

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 85782

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Elizabeth A. Brown
Clerk of Supreme Court

JUSTIN D. PORTER

Appellant,

v.

THE STATE OF NEVADA

Respondent.

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

**APPELLANT'S REPLY APPENDIX
VOLUME II**

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CERTIFICATE OF SERVICE

I hereby certify and affirm that the Appellant's Appendix to the Reply Brief, Volumes I-III, were filed electronically with the Nevada Supreme Court on February 2, 2024. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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By: /s/ Mariela Ramirez
An Employee of Oronoz & Ericsson, LLC

1 overall photos just showing the condition of the -- of the
2 apartment -- in this case the apartment, as it was when we
3 arrived.

4 Q Okay. So just for the record, Exhibit 195, is this
5 the apartment that you went to?

6 A Yes, that would have been the front door.

7 Q Okay. And you always take a picture of the front
8 door so that you know that --

9 A Just something with the address on it, yeah.

10 Q -- this is the (indiscernible).

11 So when you arrived at the scene, who was there, if
12 anyone?

13 A In my report I have that an Officer Kizner
14 (phonetic) in were on scene.

15 Q Could that be Detective Kizner?

16 A Yes.

17 Q And when you arrived there, did you speak with
18 Detective Kizner?

19 A Yeah. We would have spoken about it.

20 Q And would he have kind of given you the overview of
21 what previously had occurred within that apartment?

22 A Yes, he would have given me an idea of what he was
23 originally called there for. And then any conversations that
24 he may have had with anybody who had been in the apartment at

1 the time.

2 Q Okay. And would the conversations that he have
3 had -- he would have had with the person in the apartment kind
4 of direct what you were gonna do next?

5 A Yeah, that would be kind of the -- the outline of
6 where we would start.

7 Q Okay. So you said first thing you do is kind of
8 take over-alls. Showing you 196. What are we looking at here?

9 A This would be the living room, southeast living room
10 of the apartment.

11 Q Okay. And -- trying to find my order. And then as
12 you were walking around the apartment, would you have also
13 seen State's Exhibit 203?

14 A Yes, this was a -- a phone that was in the -- also
15 in the living room, I believe.

16 Q So kind of near the area that the pry -- prior photo
17 is here.

18 A Yeah, I believe it's right below where that chair is
19 in the prior photo.

20 Q And is there anything significant about this
21 telephone?

22 A I believe that the -- the -- the cord appeared to
23 have been cut.

24 Q Okay. Did you also go into the bedroom? Did you

1 also go into the bedroom?

2 A Oh, yes.

3 Q State's Exhibit 204. Was that within the bedroom?

4 A Yes.

5 Q As well as 198, in the bedroom?

6 A Yes, that's also in the bedroom.

7 Q Sorry. Had you learned that things specifically
8 occurred within the bedroom?

9 A There had been certain -- yeah, certain details of
10 the incident that the detective had relayed to me.

11 MR. GILL: And, Your Honor, I understand it's -- I
12 just want to make a record of what he might be referring to,
13 if he's looking down at notes or something.

14 THE COURT: Sure. Yeah. What do you have in front
15 of you, sir?

16 THE WITNESS: This is my report of the -- of the
17 incident from that night.

18 THE COURT: Okay. So if there's a time that you
19 need to refresh your recollection, just let me know so I can
20 make a record of it.

21 THE WITNESS: Okay.

22 THE COURT: So would looking at that now help
23 refresh your recollection --

24 THE WITNESS: Okay.

1 THE COURT: -- in regards to it?

2 THE WITNESS: Sure.

3 THE COURT: Okay. Go ahead.

4 THE WITNESS: Thank you.

5 THE COURT: Feel free to do so. Just go ahead and
6 read it to yourself and then look up when you're done --

7 THE WITNESS: Okay.

8 THE COURT: -- and Ms. Luzaich will ask a follow-up
9 question.

10 THE WITNESS: I'm sorry. What was the last
11 question? I'm sorry.

12 BY MS. LUZAICH:

13 Q Had you learned that things had occurred within the
14 bedroom?

15 A Yeah. Yeah. That would have been part of my
16 initial discussion with the detective.

17 Q Okay. Showing you State's 200. What are we looking
18 at here?

19 A This would be the closet in that bedroom.

20 Q And was there anything significant about the closet
21 that you were aware?

22 A There was --

23 THE WITNESS: Just referring to my notes again,
24 Your Honor.

1 THE COURT: Yeah. That's okay.

2 THE WITNESS: There was a knife and a piece of the
3 phone cord in the closet of that bedroom.

4 BY MS. LUZAICH:

5 Q Showing you State's 201. Would that be an up close
6 of the knife and the phone cord that you just pointed to --

7 A Yes, it would.

8 Q -- discussed in the picture?

9 As far as you talked about processing a crime scene, did
10 you process for prints?

11 A Yes, I did.

12 Q Did you have training and education that qualified
13 you to do that?

14 A Yes, the -- the education (indiscernible) previously
15 spoke about.

16 Q And specifically pertaining to fingerprints?

17 A Yes, that was part of the -- the American Institute
18 of Applied Forensic Science courses and the training I
19 received at the academy.

20 Q Okay. So when you are processing for fingerprints,
21 how do you go about doing that?

22 A Usually it's -- it's kind of based on what the
23 surface type of the object is. In general, the smoother and
24 cleaner a surface is, the better fingerprint will -- will

1 adhere to it. If an object is dusty or like something on the
2 outside of a house, where it gets a lot of environmental
3 damage, a little less better. Things inside a house, you
4 know, mirrors, glass, things like that, always -- always
5 better sources for a good fingerprints.

6 Q Okay. So if I am standing here right now and you
7 see my fingers on this podium, am I necessarily gonna leave
8 prints behind?

9 A Not necessarily. A lot of it depends on what is on
10 your hands at the time. If your hands are naturally -- you
11 have lotion or anything that makes them a little more wet, I
12 guess, those prints are a little more available when you touch
13 on object. Again, it depends on the surface. The surface
14 can't absorb all the moisture that would produce a print and
15 leave very little behind.

16 Q So when you are looking for -- or processing for
17 fingerprints at a location like a home, are there different
18 ways that you can do it?

19 A Yeah. There's several different -- there's --
20 there's different powders that you can use based on the
21 surfaces. Again, what mostly we -- we'll see -- I've used is
22 a basic kind of a black powder, which is kind of a really fine
23 graphite-type material. That will adhere most easily to
24 your -- your cleaner, smoother type surfaces and will give you

1 a very nicely defined print.

2 Q So showing you State's Exhibit 206, what are we
3 looking at here?

4 A So this was the telephone from the previous picture
5 that I processed for prints, again, using the very similar
6 black powder. This might have been a black magnetic powder,
7 which is -- what it sounds like. It's -- it's magnetized
8 powered which you use a magnetized wand to drag across an
9 object as opposed to what you may see in the movies with the
10 brush where they just kind of throw it on there. Very similar
11 powder, except for just a little bit different designation.

12 Q Okay. And as you look at this exhibit, can you
13 tell, were you able to find any prints?

14 A Yes, the places where you can see on the receiver,
15 where you see the little tab of tape, that would have been the
16 tape that I used to lift the print off of the object.

17 Q Okay. Can you -- there should be a mouse in front
18 of you.

19 A Oh, so --

20 THE COURT: So hit the --

21 THE WITNESS: Here's -- here's one tab --

22 MS. LUZAICH: Actually, as long as he just shows.

23 THE COURT: That's fine.

24 MS. LUZAICH: That's fine.

1 THE WITNESS: Yeah. And this one right here is
2 another piece of the tape.

3 BY MS. LUZAICH:

4 Q Okay. So when you say that a print -- so are you
5 actually picking up a fingerprint or are you picking up
6 something else?

7 A So what I'm actually looking at is I -- I'm looking
8 at -- or I'm picking up ridges. So if you look at your
9 fingerprint, you'll see the ridges that make the designs. I'm
10 picking up those ridges.

11 Now, what ends up happening is I'll put this on a card, a
12 little white card, and I'll take that back to an actual
13 fingerprint examiner who will, with a magnifying glass,
14 basically look for the identifiable marks inside that print.

15 At the scenes we don't make those determinations of a
16 good print versus a bad print. If there's any ridge detail
17 whatsoever, we send it to the actual experts who are more
18 better trained in the identification of -- of fingerprints
19 than we are.

20 Q Okay. So we're looking at this phone here, and you
21 pointed out that there were some pieces of tape. What do you
22 do, specifically? You put the black powder on. You put the
23 tape 'cause you saw ridges.

24 A Right.

1 Q Then what do you do?

2 A Then you just -- you lift the tape up and apply it
3 to a -- a white index card. And on that card I will make
4 certain notes on it of the object and where I took the -- the
5 print from. So in this case it would have been the receiver
6 of the telephone found in the living room.

7 Q So would it also include the card that you're
8 speaking of, other information pertaining to the event?

9 A Yeah, usually they had my name on there and the
10 incident -- what we refer to as the event number on it so that
11 that will all stay categorized.

12 Q Okay. So it will know what the event number is --

13 A Right.

14 Q -- know that you pulled this --

15 A My (indiscernible) yeah. And then usually an
16 address and things like that on there.

17 Q Okay. Showing you State's Exhibit 207. What are we
18 looking at here?

19 A This was -- I believe it was a bedroom door, if I'm
20 not mistaken. And, again, you'll see right -- again, using
21 the mouse, right here (indicating), a small tab of the tape
22 where some ridge detail was picked up.

23 Q Okay. So would you have put that piece of tape on
24 the same white card that you used for the phone?

1 A No, each -- each -- each piece of tape will go on
2 its own individual card with its own set of information of
3 where it was located.

4 Q Okay. And then showing you State's Proposed
5 Exhibit 205. What do we see here?

6 A So here we have a coffee cup and a -- a little box.
7 Again, you'll see the little tabs of tape here, here, and here
8 (indicating).

9 Q So would you have taken those pieces of tape and put
10 them on their own white index cards?

11 A Yes, those would have been three different cards.

12 Q And would all of these cards be put together and
13 sent to the lab under the same event number?

14 A Yes, they would all go into a single envelope and,
15 again, with all the same information on it: My name, event
16 number, location, addresses, the officer who was originally
17 involved in this. And that would all go to the latent print
18 examiners to -- for further examination.

19 Q Okay. Now, when you arrived at the scene, you said
20 that you see -- saw and spoke with Detective Kizner. What
21 about the individual who lived there? Was she there when you
22 got there?

23 A Not when I got there, no.

24 Q Was it your understanding that she was somewhere

1 else?

2 A Yes.

3 Q And did you then go there?

4 A I did.

5 Q Where was that?

6 A At about 2:00 in the morning, I went to UMC Fast
7 Track, where she was currently being examined.

8 Q What is UMC Fast Track?

9 A UMC Fast Track, back then, was a -- basically a
10 trailer in the back of the emergency room, separate from the
11 emergency room, where they took victims of sexual assault
12 that -- for the examinations, for the collection of the sexual
13 assault kits and then interviews with -- with police and --
14 and investigators, if needed.

15 Q So when you went to the trailer for the Fast Track,
16 did you see the individual who lived at the apartment?

17 A I did.

18 Q Was that Teresa Tyler?

19 A That's how she was identified to me, yes.

20 Q And showing you State's Exhibit 202, is that how she
21 appeared when you went to Fast Track?

22 A Yes.

23 Q Now, was it your understanding that she was
24 transported there by an entity?

1 A I don't recall if she -- how she was transported. I
2 just was told she was transported. I assumed it was through
3 an ambulance.

4 Q Okay. Did certain items of evidence go to
5 Fast Track with her?

6 A Yes.

7 Q What items of evidence went with her?

8 A Again, just referring to my report.

9 Q If it would refresh your recollection, go ahead.

10 A I got items -- items of clothing, a bandana, a
11 towel, and several pieces of a multi-colored cloth,
12 ribbon-type material.

13 Q And how did you obtain those items?

14 A Those were just -- they were given to me at
15 Fast Track.

16 MS. LUZAICH: Sorry. Can I --

17 BY MS. LUZAICH:

18 Q And what did you do when you discovered those items?

19 A Those items, I collected and took back to the crime
20 lab for further examination.

21 MS. LUZAICH: I'm sorry. I am missing photos.

22 Nope. I found 'em. Okay.

23 BY MS. LUZAICH:

24 Q Showing you -- well, can you describe the items? Do

1 you recall them?

2 A Yes. I collected one pair of black sweat pants, one
3 pair of white lady's underwear, one red bandana, one white
4 towel that had some apparent blood on it, one multi -- piece
5 of multi-colored cloth with a piece of phone cord wrapped
6 around it, and four additional pieces of that same
7 multi-colored cloth that were separate from the -- the tied
8 piece.

9 Q And for the record, are you refraction -- are you
10 referring to your report as you're --

11 A I am. I'm using my evidence report.

12 Q Okay.

13 A Impound report. Sorry.

14 Q So you mentioned items of material. Showing you
15 State's --

16 MS. LUZAICH: Oh, what's the last number that's
17 actually in evidence?

18 THE CLERK: I think it's 212.

19 MS. LUZAICH: Oh, okay.

20 BY MS. LUZAICH:

21 Q Showing you State's 212, what is this?

22 A Those are the pieces of the -- the multi-colored
23 ribbon, cloth-type material. You can see the phone cord
24 wrapped around one of them and then some separate pieces next

1 to it.

2 Q Okay. And State's Exhibit 211.

3 A So, again, you can see the cloth here.

4 Q Oops. Sorry.

5 A Piece of phone cord right there laying around it.
6 This is the red bandana, pair the sweat pants, a towel, and
7 the lady's underwear over here (indicating).

8 Q All right. So as we're looking at this exhibit
9 right now, is this all of those items laid out?

10 A Yes.

11 Q Whereas the prior exhibit, 112, is that the kind of
12 condition in which you found them?

13 A This -- yeah, this -- this is also -- I just wanted
14 to -- on this one, I was just trying to get to show the -- the
15 tied phone cord around it here.

16 Q Right.

17 A Yeah.

18 Q And then you said that there was a towel and a pair
19 of lady's underwear.

20 A That's correct.

21 Q Showing you 210, is that them up close?

22 A Yes.

23 Q And did you do anything to those items?

24 A So the items that I collected at Fast Track, I

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

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

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

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

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

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

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

1 circumstances, a conclusionary test?

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

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

6 A Yes, I did.

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

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

11 Q And State's Exhibit 209.

12 A Again, another bruising to the same elbow.

13 Q Well, but to a different location --

14 A To a different location --

15 Q -- of the elbow.

16 A -- yes.

17 Q So this location on the elbow is where?

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

19 Q Kind of where the arm bends?

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

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

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

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

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

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

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

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

10 A Yes.

11 Q Thank you.

12 MS. LUZAICH: I pass the witness.

13 THE COURT: Mr. Gill.

14 MR. GILL: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. GILL:

17 Q Is it Detective Atkin nowadays?

18 A No, it just --

19 Q I'm sorry.

20 A Just Mike is fine.

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

23 A Correct.

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

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

4 A No.

5 Q You're told information.

6 A Yes.

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

9 A Mm-hmm.

10 Q Is that a "yes"?

11 A Yes.

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

14 A Yes.

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

18 A Yes.

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

21 A No.

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

24 A No.

1 Q Or the semen; correct?

2 A No, I --

3 Q Just that there might be semen there.

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

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

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

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

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

12 BY MR. GILL:

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

16 A Yes.

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

20 A Correct.

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

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

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

1 were told that this was a sexual assault potentially?

2 A Yes.

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

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

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

8 A Yes, that was pretty standard.

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

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

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

20 A I believe so, yes.

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

22 A That's correct.

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

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

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

6 A I don't recall, no.

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

8 A The phone, the --

9 Q Back door?

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

11 Q The box and the cup.

12 A Um, yeah.

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

14 A No, that's fine.

15 Q -- go right ahead.

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

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

21 A That's correct.

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

24 A Right.

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

4 A No, that's correct.

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

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

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

10 A Yes.

11 Q Those were taken by you; correct?

12 A Yes.

13 Q You process it for prints?

14 A Yes.

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

17 A Yes.

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

20 A The -- the photograph, yes.

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

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

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

6 Q Okay. Different unit within Metro that --

7 A Right.

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

9 A Correct.

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

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

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

20 A Not in my realm, no.

21 Q Okay.

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

24 THE COURT: Okay. Redirect?

1 MS. LUZAICH: No, Judge, nothing.

2 THE COURT: Anything from the jurors?

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

4 THE WITNESS: Thank you.

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

8 THE WITNESS: Thank you, ma'am.

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

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

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

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

1 THE MARSHAL: All rise.

2 [OUTSIDE THE PRESENCE OF THE JURY]

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

6 MS. LUZAICH: Yes.

7 MS. KOLLINS: Yes.

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

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

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

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

2 THE COURT: Yeah, of course.

3 MR. GILL: Okay.

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

8 MR. GILL: Of course.

9 MS. KOLLINS: Yes. Yes.

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

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

15 THE COURT: Okay.

16 MR. GILL: Just for clarification.

17 THE COURT: Yes, sir.

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

1 THE COURT: No. Sorry.

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

3 THE COURT: Right.

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

7 THE COURT: Yeah.

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

11 THE COURT: Right.

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

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

19 MR. GILL: Are we going --

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

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

22 THE COURT: -- is it --

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

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

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

11 MR. GILL: Okay.

12 THE COURT: There are not any limiting instruction.

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

16 THE COURT: Yeah.

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

19 THE COURT: Multiple --

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

22 THE COURT: Right.

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

1 THE COURT: Yes.

2 MR. GILL: Okay.

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

5 MR. GILL: Right.

6 THE COURT: -- in its entirety.

7 MR. GILL: Okay.

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

11 MR. GILL: Understood.

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

15 THE COURT: Right.

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

18 THE COURT: Right.

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

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

24 MR. GILL: Sure.

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

4 MS. KOLLINS: I will do that.

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

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

7 MR. GILL: Yep.

8 MS. KOLLINS: Thank you.

9 MR. GILL: Thank you, Your Honor.

10 THE COURT: All right. Thanks, guys.

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

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

14 [OUTSIDE THE PRESENCE OF THE JURY]

15 [DISCUSSION OFF THE RECORD]

16 THE MARSHAL: All rise.

17 [IN THE PRESENCE OF THE JURY]

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

19 Please be seated. Thank you.

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

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

2 MS. LUZAICH: Yes, Your Honor.

3 MR. GILL: Yes, Your Honor.

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

5 MS. LUZAICH: Laura Zazueta.

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

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

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

12 THE WITNESS: Yes, I swear.

13 THE CLERK: Please be seated.

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

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

18 THE CLERK: Thank you.

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

20 (Indiscernible) the interpreter (indiscernible).

