

COPY

EIGHTH JUDICIAL DISTRICT COURT
CIVIL/CRIMINAL DIVISION;
CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

Plaintiff,

VS.

KIRSTIN BLAISE LOBATO,

Defendant.

CASE NO. C177394

DEPT. NO. II

Transcripts of
Proceedings

BEFORE THE HONORABLE VALORIE J. VEGA, DISTRICT COURT JUDGE

"ROUGH DRAFT"

**JURY TRIAL - DAY 11
VOLUME XI**

MONDAY, SEPTEMBER 25, 2006

COURT RECORDER:

**LISA LIZOTTE
District Court**

TRANSCRIPTION BY:

**NW TRANSCRIPTS, LLC.
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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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DESCRIPTION: ADMITTED

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1 LAS VEGAS, NEVADA MONDAY, SEPTEMBER 25, 2006

2 PROCEEDINGS

3 PROCEEDINGS BEGAN AT 10:46:02

4 (Jurors are present)

5 THE BAILIFF: Department II is now in session,
 6 Honorable Valorie Vega presiding.

7 THE COURT: Good morning, everyone.. The record
 8 shall reflect that we are resuming trial in State versus Kirstin
 9 Blaise Lobato, under Case Number C177394, in the presence
 10 of the defendant together with her three counsel. The two
 11 prosecuting attorneys are present, as are the ladies and
 12 gentlemen of the jury,

13 Proceeding forward with the State's case in chief.
 14 When we recessed, the senior crime analyst Ford was on the
 15 stand, and the Court believes that he is returning at this time
 16 to resume that testimony?

17 MS. DiGIACOMO: That's correct, Your Honor,

18 THE COURT: Would the bailiff call the hall?

19 DANIEL FORD, STATE'S wrrNEss, SWORN

20 THE COURT: You may be seated.

21 THE WITNESS: Thank you, ma'am,

22 THE COURT: As we recessed, the witness had just
 23 been passed back to the prosecution for redirect. And Ms.
 24 DiGiacomo may proceed,

XI-5

FORD - REDIRECT

MS. DiGIACOMO: Thank you, Your Honor, □

REDIRECT EXAMINATION

BY MS. DiGIACOMO:

Q Mr. Ford, defense counsel asked you about, you know, if it's possible somebody could have slept in that area after hours. Do you recall that line of questioning?

A I believe so, yes, ma'am.

Q Do you know how many pairs of shoes were actually found at the scene?

A I believe just the one pair of sandals,

Q That you impounded?

A Yes, ma'am,

Q And also defense counsel asked you about a suppressor box. I believe it was Number 161. Do you recall that?

A Yes, ma'am, I do.

Q Now, was it just that suppressor box that was found on the body?

A There was a large piece of cardboard that was over top of the body that had blood on one corner of it. We turned the piece of cardboard over and it contained bloody footwear on the underside of that piece. We cut part of it out and just impounded the section of cardboard with the bloody footwear and left the remainder of it. We took about a third of that box.

XI-6

FORD - REDIRECT

Q Okay. Now I'm showing you State's Exhibit Number 5. Can you see that?

A Yes, ma'am, I can.

Q Okay. The cardboard you're referring to, is it in this photograph?

A Yes, ma'am. It's this piece of cardboard here.

Q At the time you were — you located the body, this is the way it looked?

A Yes, ;To'lem, that's correct.

Q All right, Now, when -- this cardboard that was lifted off of the body, were there other items underneath it?

A Yes, ma'am, there were.

Q All right, Were there multiple items or just the one suppressor box?

A There was additional items there. If I could refer to Louise's report?

Q Okay. If that would refresh your recollection,

A Yes, ma'am. She writes that a piece of cardboard box with apparent blood and a footprint impression in apparent blood covered the face and upper body of the victim. Plastic bags of trash, cardboard boxes, as well as loose trash, was covering the victim's body. A piece of torn plastic was pressed around the victim's hips and wads of paper towels

XI-7

FORD - REDIRECT

were pressed over the plastic, and plastic bags of trash were over the paper towels, all underneath the piece of cardboard,

Q Now, State's Exhibit 155, do you recognize this?

A Yes, ma'am,

Q Okay. What is this?

A That's the -- should be the piece of cardboard with the bloody footwear that we cut out.

Q Okay. And if you —

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

THE COURT: You may.

BY MS. DiGIACOMO:

Q Now, is this the entire piece of cardboard?

A No, ma'am, it's about one-third of the -- the piece with the bloody footwear is Item Number 27. That's Item —

Q Oh, 27?

A Yes, ma'am.

Q I have the wrong one. This is Item 31, Item 31 would have been the one found on the ground, then?

A 27 -- that was probably the one on the ground, yes, ma'am.

Q Okay. Now I'm showing you State's Exhibit —

MS. DiGIACOMO: May I approach, Your Honor?

THE COURT: You may.

XI-8

FORD - REDIRECT

BY MS, DiGIACOMO:

Q This is actually 163 that shows Item 27.

A Okay,

Q This is the piece that had the cardboard?

A This is a piece of cardboard that says "was cut from the cardboard located on top of the victim."

Q Okay. And this is just a very small portion of what was on top of the victim?

A Correct. Along with Item 31, that you just had, as well. Item 31 was at the upper torso of the victim.

Q So Item 31 in this -- this big box, which is State's Exhibit 155, this was on top of the -- the body as well?

A Victim as well, yes, ma'am.

Q Now, defense counsel also talked to you regarding some paper towels. Do you recall that? This is State's Exhibit Number 9 I'm showing you right now.

A Yes, ma'am.

Q Okay, Now, were any of these paper towels found underneath the plastic on the genital area of the victim?

A No, ma'am, they were not.

Q Okay. So, showing you State's Exhibit Number 13, None of these paper towels here that have been removed were stuffed into the genital opening?

A No, ma'am, they were not,

XI-9

FORD - REDIRECT

1 Q Okay. And you don't see any underneath the plastic
 2 here that's been pulled back?
 3 A No, ma'am.
 4 Q And in fact the report you just read from doesn't
 5 indicate that there was any paper towels over the genital
 6 opening, correct?
 7 A No, ma'am, it does not
 8 Q And defense counsel also asked you about this
 9 plastic that was wrapped -- this right here. And I'm showing
 10 you State's Exhibit Number 12, the plastic. And he was saying
 11 it was wrapped around the victim's body. Was this piece of
 12 plastic wrapped all the way around the victim's body?
 13 A No, ma'am, It stopped at the edges of the -- of the
 14 body. At the edges of the legs and the thighs. It didn't go
 15 around the back,
 16 Q Okay, So where his body was touching or laying on
 17 its back, that paper was not wrapped around?
 18 A No, ma'am,
 19 Q In fact, that's how you were able to find a rock
 20 underneath the left buttocks area?
 21 A That's correct,
 22 Q Now, the footprints that came out on the side by the
 23 crate, the wood crate on the —
 24 A North wall?