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

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

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

1 THE COURT: Okay. Got it.

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

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

5 THE COURT: Thank you.

6 THE INTERPRETER: You're welcome.

7 THE COURT: Good afternoon, sir.

8 Ms. Luzaich.

9 MS. LUZAICH: Thank you.

10 DIRECT EXAMINATION

11 BY MS. LUZAICH:

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

13 A Yes.

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

16 A Yes.

17 Q And does Beatriz have children?

18 A Yes, she has two.

19 Q And a husband?

20 A And one husband.

21 Q And is his name Guadalupe Lopez?

22 A Yes.

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

24 A Yes.

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

3 A Yes.

4 Q When was that?

5 A It was 2000.

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

8 A It was an apartment.

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

11 A Yes.

12 Q And was the apartment number 229?

13 A Yes.

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

15 A Second floor.

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

17 A About 19 years.

18 Q Okay. Were you working at the time?

19 A Yes, I was a waitress.

20 Q And where did you work back then?

21 A At a restaurant, Mexican.

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

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

1 Q Okay. Did you work late at night?

2 A Yes.

3 Q And --

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

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

8 A Yes.

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

11 A Three, three-bedroom.

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

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

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

19 A Yes.

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

22 A About 10:00, 11:00.

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

24 A That's right.

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

3 A Mine? No.

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

5 A Yes.

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

8 A Yes.

9 Q Can you tell me about that?

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

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

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

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

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

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

23 A Yes.

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

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

2 A Yes.

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

5 A Yes.

6 Q Which?

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

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

11 A He was black.

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

14 A Yes.

15 Q What did he say?

16 A He was telling me bad words.

17 Q What kind of bad --

18 A He was telling me that he wanted money.

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

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

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

24 ///

1 BY MS. LUZAICH:

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

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

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

7 A Yes.

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

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

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

14 A [Witness nods head.]

15 THE COURT: Silence.

16 BY MS. LUZAICH:

17 Q Can you answer out loud, please.

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

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

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

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

1 said he wants money, what did you do?

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

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

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

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

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

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

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

13 Q Did you have more?

14 A No.

15 Q So then what happened?

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

18 Q What room did he take you to?

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

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

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

1 Q Okay. So was he behind you?

2 A Yes.

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

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

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

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

11 Q What happened when they woke up?

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

15 Q So what happened?

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

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

20 A He speaks English.

21 Q And he's outside; right?

22 A Yes, he's outside.

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

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

4 Q Okay. And then what?

5 A He aim at him at the head.

6 Q And then what happened?

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

9 Q Did you hear --

10 A -- and we will hear many shots.

11 Q Okay. So you heard shots fired?

12 A Yes.

13 Q What happened after the shots were fired?

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

17 Q Her son was in the bed with her?

18 A Yes.

19 Q Were you scared?

20 A We were very scared.

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

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

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

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

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

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

12 A Yes.

13 Q What happened after that?

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

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

18 A Yes, we call.

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

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

21 Q Oh, somebody called the police.

22 A Yeah, somebody called.

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

24 A The police?

1 Q Yes.

2 A Yes.

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

5 A Yes.

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

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

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

13 MS. LUZAICH: Thank you.

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

15 BY MS. LUZAICH:

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

19 A Yes.

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

21 A Yes.

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

23 A Yes. Through there, he went out.

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

1 216, what are we looking at?

2 A That's my bedroom.

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

5 A Yes.

6 Q State's 217. Still your bedroom?

7 A Yes.

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

10 A That's my sister's bedroom.

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

12 A Yes.

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

14 A Yes.

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

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

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

19 A That's my -- my bed.

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

21 CROSS-EXAMINATION

22 BY MR. GILL:

23 Q Just a few questions, Ms. Zazueta.

24 How are you?

1 A Fine. Thank you.

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

4 A No.

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

7 A He was covered.

8 Q He was covered?

9 A He was covered.

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

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

14 A That's right.

15 Q And did he have gloves on?

16 A No.

17 Q And he had a gun; correct?

18 A Yes.

19 Q What hand was he holding the gun in?

20 A I don't remember.

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

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

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

24 A Yes.

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

3 A Yes.

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

6 A Yes.

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

8 A To a revolver.

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

10 A Yes.

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

14 A Yes.

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

18 A Well, it was bigger than me.

19 Q Okay. How tall are you?

20 A Five-three.

21 Q Okay. So he was taller than you?

22 A Yes.

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

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

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

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

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

9 A He did it in English.

10 Q Okay. And you understood that; correct?

11 A Yes.

12 Q And you understand some bad words; correct?

13 A Bad words, yes.

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

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

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

22 A Sí.

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

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

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

7 A No.

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

10 A Yes.

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

14 A Not all of it.

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

17 A Yeah.

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

20 A Yes.

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

23 A Yes.

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

1 looked like somebody exited that window; correct --

2 A Yes.

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

4 THE COURT: Okay. Any redirect?

5 MS. LUZAICH: No, judge.

6 THE COURT: Any questions from the jurors?

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

10 THE WITNESS: Okay.

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

13 THE WITNESS: Thank you (English).

14 MS. LUZAICH: Guadalupe Lopez.

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

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

20 THE WITNESS: I promise.

21 THE CLERK: Please be seated.

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

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

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

2 THE CLERK: Thank you.

3 THE COURT: Ms. Luzaich.

4 MS. LUZAICH: Thank you.

5 DIRECT EXAMINATION

6 BY MS. LUZAICH:

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

8 A I live with my wife, Beatriz.

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

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

11 Q And is it just you and your wife?

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

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

14 A Two.

15 Q How old are they now?

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

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

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

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

23 A Yes.

24 Q Was that apartment 119?

1 A Yes, it was.

2 Q Oh, maybe 229?

3 A Um --

4 Q First floor or second floor?

5 A It was second floor.

6 Q Okay.

7 A Yeah.

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

10 A Yes, it was.

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

13 A Okay.

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

17 A Yes.

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

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

22 Q Tell me about that. What happened?

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

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

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

5 A It was my wife and my two sons.

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

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

14 Q Can you describe him?

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

19 Q Okay.

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

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

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

1 Q Okay. So his head as well.

2 A Yeah.

3 Q Could you tell the color of his skin?

4 A He was brown, dark. Dark skin.

5 Q Okay. African American?

6 A Yes.

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

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

12 Q Okay. A black gun.

13 A Mm-hmm.

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

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

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

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

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

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

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

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

11 Q Okay. So was she closer to Beatriz?

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

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

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

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

18 A Yes.

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

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

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

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

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

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

15 A Yeah (indicating).

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

17 A Yes.

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

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

1 Q Do you remember how many shots you heard?
2 A Four.
3 Q And after you heard the four shots, what did you
4 hear?
5 A I was just hearing a click like (descriptive noise),
6 the -- that's when I said, he's out of bullets. I'm lucky.
7 So I just --
8 Q Okay.
9 A -- I pushed him and I just started fighting with
10 him.
11 Q 'Kay. Now when the bullets -- when the bullets.
12 When the gun went off and you heard the shots, could you tell
13 where the bullets went?
14 A When I was struggling, yeah. He had hit the bed,
15 two walls, the -- the right wall and then one in front of the
16 bed. And then on the -- on the bed and on the floor, carpet.
17 Q You said it hit the bed.
18 A Yeah.
19 Q Where in the bed did the bullet hit?
20 A Let's say, like, on the -- like, kind of in the
21 middle of the bed.
22 Q Like where your --
23 A Yeah.
24 Q -- wife and children were laying?

1 A Yes.

2 Q Did any of the bullets hit you?

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

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

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

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

1 Q Okay.

2 A And --

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

7 A Yes.

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

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

14 Q Okay.

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

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

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

21 Q Okay. And you said --

22 A Kitchen.

23 Q -- there's vinyl floor.

24 A Yes.

1 Q And that you slipped on that.

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

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

6 A Mm-hmm.

7 Q Okay. Is that a "yes"?

8 A Yes.

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

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

13 A Yes, it is.

14 Q And you said you slipped.

15 A Mm-hmm.

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

18 A Yes.

19 Q Where was he?

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

22 (Indiscernible)

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

1 A Yes.

2 Q What were you doing?

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

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

9 A Yeah.

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

14 A Mm-hmm. Yes.

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

16 A Yes, it is.

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

19 THE COURT: Okay.

20 BY MS. LUZAICH:

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

22 A Yes.

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

1 A Mm-hmm.

2 Q Is that a "yes"?

3 A Yes. Yes.

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

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

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

10 A Yes.

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

13 A Yes, it is.

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

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

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

17 A Oh, yes.

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

19 A Yes. Yes.

20 Q And that's the underneath.

21 A Mm-hmm. Underneath.

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

23 A Yeah.

24 Q -- and out the other.

1 Is that a "yes"?

2 A Yes.

3 Q Oh, sorry.

4 225. Can you tell what that is?

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

6 Q Bullet hole in the wall?

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

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

9 there?

10 A No.

11 Q Were there any bullet holes in your mattress before

12 he got there?

13 A No.

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

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

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

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

18 pushed into the wall?

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

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

21 wall.

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

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

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

1 A Yes.

2 Q And then 227. Where is this?

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

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

8 A Yes.

9 Q 232. What is this?

10 A That's my head, opened up.

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

13 A Yes.

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

16 A Yes, that's me.

17 Q Couple minutes younger.

18 A Oh, yeah.

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

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

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

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

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

11 A Mm-hmm. Yes.

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

13 A Yes.

14 Q And you wouldn't let him out?

15 A Yes.

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

18 A Yes.

19 Q 215, that's the window.

20 A Correct.

21 Q How did he get to the window?

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

1 to get out.

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

4 A Yes.

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

7 A No.

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

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

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

12 A Yes.

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

15 A Yes.

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

18 A Correct. Yes.

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

22 A Those are the stairs.

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

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

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

5 A Yes.

6 Q Which --

7 A It is.

8 Q -- side of the photograph?

9 A On the left.

10 Q Okay. So over here.

11 A The second floor, yes.

12 Q Is that right?

13 A Second floor, yes.

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

16 A Correct. Yes.

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

19 A Yes.

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

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

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

1 A No.

2 Q He jumped off that balcony?

3 A Yes.

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

6 A Yes.

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

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

10 Q Okay.

11 A Broken glass.

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

14 A Yes. Yes, it is.

15 Q Just for the record.

16 A Yes.

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

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

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

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

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

24 A Yes.

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

2 A Yes.

3 Q And did the police come?

4 A Yes.

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

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

11 Q Right.

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

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

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

16 Q Okay.

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

18 THE COURT: Mr. Gill.

19 MR. GILL: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. GILL:

22 Q Mr. Lopez, how are you?

23 A Good.

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

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

3 A Yes.

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

8 MR. GILL: Court's indulgence.

9 THE COURT: Sure.

10 BY MR. GILL:

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

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

16 Q Okay.

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

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

21 A Yeah.

22 Q They're just standing at the bed.

23 A On the bed, yeah.

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

1 their right shoulder or over the left shoulder?

2 A It'll be over the right shoulder.

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

5 A Yes.

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

8 A Yes.

9 Q And that's Beatriz; correct?

10 A Yes.

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

13 A Mm-hmm.

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

16 A Yes.

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

18 A Yes.

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

21 A Correct. Yes.

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

23 A Yes.

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

1 you want."

2 A Yes.

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

5 A Yes.

6 Q -- right?

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

9 A Yes.

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

12 A Yes.

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

14 A Correct.

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

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

19 Q Okay.

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

21 Q Okay.

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

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

1 counterclockwise, and wrenched it down.

2 A Yes.

3 Q The -- the intruder's hand.

4 A Yes.

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

6 Was your hand on the trigger at any time?

7 A No.

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

11 A No, I did not.

12 Q Other than the one in your leg.

13 A Sure.

14 Q I mean --

15 A Yes.

16 Q -- you felt the burning.

17 A Mm-hmm.

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

20 A Correct. Yes.

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

23 A Yes.

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

1 spring; correct?

2 A Correct. Yes.

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

5 A Yes.

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

7 A Yes.

8 Q -- correct?

9 A After everything was --

10 Q Calmed down.

11 A Yeah.

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

13 A Oh, yes.

14 Q -- a struggle -- okay.

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

17 A No.

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

20 A Yes.

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

22 A Yes.

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

1 A Yes.

2 Q Along with hitting the intruder; correct?

3 A Correct. Yes.

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

7 A With my fist.

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

9 A No.

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

11 A Correct.

12 Q And are you both kind of swinging?

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

18 Q Okay.

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

21 Q Okay.

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

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

4 Q Okay.

5 A Yeah.

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

9 A No, it was always in his hand.

10 Q Okay. So when you say --

11 A Yeah.

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

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

14 Q Gotcha.

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

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

20 A Yes.

21 Q Including his arms.

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

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

1 A Yes.

2 Q And was that with the gun?

3 A Yes.

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

6 A Yes.

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

9 A Mm-hmm.

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

11 A Yes.

12 Q I'm sorry.

13 A Yes.

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

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

1 Q Okay.

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

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

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

8 A Yes.

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

11 A Yes.

12 Q The top of it?

13 A Yes.

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

15 A Yes.

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

18 A Mmm --

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

21 A About eight -- eight feet.

22 Q Okay.

23 A Yeah.

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

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

3 A Yes.

4 MR. GILL: Court's indulgence.

5 Nothing further, Your Honor. Thank you.

6 THE COURT: Okay. Redirect?

7 MS. LUZAICH: Nothing, Judge.

8 THE COURT: Anything for this witness?

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

13 THE WITNESS: Okay. Thank you.

14 THE COURT: Thank you so much.

15 THE WITNESS: Thank you.

16 THE COURT: State?

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

18 THE COURT: Sure.

19 [BENCH CONFERENCE BEGIN]

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

21 MR. GILL: Okay.

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

24 MR. GILL: I don't --

1 MS. LUZAICH: Yeah.

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

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

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

5 minutes?

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

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

8 Distributing what?

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

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

11 copy.

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

13 [Inaudible talking]

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

15 MS. KOLLINS: (Indiscernible)

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

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

18 while you hand out --

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

20 leave, but if not --

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

22 any more breaks.

23 THE COURT: No.

24 [BENCH CONFERENCE END]

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

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

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

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

18 THE MARSHAL: All rise.

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

21 [IN THE PRESENCE OF THE JURY]

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

24 MS. LUZAICH: Well, sort of.

1 [BENCH CONFERENCE BEGIN]

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

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

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

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

13 MR. GILL: It's --

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

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

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

6 THE COURT: State?

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

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

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

19 THE COURT: Yeah.

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

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

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

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

7 THE COURT: Is Dorothy Parton --

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

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

11 MS. LUZAICH: Yeah.

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

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

18 THE COURT: Sorry.

19 MR. GILL: It's okay.

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

21 MR. GILL: Thank you.

22 THE COURT: Okay. Thanks, everybody.

23 [BENCH CONFERENCE END]

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

1 wanted to come up to the witness stand.

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

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

12 MS. SCHIFALACQUA: I do.

13 THE CLERK: Please be seated.

14 MS. SCHIFALACQUA: Thank you.

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

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

20 THE CLERK: Thank you.

21 THE COURT: All right. Ms. Luzaich.

22 MS. LUZAICH: Thank you.

23 [TRANSCRIPT READING BEGIN]

24 ///

DIRECT EXAMINATION

BY MS. LUZAICH:

Q Ms. Case, how old are you?

A I'm 43.

Q And when is your birthday?

A August 18, 1957.

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

A 2900 East Charleston, number 50.

Q What kind of place was that?

A It was a studio apartment.

Q Was that a multi-story building?

A Yeah.

Q I'm sorry?

A There were several stories, yes.

Q And which floor did you live on?

A The bottom floor.

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

A Yes.

Q Did anyone else live with you at that address?

A No.

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

A I was at home.

1 Q And what were you doing?

2 A I was watching TV.

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

5 A Mm-hmm.

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

9 A Okay.

10 Q Thank you.

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

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

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

20 A I was in the living room.

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

23 A Someone knocked on my door.

24 Q And what did you do?

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

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

4 A Yes, I did.

5 Q How is it that you recognized him?

6 A He had knocked on my door previously.

7 Q And when in relationship to this night?

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

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

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

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

17 A Ten days.

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

21 A Maybe five minutes. He borrowed my phone.

22 Q How is it that he borrowed your phone?

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

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

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

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

7 A Okay.

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

11 A Right.

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

14 A Yes.

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

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

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

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

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

24 A No.

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

3 A Right.

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

6 A He wanted to borrow my phone.

7 Q And was he with anybody this time?

8 A No.

9 Q What did you say?

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

11 Q So then what happened?

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

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

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

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

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

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

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

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

3 A Yes.

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

6 A I --

7 Q -- if you remember?

8 A I don't remember --

9 Q Okay.

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

11 Q But you knew you had the deadbolt on.

12 A Right.

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

14 A Yes.

15 Q What -- then what happens?

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

17 Q Was that mobile phone?

18 A My cordless.

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

20 A Yeah.

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

22 A No.

23 Q Why not?

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

1 phone away from me.

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

3 A On my face.

4 Q Okay.

5 A Across my jaw.

6 Q You said you were knocked to the ground?

7 A Yes.

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

10 A I don't know.

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

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

14 Q Did he say anything?

15 A He asked me why I dissed him bitch.

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

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

19 Q Okay. So then what happened?

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

22 Q What kind of kitchen knife was it?

23 A It was a steak knife.

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

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

3 Q Okay.

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

6 Q Did he ask for money or demand money?

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

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

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

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

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

14 Q Where was your purse?

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

17 Q Did he take anything else from you?

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

21 Q Where was that ring?

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

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

1 A He asked me for it.

2 Q Okay.

3 A And --

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

5 A Oh, yes.

6 Q Why'd you do that?

7 A He had a knife.

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

11 A Yes, I do.

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

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

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

18 THE COURT: The record will so reflect.

19 BY MS. LUZAICH:

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

22 A No, he didn't.

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

1 point?

2 A I was still in the living room.

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

5 A Yes.

6 Q How does that come about?

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

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

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

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

14 A Right beside my bed.

15 Q And was the lamp plugged in or --

16 A No, it wasn't plugged in.

17 Q Okay.

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

21 Q So did you hold the lamp?

22 A Yes, I did.

23 Q Did he cut off the cord?

24 A Yes.

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

3 A Yes, he did.

4 Q What did he do?

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

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

9 A The steak knife.

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

12 A Sitting on the edge of the bed.

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

14 A Yes.

15 Q And it was around your neck?

16 A Right.

17 Q And then what happened?

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

22 Q Okay. And did you --

23 A Pulling the cord tight.

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

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

3 A Inside the cord, yes.

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

6 A Yes.

7 Q And was he on the bed?

8 A Yes.

9 Q And he was pulling the cord tight?

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

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

13 A I was losing consciousness.

14 Q And was he saying anything or --

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

17 Q And so then what happened?

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

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

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

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

1 and he said, yes, he did.