XI-10

FORD - REDIRECT

1 Q -- north wall -- correct — you'd mentioned that those
 2 were partially dry and partially wet,
 3 A Yes, ma'am. There was -- there was one that —
 4 where it started, that was all in blood, I mean it was — you
 5 couldn't see any detail at all to a footwear impression — was
 6 wet. And as they came out, they were more dry until they got
 7 to the very edge of the enclosure, and then there was no
 8 farther footwear beyond the enclosure,
 9 Q All right, And I'm going to show you State's Exhibit
 10 Number 231. oo you recognize what this is?
 11 A It's part of the blood pool that was back in -- in the
 12 near the southwest corner of that enclosure.
 13 Q All right. Friday you had testified that you believe
 14 that this area was dry? The blood.
 15 A That's correct
 16 Q Is that correct?
 17 MS. DiGIACOMO: May I approach, Your Honor?
 18 THE COURT: Yes,
 19 BY MS. DiGIACOMO:
 20 Q I'm going to show you State's Exhibit 231, up close,
 21 If you could look at -- I believe you said that was Teresa
 22 Main's glove in the picture?
 23 A Okay.
 24 Q Okay. Do you see anything on her gloves?

XI-11

FORD - REDIRECT

1 A There's blood on -- apparent blood on the fingers of
 2 the gloves. Meaning that that blood in that corner was wet.
 3 Q Okay. Now, it's your — you didn't recall that it was
 4 dry or wet, correct?
 5 A No That's correct.
 6 Q Did you review Ms. Renhard's report?
 7 A Yes, ma'am, I did.
 8 Q Does it state in there whether or not it was wet or
 9 dry?
 10 A It says the flat cardboard was wet with pooled
 11 blood. So there was a large area of blood pool that was still
 12 wet. And that's where the blood came from, on her fingers, of
 13 those gloves.
 14 Q Now, there were multiple, multiple items in the back
 15 of this trash enclosure, correct?
 16 A Yes, ma'am,
 17 Q All right. And I'm going to show you State's Exhibit
 18 Number 9. Do you see that?
 19 A Yes, ma'am, I do,
 20 Q Okay. I don't know if you can see, there's water
 21 bottles, coffee cups, Coke cans, I believe there's some half-
 22 eaten foot and cigarette butts. Do you see that in there?
 23 A Yes, ma'am.
 24 Q Now, why weren't those items collected?

XI-12

FORD - REDIRECT

1 A We -- after discussing it with the other members of
 2 the team that were there, we assumed that they were all from
 3 inside the trash bags that had been taken out of the dumpster.
 4 We didn't feel that the suspect, whoever that person may be,
 5 would have stood around drinking from a water bottle or
 6 eating food, or anything else, after killing the victim. They
 7 would have left as soon as possible. The water bottles, the
 8 drink cups, the food, or whatever, with the — again, with the
 9 employment center for the Palms being handled in that
 10 building, we had — we took it that that was trash all from that
 11 employment center.
 12 Q And showing you State's Exhibit 230. In this
 13 photograph there's multiple Coke cans and multiple cigarette
 14 butts around the area. Those weren't collected either, and
 15 impounded?
 16 A No, ma'am, they were not.
 17 Q In fact the items that you impounded are -- seem to
 18 be from areas not within the trash heap itself?
 19 A That's correct.
 20 Q Now, with regard to luminol, you were present when
 21 Louise Renhard did the luminol, correct?
 22 A Yes, ma'am. At the criminalistic's garage,
 23 Q Right. On the Ford Fiero -- or the Fiero?
 24 A Correct.

XI-13

FORD - REDIRECT

1 Q And how long have you been doing luminol?
 2 A Here in Las Vegas, about twelve years now,
 3 Q Do you have any experience with false positives for
 4 luminol?
 5 A I -- I set up a training class for the people on our
 6 graveyard shift, of taking items and soaking them in blood --
 7 wrenches, screw drivers, a hammer, handprints -- putting
 8 them on pieces of carpet and then letting them dry, spraying
 9 them with luminol so the people could see what sort of a glow
 10 we would get with it. And then taking another piece of carpet
 11 that we walked across with bloody footwear and cleaning that
 12 with a carpet cleaner to see what we would get. And then
 13 also using bleach in the cleaning of that -- of carpet pieces,
 14 and tennis shoes, to see what we would get, And you get a
 15 bright flash, almost like flash bulbs going off at a rock concert
 16 or a football game, baseball game. It's just flashes of light.
 17 The -- and then the color dissipates. It doesn't stay --
 18 Q And that would be flashes of lights with regard to
 19 the cleaning solution?
 20 A With the cleaning solutions, yes, ma'am.
 21 Q Okay. Now showing you State's Exhibit 192. Can
 22 you see what's located there?
 23 A Yes, ma'am.
 24 Q Okay. Now, this is the positive reaction with the

XI-14

FORD - RECROSS

RECROSS-EXAMINATION

1 BY MR. SCHIECK:
 2 Mr, Ford, you said you had done some training --
 3 MR, SCHIECK: I'm sorry, Your Honor, I didn't wait
 4 for you to say go ahead.
 5 THE COURT: You may.
 6 BY MR. SCHIECK:
 7 You talked about your tests that you performed with
 8
 9 A Yes, sir.
 10 What is your training background in the use of
 11 luminol?
 12 A The first time I was able to use it was here in Las
 13 Vegas. It was on a double murder,
 14 Q I want to know your training. Not your experience.
 15 A That was basically my training, was on-the-job
 16 training at a scene using it for the first time.
 17 Q Okay. And you're not a chemist, I assume?
 18 A No, sir, I'm not.
 19 Q And you're taught how to prepare the luminol and
 20 how to spray it onto a surface?
 21 A Correct,
 22 Q And then you get a luminescence response and you
 23 photograph it?
 24

XI-16

FORD - REDIRECT

1 luminol on the door panel of the Fiero, correct?
 2 A That's correct.
 3 Q All right. Now, is this reaction different than you
 4 described with regard to the cleaning supplies with the flashes
 5 of light?
 6 A Flashes of light, you're not able to capture with
 7 photography because it -- it dissipates immediately. Where
 8 the luminol glow remains for a period of time and allows you
 9 to capture it with time lapse photography.
 10 Q And this is when the luminol reacts positive for
 11 blood?
 12 A Yes, ma'am,
 13 Q And so State's Exhibit 192 is a consistent reaction of
 14 a positive for blood?
 15 A Yes, ma'am, that's correct.
 16 Q And the other positive reactions on the floral seat
 17 covers and the gray seat, as well, would that be more
 18 consistent with being positive for blood or being a false
 19 positive?
 20 A Positive for blood.
 21 MS, DIGIACOMO: Court's indulgence, Your Honor,
 22 I'll pass the witness,
 23 MR. SCHIECK: Thank you, Your Honor,
 24