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

3 A Yes.

4 Q So then what happens?

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

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

7 A Yes, he did.

8 Q Where did that happen?

9 A On the bed.

10 Q Did he do anything before he did that?

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

12 Q What did you say?

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

14 Q And --

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

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

19 A Yes.

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

21 A He just put his penis in my vagina.

22 Q Was that against your will?

23 A Yes.

24 Q Did he ejaculate?

1 A I don't know.

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

4 A I was laying sideways on the bed.

5 Q And where was he?

6 A On top of me.

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

9 A Yes.

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

12 A I don't remember.

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

14 A I sat up and started to get dressed.

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

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

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

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

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

24 A His private area.

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

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

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

8 A Yes.

9 Q When he was in the bathroom?

10 A Yes.

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

12 A About four feet.

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

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

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

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

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

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

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

3 A In his hand.

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

5 A Yes.

6 Q And then what happened?

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

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

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

14 Q Okay.

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

17 Q And what did he do with it?

18 A He used it as a condom.

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

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

22 Q And what happened next?

23 A He sexually assaulted me.

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

1 A He put his penis in my vagina again.

2 Q And that was against your will?

3 A Yes.

4 Q Now, you said he threatened to sexually assault

5 anally?

6 A Yes.

7 Q Did he follow through on that threat?

8 A No, he did not.

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

10 did he do?

11 A He went to wash himself again and flushed down

12 whatever he used for the condom at that point.

13 Q And what are you doing?

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

15 again, trying to cover myself up.

16 Q And then what does he do?

17 A He stabbed me.

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

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

20 and stabbed me.

21 Q And where did he stab you?

22 A In the abdomen.

23 Q Okay. And --

24 A And right here.

1 Q Your --

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

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

6 BY MS. LUZAICH:

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

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

11 Q Okay. And so --

12 A -- and he just lunged forward.

13 Q And the knife went in?

14 A All the way in.

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

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

18 Q And then he pulled the knife out?

19 A Yes.

20 Q And then what happened?

21 A He stabbed me again.

22 Q Where did he stab you the second --

23 A Right in the middle, right here.

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

1 breast, the ribcage, top of the ribcage.

2 THE WITNESS: Right.

3 BY MS. LUZAICH:

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

6 A Yes, I did.

7 Q Are you standing at this point or --

8 A Yeah. Yes, I was.

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

11 A Yes, he did.

12 Q And then what happened?

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

15 THE COURT: Which side?

16 THE WITNESS: On this side.

17 THE COURT: The right side?

18 THE WITNESS: Yes.

19 BY MS. LUZAICH:

20 Q The right side.

21 And now what are you doing?

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

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

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

10 A Slice my throat.

11 Q Slice your throat?

12 A Yes.

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

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

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

17 A No.

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

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

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

22 A Yes.

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

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

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

8 A Yes.

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

11 A Yes.

12 Q Okay. And you regained consciousness?

13 A Yes, I did.

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

16 A No, I don't.

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

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

21 Q Okay.

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

1 Q Okay. You saw yourself in the mirror?

2 A Yes.

3 Q And where was the Defendant?

4 A I don't know.

5 Q Okay.

6 A I don't remember.

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

9 A Yes.

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

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

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

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

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

18 A Or --

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

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

23 Q Okay.

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

1 two references to choking?

2 THE WITNESS: Yes.

3 BY MS. LUZAICH:

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

6 A Right.

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

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

10 Q Okay.

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

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

15 A Yes.

16 Q And what did he say to you?

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

19 THE COURT: I'm sorry. What?

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

22 BY MS. LUZAICH:

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

1 A Right.

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

4 A No.

5 Q So do you go into the bathroom?

6 A Yes.

7 Q And what do you do?

8 A I washed.

9 Q And where did you wash?

10 A In my vaginal area.

11 Q What about your hands or your fingernails?

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

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

18 A Yes.

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

21 A Yes.

22 Q And did you do that?

23 [TRANSCRIPT READING END]

24 MS. LUZAICH: Oops.

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

1 [TRANSCRIPT READING BEGIN]

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

6 BY MS. LUZAICH:

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

9 A Yes, I did.

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

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

14 Q The lamp cord that he had cut off?

15 A Yes.

16 Q Okay.

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

18 [TRANSCRIPT READING END]

19 MS. LUZAICH: Not computer savvy.

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

22 THE COURT: Sure.

23 MR. GILL: Help with the --

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

1 sorry.

2 MR. GILL: It's two fingers.

3 [TRANSCRIPT READING BEGIN]

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

10 BY MS. LUZAICH:

11 Q What was happening with your stab wounds?

12 A Nothing.

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

15 A No, there was no blood.

16 [TRANSCRIPT READING END]

17 MS. LUZAICH: Oop.

18 MR. GILL: I got it.

19 [TRANSCRIPT READING BEGIN]

20 BY MS. LUZAICH:

21 Q Okay.

22 A There was nothing to the stab wounds.

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

24 A They were sore but --

1 Q Okay.

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

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

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

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

10 A Yes.

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

13 A It was worse at that point.

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

16 A Yes.

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

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

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

24 A Yes.

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

4 A The smoke alarm going off.

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

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

7 Q And so the smoke alarm went off?

8 A Yes.

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

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

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

15 A Yeah. It stopped.

16 Q It stopped?

17 A Yes.

18 Q Then what happened?

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

21 Q How did you know that?

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

24 Q Okay.

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

3 Q Okay.

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

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

7 A What I thought, yes.

8 Q -- a door slam?

9 A Right.

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

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

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

14 A It opened out into the bedroom.

15 Q Okay.

16 A Actually this way.

17 Q And were you able to open the door?

18 A No.

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

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

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

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

1 Q By "it" being the bathroom door?

2 A Yes.

3 Q Okay.

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

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

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

17 A Yes.

18 Q The bedroom was on fire?

19 A Yes. The bed was on fire.

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

23 A Right.

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

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

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

6 A And ran out the door.

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

8 A Yes.

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

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

14 Q What were you afraid was outside?

15 A This young man right here.

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

17 A Yes.

18 Q So you went down the stairs?

19 A No.

20 Q I --

21 A To --

22 Q To the stairwell?

23 A Yeah. Just behind them.

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

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

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

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

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

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

15 A Yes, the fire department.

16 Q So the fire department arrives?

17 A Yes.

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

20 A Yes.

21 Q Are you taken to the hospital?

22 A Yes, I am.

23 Q What happens at the hospital?

24 A They did a -- a rape kit.

1 Q Okay.

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

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

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

11 Q How long were you in the hospital?

12 A Two nights.

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

15 A Yes.

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

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

19 Q And that's still today?

20 A Yes.

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

23 A Yes.

24 MS. LUZAICH: May I approach the witness?

1 THE COURT: Yes.

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

7 Can I -- I'm sorry.

8 Can I just publish them, Judge?

9 THE COURT: Yeah.

10 BY MS. LUZAICH:

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

13 Out loud.

14 A Yes.

15 Q And what would that be a picture of?

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

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

20 A Yes.

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

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

23 THE COURT: Okay. You may approach.

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

1 started this afternoon.

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

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

6 MR. GOODWIN: No.

7 BY MS. LUZAICH:

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

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

12 [TRANSCRIPT READING END]

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

15 [TRANSCRIPT READING BEGIN]

16 BY MS. LUZAICH:

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

20 A Nothing.

21 Q Nothing? Okay.

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

1 the injury photos, that's fine.

2 THE COURT: Okay.

3 BY MS. LUZAICH:

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

6 105, 106.

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

9 Q Okay. And what room is this?

10 A That's the bathroom.

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

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

13 A The front door.

14 Q Okay. 108.

15 A That must be the kitchen.

16 Q Okay.

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

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

21 THE COURT: Okay.

22 MS. LUZAICH: Pictures of the apartment.

23 BY MS. LUZAICH:

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

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

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

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

5 A Yes.

6 MS. LUZAICH: Move for admission of 109.

7 MR. GOODWIN: No objection.

8 THE COURT: Okay.

9 BY MS. LUZAICH:

10 Q 110, do you recognize this photo?

11 A Yeah.

12 Q What is this a picture of?

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

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

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

18 Q Okay.

19 A -- how that happened.

20 Q Okay.

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

22 MS. LUZAICH: 110.

23 MR. GOODWIN: 110. Thank you.

24 ///

1 BY MS. LUZAICH:

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

4 A Yes.

5 Q Okay.

6 THE COURT: Move for the admission?

7 MS. LUZAICH: Move for admission of 110.

8 MR. GILL: No objection.

9 THE COURT: It'll be admitted.

10 BY MS. LUZAICH:

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

13 A Yes.

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

16 A Yes.

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

19 A Yes.

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

22 A Yes, and it got much worse.

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

1 A Yes.

2 Q How long did that last?

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

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

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

8 THE COURT: What? I'm sorry.

9 THE WITNESS: I slump --

10 [TRANSCRIPT READING END]

11 MS. SCHIFALACQUA: Oh, sorry.

12 [TRANSCRIPT READING BEGIN]

13 MS. LUZAICH: A slump?

14 THE WITNESS: Little bit of a lazy eye.

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

16 THE WITNESS: The right eye.

17 THE COURT: Okay.

18 BY MS. LUZAICH:

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

21 A Yes.

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

24 MR. GOODWIN: No objection.

1 THE COURT: Admitted.

2 BY MS. LUZAICH:

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

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

7 Q And this picture is a picture of your eye area
8 that's bruised and bloodied and there are various markings on
9 your face around the eye?

10 A Yes.

11 Q And that would have been the area when he first came
12 through the door that he knocked you to the ground?

13 A Yes.

14 Q Okay. Do you know what he hit you with?

15 A I believe it was just his hand.

16 Q Okay. Open hand? Closed?

17 A I really don't remember.

18 MS. LUZAICH: I'll move for the admission of State's
19 Proposed Exhibit 112.

20 MR. GILL: No objection.

21 THE COURT: It will be admitted.

22 BY MS. LUZAICH:

23 Q And State's Exhibit 113 and 114. That fairly and
24 accurately depicts your neck and throat area --

1 A Yes.

2 Q -- in the hospital that night?

3 A Yes.

4 Q And what can you tell us about what you see in these
5 pictures?

6 A Just the bruising and the red spots from -- probably
7 from my [sic] hands.

8 Q Okay. From the strangulation with the lamp cord and
9 then the manual --

10 A Yes.

11 Q -- strangulation? Okay.

12 MS. LUZAICH: I'll move for the admission of State's
13 Proposed Exhibits 113 and 114.

14 THE COURT: Any objection?

15 MR. GOODWIN: No objection.

16 THE COURT: They will both be admitted.

17 BY MS. LUZAICH:

18 Q I'm going to show you what's been marked as State's
19 Proposed Exhibits 115 and 116.

20 [TRANSCRIPT READING END]

21 MS. LUZAICH: Oops. Sorry.

22 [TRANSCRIPT READING BEGIN]

23 BY MS. LUZAICH:

24 Q Is that a fair and accurate depiction of your

1 abdomen when you were at the hospital on March 7th?

2 A Yes.

3 Q And in State's 115, there's a bruised area in the
4 center. Was that there prior to this night?

5 A No.

6 Q And there's a --

7 A Stab wound.

8 Q -- appears to be a stab wound. Was that the result
9 of Defendant stabbing you?

10 A Yes, it is.

11 Q And then to the upper part of your abdomen?

12 A Actually, it's the lower.

13 Q Oh --

14 MR. GOODWIN: I'm sorry, ma'am. What did you just
15 say?

16 [TRANSCRIPT READING END]

17 MS. LUZAICH: Court.

18 [TRANSCRIPT READING BEGIN]

19 THE COURT: She had it upside down.

20 MR. GOODWIN: I'm sorry. Thank you.

21 MS. LUZAICH: Thank you.

22 BY MS. LUZAICH:

23 Q There's one upper and then there's one to the lower,
24 which would have been the lower right?

1 A Yeah.

2 Q So this fairly and accurately depict -- depicts the
3 two stab wounds?

4 A Yes, it does.

5 Q And was it a total of two stab wounds?

6 A Yes.

7 Q Okay. And the same with 116?

8 A Yes.

9 Q Same thing, fairly and accurately depicts the stab
10 wounds?

11 MS. LUZAICH: I'll move for the admission of State's
12 Proposed Exhibits 115 and 116.

13 THE COURT: Any objection?

14 MR. GOODWIN: No.

15 THE COURT: Okay.

16 BY MS. LUZAICH:

17 Q I'm going to show you what's been marked as State's
18 Proposed Exhibits 117 and 118.

19 [TRANSCRIPT READING END]

20 MS. LUZAICH: I didn't notice that was there. Sorry
21 about that.

22 [TRANSCRIPT READING BEGIN]

23 BY MS. LUZAICH:

24 Q Do you recognize what's in those photos?

1 A Looks like smoke.

2 Q Okay. Are those your feet?

3 A Yes, those are my feet.

4 Q And they're -- what? -- blackened?

5 A Yes.

6 Q And that was the result of the --

7 A The fire, leaving the fire from my house.

8 MS. LUZAICH: Okay. I'll move for the admission of
9 proposed 117 and 118.

10 MR. GOODWIN: No objection.

11 THE COURT: That will be admitted.

12 BY MS. LUZAICH:

13 Q Do you -- Ms. Case, do you have any scars on your
14 abdomen as a result of the stab wounds?

15 A Yes, I do.

16 Q And do you have a scar for each of the stab wounds?

17 A Yes, I do.

18 THE COURT: So do you have scars?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: From the stab wounds?

21 MS. LUZAICH: Okay. May I have the Court's
22 indulgence?

23 THE COURT: Yes.

24 ///

1 BY MS. LUZAICH:

2 Q Ms. Case, do you -- can you tell us or do you recall
3 what kind of clothing the Defendant was wearing this night?

4 A I recall a pair of black flair-leg jeans with the
5 FUBU logo on them.

6 Q Okay.

7 A And a lime green polo shirt that was really long.
8 He also wore a red fleece jacket that zipped from probably
9 here up with a pocket in the front.

10 MS. LUZAICH: For the record, she was indicating the
11 zipper about mid torso.

12 THE COURT: You mean from the chest up.

13 THE WITNESS: Right.

14 THE COURT: Okay.

15 BY MS. LUZAICH:

16 Q And --

17 A He put my ring in his pocket.

18 Q You're indicating there was a pocket in the --

19 A In the front, yeah. A pocket in the front.

20 Q Okay. And footwear, to the best of your
21 recollection, what kind of footwear he had on?

22 A No, I don't.

23 Q If -- did you give -- do you recall giving a
24 voluntary statement, a tape-recorded statement in this case?

1 A Yes.

2 Q If I showed you that statement, would that help you
3 recall if you told the police what kind of footwear he had on?

4 A Mm-hmm.

5 MS. LUZAICH: Okay. Page 6, Counsel.

6 BY MS. LUZAICH:

7 Q Showing you a voluntary statement with your name on
8 it, page 6, just read to yourself.

9 To put it in context, we might start on page 5. You're
10 asked about his clothing description and you talk about the
11 FUBU jeans. And go ahead and take a look at your answer on
12 page 6. Just read it to yourself.

13 Does that help you remember what kind of footwear you
14 said he had on that night?

15 A No, I really -- I still don't remember what footwear
16 he had on.

17 Q Okay.

18 A Apparently I did at that point.

19 Q At that point you remembered? And what did you
20 remember at that point?

21 MR. GOODWIN: Judge, is this an impeachment
22 question?

23 THE COURT: Sorry. Give me the page number.

24 MS. LUZAICH: 185.

1 THE WITNESS: Line 14.

2 THE COURT: Sorry. Well, if she doesn't remember,
3 then you can have past recorded recollection and you can have
4 it into evidence.

5 MS. LUZAICH: Right.

6 BY MS. LUZAICH:

7 Q So what did you say to the police he was wearing, as
8 far as tennis shoes, when you gave the statement on March 7th?

9 A He was wearing white and black tennis shoes.

10 Q Okay.

11 MR. GOODWIN: Your Honor, I'm not clear what you'd
12 indicated. Did you indicate that was a statement given under
13 oath at a prior hearing?

14 THE COURT: No, there's refreshing the memory. And
15 if it doesn't work, they can do past recollection recorded.
16 So first they can read it to her. If it doesn't help, she's
17 allowed to read the portion out loud. So it's overruled.

18 MR. GOODWIN: Past recollection is an impeachment
19 technique.

20 THE COURT: If that's what you want to call it, you
21 can. But she did follow the requirements.

22 BY MS. LUZAICH:

23 Q Ms. Case, during the second sexual assault where the
24 Defendant grabbed the -- like the cellophane from the

1 cigarette carton, when he then penetrated you, did the
2 cellophane go inside you?

3 A Yes.

4 Q Okay. And did you -- did it stay in there or did it
5 come out automatically?

6 A I had to remove it.

7 Q And can you tell us kind of how that came about?

8 A Only thing I can recall is being in the bathroom
9 trying to remove it.

10 Q Okay.

11 A And that's at the point when he had asked me to wash
12 myself.

13 Q And were you, in fact, able to remove it?

14 A Yes.

15 Q And then did he tell you to do anything with it?

16 A To flush it down the toilet.

17 Q Okay. Did you do that?

18 A Yes, I did.

19 Q At any point did the Defendant grab a scissor or
20 have a scissors?

21 A No.

22 Q Thank you.

23 [TRANSCRIPT READING END]

24 MS. LUZAICH: That completes direct examination.

1 THE COURT: Okay. So, ladies and gentlemen, when we
2 pick up tomorrow, at some point, we will do the rest of the
3 examination. We're going to break for the evening.

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

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

17 We'll be back tomorrow at 11:30. I have my criminal
18 calendar in the morning. So if you get here and there are
19 people coming in and out, just means that the calendar's
20 going. But try to be done with it before 11:30.

21 Have a nice night. We'll see you then. Thank you.

22 THE MARSHAL: All rise.

23 [Hearing concluding at 4:12 p.m.]

24 *****

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

4 
5 ALLISON SWANSON, CSR NO. 13377
6 CERTIFIED SHORTHAND REPORTER
7 FOR THE STATE OF CALIFORNIA
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STATE OF NEVADA,)
)
 Plaintiff(s),) CASE NO. C174954-1
)
 vs.)
) DEPT. NO. VI
 PORTER, JUSTIN D.,)
)
 Defendant(s).)

RECORDER'S TRANSCRIPT OF HEARING:
JURY TRIAL - DAY 6

RECORDED BY: DE'AWNA TAKAS, COURT RECORDER
TRANSCRIBED BY: ALLISON SWANSON, CSR No. 13377

I N D E X O F W I T N E S S E S

PLAINTIFFS' WITNESSES:

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ANGELA SMITH-PORTER

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1 Las Vegas, Nevada, Friday, September 9, 2022

2 [Case called at 9:44 a.m.]