XI-15

FORD - RECROSS

1 A That's correct.
 2 Q Okay, You're not involved in whatever goes into the
 3 luminol? You're given compound A, compound B, mix it with
 4 water and spray it? Correct?
 5 A Yes, sir, with directions on a piece of paper.
 6 Q And that's the extent of your training with luminol?
 7 A Correct.
 8 Q Okay. And you said you had done a little testing on
 9 your own or put together a little workshop where you had got
 10 a false positive with the use of some cleaning items?
 11 A Yes, sir.
 12 Q Okay. And you got those sparkles?
 13 A Yes, sir.
 14 Q Okay. You didn't get any sparkles in this case?
 15 A In this case in the car?
 16 Q Yes.
 17 A Not that I remember seeing. She -- if she had done
 18 something later with it, she did -- it wasn't to my knowledge,
 19 no, sir.
 20 Q So there's no indication that any cleaning fluid or
 21 anything that would react with luminol, if it does react, reacted
 22 in this case?
 23 A That's correct
 24 Q So you found no evidence that there'd been any

XI-17

FORD - RECROSS

1 cleaning with cleaning products on the inside of that car,
 2 correct?
 3 A Nothing that would react to the luminol, no, sir.
 4 Q And when we're talking about cleaning products,
 5 we're just talking about one type of false positive, is that
 6 correct?
 7 A Correct
 8 Q There's a great many types of items that will create
 9 false positives, is that correct?
 10 A Many. Plant life, some vegetable products, food
 11 stuffs will give the same thing,
 12 Q Do you have any recollection or have you read or
 13 have any training on what those other items are that create
 14 false positives?
 15 A Trees that are common to here in this -- this area.
 16 Different flowers and all, But I don't remember specifically
 17 without looking at some paperwork.
 18 Q Dandelions?
 19 A Maybe, 'Va have to look at -- if I could pull a report
 20 out?
 21 Q Do you have a report that —
 22 A Yes, sir,
 23 Q Okay. What report is this?
 24 A In fact, after I look at it, you can have it, sir, It's a

XI-18

FORD - RECROSS

1 Q That's something that might replace luminol because
 2 it's more effective?
 3 A And it's easier to use and supposedly you don't need
 4 as dark a room to photograph.
 5 Q But you weren't using that back in 2001 when this
 6 car was processed?
 7 A Don't believe it was available, sir,
 8 Q And in fact with luminol you use a confirmatory test -
 9 to make sure that you're not getting a false positive?
 10 A Exactly. You still have to test for -- to make sure it's
 11 blood there that's glowing, and, again, the studies with luminol
 12 state that there can or cannot be DNA afterwards,
 13 Q But you'd certainly want to see a confirmatory test
 14 before you'd call something blood?
 15 A Yes, sir,
 16 Q Okay. Now, are you aware that there's no
 17 confirmatory tests in this case?
 18 A I'm not aware of that, no, sir.
 19 Q You said I could have a copy of that, though?
 20 A That's yours, sir.
 21 Q Okay. Thank you. Where did you get that anyway?
 22 A Downloaded it the other night. Lightning Powder, a
 23 company that produces and provides crime scene investigation
 24 equipment out of -- used to be out of Oregon -- has it on their

X1-20

FORD - RECROSS

1 technical note by -- that a speech was given by a Lieutenant
 2 Robin Bratton [phonetic] with the Michigan State Police at an
 3 IAI conference in Massachusetts in 1997 regarding Hemoglow
 4 which is another commercially luminol type preparation. He
 5 compared Hemoglow and luminol for positives and false
 6 positives, and indicated whether it's the -- a strong
 7 luminescence, a plus and a minus is a slight dot luminescence,
 8 which is your false positive, and then just the minus is no
 9 luminescence produced. Dandelions, spruce, lamb ears,
 10 thistle, pyracarba, burning bush, cotoneaster, creeping
 11 myrtle, Boston ivy, hackberry tree, clover —
 12 Q I'm just kind of looking up there. It looks like you've
 13 got a long list of items —
 14 A Yes, sir. It is.
 15 Q -- that give false positives. Okay, Thank you very
 16 much. So there's a lot of things that give false positives?
 17 A Yes, sir, there is.
 18 Q Okay. Did you test any of those items in the little
 19 testing that you did?
 20 A No, sir, I did not. This was -- became available to
 21 me just this past week. The -- and the —
 22 Q And who — who provided --
 23 A The Hemoglow, it appears, is even going to be a
 24 better product than luminol for false positives.

X1-19

FORD - RECROSS

1 website,
 2 Q So you did a little research over the weekend or
 3 during the last week --
 4 A Last week.
 5 Q -- concerning luminol?
 6 A To refresh my memory on luminol,
 7 Q Now, you were asked some questions about what
 8 you found there at the crime scene, and you referred to Mrs,
 9 Renhard's report to refresh your recollection, is that correct?
 10 A Yes, sir, that's correct
 11 Q She was assigned to be the one to prepare the
 12 written report of what's at the scene, correct?
 13 A Correct.
 14 Q And your assignment was to collect and draw the
 15 diagram and document where items were found at?
 16 A Correct.
 17 Q So it's sort of a division of responsibilities? Is that
 18 correct?
 19 A Yes, sir,
 20 Q Okay. And that's normal with the Metropolitan
 21 Police Department to assign different responsibilities at a crime
 22 scene?
 23 A Yes, sir, It depends on how large the scene is as to
 24 whether we use two people or three or four, and then the

X1-21

FORD RECROSS

FORD - RECROSS

1 duties are even smaller.
 2 Q Okay. I'm going to ask you a question from her
 3 report The report says a torn piece -- excuse me -- "a piece
 4 of torn plastic was pressed around the victim's hips," Is that
 5 what she reported there in that paragraph?
 6 A Yes, sir, That's correct.
 7 Q Okay. So her description was torn plastic pressed
 8 around the victim's hips? Correct?
 9 A Yes, sir.
 10 Q Okay. And it's your recollection it didn't go all the
 11 way around but is it fair to say that it went around the hips?
 12 A It went around the hips but it did not encircle the
 13 body.
 14 Q Okay, And then it says "and wads of paper towels
 15 were pressed over the plastic," Correct?
 16 A Yes, sir, that's correct.
 17 Q Okay. And did you impound those paper towels that
 18 were pressed over the plastic that was pressed around the
 19 victim's hips?
 20 A No, sir, I did not.
 21 Q Any recollection of how many wads of paper towels
 22 were pressed over the plastic?
 23 A No, sir, I do not.
 24 Q And then she continues in that same sentence, "and