3 *****

4 [IN THE PRESENCE OF THE JURY]

5 THE MARSHAL: All rise.

6 THE COURT: Good morning, everybody. And welcome
7 back. Please be seated.

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

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

14 MS. KOLLINS: Yes, Your Honor.

15 MR. GILL: Yes, Your Honor.

16 THE COURT: All right. So, ladies and gentlemen,
17 yesterday we had a question in regards to when Ms. Case and
18 Ms. Livingston testified at those hearings. So I wanted to
19 give you those dates now. So in regards to Ms. Case, Ms. Case
20 testified on November 2nd of 2000 and November 6th of 2000.
21 Ms. Livingston testified on November 13th of 2000. So all
22 three days in November of 2000.

23 All right. State, next witness, please.

24 MS. LUZAICH: Angela Porter is still on the stand,

1 Your Honor.

2 THE COURT: Okay. Thank you.

3 MS. LUZAICH: Or is still in the middle of
4 testimony.

5 THE COURT: Yes.

6 Come on up, ma'am. Yeah.

7 THE WITNESS: Yes, ma'am.

8 THE MARSHAL: And, again, she's gonna have to
9 re-swear you. So if you don't mind stepping up there --

10 THE WITNESS: Yes, sir.

11 THE MARSHAL: -- remain standing and raise your
12 right hand.

13 THE WITNESS: Yes, sir.

14 THE MARSHAL: And help yourself to water, if you
15 need some.

16 THE WITNESS: Yes, sir.

17 ANGELA SMITH-PORTER,
18 [Having been called as a witness and being first duly
19 sworn testified as follows:]

20 THE WITNESS: Yes, I do.

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

23 THE WITNESS: Yes, ma'am. My name is
24 Angela D. Smith-Porter. S-M-I-T-H, P-O-R-T-E-R, A-N-G-E-L-A,

1 D.

2 THE COURT: All right. Ms. Luzaich.

3 MS. LUZAICH: Thank you.

4 DIRECT EXAMINATION (Resumed)

5 BY MS. LUZAICH:

6 Q Good morning, Mrs. Porter. How are you?

7 A Fine.

8 Q Did you get a good rest last night?

9 A No, ma'am.

10 Q Little bit of rest?

11 A Yes, ma'am.

12 Q Okay. We were talking yesterday about a few
13 different things.

14 A Yes, ma'am.

15 Q One of them was a -- a buccal swab that was taken
16 from your son.

17 A Yes, ma'am.

18 Q And you, I believe, correct me if I'm wrong, said
19 that you did not see the detective, you only spoke to the
20 detective on the phone.

21 A I don't know if it was a detective, but I thought it
22 was an officer.

23 Q Okay. A police officer.

24 A Right.

1 Q Um --

2 A And they call me on the phone. I don't know if I
3 was at work, but I -- when they called me, I was -- I -- that
4 I was -- I can't remember. I can't remember where I was.

5 Q Okay.

6 MS. LUZAICH: May I approach the witness?

7 THE COURT: Yeah.

8 BY MS. LUZAICH:

9 Q I'm going to show you State's Exhibit 181.
10 Ma'am, is that your signature?

11 A Yeah. (Indiscernible)

12 Q Okay. I --

13 A What?

14 Q I'm gonna show you on the big screen.

15 A Thank you.

16 Q Just so everybody can see it. There's a screen in
17 front of you --

18 A The "D" isn't -- oh, I'm sorry. The "D" is not how
19 I spell my name. I'll show you my license.

20 Q That's okay.

21 All right. Would you agree with me that it says, at the
22 top -- maybe I should make it bigger and then I'll just move
23 it. Is that big enough? Can you read it or should I make it
24 bigger?

1 A No. You should make it bigger, but --

2 Q You want me to make it bigger?

3 A -- I don't remember seeing this. This is a consent
4 to search.

5 Q Okay. So you would agree with me that this is a
6 Las Vegas Metropolitan Police Department consent to search;
7 correct?

8 A To search. It -- I -- that's what I'm --

9 Q (Indiscernible) --

10 A I'm sorry. This is consent to search --

11 Q Can you --

12 A -- 'cause they came in -- like I explained to you
13 yesterday --

14 Q Ms. Porter --

15 A -- I never seen them.

16 Q -- can you please answer my questions?

17 THE COURT: Just one sec. Okay.

18 BY MS. LUZAICH:

19 Q Okay. So would you agree with me it says on it,
20 "Las Vegas Metropolitan Police Department consent to search";
21 correct?

22 A To search.

23 Q And it's dated June 13th of 2000.

24 A That's what it says. That's what your --

1 Q And does it say "Justin Porter"?

2 A Mm-hmm.

3 Q Is that a "yes"?

4 A Yes, ma'am.

5 Q And is that written in his handwriting?

6 THE COURT: His -- I'm sorry. "His" being Justin?

7 MS. LUZAICH: Yes.

8 THE WITNESS: Yeah. I don't know.

9 BY MS. LUZAICH:

10 Q Okay. And Angela Smith, hyphen, Porter, is that

11 your handwriting?

12 A The "D" is missing.

13 Q Okay. But is that your handwriting?

14 A I don't know. I'm being truthful with you.

15 Q Okay.

16 A If the script say so, I guess it is.

17 Q It's not a script; it's a document.

18 A Yes, ma'am.

19 Q Um --

20 A I'm sorry.

21 Q That's okay. And it says on it, "DNA buccal swab of

22 Justin Porter." Does it not?

23 A Yes, ma'am.

24 Q And I assume you don't recognize that handwriting.

1 A Uh, of which one are you talking about, ma'am?

2 Q Where it says "DNA buccal swab."

3 A Yeah, I see it.

4 Q Okay. You rec -- you do not recognize that

5 handwriting; correct?

6 A No.

7 Q And then it says that "the officers are authorized

8 by me to take from the above listed location items and I've

9 been advised that anything they take may be presented in court

10 as evidence." Right?

11 A That's what that says.

12 Q "I further advise that I do not have to consent to

13 this search and have the right to an attorney present."

14 Correct?

15 A That's what that --

16 Q It says right there?

17 A -- says.

18 Q And then is that your handwriting signature?

19 A No, ma'am. I --

20 Q Is it your handwriting?

21 A That's not how I write.

22 Q Okay. In 2000, was that your handwriting?

23 A That was 20-something --

24 Q And Justin's.

1 A -- years ago. I'm not -- I don't -- I don't know.
2 I'm being truthful. I don't know. Because --

3 Q Okay. So --

4 A -- this is -- I -- I'm confused because it say
5 "search." That's what I'm confused about.

6 THE COURT: Ms. Luzaich, I think that the breakdown
7 in the communication is that "search" and "DNA," to her, mean
8 two different things.

9 MS. LUZAICH: Right. I -- which is why I explained,
10 on here it says that they want to collect a DNA buccal swab of
11 Justin Porter; correct?

12 THE WITNESS: I'm trying to do what you're
13 talking -- I don't remember seeing this form.

14 BY MS. LUZAICH:

15 Q Okay. But would you agree with me that your name
16 and your son's name and your signature and your son's
17 signature are on it, along with his birth date?

18 A I can't say that's his signature. I -- I can't say.

19 Q Okay.

20 A I can't say.

21 Q So there were two different times that there was
22 contact with the police about this. They came to your home
23 and searched it with a search warrant on another day; correct?

24 A The day they stopped me, yes, ma'am.

1 Q And that was in August of 2000 --

2 A Yes, ma'am.

3 Q -- correct?

4 And, specifically, that was on August 10th of 2000;
5 correct?

6 A Yes, ma'am, if that's what the thing say.

7 Q And you were living at 208 North 13th Street;
8 correct?

9 A At that time, yeah.

10 Q Yes. In apartment number 3; correct?

11 A I don't know.

12 Q Okay.

13 A Because that wasn't my apartment.

14 THE WITNESS: I'm not disagreeing, Your Honor. I
15 just --

16 MS. LUZAICH: Ma'am --

17 THE WITNESS: -- know that's the apartment.

18 MS. LUZAICH: -- there's -- there's no question
19 pending.

20 BY MS. LUZAICH:

21 Q On August 10th of 2000, you had two different
22 contacts with the police, would you agree with that?

23 A Yes, ma'am.

24 Q There was one when they actually searched and took a

1 tape-recorded statement of you. And that was after midnight
2 into the 11th; correct? And that's what we talked about
3 yesterday. Your statement was given at six minutes -- or
4 started at six minutes after midnight on the 11th. Remember,
5 we talked about that yesterday? Do you not remember that?

6 Here, I'm going to show you the statement --

7 A Thank you.

8 Q -- that we looked at yesterday.

9 A Be --

10 Q I'm not trying to be difficult, Mrs. Porter.

11 A And I'm not trying to be difficult. I'm trying to
12 think. Because when I -- when they stopped me, it was
13 daytime.

14 Q And I'm coming to that.

15 A Okay.

16 Q But you gave a statement -- correct? --

17 A They --

18 Q -- August 11th at 20 -- six minutes after midnight.

19 A That was the day they searched the house.

20 Q To search the house. And they stopped you earlier
21 that day, during the daytime --

22 A Yes.

23 Q -- and you had a conversation. You and your
24 husband -- and I'm sorry. I think I pronounced his name wrong

1 yesterday. How do you say his name?

2 A Sergo.

3 Q Sergo? You and your husband Sergo had a
4 conversation with two detectives when they stopped you. Would
5 you agree with that?

6 A Which -- which time?

7 Q During the day.

8 A Yeah, we had a conversation.

9 Q Okay.

10 A But it was -- oh, I --

11 Q And they talked to you about the fact that they were
12 planning to search your home --

13 A No.

14 Q Showing you State's Exhibit 183.

15 A They asked me could they search my home and I had
16 nothing to hide so --

17 Q Right. Oh, oh, I'm sorry. They -- they --

18 A That --

19 Q -- asked you. And showing you State's Exhibit 183.

20 A Mm-hmm.

21 Q Is this a -- an other consent to search card?

22 A Um, I'm trying to --

23 Q It's not the one we -- no, I'm just saying, is it an
24 other consent to search form? It's not the one we talked

1 about a minute ago -- correct? -- it's a different one.

2 A I don't know 'cause I didn't sign this and I didn't
3 see that. That's not my name on it. I'm not trying to be
4 difficult. You told me to tell the truth and that's what I'm
5 doing.

6 Q Right. I'm just -- I'm trying to ask you a
7 question. Can you answer the question that I ask you --

8 A Yes, ma'am.

9 Q -- is this a consent to search card and it's, then,
10 the one we just looked at. Would you agree with that?

11 A I don't know. 'Cause I'm telling you, I didn't see
12 this.

13 THE COURT: She -- so --

14 BY MS. LUZAICH:

15 Q I didn't ask you if you saw it. I'm asking you, is
16 this a different consent to search card?

17 A From what? I'm -- please forgive me.

18 Q I'm going to show you on -- I'm just going to show
19 you on the big screen.

20 MR. GILL: Well, can we -- I don't know if that's
21 been admitted yet.

22 THE WITNESS: Help me, please.

23 THE COURT: Wait. Hold on.

24 Has that been admitted, Ms. Luzaich?

1 MS. LUZAICH: Yes.

2 THE WITNESS: Okay, then.

3 MS. LUZAICH: Oh, I'm sorry.

4 MR. GILL: Can we approach real quick?

5 [BENCH CONFERENCE BEGIN]

6 MR. GILL: Can I just look at it? I --

7 (indiscernible)

8 THE COURT: Huh?

9 MR. GILL: Like, I -- I know what we're trying to do

10 because we don't have Sergo. But if she doesn't know and --

11 and even refreshing it, I don't know that it --

12 THE COURT: (Indiscernible)

13 MS. LUZAICH: I was just gonna ask her, is it her

14 husband's name and signature --

15 MR. GILL: I know.

16 MS. LUZAICH: -- and the date is the 10th. I mean,

17 I can get in through Barry Jensen.

18 MR. GILL: Yeah.

19 MS. LUZAICH: I'm just -- she's being --

20 MR. GILL: I know. I know.

21 MS. LUZAICH: -- intentionally difficult. I'm

22 sorry.

23 MR. GILL: I know.

24 MS. LUZAICH: She has her agenda --

1 THE COURT: You -- I mean, she can --
2 (indiscernible) --

3 MS. LUZAICH: I mean, can I -- it's -- Barry's gonna
4 testify. Can I get it in through her? I mean, Judge, just
5 'cause I want to --

6 THE COURT: I mean --

7 MS. LUZAICH: -- show them.

8 THE COURT: So -- unless they're stipulated to, she
9 is not -- I mean, it's hearsay; right? I don't think there's
10 any exception. She's not laying a foundation. She's not -- I
11 think you can show it to her.

12 MS. LUZAICH: Well, it's not hearsay 'cause it's
13 not --

14 THE COURT: Right.

15 MS. LUZAICH: -- offered for the truth.

16 THE COURT: What's the document for?

17 MS. LUZAICH: It's just --

18 THE COURT RECORDER: Watch the microphone.

19 MS. LUZAICH: Well, the fact that they spoke to her
20 earlier -- well, she said they -- she spoke to them during the
21 day. And this is the 10th. So it's the day before, but
22 during the day. And it's her husband's signature. And he
23 signed a consent to search.

24 THE COURT: So what I'm saying is, is ask her all

1 the questions about it and then bring it in with Barry. I
2 mean, I don't understand --

3 MS. LUZAICH: Okay. That's fine.

4 MR. GILL: Yeah. Sorry.

5 MS. LUZAICH: No. No.

6 [BENCH CONFERENCE END]

7 BY MS. LUZAICH:

8 Q Okay. State's Proposed 183 --

9 A Yes, ma'am.

10 Q -- is that your husband's name?

11 A Yes, ma'am.

12 Q Is that his handwriting?

13 A Yes, ma'am.

14 Q And is that his signature?

15 A Wait a minute. Hold on.

16 Q I'm sorry. I don't mean to upset you. I really
17 don't.

18 A Yeah.

19 Q That's his signature? Okay.

20 A (Indiscernible)

21 Q Okay.

22 A I told you I have, like, circles in my eyes.

23 Q That's okay. And the date on it is 8/10 --

24 A Yes, ma'am.

1 Q -- 2000; is that correct?

2 A Yes, ma'am.

3 Q Okay. Thank you.

4 So you spoke to the detectives earlier in the day and
5 then they came back later that night with a search warrant.
6 Would you agree with that?

7 A When they came to my home -- when they stopped us
8 and they went to the home, they made me stay outside and they
9 waited for the search warrant.

10 Q Right. But that was later that day, late at night;
11 is that correct?

12 A They -- they never left us.

13 Q Okay. You left them, though. Would you agree with
14 that? That you went to do some things?

15 A They did not let us back in the home.

16 Q Did you speak to them earlier in the day and they
17 talked about whether or not there would be a consent to
18 search? Would you agree with that?

19 A I can't remember.

20 Q And then the detectives were getting a search
21 warrant and you and your husband went to do some errands.
22 Would you agree with that?

23 A Yes, we went to sign the -- the papers 'cause I
24 purchased a home.

1 Q Okay. So that was August 10th into August 11th.

2 A Yes, ma'am.

3 Q When Justin gave a -- well, would you agree that he
4 gave a buccal swab? I understand you don't remember the
5 signatures and stuff. Would you agree that he gave one?

6 A I don't know.

7 Q So you're saying you weren't present when he -- do
8 you know what a buccal swab is?

9 A No, ma'am.

10 Q Okay. It is when they take a long Q-tip and they
11 rub it on the inside of your mouth --

12 A I don't --

13 Q -- and then put it in a box.

14 A I don't remember.

15 Q And you don't remember doing that -- or letting --
16 or standing there while it was being done.

17 A No, ma'am.

18 Q Okay. Well, would you agree that the piece of paper
19 says it was done on June 13th of 2000?

20 A That's what your script say, yes. I mean -- I'm
21 sorry.

22 THE COURT: Document.

23 THE WITNESS: I'm sorry.

24 THE COURT: That's fine.

1 BY MS. LUZAICH:

2 Q And -- and, Mrs. Porter, the only reason I keep
3 saying it's not a script, because a script sounds like I --
4 I've written out everything that everybody has to say. And
5 that's not what I do. You understand that; right? I ask
6 questions and I try to elicit information.

7 A Yes, ma'am --

8 Q Would you agree with that?

9 A -- (indiscernible) understand. This is the first
10 time I ever been through this. For me to misquote you, I'm
11 sorry. But I just saying what I -- I -- I hear.

12 Q Okay. Do you recall telling the police that shortly
13 before that -- that buccal swab, the consent to search that
14 you don't recall being there for, that -- that Justin was
15 injured?

16 A Him and his girlfriend had got in a fight and I
17 went and got him.

18 Q Okay. That's not what I asked you. Do you remember
19 telling the police that, before the buccal swab, Justin was
20 injured?

21 A I don't remember.

22 Q Do you remember telling them it looked as if he fell
23 on the ground?

24 A I don't remember.

1 Q Okay. I'm sorry. I'm looking in your statement.

2 A Yes, ma'am.

3 Yes, ma'am.

4 Q Okay. Would you agree that this is the same
5 statement that we've talking about? Angela D. Porter Smith;
6 right?

7 A I -- I've never seen this script till you gave it to
8 me. So I never seen any of this here. So --

9 Q Would you agree that this is the same document that
10 we were looking at yesterday?

11 A That's the same document that you gave me yesterday,
12 yes, ma'am.

13 Q And that we were looking at in court when we were
14 talking to the jury?

15 A Yes, ma'am, if that's what you (indiscernible).
16 Yes, ma'am. (Indiscernible)

17 Q What -- I just don't understand why you keep saying
18 if that's what I say.

19 A Because I've never seen this before until you gave
20 it to me. So I have to go on, ma'am, what you gave me. Not
21 trying to be funny. But --

22 Q Okay.

23 A -- if I --

24 Q So are you trying -- I mean, are you trying to say

1 that this is not an actual statement that you gave to the
2 police?

3 A I can't say that. Ma'am, I can't say that.

4 Q Do you remember --

5 A I can --

6 Q -- talking to the police?

7 A I remember talking to the police 22 years ago.

8 Q Okay.

9 A So for --

10 Q And do you remember them [sic] had a tape recorder?

11 A Ma'am, I don't -- 22 years ago, ma'am.

12 Q I understand. How many times has the police
13 searched your home?

14 A They search my home one time.

15 Q Okay. And you don't remember the -- what happened
16 the one time they searched your home?

17 A They came -- I sat inside, ma'am. They made me and
18 my husband sit outside.

19 Q Right. And they talked to you --

20 A And they went in the house --

21 Q -- outside.

22 A They -- they were very limited to me about what they
23 were saying.

24 Q I'm not asking what they were saying, I'm just

1 asking about what you were saying.