1 Q Okay. Now, where would that be when it just says
 2 "located on top of victim?"
 3 A The -- Item 27 should have been from a piece of
 4 cardboard that totally covered the victim. Below 27 would
 5 have been 31. It was in the upper portion of the -- upper
 6 torso of the victim,
 7 Q Okay, And that's from the waist up?
 8 A Yes, sir.
 9 Q And from the waist up would be above where the
 10 penile amputation was at?
 11 A Yes, sir.
 12 Q Okay. So that piece of cardboard wasn't covering
 13 that area?
 14 A No, sir.
 15 Q Now, you also impounded some pieces of -- or some
 16 buttons, is that correct?
 17 A Yes, sir, that's correct,
 18 Q And those were Items 18?
 19 A Yes, sir, they were.
 20 Q And you were processing some -- some of the items
 21 for latent prints there at the scene?
 22 A Yes, sir.
 23 Q And I note that -- on page 3 of your report, it
 24 doesn't list Item 18 as something that was checked for

x1722

XI-24

FORD - RECROSS

FORD RECROSS

1 plastic bags of trash over the paper towels,"
 2 A Correct.
 3 Q So there was plastic -- according to her report,
 4 plastic pressed around the hips, towels pressed against the
 5 plastic and then plastic bags on top of that?
 6 A Yes, sir, And then the cardboard piece on top of
 7 that,
 8 Q Okay. And you bring up the cardboard piece.
 9 We've talked about Number 27 and Number 31, correct?
 10 A Correct. Yes, sir.
 11 Q And those are the numbers -- the item numbers you
 12 assigned to those at the scene when you collected them,
 13 correct?
 14 A Correct.
 15 Q Okay. And Item 31 says "folded cardboard box with
 16 apparent blood from trash pile at upper torso of victim,"
 17 A Yes, sir.
 18 Q Okay. How would you describe upper torso?
 19 A From the waist up.
 20 Q And how far up? Do you recall?
 21 A No, sir, I don't remember.
 22 Q And 27 just says "cut from cardboard located on top
 23 of victim,"
 24 A Yes, sir,

1 fingerprints. Is that correct?
 2 A No, sir, they weren't, because of their size,
 3 Q Okay. And additionally, the -- Number 19, the pink
 4 hair pick was not checked for fingerprints there at the scene?
 5 A That's correct, sir,
 6 Q And you talked on Friday about the fact that you
 7 collected a lot of things and took them back to the crime lab,
 8 that were never impounded. Is that true?
 9 A I -- I -- I did say that, yes, sir,
 10 Q Okay. And those items you looked at and tested
 11 and then discarded if you didn't find anything at that time?
 12 A Correct,
 13 Q And there's no listing whatsoever of what those
 14 items were?
 15 A No, sir. It would have been either trash bags or
 16 trash items or, again, the pictures of the palms -- the green
 17 palm trees that were there,, Nothing that we felt that would
 18 have contained DNA or possible biological evidence related to
 19 the case.
 20 Q And so back at the crime lab who was making the
 21 decision on what items were discarded that had been collected
 22 at the scene?
 23 A It would have been, again, a team effort of the
 24 three, four of us that were out there,

XI-23

XI-25

FORD RECROSS

1 Q Would that have included the homicide detectives or
2 just the crime scene analysts?

3 A Just -- probably just the crime scene analysts, sir.
4 Unless there was a question on one and then it would have
5 gone to the homicide detectives to see if they wanted to keep
6 it

7 Q And so the final decision would have been theirs if
8 there was any question?

9 A Yes, sir

10 Q Now, the -- and, of course, once it's discarded
11 there's no way that it can ever be retested, correct?

12 A No, sir.

13 Q Okay. So if the defense wanted to look at those
14 items it would be impossible to do so?

15 A They're -- they're long gone.

16 Q And you just indicated there's even a new test that's
17 now come out that is better than luminol?

18 A Right.

19 Q Okay, So there's still advancements being made on
20 crime fighting investigative techniques?

21 A Every day.

22 Q Once the items are discarded there's no way to use
23 any new procedures on those items?

24 A Well, my understanding is once an item has been

X1:26

FORD - RECROSS

1 had any evidence that could have been used to say someone
2 -- a particular person committed this crime?

3 A No, sir,

4 Q Okay, Now, you indicated that you didn't take a lot
5 of the things that you just characterized as garbage from --
6 either from the bank or from the Palms employment --
7 employment office?

8 Right,

9 Q You just felt it came from there?

10 A Right. Yes, sir.

11 Q Now, did it appear that those items at one point in
12 time had been inside the larger dumpster and then taken out
13 and put over the body?

14 A Yes, sir, The --

15 Q Wouldn't the person taking them out of the
16 dumpster have had to touch them in order to put them over
17 the top of the body?

18 A Yes, sir, We examined the bags for apparent bloody
19 hand prints or fingerprints; none were located We processed
20 a lot of the bags for fingerprints there at the scene, and didn't
21 get any positive results, even from the people that would have
22 put those trash bags together and carried them out to the
23 dumpster.

24 Q And we -- I think we talked about this on Friday.

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FORD - RECROSS

1 processed with a certain procedure, that any further testing
2 -- unless it's done in a certain line -- is impossible to do with
3 that item,

4 Q What items did you use -- did you test that
5 prevented any further testing from being done?

6 A For example, if we super glue an item and then use
7 silver nitrate, then hydron -- or silver nitrate last and then
8 hydron first -- if it's used out of sequence, they can't be
9 processed with those procedures. If you use silver nitrate first
10 which should be last, you can't use -- and then hydron would
11 -- again at all. It has to be hydron and then silver nitrate, I
12 would believe it would be the same thing with the luminol and
13 the Hemoglow. That once the luminol's been used, the
14 Hemoglow would be ineffective as a testing procedure unless
15 you had a clean new object that hadn't been tested with that
16 procedure at all.

17 Q Were any of the items that were discarded
18 photographed before they were discarded?

19 A No, sir, they wouldn't have been.

20 Q Okay. So there's -- and none of those items had
21 anything that you felt or the team felt was of evidentiary
22 value?

23 A No, sir,

24 Q So they would have all excluded -- would not have

XI-27

FORD - RECROSS

1 That's not unusual in this type of setting, that fingerprints not
2 be there?

3 A Correct,

4 Q Because of the environment and the other things we
5 talked about?

6 A Yes, sir.

7 Q And there were individuals from the coroner's office
8 that arrived at the scene, is that correct?

9 A A deputy coroner investigator, yes, sir,

10 Q Do you recall who that was?

11 A I believe it was Shelly Stauffer.

12 Q And her responsibility is to come out and do the
13 formal declaration of death and transport the body to the
14 coroner's office?

15 A Take control of the body, prepare a report for the
16 pathologist and request a mortuary to transport,

17 Q And you're familiar with their procedures? That they
18 prepare reports of what they do when they come out to pick
19 up bodies?

20 A Yes, sir, that's correct,

21 Q And they receive information from the officers that
22 are at the scene that were there from the very beginning?

23 A Correct,

24 Q And some of that information is important to take

XI-29

FORD - RECROSS

1 back to the coroner so that when he's doing -- or the
2 pathologist when he's doing the autopsy, he has some idea of
3 what he's looking at?

4 A Correct.

5 Q You expect that information to be relayed to others
6 in the information chain?

7 A Correct,

8 Q And was -- Sergeant Manning was out there also,
9 correct?

10 A Yes, sir, he was.

11 Q Okay. And he would have been one of the
12 individuals that would have passed on information as to what
13 was at the scene, to the various individuals that arrived later?

14 A Correct.

15 Q Okay, Are you aware of him describing that there
16 were white paper towels --

17 MS. DiGIACOMO: Objection, Your Honor. Hearsay,
18 THE COURT: Sustained.

19 BY MR, SCHIECK:.

20 Q Did you impound any white paper towels?

21 A No, sir, I did not,

22 Q Do you know of any reason why he would indicate
23 they were impounded?

24 A No, sir, I would not.

XI-30

FORD - RECROSS

1 Q But you were the only individual there at the scene
2 impounding items?

3 A Correct.

4 Q And so if white paper towels were impounded, they
5 would have been by you?

6 A If they were located around the body, yes, sir.

7 Q Well, anything at the scene would have been
8 impound -- let's just say in the enclosure where the body was
9 at -- that would have been impounded by you?

10 A Uni⁹s it was something that the homicide detectives
11 wanted to stay with the body to go to the morgue and be
12 removed there. Then it wouldn't have been my responsibility.

13 Q That would have been the responsibility of Maria
14 Thomas who responded to the autopsy and collected items
15 there?

16 A Yes, sir.

17 Q Thank you.

18 MR. SCHIECK: No further questions, Your Honor.
19 THE COURT: Redirect?

20 MS, DiGIACOMO: Thank you, Your Honor. May I
21 approach the Clerk?

22 THE COURT: You may.

23 MS, DiGIACOMO: Thank you.,
24

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D - FURTHER REDIRECT

FURTHER REDIRECT EXAMINATION

1 BY MS. DiGIACOMO:

2 Q Mr. Ford, when the luminol tests on the car -- I
3 believe you stated that it was your job to take the photograph
4 as CSA Renhard sprayed --

5 A Correct.

6 Q -- the luminol? Is that correct?

7 A Yes, ma'am.

8 Q All right. Now, do you recall there being a positive
9 reaction on the floorboard? I'm going to show you State's
10 Exhibit 191. Can you see that photograph?

11 A Yes, ma'am, I can,

12 Q Okay, Do you recall there being a positive reaction
13 on the floorboard where State's 191 was taking a picture of?

14 A I don't remember, no, ma'am. But, obviously, the
15 photograph there shows that, yes, ma'am.

16 Q Okay. Does the photograph show the positive
17 reaction or did you miss it?

18 A It could have been I missed it. I don't remember it.

19 Q Okay. Is there any blue --

20 A There's no blue in this photograph though, no,
21 ma'am.

22 Q Okay, So if it had been a flashing like you had
23 talked about with false positives, it's possible that you wouldn't
24

XI-32

FORD - FURTHER REDIRECT

1 have been able to capture it in a photograph?

2 A Correct,

3 Q Now, you talked about -- and you read the list -- of
4 many vegetative matters that can cause false positive
5 reactions?

6 A Yes, ma'am.

7 Q What do those reactions look like?

8 A It's, again, the flash that I talked about earlier with
9 the Clorox. It's just -- it's like flash bulbs going off, and you
10 can use -- the blue glow doesn't stay. It's a bright flash of the
11 blue glow and then it -- the blue is gone. Q Okay, So it
12 doesn't look like what we saw on the car seats or the door
13 panel?

14 A No, ma'am.

15 Q And the plastic bag that was around the hip area of
16 the victim, was it consistent with the other plastic bags found
17 in the trash, in the enclosure?

18 A Not as a plastic bag as such. Maybe plastic that had
19 wrapped electronic components, or whatever, for shipping.
20 But not -- not a plastic bag,

21 Q So it wasn't a very large piece of plastic?

22 A No, ma'am, not that I remember.

23 Q And the paper towels that we've seen photographs
24 of that weren't impounded, was there any trace evidence on

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FORD - FURTHER RECRC

1 those paper towels?
 2 A There was no blood on the items at all. Otherwise
 3 we would have taken those as evidence.
 4 Q It just appeared to be trash on top of the body?
 5 A Yes, ma'am.
 6 Q And defense counsel talked to you about the
 7 information that's relayed to the coroner investigator or other
 8 members in the coroner's office so that they can do their
 9 investigation,
 10 A Correct.
 11 Okay. Is the information that they receive always
 12 correct?
 13 A It depends on who it's passed through. Shelly
 14 Stauffer was the only coroner investigator at the scene.
 15 Q Okay. So --
 16 A So if information was passed to someone else other
 17 than her, I -- I don't know when that would have taken place,
 18 Q Okay. Or how correct it was?
 19 A Correct.
 20 MS. DiGIACOMO: Nothing further.
 21 THE COURT: Recross.
 22 **FURTHER RECROSS-EXAMINATION**
 23 BY MR. SCHIECK:
 24 Q While we're talking about luminol again, luminol is a

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ID - FURTHER RECROSS

1 don't leave a footprint, you -- I mean, a visible-to-the-eye
 2 footprint can leave a mark that luminescence will hit on,
 3 correct?
 4 A If there's -- if there's blood transfer that takes place,
 5 yes, sir. But it would have -- the blood would -- I think would
 6 still have to be wet to a point.
 7 Q Would you have -- if you can see the blood, you
 8 don't use luminol, correct? You use --
 9 A Correct,
 10 Q Okay, It's only the blood you can't see that you use
 11 the luminol?
 12 A It's luminol is for invisible blood, yes, sir,
 13 Q So you might not be leaving prints behind as you
 14 walk along that are visible to the eye, but luminol can come
 15 along and tell, yes, you were there?
 16 A And pick it up. Yes, sir.
 17 Q Especially if you sit in a car for a couple hours with
 18 bloody shoes in the car?
 19 A Should have left something, possibly.
 20 Q Thank you.
 21 MR. SCHIECK: Nothing further.
 22 THE WITNESS: Yes, sir,
 23 MS. DIGIACOMO: Just briefly, Your Honor.
 24 THE COURT: You may.