2 A They didn't allow me to say anything.

3 Q Okay. Is this --

4 A This was said -- I was in his car when this was
5 taken.

6 Q Okay.

7 A So that's when you say certain things, I'm trying to
8 hook that up with what I can remember.

9 Q Okay. So you remember talking to them twice that --
10 once during the day when you got stopped and once at your home
11 when they searched it.

12 A I remember --

13 Q Would you agree with that?

14 A -- talking -- yes, ma'am.

15 Q Okay.

16 A Yes, ma'am.

17 Q So do you remember telling them in the car that he
18 was injured on his butt?

19 Here. Look. Did you say that?

20 A No, ma'am.

21 Q Okay. Does it say here that you said that?

22 A I never looked at Justin's butt. I'm sorry.

23 Q Um --

24 A Yeah, read it.

1 Q The question is, "At some point shortly before
2 Justin left, did you know that -- notice that he had an
3 injury?"

4 Was your answer, "Yeah, the neighbor told me that they
5 had seen a car hit him."

6 Did you -- do you remember that?

7 A No, ma'am.

8 Q Okay. But did you -- does this indicate that that's
9 what you said?

10 A I remember -- I -- I vaguely remember something
11 about a car. When you -- when you said that, that tripped --

12 Q Okay. And was your answer then, "And that Jug
13 didn't tell me. Once the neighbor told me, I confronted
14 Justin" --

15 A And I did.

16 Q He didn't want you worrying about him.

17 A That's true. Never wants me --

18 Q And you said, "And it looked" -- sorry. "I looked
19 at the -- it looked like as if you had fell on the ground and
20 scraped your butt because it had a scab on it, and I went and
21 bought him Neosporin" --

22 A Yeah.

23 Q -- "to put on it."

24 A Yeah. But I didn't look at -- at your butt. I --

1 he had shorts.

2 Q Okay.

3 A So he just raised it up.

4 Q Okay.

5 A Okay.

6 Q But you told the detectives that it looked like he
7 had --

8 A It looked --

9 Q -- fallen on the ground and scraped his butt.

10 A Well, I -- yes, ma'am.

11 Q And that was shortly before he gave the buccal swab
12 that you don't remember to the detectives -- or to the police.

13 A Well, I'm not saying they didn't give to him. I'm
14 just saying that I wasn't there when they gave it to him.

15 Q Okay. But the injury that you observed was shortly
16 before the buccal swab was given; is that correct?

17 A I don't know the days.

18 MS. LUZAICH: I pass the witness.

19 THE COURT: Mr. Gill?

20 MR. GILL: Thank you, Your Honor.

21 Lisa, can I have the -- of the --

22 MS. LUZAICH: The buccal?

23 MR. GILL: The statement.

24 MS. LUZAICH: Oh, her statement?

1 MS. KOLLINS: Here. I have two.

2 MR. GILL: Thank you.

3 CROSS-EXAMINATION

4 BY MR. GILL:

5 Q Ms. Smith-Porter, how are you? About --

6 A Okay.

7 Q -- ready to be done with this?

8 A Yes, sir.

9 Q I just have a few questions.

10 A Yes, sir.

11 Q I want to talk real quick about the last line of
12 questions --

13 A Yes, sir.

14 Q -- with the injuries.

15 A Yes, sir.

16 Q Did you, at any point -- were you told by one of
17 your neighbors or anyone else that their -- Justin had been in
18 a car accident?

19 A They -- she brought it up and I can remember -- I
20 can't remember everything. But the neighbor next to me told
21 me, "I seen your son" --

22 MS. LUZAICH: Objection. Hearsay.

23 THE COURT: Sustained.

24 ///

1 BY MR. GILL:

2 Q Did any -- without saying what they said, did anyone
3 tell you?

4 A Yes, sir.

5 Q Okay. And is that why you treated the injuries the
6 way you did?

7 A Yes, sir.

8 Q And he didn't let you look at -- Justin didn't let
9 you -- let you look at his --

10 A No.

11 Q -- butt, excuse me, but --

12 A No.

13 Q -- you didn't see it, you just had heard and that's
14 why you treated.

15 A Yes, sir.

16 Q Okay. Now, I want to talk to you about Mr. Deloney.
17 You remember your testimony from yesterday?

18 A Yes.

19 Q Can you give a physical description of Mr. Deloney,
20 back in 2000?

21 A Ooo, he was young. He was tall.

22 Q How tall do you think?

23 A They so close in similarity -- sorry if I'm saying
24 anything. Until you --

1 Q And when --

2 A -- you thought --

3 Q And I'm sorry. When you say "they," Justin and Kris
4 was close?

5 A Yeah.

6 Q Okay. So the question was, how tall do you think he
7 was? Do you have an estimate?

8 A No, sir.

9 Q Okay. In relation to Justin, how tall was he at the
10 time?

11 A Just a tinch.

12 Q A tinch taller or shorter?

13 A Yeah.

14 THE COURT: Which one? Taller or shorter?

15 THE WITNESS: Taller. He's as tall -- a little
16 taller than Justin.

17 THE COURT: Okay.

18 THE WITNESS: 'Cause --

19 MR. GILL: Okay.

20 THE WITNESS: -- he was slim (indicating).

21 BY MR. GILL:

22 Q Okay.

23 A I'm sorry.

24 Q And is he African American?

1 A Yes.

2 Q What was his age at the time? Do you recall?
3 Kris's, not Justin's.

4 A I don't know. 'Cause I think he might be a year
5 older than Justin.

6 Q But within a year or two; is that fair?

7 A Right. Justin -- Justin, at that time, was --
8 what? -- 16, 17. And Kris had to be, like, maybe 18, 17.
9 They -- I'm sorry because I didn't -- because --

10 Q Okay. And that's -- that's fine. You -- you think
11 they were very close in age, whether it's one or two years
12 apart. Is that fair?

13 A Mm-hmm. One, two -- I don't know, ma'am [sic].

14 Q And I'm not trying to trip you up, Ms. Smith-Porter.
15 I just --

16 A No, I'm being truthful.

17 Q -- want to -- I just want to confirm your answer.
18 One or two years; is that fair?

19 A Yeah.

20 Q Yes?

21 A [Witness nods head.]

22 Q And you also mention that you were concerned about
23 Justin being out because you worked a lot. You remember that
24 statement?

1 A Yeah.

2 Q And -- and you did work nights?

3 A I worked nights, days -- I'm a bus driver. So my --
4 my run was different times 'cause we bidded on it. So I
5 might work this -- this six months this way and that six months
6 that way. But it was never the same.

7 Q And back in 2000, you don't necessary -- the summer
8 of 2000, you don't necessarily remember what shift you were
9 on; is that right?

10 A Um, probably Charleston.

11 Q I mean -- "shift" meaning time of day that you were
12 working.

13 A Ah, (witness shakes head).

14 Q You do not remember?

15 A Huh-uh.

16 Q And that's a "no."

17 A No, sir. No.

18 Q Thank you.

19 A No.

20 Q And with -- you also had mentioned to Ms. Luzaich,
21 yesterday, that when you were home, you make sure Justin was
22 home.

23 A I would -- well, I would pick him up on my off days
24 and -- 'cause -- I don't know if I could say this. But I was

1 picking him up at his girlfriend house or my son's house or my
2 daughter's house when I get off from work on the days that I
3 work days.

4 Q So he was with you --

5 A The majority of the time.

6 Q Okay. When you were not working?

7 A When I was not working, which was very -- like I
8 say, very seldom.

9 Q Okay. Now, the -- it's fair to say -- and I know
10 Ms. Luzaich was asking you questions this morning that you --
11 you spoke to detectives or officers at some point; correct?

12 A Yes, sir.

13 Q And that was in August of 2000?

14 A Yes, sir, that's --

15 Q And -- and -- do you remember giving a statement?

16 A I remember giving a statement, but I can't -- and
17 not lie, exactly everything that I said.

18 Q And that's because it was 22 years ago.

19 A It was 22 years ago and my mind was a lot better
20 than it is now. I'm 64.

21 Q Okay. But you do -- again, you do remember talking
22 to them --

23 A Pieces. Bits and pieces. I did talk to 'em twice.
24 Once when they stopped me in the car, right in the -- when

1 they made me -- asked me to get in the car, could they talk to
2 me. So that was twice.

3 Q Okay. And -- and, again, the statement that you
4 were shown, do you -- do you doubt that you gave a statement?

5 A I gave a statement. But to be 100 percent positive
6 of what I said, I have to go on what she -- what they said I
7 said.

8 Q Okay. And that's -- and that's all we're asking.
9 Because it was recorded; correct?

10 A I was -- I was asked questions.

11 Q Okay.

12 A And I only answered the questions to the best of my
13 knowledge, when they asked me.

14 Q And that was back in 2000, again.

15 A Yes.

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

17 THE COURT: Any redirect?

18 REDIRECT EXAMINATION

19 BY MS. LUZAICH:

20 Q Would it surprise you to know that Kristopher
21 Deloney is three years younger, or two years younger than
22 Justin?

23 A No, 'cause like I explained before to you, is that
24 I'm not sure about their ages because they were cousins and

1 they -- we all grew up -- they grew up together. So as far as
2 actually knowing how old he is, I wouldn't know that.

3 Q Okay.

4 A But what I would know is that they hung together.
5 And they was at my house all the time. Him and other friends.
6 Because I was the fun house. Which mean I ate -- I kept food
7 in the house.

8 Q Okay. But he was also elsewhere a lot?

9 A Right. But if you -- Kris has always been taller.

10 THE COURT: Has been what? Oh, taller?

11 Is that a "yes"?

12 THE WITNESS: He's tall.

13 THE COURT: Okay.

14 BY MS. LUZAICH:

15 Q Okay. But younger.

16 A But younger.

17 Q Two years younger.

18 A And I didn't know that. You telling me something
19 that I didn't know.

20 Q Oh, okay. Thank you.

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

22 THE COURT: Any questions from the jurors?

23 All right, ma'am. Thank you so much.

24 THE WITNESS: Okay. I appreciate it.

1 THE COURT: Please don't -- please don't share your
2 testimony with anyone else involved in the case since it's
3 ongoing.

4 THE WITNESS: Yes, ma'am.

5 THE COURT: But you are excused. Thank you.

6 THE WITNESS: Yes, ma'am.

7 And thank you guys very much. I appreciate it.

8 THE COURT: State?

9 MS. LUZAICH: Sergeant Calarco.

10 THE MARSHAL: If you could step up there, remain
11 standing, and raise your right hand so the clerk can swear you
12 in.

13 THE WITNESS: Okay.

14 MICHAEL CALARCO,
15 [Having been called as a witness and being first duly
16 sworn testified as follows:]

17 THE WITNESS: I do.

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

20 THE WITNESS: Yeah. My name is Michael Calarco,
21 M-I-C-H-A-E-L. Last name is Calarco, C-A-L-A-R-C-O.

22 DIRECT EXAMINATION

23 BY MS. LUZAICH:

24 Q Good morning, sir. How are you employed?

1 A Good morning, ma'am. I am a sergeant with the
2 Las Vegas Metropolitan Police Department.

3 Q How long have you been with Metro?

4 A Including my cadet time, over 20 years.

5 Q Okay. So let's start from the beginning. When you
6 say including your cadet time, what is a cadet?

7 A So a cadet is a -- well, was a position that we had
8 that was essentially report takers. They were civilian
9 positions from the ages of 18 to 21. You would hire on and,
10 essentially, when you hit 21, you would do a brief background,
11 psychological, and you would go to the police academy. So --

12 Q For how long were you a cadet?

13 A From 18 to 21.

14 Q And when you turned 21, did you then go to the
15 academy and become an officer?

16 A So I was actually in the Marine Corps., reserves
17 too --

18 Q Oh, sorry.

19 A -- and it was right at 9/11. So I was activated for
20 a year, year and a half, and I was deployed.

21 Q Thank you for your service.

22 A And when I came back, went into the police academy.

23 Q And when you went to the police academy, did you
24 then come out and begin your duties as a patrol officer?

1 A Yes, ma'am.

2 Q So the difference between a cadet and a patrol
3 officer, one, is that's a civilian employee. And a patrol
4 officer, obviously, is sworn.

5 A Correct.

6 Q Cadet does not carry a gun; would that be correct?

7 A That's correct.

8 Q But a police officer would.

9 A Correct.

10 Q For how long were you an officer before you became a
11 sergeant?

12 A I was an officer for about 11 years.

13 Q And when did you become a sergeant?

14 A Sergeant in 2015.

15 Q And what are your duties as a sergeant?

16 A Right now I have a field training squad. It's -- in
17 a Patrol Area Command, Spring Valley Area Command. So I have
18 a squad of nine field training officers, and we currently have
19 six new officers -- well, actually five new officers and a
20 cadet that we're training. So I have the regular patrol
21 duties to supervise their patrol squad of the entire area
22 command and then also supervise the FTOs, or field training
23 officers, and the new officers.

24 Q So has Metro always used cadets as -- as you

1 described what you did?

2 A No. So there was -- when I was a cadet, there
3 was -- I don't know how long before that we had cadets. I
4 would say roughly ten years or so. And then it went away for
5 a while. We started a program called PSRs, which is Patrol
6 Service Representatives. And there was -- it was almost the
7 exact same position, however there was no, like, time frame.
8 There was no age restriction. So they could -- we had PSRs
9 that have been on for over 20 years now.

10 So -- we use them. But we just brought -- this is
11 actually the first cadet class that we brought back that I
12 have one of the guys on my squad sense probably ten years ago
13 or more.

14 Q So in order to be a cadet when you were, what did
15 you have to do? Did you have to go through classes? Become
16 certified? What did you do?

17 A To become a cadet?

18 Q Yes.

19 A So there -- so become a cadet, you have to go
20 through the same type of testing process. There's a
21 background investigation, there's a psychological -- or
22 actually, no, we did not do psychological. There's a
23 polygraph. And then we went through a -- a cadet academy,
24 which is an abbreviated academy that focuses on all cadet type

1 stuff, which would be the reports, the traffic accidents,
2 responding, and kind of how to -- how to deal with traffic
3 accidents. And then we would go through a -- an abbreviated
4 field training program, which focus on the same type of
5 duties.

6 Q Okay. So when you actually became a cadet and were
7 working, after you'd been through the academy, what did you do
8 on a daily basis?

9 A On a daily basis I would -- I would respond to
10 report-type calls. Most of 'em were non-violent, like
11 burglaries. I would recover stolen vehicles, take stolen
12 vehicle reports. Sometimes there were violent crimes. I
13 would go to and then help out the officers and take reports
14 for those. That was the majority of my day-to-day operations.

15 When I wasn't doing anything like reports, I would look
16 for stolen cars maybe parked somewhere, stuff like that.

17 Q Okay. And you would -- when you responded to a
18 scene, would you then fill out the report.

19 A Correct.

20 Q Would you talk to witnesses so that -- well, let me
21 rephrase.

22 In the report that you did, what kind of information --
23 bless you -- would you include?

24 A I would include all the same information as if a

1 police officer was doing it. So it would be the location,
2 time, suspect, witnesses, victims, the details of what
3 happened. Just like a regular police officer would do. It
4 was the same information that would go into the reports.

5 Q And when you say the details of what happened, is
6 that kind of what's called a "narrative"?

7 A Yes, ma'am.

8 Q How would you get the information for a narrative?

9 A It would be talking to the victims, witnesses, or
10 anybody else that might have pertinent information.

11 Q Okay. So on -- oh, and sorry. When were -- like,
12 what period of time were you a cadet?

13 A From 1999 to 2001.

14 Q All right. So on April 12th of 2000, did you work
15 as a cadet?

16 A Yes, ma'am.

17 Q Did you respond to the scene of a burglary/robbery
18 at 436 North 12th Street?

19 A I did, yes.

20 Q And were you -- did I already ask you this? I'm
21 sorry. Were you assigned to a particular area?

22 A You didn't ask me. It was --

23 Q Oh.

24 A -- Downtown Area Command, I was assigned to.

1 Q What -- does Downtown Area Command have a certain
2 area that they --

3 A We've -- we've restructured --

4 Q -- handle?

5 A -- the area commands, but back then it was -- it
6 was -- it was very similar to what it is now. I don't know
7 the actual cutoffs. But, I mean, right now, where we're at is
8 Downtown Area Command. And it went, I want to say, Eastern
9 might have been the east boarder. I want to say maybe Owens,
10 Lake Mead was the north boarder. South boarder, Sahara --
11 I -- I'm not 100 percent sure. But it was right around there
12 is, like, the Downtown Area Command.

13 Q Okay. And you -- when you responded to that scene,
14 did you speak with two individuals named Francis Rumbaugh and
15 Clarence Rumbaugh?

16 A Yes, ma'am, according to my report, I did.

17 MS. LUZAICH: I have State's Proposed Exhibits 286
18 and 287, photographs that I believe will be entered by
19 stipulation.

20 MR. GILL: Correct.

21 THE COURT: Okay. Those will be admitted. And you
22 can publish if necessary.

23 MS. LUZAICH: Thank you.

24 [STATE'S EXHIBITS 286 and 287 ADMITTED.]

1 BY MS. LUZAICH:

2 Q So you went to 436 -- uh, 436. Sorry about that.
3 Oh, yeah, 436 North 12th Street. And showing you 286, is that
4 the apartment door? Does it appear --

5 A Um, it does appear to be that door, yes, ma'am.

6 Q And four -- 287, the actual door to enter the
7 apartment?

8 A It does appear to be that.

9 Q Okay. But you would agree it was an apartment;
10 right?

11 A Yes.

12 Q And you spoke to individuals named Florence --
13 Florence. Francis and Clarence Rumbaugh. And you got a -- or
14 did you -- sorry -- get a description from them of what had
15 occurred?

16 A According to my report, yes, I did.

17 Q Okay. Now -- I mean, how many scenes have you
18 responded to since 2000?

19 A I -- thousands.

20 Q Okay. You don't remember every single scene;
21 correct?

22 A Correct.

23 Q But you did generate a report at or near the time;
24 correct?

1 A Yes.

2 Q Now, do you know, would another police officer
3 necessarily have been there?

4 A Not every single time. Most of the time, on violent
5 crimes, we do have an officer that would show up with me and
6 just kind of make sure that everything was secure, see if they
7 can help out with locating crime scene witnesses, stuff like
8 that. But as soon as it would be static, it would probably be
9 just myself.

10 Q Okay. And you would indicate in your report, also,
11 kind of why you were there. You know, items stolen, something
12 like that?

13 A Yes, ma'am.

14 Q And did you indicate in your report that there was
15 items stolen?

16 A I did.

17 Q And do you remember what you wrote or what was
18 stolen?

19 A Not at all.

20 Q Would it refresh your recollection to look at the
21 report?

22 A Yes, ma'am.

23 I reviewed it.

24 Q And what items did you indicate were stolen?

1 A So, initially, I indicated there -- looks like \$40
2 of some type of denomination of cash and then there was also a
3 watch that looks like I put that it was taken. But I think
4 they -- there's some handwritten notes on here that it wasn't
5 actually taken.

6 Q And would you also indicate what type of entry was
7 made into the apartment?

8 A Entry into the apartment, I would have to look at my
9 narrative real quick.

10 It's forced entry. It says forced entry, through the
11 door.

12 Q And do you also indicate kind of suspect actions in
13 your report?

14 A Yes. You want me to read it from the narrative or
15 the MO portion --

16 Q The MO portion.

17 A Okay. The MO portion, I put in there that there was
18 forced entry. Someone was hit during the act. Move victim's
19 location. Pulled, grabbed victim. And that the suspect had
20 concealed their face.

21 Q Under "crimes against property" --

22 A Yeah, I actually saw that. The property, there was
23 an additional one that I put. I put \$40 and then there was
24 also \$80 that I missed, property number one.

1 Q Okay. What about under "crimes against property,"
2 on page 2, "suspect actions"?

3 A Suspect action was bodily force, selective and
4 (indiscernible), wiped prints, cut phone cord.

5 Q Now, do you know, as a cadet -- actually, as a
6 cadet, would you enter the apartment and walk through as well?

7 A Once I knew that it was safe, yes. Yes, ma'am. And
8 when I'm doing my report, I'm -- it's just as if an officer
9 was in there and just kind of establishing what had happened,
10 if there's any evidence. We might need to get prints, stuff
11 like that.

12 Q Okay. So when you write "forced entry," that --
13 would that be because you observed something?

14 A Yes, ma'am.

15 Q And when you write "cut phone cord," would that be
16 because you observed something?

17 A Yes, ma'am.

18 Q Okay. Then on June 9th of 2000, did you also
19 respond to a scene at 2850 Cedar Avenue?

20 A Yes, ma'am, according to that report, I did.

21 Q Apartment 229?

22 A Yes, ma'am.

23 Q Does that sound familiar? And did you -- do you
24 speak Spanish?

1 A I do not.

2 Q Were there individuals there who spoke Spanish?

3 A I believe, according to the report, there was.

4 Q Okay. So did you speak to one individual, a man
5 named Guadeloupe Lopez?

6 A According to the report, yes, ma'am.

7 Q Okay. And were there two Spanish-speaking ladies
8 that were there, Beatriz and Laura Zazueta?

9 A Again, according to the report, yes.

10 Q Okay. Showing you State's Exhibit 230, an
11 apartment. You recall going to an upstairs apartment, based
12 on the fact that the apartment number was 229?

13 A I mean, based on the report and the -- that most
14 "two" numbers are upstairs, yes.

15 Q Okay. And then State's Exhibit 214, apartment
16 209 -- 229 --

17 A 229.

18 Q -- sorry.

19 A Yes, ma'am.

20 Q And do you recall there being broken glass on the --
21 State's Exhibit 229 -- on the outside?

22 A According to the report, yes, ma'am.

23 Q So, again, would -- do you recall what you had
24 indicated in this case about entry and things missing?

1 A I would have to reference the report.

2 Q Would it refresh your recollection to review the
3 report?

4 A Yes, ma'am.

5 Q So does it indicate you responded to a burglary and
6 robbery with deadly weapon?

7 A Yes, it does.

8 Q And lists the victims that I just described;
9 correct?

10 A That's correct.

11 Q Does it indicate what, if anything, was stolen?

12 A Um, I'd have to look to see the property that was
13 taken. It says \$200 US currency was taken.

14 Q Okay. And does it indicate whether a weapon was
15 used?

16 A It does. There was a firearm that was used.

17 Q Did -- did it indicate -- well, you said that a
18 firearm was used. Would you have walked around the apartment
19 to see evidence of that, before you actually put it in your
20 report?

21 A Yes, I would.

22 Q And did it indicate anything that happened to the
23 individuals?

24 A According to the narrative portion, there was a

1 struggle involving the victim and there were some shots, three
2 shots that were fired. It looks like someone was also pistol
3 whipped with a handgun.

4 MR. GILL: Just for the record, Your Honor, he's
5 reading from the report at this point.

6 MS. LUZAICH: Oh, sorry.

7 THE COURT: Okay.

8 MS. LUZAICH: I didn't realize.

9 THE COURT: That's okay.

10 BY MS. LUZAICH:

11 Q And would you have called out a Spanish-speaking
12 officer to speak to the individuals who don't speak Spanish --
13 or who don't speak English? Sorry about that.

14 A I would.

15 MS. LUZAICH: Thank you. I pass the witness.

16 THE COURT: Mr. Gill?

17 MR. GILL: It'll be Mr. Goodwin, Your Honor.

18 THE COURT: Oh, Mr. Goodwin.

19 CROSS-EXAMINATION

20 BY MR. GOODWIN:

21 Q Good morning, officer. How are you?

22 A Good morning, sir. Good. How are you.

23 Q Good. Thank you.

24 So just a quick question -- just couple questions

1 (indiscernible) quick.

2 This happened some time ago?

3 A Twenty-two years ago-ish.

4 Q And you said a couple different times "according to
5 my report."

6 A That's correct.

7 Q So nothing in this really stuck out to you; correct?

8 A Not at all.

9 Q And you may have done hundreds of these calls?

10 A As a cadet?

11 Q As a cadet.

12 A Yes.

13 Q And --

14 A Yes, sir.

15 Q Okay. So when you went to these scenes, nothing
16 stuck out to you?

17 A Nothing on these two are sticking out to me, no.

18 Q No --

19 A I can't say that there's others that wouldn't. But
20 these two did not.

21 Q Okay. And when you're looking at the report and
22 you're seeing things like the cut telephone cord and things
23 like that, now, would you be taking your report prior or after
24 the crime scene analyst would come?

1 A Um, I mean, it depends upon how many officers there,
2 if there was a need to preserve some type of the crime scene,
3 if I was able to bring my report in there. It all depends.

4 Q Okay.

5 A But I would wait to finish it for ID or CSA to be
6 done because I -- I would usually put in there, ask them if
7 they -- they got prints or something like that.

8 Q Okay. And just a couple questions. When the call
9 would come in, the police would respond. Would you be the
10 first contact with the people or would -- would an officer --
11 I mean, you said sometimes you came along. But in situations
12 like this, would you be the person responded and directed
13 anybody or would you just be speaking to, say, the victims?

14 A Like I said, it depends if there was a clear
15 indication that there was no suspect there, there would be
16 times where I could be the first one. But a majority of the
17 times, especially with violent calls, I would not be the first
18 one that would respond.

19 Q Okay. So it's likely that you did not -- you were
20 not the first person to respond to this scene?

21 A I -- I have no clue.

22 Q And in those instances when you would respond with
23 another officer, was the officer doing the talking and you
24 were recording and they were directing or were you the person

1 doing the speaking?

2 A It would -- it would go both ways. I mean,
3 sometimes I would jump in there and I would start interviewing
4 and they would be looking around. I mean, it -- it all
5 depended. There wasn't a certain way we did it every single
6 time.

7 Q Okay.

8 A But, ultimately, I would be filling out the report.
9 So I would probably be the one talking the most so I could get
10 information for myself and ask clarifying questions.

11 Q Sure. And just one section on that, the -- the
12 modis operandi, the MO section, that's just -- and I'm sorry.
13 You don't have to review it.

14 A Oh.

15 Q Just some clarification. That's not saying that --
16 I mean, that's just saying that this is the method that was
17 used in this instance; correct?

18 A That is correct.

19 Q It's not suggesting any sequence or anything like
20 that.

21 A Not -- no, sir.

22 Q Okay.

23 MR. GOODWIN: No further questions, Your Honor.

24 THE COURT: Redirect?

1 MS. LUZAICH: No, nothing. Thank you.

2 THE COURT: Anything for this witness, ladies and
3 gentlemen?

4 Sir, thank you so much for being here. Please don't
5 share your testimony with anyone else involved in the case
6 since it's ongoing, but you are excused. Thank you.

7 THE WITNESS: Thank you, ma'am.

8 MS. KOLLINS: May we approach?

9 THE COURT: Yeah.

10 MS. KOLLINS: Thank you.

11 [BENCH CONFERENCE BEGIN]

12 MS. KOLLINS: We're just waiting for my
13 (indiscernible) we thought he would be here by now. Otherwise
14 I have someone to read on their way down.

15 MR. GILL: And I have a client who has to potty.

16 THE COURT: Okay. (Indiscernible) not gonna be
17 long, is he?

18 MS. KOLLINS: No.

19 THE COURT: So we'll do Workman really quick.

20 MR. GILL: Thank you.

21 [BENCH CONFERENCE END]

22 MS. LUZAICH: I'm just looking for photos, Judge.
23 I'm sorry.

24 THE COURT: No worries.

1 MS. LUZAICH: Judge, can we take a ten-minute break?

2 THE COURT: We just discussed that at the bench.

3 We're gonna do Workman and then we're gonna take a break.

4 Okay. We're gonna take a recess at this point in time.

5 Please, during this recess, do not discuss or communicate
6 with anyone, including fellow jurors, in any way regard the
7 case or its merits either by voice, phone, e-mail, text,
8 internet, or other means of communication or social media.

9 Please do not read, watch, or listen to any news, media
10 accounts, or comments about the case; do any research, such as
11 consulting dictionaries, using the internet, or using
12 reference materials.

13 Please do not make any investigation, test a theory of
14 the case, recreate any aspect of the case, or in any other way
15 attempt to learn or investigate the case on your own. And
16 please do not form or express any opinion regarding the case
17 until it's formally submitted to you.

18 We'll have our 15-minute break at this point in time.

19 Thank you.

20 THE MARSHAL: All rise.

21 [RECESS AT 10:35 A.M.; PROCEEDINGS RESUMED AT
22 10:52 A.M.]

23 [OUTSIDE THE PRESENCE OF THE JURY]

24 [DISCUSSION OFF THE RECORD]

1 THE MARSHAL: All rise.

2 [IN THE PRESENCE OF THE JURY]

3 THE COURT: All right. Thank you, everyone.

4 Welcome back.

5 We're on the record on State of Nevada versus
6 Justin Porter, C174954. Mr. Porter's present with Mr. Gill as
7 well as Mr. Goodwin. Both Chief Deputy District Attorneys,
8 Ms. Luzaich as well as Ms. Kollins, are present on behalf of
9 State.

10 Do the parties stipulate to the presence of the jury?

11 MS. KOLLINS: Yes, ma'am.

12 MR. GILL: Yes, Your Honor.

13 THE COURT: All right. Next witness, please.

14 MS. KOLLINS: Your Honor, the State would be reading
15 in the testimony of Francis Rumbaugh.

16 THE COURT: Okay.

17 MS. KOLLINS: And I've provided the Court with a
18 copy and Defense counsel. We will be doing that through
19 Kassandra Acosta today.

20 THE COURT: Okay. Ms. Acosta, if you could come up,
21 please. And for your notes, ladies and gentlemen, let me get
22 the date of the actual hearing for Ms. Rumbaugh so you can put
23 it in your notes.

24 All right. Francis Rumbaugh was on October 16th of 2000.

1 All right. Would you please stand and raise your right
2 hand. And we're going to swear you in as a reader, so you can
3 use your real name.

4 KASSANDRA ACOSTA,
5 Was first duly sworn to read the answers in the transcript
6 to the best of her ability:

7 MS. ACOSTA: Yes.

8 THE CLERK: Please be seated, stating your full
9 name, spelling your first and last name for the record.

10 MS. ACOSTA: Kassandra Acosta, K-A-S-S-A-N-D-R-A.
11 Acosta, A-C-O-S-T-A.

12 MS. KOLLINS: And then, Ms. Rumbaugh was also sworn
13 in at the proceeding.

14 THE COURT: Yes. So Ms. Rumbaugh was sworn in, just
15 like you've seen all the other witness sworn in. Raise --
16 rose her -- she raised her right hand and swore to tell the
17 truth.

18 And then, Ms. Kollins, on behalf of Ms. Lowry.

19 MS. KOLLINS: Thank you.

20 [TRANSCRIPT READING BEGIN]

21 DIRECT EXAMINATION

22 BY MS. KOLLINS:

23 Q Ms. Rumbaugh, how old are you?

24 A Seventy-nine.

1 Q And what is your birth date?

2 A April the 11, 1921.

3 Q Ms. Rumbaugh, I'd like to direct your attention to
4 April 12th of this year, 2000, where did you live on that
5 date?

6 A 436 North 12th Street, Las Vegas, here.

7 Q And did that home have a number or letter attached
8 to it to identify it?

9 A Yes, B.

10 Q And you said that -- that was in Clark County,
11 Las Vegas?

12 A Yes.

13 Q And could you describe your home for us, what it
14 looked like?

15 A It's a one-bedroom with a living room and a
16 bathroom.

17 Q And is it a single-story residence?

18 A Yes, it is.

19 Q And on April 12th of this year, did anyone else live
20 with you at that address?

21 A Yes, my husband.

22 Q And what's his name?

23 A Clarence.

24 Q Now, I'd like to direct your attention to

1 approximately 11:25 p.m. that evening. Were you home?

2 A Yes, we were.

3 Q And when you say "we," you're referring to?

4 A My husband and I.

5 Q Was anyone else there with you?

6 A No.

7 Q What were you doing?

8 A Eating cake and ice cream and watching TV.

9 Q Okay. And in that -- in what room of your home were
10 you doing that?

11 A The living room.

12 Q And did something unusual occur at about that time?

13 A Yes, I heard a loud noise at the screen. And it was
14 somebody breaking in. And we had it latched and they broke in
15 and lifted up the latch and busted in -- and bursted in.

16 Q When you say your screen, where was the screen
17 located?

18 A Um, on the front door.

19 Q So it was a screen door?

20 A Yes.

21 Q And what about your front door at that time was --

22 A It was -- it was open.

23 Q Okay. Were there any other things in your apartment
24 that were open?

1 A No.

2 Q Okay.

3 A Oh, yes, the -- the windows.

4 Q Okay.

5 A The two windows.

6 Q So the front door was open and the screen door

7 was --

8 A Closed and latched.

9 Q Okay. And you said you heard some noise.

10 A Yes.

11 Q And what kind of noise was it?

12 A It was just, uh, when you heard the breaking in, in

13 the screen.

14 Q And then what's the next thing that happened?

15 A Then this person bursted in. And it started -- and

16 I started to scream "help, help." And he said for me to shut

17 up. And he run and shut the two windows and shut the door.

18 And then he rushed over to the cabinet where I had the knife

19 laying when I cut the cake. And he took that and cut my cord

20 on the telephone.

21 Q And you said you had a knife out that you had cut

22 the cake with?

23 A Uh-huh.

24 Q Can you describe that knife for us?

1 A It was a pairing knife, about six inches long with a
2 black handle.

3 Q And you said he cut the cord to the phone?

4 A Yes.

5 Q Where was your phone located?

6 A It was sitting on the kitchen table.

7 Q And after -- after he cut the phone cord, then what
8 happened?

9 A Then he -- well, he threw me over to the couch.

10 Q And how -- how did that happen? Where you were and
11 where was he?

12 A I was standing up in front of my reclining chair and
13 then he ran over and grabbed me by the arm. I still have the
14 mark there where it keeps coming up and thumping.

15 Q Okay. Your -- you're touching your wrist area?

16 A The wrist, yes. Mm-hmm.

17 [TRANSCRIPT READING END]

18 MS. KOLLINS: Court.

19 THE COURT: Oh, sorry. Again, I always forget about
20 that.

21 [TRANSCRIPT READING BEGIN]

22 THE COURT: She's in the -- the left wrist for the
23 record.

24 MS. KOLLINS: Thank you.

1 THE WITNESS: And I had -- had black-and-blue marks
2 from my shoulder down to my elbow.

3 THE COURT: The left shoulder?

4 THE WITNESS: Yes.

5 THE COURT: She's indicated on the record.

6 THE WITNESS: Uh-huh. And -- yeah.

7 BY MS. KOLLINS:

8 Q So you said that he -- he came over to you, he
9 grabbed you.

10 A And then he -- and then -- and threw me over towards
11 the couch.

12 Q Okay.

13 A And that's when I got all that bruising.

14 Q On your left arm?

15 A Yes.

16 Q Okay. When he threw you, where did you land?

17 A On the cushion of the couch.

18 Q Did your whole body land on the couch or did part of
19 you land somewhere else -- someplace else?

20 [TRANSCRIPT READING END]

21 MS. KOLLINS: Excuse me. Correction.

22 [TRANSCRIPT READING BEGIN]

23 THE WITNESS: No, it -- I -- I landed all on the
24 couch.

1 BY MS. KOLLINS:

2 Q And when he came over and he grabbed your wrist,
3 where was the knife?

4 A In my right hand. He grabbed me by his left.

5 Q Okay.

6 A And pulled me.

7 Q Describe this person that came into your home that
8 night.

9 A Well, he had a red handkerchief over, across his
10 face. I never saw his face.

11 Q What part of his face did the red handkerchief
12 cover?

13 A All. Like that, from his nose down.

14 MS. KOLLINS: May the -- may the record reflect that
15 the witness took her hand and put it up to the middle of her
16 nose and indicated from there down; is that correct?

17 THE COURT: Yes.

18 THE WITNESS: Yes. Uh-huh.

19 THE COURT: The record will so reflect.

20 BY MS. KOLLINS:

21 Q And you said it was a red handkerchief?

22 A Yes, it was.

23 Q And how was it that that handkerchief stayed on his
24 face?

1 A He just held it, like this, with his hand.

2 Q I see. When, um, when he grabbed you, you said with
3 his left hand and he had the knife in his right hand, how did
4 the handkerchief stay on at that point?

5 A He still just had the handkerchief -- the knife in
6 one hand and hanky over his face with the other hand.

7 Q And -- but how did he grab you with his left hand
8 and throw you?

9 A He must have -- with -- I really don't really,
10 really remember. But it just -- but it must have been with
11 the one with the knife and pulled me.

12 Q Okay.

13 A Because everything he touched in the house, he
14 touched with the corner of that knife.

15 Q Okay. And you were -- you were describing him. You
16 said he had the red handkerchief. What else can you tell us
17 about him?

18 A That's pretty much about all.

19 Q What race was he?

20 A He was dark.

21 Q Okay. And, um, when you say "dark," do you mean he
22 was a black mean?

23 A Yes. Uh-huh.

24 Q And what age?

1 A I -- I thought about 30, 35, someplace in there. He
2 was awfully strong.

3 Q Okay. Anything about his clothes that you can tell
4 us, the clothes that he had on?

5 A No, I don't remember. But my hand -- but my husband
6 said he did, so --

7 Q Okay. And after -- after he threw you on the couch,
8 then what happened?

9 A Then he went after my husband.

10 Q Where was your husband?

11 A He was in front of his reclining -- recliner,
12 standing. And then he got to wrestling with him and threw him
13 down on the floor. And when he threw him down on the floor,
14 he notice his wallet in his back pocket. And he said he
15 wanted the money.