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FORD - FURTHER RECR.OSS

1 very sensitive test, correct?
 2 A One part of blood to one million will give a reaction,
 3 yes, sir.
 4 Q And if an individual walked in blood such as we've
 5 seen in the photographs where their entire sole of their shoe
 6 was soaked with blood that it left a footprint --
 7 A Should -- it would have left an impression
 8 somewhere along the line, yes, sir.
 9 Q That blood would have gotten up inside the treads
 10 of the shoe?
 11 A Should have, yes, sir.
 12 Q Especially if it was wet, which it appears --
 13 A Yes, sir.
 14 Q It must have been wet to transfer to the shoe?
 15 A Correct.
 16 Q And would have been up inside the treads?
 17 A Yes, sir.
 18 Q It would have stayed there for a long time?
 19 A Unless it was cleaned off.
 20 Q To one -- one millionth of a particle, though, that's
 21 pretty -- pretty hard to clean all of that out of the tread of a
 22 shoe, correct?
 23 A Yes, sir,
 24 Q And a shoe can transfer that -- even though you

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FORD - FURTHER REDIRECT

FURTHER REDIRECT EXAMINATION
 2 BY MS. DiGIACOMO:
 3 Q Talking about the bloody footprints coming out of
 4 the scene and if that person had gotten into a car, those
 5 footprints were only coming away from the direction of the
 6 body and where the person was killed?
 7 A That's correct. And it was only the right shoe print,
 8 Q Okay. So it was only one shoe print?
 9 A Correct,
 10 Q Now, are you able to tell if the person who left that
 11 bloody right shoe print is the person that actually killed Mr.,
 12 Bailey?
 13 A I would think not, because --
 14 MR. SCHIECK: Objection. Speculation, Your Honor,
 15 MS. DiGIACOMO: Your Honor, he's gotten into
 16 whether or not the footprint would have been left in his client's
 17 car. MR. SCHIECK: I didn't say anything about my
 18 client's car,
 19 THE COURT: The Court overrules the objection,
 20 You may answer.
 21 THE WITNESS: I would feel if the bloody footprints
 22 in the scene had been made by the suspect, that there would
 23 have been more than just the right shoe print because of all
 24 the movement that had taken place inside that scene, with all

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FORD - FURTHER RECRC

1 the blood in that southwest corner.
 2 BY MS. DiGIACOMO:
 3 Q And there were no other footprints found, other than
 4 ones that were documented on the cardboard and on the
 5 concrete?

6 A That's correct,,

7 MS. DiGIACOMO: Court's indulgence. Pass the
 8 witness,

FURTHER RECROSS-EXAMINATION

10 BY MR. SCHIECK:

11 Q Well, now I'm confused because there are no other
 12 bloody footprints. Correct?

13 A That's -- the only ones are the cardboard and what's
 14 on the cement deck of that enclosure, yes, sir.

15 Q So it must have been possible to be back here
 16 without getting any blood on your feet?

17 A Could be, yes, sir_

18 Q Or only on one foot.

19 A Possibly

20 MR. SCHIECK: Nothing further,

21 MS, DiGIACOMO: Nothing further.

22 THE COURT: The bailiff will approach the jury.
 23 Counsel may approach.

24 (Off-record Bench Conference)

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THOMAS - DIRECT

1 follow-up report, but I don't know what's in that follow-up
 2 report,

3 MS. DiGIACOMO: Nothing further.

4 MR. SCHIECK: Nothing, Your Honor_

5 THE COURT: You may step down.

6 THE WITNESS: Thank you.

7 THE COURT: You're welcome. I believe at this time
 8 the State will resume with Maria Thomas, is that correct?

9 MR. KEPHART: That's correct, Your Honcir,

10 THE COURT: The bailiff will call the. hall,

11 MS. DIGIACOMO: May I approach the Clerk, Your
 12 Honor?

13 THE COURT: Yes.

14 MARIA THOMAS, STATE'S WITNESS, SWORN

15 THE CLERK: State your first and last name for the
 16 record,

17 THE WITNESS: Maria Thomas, M-A-R-I-A T-H-O-M-A-S,

18 THE COURT: State may resume their direct
 19 examination of this witness.

20 MR. KEPHART: Thank you, Your Honor.

21 **DIRECT EXAMINATION (Continued)**

22 BY MR_ KEPHART:

23 Q Ms. Thomas, when you left on -- I guess it was,
 24 what, last Wednesday?

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FORD - FURTHER REDIRECT

1 THE COURT: Mr. Ford, the ladies and gentlemen of
 2 the jury have sent out two questions for you which the Court is
 3 going to read to you. After the Court reads the question, give
 4 your answer. After you have answered both questions, the
 5 attorneys for both sides may ask you some follow-up
 6 questions,

7 THE WITNESS: Okayr

8 THE COURT: Were the bloody footwear tracks left
 9 on the cardboard from the same type of shoe that were left on
 10 the concrete, ilumber F2?

11 THE WITNESS: That, I don't remember,

12 THE COURT: Louise Renhard had said that luminol
 13 was not used on the bat found in Kirstin's car. Do you know
 14 why this test was not done?

15 THE WITNESS: No, ma'am, I don't,,

16 THE COURT: The first question will be marked as
 17 Court's 54, and the second is Court's 55, Follow-up by the
 18 State?

19 MS_ DiGIACOMO: Thank you.

FURTHER REDIRECT EXAMINATION

21 BY MS. DiGIACOMO:

22 Q Are you aware of whether or not phenolphthalein
 23 was used on the bat?

24 A No, I'm not. She -- I know she prepared a homicide

M-39

THOMAS - DIRECT

1 A Yes.

2 Q When we left off with you, we were -- I was just
 3 talking to you in reference to your involvement with evidence
 4 impound at an autopsy on July 9th of 2001. Do you recall that
 5 testimony?

6 A Yes,,

7 Q We actually went through a number of photographs
 8 that you indicated that you recognize as being -- as taking
 9 those photographs. Do you remember that as well?

10 A Yes.

11 Q Also I was getting into the items that you had
 12 indicated that you had actually impounded with reference to
 13 that autopsy. Do you remember that testimony?

14 A Yes,

15 Q Now, you had indicated that the way that the crime
 16 scene -- crime scene analysts work is that if you're working
 17 days and you're involved in a homicide, that the day shift
 18 individuals would go to the autopsy and take photographs and
 19 collect whatever evidence has been sent.

20 A That's correct.

21 Q And when we're talking about collecting evidence,
 22 you're talking about taking items associated with the body that
 23 comes in or do you deal with things from the scene as well?

24 A No, the body.

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THOMAS - DIRECT

1 Q Okay. So when you get the body, you have it -- it's
2 sealed up in a black bag? And you were talking about the —
3 that it's actually -- it has a clasp on it or something, and you
4 have to open it?

5 A Yes, There's a seal and it's numbered. And the bag
6 can be black, blue. It depends on the coroner's office.

7 Q Okay, So whenever you receive the body that's in
8 this black plastic bag, it's however it was sent to you from out
at the scene?

10 A That's correct.

11 Q Okay, In this particular case you testified about
12 what the victim Duran Baily was wearing?

13 A Yes.

14 Q You indicated that he had a shirt on, tan pants, a
15 pair of white socks -- and I believe in reference to clothing,
16 that was the extent of it, is that right?