16 Q Okay. And --

17 A And then my husband, he took his wallet out. And
18 before he could even reach in there to take the money out, he
19 reached in and took the money.

20 Q And where was your husband at that point when the
21 Defendant reached in and took money out of his wallet?

22 A He was -- he had gotten up off the floor and was
23 standing in front of his chair.

24 Q Okay. Now describe for me -- let's back up a little

1 bit. Describe for me. You said he came after your husband.
2 What interaction did he have with your husband? What happened
3 between him and your husband?

4 A Just wrestled him and threw him to the floor.

5 Q Threw him to the floor? Okay.

6 A Uh-huh.

7 Q And then --

8 [TRANSCRIPT READING END]

9 MS. KOLLINS: I'm sorry.

10 [TRANSCRIPT READING BEGIN]

11 BY MS. KOLLINS:

12 Q And then was your husband able to get up?

13 A Yes.

14 Q Okay.

15 A Uh-huh.

16 Q And tell us about the man taking the money out of
17 the wallet.

18 A He just reached over. My husband went to reach,
19 pull the money out, and he just threw -- and he just threw
20 his -- pushed his hand away and grabbed it from -- grabbed it
21 himself.

22 Q Do you know how much money he took?

23 A Yes. He took \$81.

24 Q And did your husband have anything else in his

1 wallet, like identification or a credit card?

2 A Yes, he had that. But all he was interested in, I
3 guess, was the money.

4 Q Okay. And what did this -- what did this man do
5 with the money once he took it from your husband?

6 A Put it in his pants -- in his pants pocket.

7 Q Okay. What was the next thing, then, that happened?

8 A Then he wanted a gun.

9 Q How did you know that?

10 A He asked if I had a gun and I said no. So he made
11 us go into our bedroom.

12 Q How did he make you go into your bedroom?

13 A He -- just pointing the knife at us and said, "Go,
14 come in here."

15 Q Okay.

16 A And then he went through all my closets.

17 Q Okay. Let me back you up. Why did you go into your
18 bedroom?

19 A Because he told us to.

20 Q Okay.

21 A Yeah.

22 Q And once you and you --

23 [TRANSCRIPT READING END]

24 MS. KOLLINS: Excuse me.

1 [TRANSCRIPT READING BEGIN]

2 BY MS. KOLLINS:

3 Q And once you and your -- you and your husband went
4 in the bedroom also?

5 A Mm-hmm. We both had to go in.

6 Q And when you got into your bedroom, what part of
7 your bedroom were you then in? Where?

8 A Just standing right beside the bed.

9 Q And where was --

10 A Because it's not that big of a room.

11 Q And then where was your husband?

12 A Right standing beside me.

13 Q And then the man, what -- what did he do?

14 A And then he started to go through the cupboards.

15 Q Okay.

16 A And, uh --

17 Q How did he do that? How did he go through the -- go
18 through them?

19 A With the knife. And then he went over to the desk
20 where we have cups that we have change, where we put nickels,
21 dimes, and quarters when we -- when we got them. And we had
22 them throw -- throwed in there. And then he went over there
23 to get the money.

24 And he picked up all the cups and then, when he seen the

1 pennies, he goes, "Oh, pennies." And he threw that cup back
2 on the -- on there. And then when he took the change, the
3 nickels and the quarters, and stuck them in his pockets. And
4 then he took another hanky, while he held this one, and he
5 wiped those containers off.

6 Q Where did the other hanky come from?

7 A His pocket.

8 Q Okay.

9 A Yeah.

10 Q And what did it look like?

11 A I really didn't pay that much attention to it.

12 Q The cups that you said you kept your change in, the
13 cup that had the pennies in it, what kind of cup was that?

14 A It -- it's a cup that they have at the casinos,
15 El Cortez.

16 Q Okay.

17 A Those cups, when you put out your money and take it
18 up to exchange it for the cash.

19 Q Okay.

20 A It was that kind of cups.

21 Q And what was the cup made of?

22 A Plastic.

23 Q And the cup that had the nickels and quarters in it,
24 what kind of cup -- what kind of cup was --

1 A El Cortez cups.

2 Q And was that plastic as well?

3 A Yes, it was. Mm-hmm.

4 Q Now, when you were talking about the man going
5 through the cupboards, you were kind of indicating, you said
6 he did it with the knife.

7 A The tip of the knife. He take -- he had the knife
8 in his hand and he just take the knife and pulled. Because
9 it's just a sliding door is what it is.

10 Q Okay.

11 A And he would slide the door with that.

12 Q And did -- he did --

13 A Because it was look -- because he was looking for
14 this gun.

15 Q And how do you know that?

16 A Because he said so.

17 Q What did he say?

18 A He kept saying, "You got a gun. You got a gun."
19 And I kept telling him, no, we didn't have such a thing.

20 Q What else did he say when he was in the bedroom with
21 you?

22 A Well, that was about it. And then whenever he was
23 ready to go, he tried to go out our big sliding door that
24 he -- that we have there. And it only opened so far. And so

1 when he opened it, I told him he'd never get out that way
2 because that's all the further it opened.

3 And so he said, "I have to go out this other way then."
4 And I said yes. So he made us stay in the bedroom, shut --

5 Q How --

6 A -- shut the door and then he went across the living
7 room there to the -- where the door was and went out. I --
8 and which way he went, I don't know, because he made us stay
9 in the bedroom.

10 Q The sliding door that you're talking about, where's
11 that located in your home?

12 A It's in our bedroom. It's a big, long sliding glass
13 door.

14 Q Okay. And you said you can't get out through that
15 door?

16 A Right.

17 Q You said he made you stay in the bedroom. How is it
18 that he made you stay in the bedroom?

19 A He just went to the door and he said, "Now you stay
20 here till I get out." And then he shut that door. And then
21 he -- I heard him go across the living room and open up the
22 other door and go out. And he also shut that door when he got
23 out also.

24 Q During the -- during the entire time that this man

1 was in your apartment, what other kinds of things did he say
2 to you or talk about?

3 A Well, he -- teasing my husband about sex life. And
4 I just said to him, I said, "You're getting awfully personal,
5 aren't you?" And then he never said another word about it.
6 So that was it.

7 Q When you say he was teasing your husband, what did
8 he say to your husband?

9 A Um, "Wouldn't you like to" and -- I don't like to
10 say the words that he said.

11 Q Okay.

12 A It was nasty.

13 Q And with all due respect, I understand that. But I
14 do have to ask you what exactly he said. Can you tell us?

15 A Well, he called -- he called it mother --

16 Q Can you spell it?

17 A F-U-C-K-E-R.

18 Q Okay.

19 A And he said, "How long has it been, sir?" And he
20 had him around the neck with his arm when he was doing all
21 this.

22 And I just looked at him and said, "You're getting pretty
23 personal, aren't you?" And he just stopped.

24 Q Okay. Now, um, so he called your husband that name

1 and then he said how long has it been. How did you know what
2 he was referring to?

3 A When he said the mother --

4 Q Okay.

5 A I just took it to be that so --

6 Q So what did you think he was referring to?

7 A Sex.

8 Q And you said he had his arm around your husband's --

9 A Neck.

10 Q Okay. And where were he and your husband located?

11 A Right inside of the bedroom door, where we all was
12 at because it's not really that big.

13 Q So this happened after he moved you into the
14 bedroom?

15 A Yes. Yes.

16 Q Were you frightened while he was there?

17 A Yes, I was.

18 Q How long did you stay in your bedroom? How did you
19 know or how was it that you thought he left your home?

20 A Well, I had my ear up against the door. And when I
21 heard the door shut out there, I made a beeline out there to
22 get it locked.

23 Q Okay. And the, um -- how many phones did you have
24 in your apartment?

1 A Just the one.

2 Q And that was the one with the cut cord?

3 A Yes.

4 Q And so you said you made a beeline for the door and
5 you locked it?

6 A Yes.

7 Q And then what did you do?

8 A Then we waited a few seconds. And then we went over
9 to my daughter's house. She just lives right across the
10 street, up the hill a couple ways. You know, a couple houses.
11 And went over there to her and then she called 9-1-1 for us.

12 Q Okay. And how did you get to your daughter's?

13 A We walked.

14 Q You walked?

15 A Mm-hmm. It's just, like, across the street a couple
16 of houses.

17 Q Okay. You described for us a bump that you still
18 have on your --

19 A Yes.

20 Q -- wrist?

21 A Right here. It comes up and you can feel it
22 thumping.

23 Q And you said that you had bruises down your left
24 arm?

1 A Yes. But they're cleared up. They were about two
2 weeks clearing up.

3 Q Did you have any other injuries?

4 A No.

5 Q The pairing knife, did the man take that with him or
6 leave it behind?

7 A No, he took it with him. He must have because I
8 have never been able to find it.

9 Q Okay. And --

10 A And, also, I had a pair of sharp scissors lying on
11 my stand that was, like, for cutting thread and stuff. They
12 were missing. And I still haven't found them this day. And
13 it was lying -- lying on my side -- my stand.

14 Q Okay. Um, aside -- you talked about the \$81 from
15 your husband's wallet, the change from the El Cortez cup, your
16 pairing knife. Um, you said that you're also missing a pair
17 of sharp scissors?

18 A Yes.

19 Q Is there anything else --

20 A No.

21 Q -- that --

22 A No.

23 Q -- you saw him take or you are missing?

24 A No. Uh, I thought he had taken my watch, but later

1 I found where he had laid it on the stand. And I left -- and
2 left it.

3 Q Did you see him actually look at your watch or
4 handle your watch?

5 A Yes.

6 Q Okay.

7 A Took it out of my jewel case.

8 Q And -- and did he say anything when he was doing
9 that?

10 A No, he just said I didn't have much.

11 Q He told you --

12 A Yes. And I said it's because I'm allergic to
13 jewelry. I can't wear them. So that's -- this was a lapel
14 watch that he had take -- that he had taking [sic] and, um --
15 but I -- but as I said, he must have took it out of his pocket
16 and laid it on another stand because I found it later.

17 Q Okay. Was there any other jewelry that he handled
18 and he left?

19 A No.

20 Q Or he looked at or left?

21 A He just moved it around with a pairing knife.

22 Q When he was going through the cupboards and asking
23 about a gun, um, what parts of your house did he look through?

24 A That would be just the bedroom.

1 Q Did he look through the kitchen or the living room
2 at all?

3 A No, not -- no, I don't think so.

4 [TRANSCRIPT READING END]

5 [DISCUSSION OFF THE RECORD]

6 MS. KOLLINS: Your Honor, the State's Proposed 1
7 through 5, there's a stipulation for the admission of those,
8 as they mirror what's in the prelim transcript. So if I could
9 publish --

10 THE COURT: Yes.

11 MS. KOLLINS: Thank you.

12 [TRANSCRIPT READING BEGIN]

13 MS. KOLLINS: Okay. Your Honor, may I approach the
14 witness?

15 THE COURT: Yes.

16 MS. KOLLINS: I'm going to show the witness what's
17 been marked as State's Proposed Exhibits 1 through 5. And I
18 believe Defense counsel has seen these photographs.

19 MR. GILL: That's correct, Judge.

20 THE WITNESS: Well, I'll have to get my glasses out.

21 MS. KOLLINS: Okay.

22 THE WITNESS: Oops. Going to poke my eye out.

23 BY MS. KOLLINS:

24 Q I'm going to show you what's been marked for

1 purposes of identification as State's Proposed Exhibit 1. Do
2 you recognize what's in that photograph?

3 A Yeah. That's my front door.

4 Q Okay. And is that an accurate picture of your front
5 door?

6 A Yes, it is.

7 Q And is that an accurate picture of your front door
8 on April 12th of 2000 when this happened?

9 A Yes, it is.

10 MS. KOLLINS: Move for the admission of State's
11 Proposed 1.

12 THE COURT: Any objection?

13 MR. GILL: No objection.

14 THE COURT: Okay.

15 BY MS. KOLLINS:

16 Q I'm showing you what's been marked as State's
17 Proposed Exhibit 2. Do you recognize what's in that
18 photograph?

19 A Yes, that's my -- that's my number of our house and
20 the letter on our front door.

21 Q That fairly and accurately depict your front door?

22 A Yes, it is.

23 Q On April 12th of 2000?

24 A Yes, it is.

1 MS. KOLLINS: I'll move for the admission of State's
2 Proposed 2.

3 THE COURT: Any objection?

4 MR. GILL: No, Your Honor.

5 THE COURT: Okay. It'll be admitted.

6 BY MS. KOLLINS:

7 Q Going now to show you what's been marked as State's
8 Proposed Exhibit 3. Do you recognize what's in that
9 photograph?

10 A Yes, that's the upper part of -- it looks like of
11 our screen.

12 Q Could you hear her?

13 MR. GILL: I did not.

14 BY MS. KOLLINS:

15 Q Go ahead, a little louder.

16 A Okay. The upper part of our screen door.

17 Q And is that a fair and accurate picture of your
18 screen door on April 12th of 2000?

19 A Yes, it is.

20 Q And is there anything about your screen door that
21 was different than it had usually been?

22 A Well, that's -- that's where the lock was.

23 Q Is there a lock missing?

24 A Well, actually, he punched a hole in it.

1 Q Oh, okay. So there's a hole there in your screen
2 door?

3 A Yes.

4 Q And that wasn't there before?

5 A No, it wasn't.

6 Q Before that night when this man came in?

7 A No.

8 MS. KOLLINS: I'm going to move for the admission of
9 State's Exhibit 3.

10 MR. GILL: No objection.

11 THE COURT: Okay. That'll be admitted.

12 BY MS. KOLLINS:

13 Q State's Proposed Exhibit 4, do you recognize what's
14 in that photograph?

15 [TRANSCRIPT READING END]

16 THE COURT: Would you mind zooming a little bit --

17 MS. KOLLINS: Sure. Sure.

18 THE COURT: -- Ms. Kollins, if you could. Sorry.
19 It's just so hard to see from this (indiscernible).

20 There go. Thank you.

21 [TRANSCRIPT READING BEGIN]

22 BY MS. KOLLINS:

23 Q State's Proposed Exhibit 4, do you recognize what's
24 in that photograph?

1 A Yes, that's the container that, uh, where -- where
2 he had our money. See, the El Cortez.

3 Q And do those -- does that fairly and accurately
4 depict the containers on April 12th of 2000?

5 A Yes, it is.

6 Q Now, where are they located in this picture?

7 A They look like they're upside down on my bed maybe?

8 MS. KOLLINS: Okay. I'd move for the admission of
9 State's Proposed 4.

10 THE COURT: Any objection?

11 MR. GILL: Your Honor, do you mind if we see that
12 photo very quickly?

13 THE COURT: No problem.

14 MR. GILL: Thanks. Thanks, Theresa.

15 BY MS. KOLLINS:

16 Q Mrs. Rumbaugh, this -- this photograph, is that an
17 El Cortez cup furthest to the right?

18 A Yes, mm-hmm.

19 Q And then next to it is what?

20 A That looks like the El Cortez cup also.

21 Q And there's another --

22 A Oh.

23 Q Do you know what that object is at the far left of
24 this picture?

1 A Yeah, it looks like another cup.

2 Q But it could be --

3 [TRANSCRIPT READING END]

4 MS. KOLLINS: I'm sorry.

5 [TRANSCRIPT READING BEGIN]

6 BY MS. KOLLINS:

7 Q Okay.

8 A But it could be maybe -- may be a Western one.

9 Q Okay.

10 A Okay.

11 Q So how many El Cortez cups with change in it did you

12 have?

13 A It was either two or three, I don't remember.

14 Q Okay. And what -- you said you had only pennies?

15 A Had -- and one had pennies and one had nickels and

16 one had quarters.

17 [TRANSCRIPT READING END]

18 MS. KOLLINS: Okay. And I'm sorry. I misread that

19 question. If I could just read that over?

20 THE COURT: Yeah.

21 [TRANSCRIPT READING BEGIN]

22 BY MS. KOLLINS:

23 Q Okay --

24 [TRANSCRIPT READING END]

1 MS. KOLLINS: If we can just go back. Ms. Acosta, I
2 apologize.

3 [TRANSCRIPT READING BEGIN]

4 BY MS. KOLLINS:

5 Q Okay. And what -- you said one had only pennies.

6 A And one had pennies and one had nickels and one had
7 quarters.

8 Q And did you have cups with other casino names on
9 them?

10 A Yes. We had Western and the El Cortez ones there.
11 So --

12 Q And did the man -- you said the man left the
13 pennies?

14 A Mm-hmm.

15 Q Did he take money from the Western cup as well as an
16 El Cortez cup?

17 A I don't know. I don't remember.

18 Q Okay.

19 A I just know they were there and he had dumped them.

20 Q Okay.

21 A And then he took another hanky and wiped them.

22 Q Okay.

23 A And I don't know if he wiped them all, but I seen
24 him wiping some.

1 MS. KOLLINS: Okay. I'm gonna move for the
2 admission -- did I move for 4?

3 MR. GILL: You did. No objection.

4 MS. KOLLINS: Okay.

5 THE COURT: Okay. That'll be admitted.

6 BY MS. KOLLINS:

7 Q I'm going to show you what's been marked as State's
8 Proposed Exhibit 5. Do you recognize what's in that
9 photograph?

10 A Yes, this is on my dresser. This is my powder and
11 this is a container for the powder and this is just a can
12 that's sitting there with nothing in it.

13 Q And that does --

14 A And this is a little, um, um, chest where we put
15 money in. But it has a lock. So -- so it wasn't opened.

16 Q Okay.

17 A And this is a little container that my granddaughter
18 made me. It's like a little chest where I just put -- put
19 little things in it on my dresser.