17 A Yes.

18 Q Okay. He was also wrapped in a sheet?

19 A Yes,

20 Q That's a sheet that's provided by the crime scene
21 analyst, to put his body in, to bring it —

22 A Yes,

23 Q Okay. And you indicated that — we -- I think we left
24 off -- we were talking about a clear plastic -- in your report it's

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THOMAS - DIRECT

that?

2 A My signature, the information as to the case, the
3 case number, the date, the location where I impounded the
4 items -- or where I collected the items, and an itemized list of
5 what the contents are.

6 Q And so if we were to open this, it would have tan
7 pants with apparent blood and a pair of white socks?

8 A Yes. Which also had apparent blood and were
soiled.

10 Okay. Is this also one that has the biohazard sticker
11 on it?

12 A Yes, because of the apparent blood on it.

13 Q Okay,

14 A And here's the biohazard right here.

15 MR. KEPHART: At this time move to admit
16 State's Proposed Exhibit 129.

17 MR, SCHIECK: No objection, Your Honor.

18 (State's Exhibit 129, admitted)

19 BY MR, KEPHART:

20 Q So 129 is the -- I'm showing you what's been
21 admitted as Exhibit 220. Can you see that where you're at? Is
22 that too light?

23 A Yes, I can see it,

24 Q Okay. So 129 would be these tan pants and these

XI-44

THOMAS - DIRECT

1 identified as a clear plastic bag with apparent blood, and you
2 say it was on the victim's abdomen,

3 A Yes.

4 Q Okay.

5 MR. KEPHART: Court's indulgence, Your Honor, I'm
6 trying to find a photo. just go on.

7 BY MR, KEPHART:

8 Q You also had indicated that you -- that there -- I
mean, there was multiple things that you actually impounded,
10 is that correct?'

11 A Yes.

12 Q And those were things that were associated with the
13 body?

14 A That's correct,

15 Q Okay, And just so we cover these, I want to —

16 MR, KEPHART: May I approach, Your Honor?

17 THE COURT: Yes.

18 BY MR, KEPHART:

19 Q I'm showing you what's been marked as State's
20 Proposed Exhibit 129, and ask you if you can tell me what this
21 is? Do you recognize that?

22 A Yes. It contains the tan pants that the victim was
23 wearing and a pair of white socks,

24 Q And how is it that you recognize this item as being

XI-43

THOMAS - DIRECT

1 socks that were on the victim, is that right?

2 A That's correct.

3 Q And that is also shown in Number 46, after they've
4 been removed?

5 A Yes.

6 Q And kind of laid out?

7 A Yes,

8 Q All right, And then we also have Number 45, And it
9 has some items that were where? Found in the pockets?

10 A In the pockets of the pants.

11 Q Okay. We'll get into that later. You actually
12 impounded those items as well?

13 A Yes.

14 Q Okay. In your report do you take note or do you
15 note if there's any type of damage to the pants? Specifically
16 anything that'd be consistent with a puncture maybe made by
17 a knife or some type of sharp object?

18 A As far as defects, yes, I would note any defects that
19 were in the pants.

20 Q Okay. And was there any noted in this particular
21 case?

22 A I didn't observe any.

23 Q Okay, Specifically in the crotch area of the pants,
24 did you notice any type of puncture wound, puncture hole or

XI-45

THOMAS - DIRECT

1 something that would be consistent with being made with a
 2 sharp object?
 3 A No. And if I had, it would be indicated in my report.
 4 Q Okay. So no tears or anything like that?
 5 A No, I didn't observe any,
 6 Q Would you consider a tear to be a defect?
 7 A It depends. If it's -- if it's just an obvious tear that
 8 has nothing to do with other information, as far as the
 9 evidence in the case, I may not -- I would document it
 10 photographically but I may not make a note of it in my report.
 11 If it even remotely looks like a puncture mark or any type of
 12 stab mark, et cetera, I would make a note of that
 13 Q Okay. And there was none in this?
 14 A That's correct,
 15 Q Okay. Now, see how the pocket is kind of pulled out
 16 on the right side there?
 17 A Uh-huh,
 18 Q Is that a yes?
 19 A Yes, I'm sorry.
 20 Q And then in Number 45 you have items that you
 21 have laying out. Do you recall whether or not you retrieved
 22 any type of item from the right front pocket of these pants?
 23 A The watch that's observed there by the right front
 24 pocket.

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THOMAS - DIRECT

1 Q Okay, And Item Number 46, do you recall whether
 2 or not you had already taken the watch out of the pants by the
 3 time you took that photo?
 4 A I had already taken the watch out of the pant.
 5 Q Okay. So the way the pocket is pulled back, could
 6 that have been something that you caused?
 7 A Yes, In this photograph it's obvious that I've taken
 8 the pants off the victim, and I have a sterile sheet underneath
 9 the pants, and I've laid out the pants. I have done that That
 10 was not how the pants arrived at the -- at the autopsy.
 11 Q Okay, And with respect to the -- it's kind of hard to
 12 see in the photo to the jury -- okay, that's better. The darker
 13 areas on the pants -- it appears to be spots or -- of something
 14 on there, Do you see what I'm talking about?
 15 A The stains that appear to be blood?
 16 Q Okay, There's areas in there that have actual voids
 17 of no blood?
 18 A That's correct.
 19 Q And would that be consistent with the way the pants
 20 were as they were crumpled up on the victim's body?
 21 A Yes,
 22 Q And that's what you see in Exhibit Number 220, how
 23 the pants are pulled down, kind of crumpled up --
 24 A Yes,

XI-47

THOMAS - DIRECT

1 Q -- on his legs, is that correct?
 2 A Yesr
 3 Q Okay. Now, this is how you got the body though
 4 from -- from -- out at the scene?
 5 A That's correct,
 6 Q And you have no idea if the pants were up, down or
 7 where they were, if they were laying next to the body, do you?
 8 A That's correct,
 9 Q Okay, Have you ever been involved in a Situation
 10 where you had to go to the crime scene of a dead human
 11 body?
 12 A Yes,
 13 And where you've helped assist put the body in a
 14 bag and send it off to the coroner's office?
 15 A Yes,
 16 Q Okay, And is it safe to say that at times maybe
 17 evidence may get moved or disrupted somehow?
 18 A Absolutely.
 19 Q Meaning maybe his pants would have been down a
 20 little further, maybe up a little further?
 21 A Yes.
 22 Q And on Exhibit Number 220, you actually see he has
 23 a shirt on, his hands are bagged, and then you see the plastic
 24 around the midsection there? Correct?