20 Q So you indicated that towards the front of the
21 dresser is a little box and that's locked?

22 A Yes. Mm-hmm. And that's where my husband puts
23 money in sometimes.

24 Q Did the man get into that box also?

1 A No, because it was locked.

2 Q And behind it you said is a chest that your
3 granddaughter made you?

4 A Yes, mm-hmm. It's -- it's just for looks, I guess.

5 Q Okay. And to the left is also --

6 A Oh, this is my jewel case.

7 Q Okay.

8 A Right here. And my granddaughter used to live --
9 and this's hers on the top.

10 Q And did the man take anything out of your jewel
11 case?

12 A Yes, he took that watch and just moved the rest of
13 my jewelry around with the knife.

14 Q Okay. And does this picture fairly and accurately
15 depict your -- your dresser area in your --

16 A Yes, it is.

17 Q -- bedroom on April 12th of 2000?

18 A Yes, and this is the mirror above.

19 Q Okay. Thank you.

20 MS. KOLLINS: I move for the admission of State's
21 Proposed 5.

22 THE COURT: Any objection?

23 MR. GILL: No.

24 THE COURT: It'll be admitted.

1 BY MS. KOLLINS:

2 Q Mrs. Rumbaugh, this man that came into your home, is
3 he someone that you know -- that you knew?

4 A No.

5 Q And is he someone that you consented to have in your
6 home that -- that night?

7 A No.

8 Q Thank you, Mrs. Rumbaugh.

9 MS. KOLLINS: I'm gonna pass the witness.

10 THE COURT: Mr. Brown, will you be doing it?

11 MR. GILL: Thank you, Judge.

12 CROSS-EXAMINATION

13 BY MR. GILL:

14 Q Good morning, Ms. Rumbaugh.

15 A Good morning.

16 Q Ms. Rumbaugh, I'm a Defense attorney. I had a few
17 questions I'd like to ask you as well. Is that all right?

18 A Okay. That's fine with me.

19 Q Thank you. Do you recall giving the police any kind
20 of statement where they had the tape recorder sitting out?

21 A Yes.

22 Q Did you give them one?

23 A Yes, I did.

24 Q Okay. And did you review that statement at all?

1 A I read it over before I signed it.

2 Q Okay. So you actually saw that statement as well;
3 right?

4 A Yes. Yes.

5 Q Okay. Ma'am, when you spoke to the police and you
6 gave them that recorded statement, was that the third time
7 that you'd spoken to them about what happened to you and your
8 husband?

9 A It could have been. I don't -- I don't really
10 remember.

11 Q Okay. But you recall that you did speak to them a
12 few times; right?

13 A Yes, I did.

14 Q And when you went to your daughter's house after
15 this instance -- incident, did you talk to your daughter about
16 what had -- what happened?

17 A Yes, and she called 9-1-1 right away.

18 Q All right. And did you tell your daughter some of
19 the things that you could remember about what happened?

20 A Yes.

21 Q Okay. And do you know whether the police spoke to
22 your daughter as well?

23 A Yes, she was right there.

24 Q Okay. So your recollection is that the police did

1 talk to your daughter?

2 A Yes.

3 Q Okay. Ma'am, do you -- do you have any recollection
4 how old you thought this person -- let me start over again.

5 Do you remember what you told the police about how old
6 this person was that went into your house?

7 A Yes, I thought he was around 30, 35 years old.

8 Q Okay. Do you have any recollection telling the
9 police that you thought he was in his mid 20s?

10 A It was my husband, I think, that said that.

11 Q I see. So your husband thought he was in his mid
12 20s. Okay.

13 Do you have any rec -- recollection what you told the
14 police with about how tall this person was?

15 A No.

16 Q Did they ask you?

17 A I don't remember.

18 Q Okay. Did they ask you how much this person
19 weighed?

20 A I don't remember that either.

21 Q Okay.

22 A It's been so long since it happened.

23 Q Oh, that's fine. Of course. I understand.

24 Do you have any recollection telling the police that this

1 person had a thin build?

2 A No, I don't.

3 Q Okay. And you don't recall telling the police that
4 this person was dark skinned.

5 A I think I did tell them that.

6 Q So you did tell them he was dark skinned.

7 A Yeah.

8 Q Was that in response to the policeman asking you to
9 describe this person?

10 A I think so.

11 Q Okay. And of course the policeman asked you what
12 this person was wearing.

13 A Yes, but I didn't see it.

14 Q Okay. So in response to the policeman asking you
15 specifically what the person was wearing, you weren't able to
16 tell the police.

17 A No.

18 Q So no shirt color.

19 A No, because my vision is -- is kind of --

20 Q I understand. Of course I understand.

21 No trouser colors, nothing like that.

22 A I -- I didn't, but my husband did.

23 Q Okay. Fair enough.

24 Ma'am, you mentioned that the -- the three cups that you

1 had in your -- in your home at the time, one of them had
2 pennies and then the other one had --

3 A Nickels and quarters.

4 Q And quarters. You don't have any dimes?

5 A Well, he might have thrown some in with the
6 nickels. I don't really know because that's -- that was his
7 territory.

8 Q You mean your husband.

9 A Yes.

10 Q Oh, I see. So these three cups of money actually
11 belonged to your husband?

12 A Right.

13 Q I see. Okay.

14 A Right.

15 Q As you sit here today, ma'am, you can't really give
16 us any more information that you've already given the police
17 about what this person looked like; is that right?

18 A That's correct.

19 Q Okay. Did you ever go down to the detention center
20 to do something that we call a lineup? Nothing like that?

21 A No, I didn't.

22 Q Okay. The District Attorney asked you a question
23 about when this person that was in your home was holding on to
24 your wrist. Do you remember that?

1 A Yes.

2 Q Okay. And the District Attorney brought up an
3 interesting point, that you know for sure that this person was
4 holding some kind of handkerchief against his mouth; is that
5 so?

6 A Yes.

7 Q It wasn't tied back there, was it?

8 A No, it wasn't.

9 Q Okay.

10 A It was held with him.

11 Q And my guess is, is that he was holding that
12 handkerchief against his mouth with his left hand?

13 A Yes.

14 Q And do you know that to be a fact?

15 A Yes.

16 Q Okay.

17 A Yeah.

18 Q And you also told us that he had in his right hand
19 the pairing knife so that he -- pairing knife that he picked
20 up from your house; correct?

21 A Right.

22 Q Okay. Now, he didn't walk in with a pairing knife,
23 did he?

24 A No, he didn't.

1 Q Okay. And despite how it might have happened, you
2 know for a fact that at some point he did hold on to your
3 wrist; is that so?

4 A Yes.

5 Q And the only explanation that you have is that he
6 must have done it with the right hand that he was holding the
7 knife in; correct?

8 A Yes.

9 Q Okay. Ma'am, I was a little surprised to hear you
10 say this morning that he threw you onto the couch. Do you
11 remember telling us that?

12 A Mm-hmm.

13 Q Did you actually tell that to the police when they
14 first came to talk to you?

15 A I don't know.

16 Q You don't recall whether you told them that?

17 A No. No.

18 Q Now, obviously we don't have any -- the copy of the
19 statement you gave police, but let me ask you this --

20 A Mm-hmm.

21 Q -- do you recall telling the police, when they had
22 the tape recorder, that he threw you to the couch? Do you
23 recall that?

24 A I don't remember. I just said maybe he threw me

1 across the room. So I don't really remember.

2 Q Okay. So even having given the statement and then,
3 according to your testimony, having reviewed the statement, as
4 you sit here today, you still have no recollection whether you
5 told the police that he threw you to the couch.

6 A No, I don't.

7 Q Okay. Ma'am, when this person that was in your
8 house grabbed you and threw you to the couch, can you give us
9 an idea of how far you were thrown?

10 A I'd say from here, maybe over there.

11 Q Over to there would be about where I'm standing
12 or --

13 A Yes, about there.

14 MR. GILL: That's about ten feet, Judge. Do you
15 agree?

16 THE COURT: Yes.

17 MR. GILL: Okay.

18 THE COURT: I would say at least ten feet.

19 MR. GILL: Okay.

20 THE COURT: Do you agree?

21 MS. KOLLINS: That's fine, Judge. Sure.

22 BY MR. GILL:

23 Q So, ma'am, your testimony is that he threw you by
24 the wrist approximately ten feet.

1 A Yes, he just -- he -- he pulled me around and let me
2 go.

3 Q Okay.

4 A And that's because I was hollering "help."

5 Q You think the reason why he threw you like that is
6 because you were hollering "help"?

7 A Yes.

8 Q Okay.

9 A Yes.

10 Q Do you have any recollection telling the police
11 about these sharp scissors that turned up missing?

12 A No, because I didn't know it at the time.

13 Q Okay.

14 A That they were missing when they were -- when they
15 were there.

16 Q I see.

17 A It was whenever I went to go to use them that I
18 couldn't find them.

19 Q I see. So as far as you know, the police might
20 have -- might have no idea that there's a pair of scissors
21 missing; is that right?

22 A Right. Right.

23 Q And it could be because you misplaced those scissors
24 at all.

1 A No.

2 Q Okay.

3 A Because I always kept them there because that's
4 where I sewed and knitted and things like that.

5 Q Okay. Now, the money that was in your husband's
6 pocket, do you personally know how much money he had in his
7 wallet?

8 A No, I don't. But I heard him tell.

9 Q Okay. All right. So you as you sit here today,
10 other than what other people have told you, you have no idea
11 how much money was in his pocket.

12 A No, because I don't go through his wallet.

13 Q I understand. And of course the money that's in his
14 wallet, is that his money?

15 A Yes, it is.

16 Q And the money in those cups is his money too; right?

17 A Yeah.

18 Q Okay.

19 MR. GILL: Court's indulgence just for a second,
20 Your Honor.

21 THE COURT: Okay.

22 BY MR. GILL:

23 Q Ma'am, I don't want to bear -- embarrass you again,
24 but the District Attorney did ask you some questions about

1 some statements that were made to you by this person that was
2 in your house.

3 A Yes.

4 Q And those statements, I guess, were directed
5 directly at your husband; is that right?

6 A Yes, they were.

7 Q Did you tell the police about those statements?

8 A Yes, we did.

9 Q You did tell them about that?

10 A Yes.

11 Q Okay. And other than those statements that he made,
12 do you recall anything else that this person said to you or
13 said to anybody that you overheard while he was in your house?

14 A No, because once he said that and I said "you're
15 getting a little bit personal," he just clammed up then.

16 Q So anything else was said --

17 A No.

18 Q -- to the best of your recollection?

19 A No.

20 Q All right. Let me review with you just a couple
21 items that I suspect were probably in your house. Do you own
22 a radio?

23 A Yeah.

24 Q And that's in your house?

1 A Yes.

2 Q And do you own, like, a portable television?

3 A Yes.

4 Q Do you and your husband own any stereo-type
5 equipment, things like that?

6 A Yes, we do.

7 Q And --

8 A We have a microwave and everything. He never
9 touched a thing.

10 Q Never touched anything else?

11 A No.

12 Q Okay. So as we sit here today, the only thing that
13 you know that was taken from your house was what we'll
14 describe as a pairing knife; is that correct?

15 A That's right.

16 Q So money from your husband's wallet, but we don't
17 know personally how much money was in there; right?

18 A Yes.

19 Q Okay. And then some change that was in those three
20 cups; correct?

21 A Yes.

22 Q Okay. One more question, ma'am. When the police
23 came, after your daughter called them, you told the police
24 that you thought this person had taken the watch; is that

1 correct?

2 A Yes. Right. And I later told them that I had found
3 it.

4 Q Yes, ma'am. Now this watch that we're talking
5 about, is it the wrist watch?

6 A No, it's a lapel.

7 Q Oh, it's a lapel watch.

8 A Yes.

9 Q Okay. And do you remember how many days later
10 you -- you actually called the police back and told them "I
11 found my -- my little watch"?

12 A No, I don't know how many days because it was a
13 couple of days later that I did find it.

14 Q Okay. All right. Ma'am, thank you very much.

15 A Sure.

16 MR. GILL: Thank you, Judge.

17 MS. KOLLINS: Just a few questions.

18 REDIRECT EXAMINATION

19 BY MS. KOLLINS:

20 Q Mrs. Rumbaugh, what was it about this man that led
21 you to think that he was about 35?

22 A I don't know. Just his build and all, I guess.

23 Q And -- okay. And do you have some vision
24 difficulties?

1 A Yes, I do.

2 Q And can you tell us what they are?

3 A I can't see from my left side at all.

4 Q And is that from the left side of each eye?

5 A Yes. Mm-hmm. I can see straight ahead and off to
6 the right.

7 Q And what is that a result of?

8 A A stroke.

9 Q And when was that?

10 A Um, that was in '95.

11 MS. KOLLINS: Thank you. I have no additional
12 questions.

13 THE COURT: Anything else?

14 MR. GILL: Very briefly, Judge.

15 RE CROSS-EXAMINATION

16 BY MR. GILL:

17 Q Ma'am, so if -- if what I'm saying is true, the only
18 reason that you believe this person was in his 30s was because
19 of his build; is that right?

20 A Right. Right.

21 Q Okay. And just the way he acted, you know, I mean
22 like a man about that age --

23 [TRANSCRIPT READING END]

24 MR. GILL: Oh, I'm sorry.

1 [TRANSCRIPT READING BEGIN]

2 BY MR. GILL:

3 Q Okay.

4 [TRANSCRIPT READING END]

5 MR. GILL: My apologies. That was my mistake.

6 [TRANSCRIPT READING BEGIN]

7 THE WITNESS: And -- and just the way he acted. You

8 know, I mean, like a man about that age.

9 BY MR. GILL:

10 Q Okay.

11 A He was strong and this and that.

12 Q So you -- in all fairness, you don't know if the

13 person was in his 20s or his 30s.

14 A No, I don't.

15 Q And the person could have been in his 40s as well.

16 A Yes, but I don't believe so.

17 Q But you don't believe so.

18 A No.

19 Q Okay. Was he taller than me?

20 A No, he was about maybe your height.

21 Q Okay. Was he heavier than me?

22 A No.

23 Q No. Okay.

24 MS. KOLLINS: Can we state for the record how tall

1 Mr. Abood is?

2 MR. GILL: I don't know.

3 MS. KOLLINS: And how much he weighs.

4 THE COURT: I think he knows how tall he is and
5 about how much he weighs.

6 MR. GILL: 5-10 and a half, Judge.

7 THE COURT: And what about the weight?

8 MR. GILL: Oh, about 185.

9 THE COURT: Is that a confession?

10 MR. GILL: On a good day, Your Honor.

11 Ma'am, thank you again. Thank you.

12 THE WITNESS: Okay.

13 THE COURT: Thank you for your testimony. Please
14 remain outside and do not discuss your testimony with anyone
15 else.

16 THE WITNESS: Okay.

17 [TRANSCRIPT READING END]

18 THE COURT: Thank you, Ms. Acosta.

19 Are we reading the other one next or --

20 MS. LUZAICH: That's what we're talking about.

21 THE COURT: Oh, okay.

22 MS. LUZAICH: If we do that, can we still do Workman
23 and then break for lunch?

24 THE COURT: Yeah.

1 MS. LUZAICH: Okay.

2 MS. KOLLINS: We'll be reading Clarence Rumbaugh.
3 And that will be read by Corey Hallquist.

4 THE COURT: Okay. Sounds good.

5 And Clarence Rumbaugh testified on October 16th of 2020.

6 MS. KOLLINS: Of 2000.

7 THE COURT: Oh, sorry. Yeah. It's really hard
8 to -- for me to say "2000."

9 Sir, would you please raise your right hand?

10 Thank you.

11 COREY HALLQUIST,
12 Was first duly sworn to read the answers in the transcript
13 to the best of his ability:

14 MR. HALLQUIST: I do.

15 THE CLERK: Please be seated, stating your full
16 name, spelling your first and last name for the record.

17 MR. HALLQUIST: My name is Corey Hallquist,
18 C-O-R-E-Y. Last name H-A-L-L-Q-U-I-S-T.

19 THE COURT: All right. So Mr. Rumbaugh was sworn in
20 by the clerk before the hearing and then Ms. Kollins for
21 Ms. Lowry.

22 [TRANSCRIPT READING BEGIN]

23 ///

24 ///

DIRECT EXAMINATION

BY MS. KOLLINS:

Q Mr. Rumbaugh, how old are you?

A Eighty-four.

Q And what is your birthday?

A July 19, 1916.

Q And, Mr. Rumbaugh, I'd like to direct your attention to April 12th of this year. Where were you living on that date?

A At 436 North 12th.

Q And is there a letter associated with that home?

A Apartment B.

Q And who did you live there with?

A My wife.

Q And did anyone else live there?

A Not at that time, no.

Q Approximately 11:25 p.m. that night, what were you doing?

A We just had -- we just finished a few munchies and we were watching television.

Q And could you just describe for us a bit about how your home is laid out, the rooms and such?

A Well, there's actually just two large rooms and they're separated into four small ones.

1 Q And what would those rooms be?

2 A There is a kitchen, dining room, bedroom, and bath.

3 Q Where were you eating your munchies and watching TV?

4 A In the living room.

5 Q And could you describe the condition of your front
6 door at that time as you were sitting there watching TV?

7 A It was locked and the screen door -- the main door
8 was open.

9 Q Okay.

10 A For ventilation.

11 Q And did something unusual happen at that time?

12 A Yes, a hole appeared in the screen and a hand came
13 in and opened the door.

14 Q And once that hand opened the door, then what
15 happened?

16 A Then he came in and wanted, um, our money and a gun.

17 Q Can you describe the person that came into your
18 home?

19 A The only thing that was outstanding about him was
20 the fact that he was about six feet tall. And I figured he
21 was young, 20s or old teens. And he had white tennis shoes
22 on. That's all I noticed.

23 Q So you noticed it was a male?

24 A Yes.

1 Q And you said young 20s, late teens.

2 A Yes.

3 Q And white tennis shoes.

4 A Right.

5 Q Did you notice the race of this man?

6 A Yes. He was African American.

7 Q And besides his shoes, was there anything about his
8 clothing that you recall?

9 A No, I don't recall right now. No.

10 Q And were you able to see his face?

11 A No, he had a red bandana over his face, to his eyes.

12 Q And once this man came into your apartment, then
13 what happened?

14 A Well, he -- he, um, knocked me down and momma and
15 threw her onto the couch. And he went around opening doors
16 and drawers, and he found a pairing knife in the kitchen. He
17 took it and cut the phone line, and he used that to open and
18 close the doors from there on.

19 Q The phone with the phone line, where was that phone
20 located in your home?

21 A That was in the kitchen.

22 Q And you said that he knocked you down?

23 A Yes.

24 Q And how did that happen? How did he do that? What

1 happened?

2 A I don't recall.

3 Q Did he put his hand on you?

4 A Oh, yes.

5 Q And where were you knocked to?

6 A Onto the floor.

7 Q And did you have any injuries or bruises?

8 A Just bruises.

9 Q And where were the bruises?

10 A Um, mostly on my back.

11 Q And you said -- what did he do --

12 [TRANSCRIPT READING END]

13 MS. KOLLINS: Sorry. Correction. Excuse me.

14 [TRANSCRIPT READING BEGIN]

15 BY MS. KOLLINS:

16 Q And you said -- what did he do to your wife that you
17 saw?

18 A Pardon?

19 Q You said he did something to your wife.

20 A Yes, he, uh, grabbed her by the arm and -- and
21 forced her around that way and bruised the arm quite badly.

22 Q Now, once the man came into your apartment, um, did
23 the front door to your apartment remained [sic] open?

24 A I believe it did, yes.