XI-48

THOMAS - DIRECT

1 A Right,
 2 Q And that's how you got it from the crime scene?
 3 A Right,
 4 Q When I say "it" I mean Mr. Duran's body,
 5 A Right.
 6 Q Now, I'm showing you what's been marked as
 7 State's Proposed 130, and ask you if you can identify that?
 8 A Yes. This is a plaid shirt with what I observed to be
 9 vegetation and other debris, with apparent blood.
 10 Q Okay. And this is -- how do you recognize that? Is
 11 that based on the sticker that's on the bag?
 12 A Yes. Again, my signature, the report number, the
 13 case number, the location where I recovered it from.
 14 Q Okay, This one's also biohazard?
 15 A Yes.
 16 MR. KEPHART: Move to admit 130.
 17 MR. SCHIECK: No objection, Your Honor.
 18 THE COURT: Granted.
 19 (State's Exhibit 130, admitted)
 20 BY MR. KEPHART:
 21 Q Now, this is the dark-colored shirt that is on Mr.
 22 Bailey's body in Exhibit 220? You see it there on his arms?
 23 A Yes. Yes,
 24 Q A better photo is Exhibit 221, when they roll him up

XI-49

THOMAS - DIRECT

1 on his side.
 2 A Yes,
 3 Q You see the shirt there?
 4 A That's correct,
 5 Q I'll show you what's marked as State's Proposed
 6 Exhibit 255, and ask you to take a look at that,
 7 A Yes. This is a clear plastic bag with apparent blood,
 8 Q Okay, And that's how you write it, "clear plastic bag
 9 with apparent blood?"
 10 A Right
 11 Q Where did that come from?
 12 A That was over the abdomen area,
 13 Q Okay. And this is also a biohazard?
 14 A Yes, This is a biohazard,
 15 MR. KEPHART: Move to admit 225 [sic], Your
 16 Honor.
 17 MR. SCHIECK: No objection, Your Honor.
 18 THE COURT: Granted.
 19 (fate's Exhibit 255, admitted)
 20 BY MR. KEPHART:
 21 Q Now, with respect to 225, I'm showing you what's
 22 marked as 222. Can you see that or is that too dark, too?
 23 THE COURT: 225 or 255?
 24 MR, KEPHART: Oh, I'm sorry, Judge. 255, I'm

XI-50

THOMAS - DIRECT

1 sorry.
 2 THE COURT: Thank you.
 3 BY MR. KEPHART:
 4 Q Is that what is shown in 222?
 5 A Yes, that's the plastic bag.
 6 Q Amongst other things. I mean, the paper bags and
 7 there's a sheet there. But this -- this is the white -- I mean the
 8 clear plastic bag that you're talking about?
 9 A Right.
 10 Q Oka. Now, if I remember right, when you testified
 11 previously, you indicated that it was stuck to his body?
 12 A Yes, it was -- it had adhered to the body somewhat.
 13 Q When we mean adhere -- it means it's sticking to the
 14 body?
 15 A Kind of. Yes.
 16 Q Okay. And so when you pulled it off, you had to
 17 kind of pull -- use a little bit of --
 18 A Right. To remove it. Yes,
 19 Q Okay, And what was your understanding what was
 20 causing it to stick to the body?
 21 A I assumed it -- it could have been moisture from the
 22 changes in the temperature from the scene, transported, and
 23 then being kept in the refrigerator at the morgue. I just made
 24 that assumption

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THOMAS - DIRECT

1 Q Could the blood have been what helped stick it to
 2 the body?
 3 A The blood could have also -- right,
 4 Q Okay, And I'm showing you what's been admitted
 5 as Exhibit 217. And you've seen that before, as well?
 6 A Yes.
 7 Q Is that the plastic bag that we're talking about in
 8 255?
 9 A That's the plastic bag,
 10 Q And you actually identified it as a bag by the way
 11 that the end was kind of tied?
 12 A Right,
 13 Q Okay. Also in -- in Exhibit 129 -- you talked about
 14 socks that were taken off his body?
 15 A Yes,
 16 Q I'm showing you what's been admitted as 224 and --
 17 well, 224, okay, and 225. Those appear to be the same socks
 18 just at different angles?
 19 A Yes.
 20 Q Okay. And these would have been something that
 21 you took a photo of?
 22 A Yes,
 23 Q Other than the obvious blood spots that are -- that
 24 are on -- let me give you 224 back -- up around the toe, and

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THOMAS - DIRECT

1 then a little bit on the other side of the other foot, does it
 2 appear that the socks are -- I mean, they're not filthy, are
 3 they?
 4 A Well, they're soiled. They're filthy to me,
 5 Q From around the front of the toe area?
 6 A Yes, and the heel.
 7 Q Okay. Now, you didn't see the socks at the scene,
 8 right? The other socks?
 9 A That's correct. I didn't -- I was not at the scene.
 10 Q Okay. I'd like to show you what's been marked as
 11 State's Proposed Exhibit 165, and ask you to identify that.
 12 A This is the men's wristwatch that was in the pants
 13 pocket.
 14 Q That you've already testified about?
 15 A Yes.
 16 Q So if we opened that, that's what we'd find?
 17 A That's correct.
 18 Q Okay. And this is something that you packaged up,
 19 and you took out of the pants pocket?
 20 A Yes. It's got -- it has, again, my signature, the case
 21 number, where I recovered it from, et cetera,
 22 MR. KEPHART: Move to admit 165,
 23 MR. SCHIECK: No objection,
 24 THE COURT: Granted.

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THOMAS - DIRECT

(State's Exhibit 165, admitted)

BY MR. KEPHART:

Q Show you 166.

A This was a piece of metal that was found tucked in his sock, and this also has my signature, the package does, has my signature, my personnel number, where I recovered it from, the case number, the date.

MR, KEPHART: Move to admit 166.

MR. SCHIECK: No objection,

THE COURT: Granted,

(State's Exhibit 166, admitted)

BY MR. KEPHART:

Q 167?

A This -- this was a yellow Post-it note, a strip of green paper and nail clippers or nail cutters that we also found in the pants pockets. And it also -- the package also has my signature, the seals with my initials, the date, where it was recovered from, the case number,

MR KEPHART: Move to admit 167.

MR, SCHIECK: No objection, Your Honor.

THE COURT: Granted,

(State's Exhibit 167, admitted)

BY MR, KEPHART:

Q And 176?

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THOMAS - DIRECT

A This would have the orange matchbook that I also found with the victim, brown leather bi-fold wallet and three pieces of paper with miscellaneous writing on it. And the package also has the case number, where I recovered it from, my signature, my personnel number, the date, et cetera,

MR. KEPHART: I'll move to admit 176, Your Honor,

MR, SCHIECK: No objection, Your Honor.

THE COURT: Granted.

(State's Exhibit 176, admitted)

BY MR. KEPHART:

Q Also showing you what's been marked as — well, Ill get back to this one. Now, besides the items that you just testified about, you talked about how you — you documented other items that you actually impounded as well. Let's see, we talked about the shirt, the pants, the socks, the wristwatch, items that you recovered from his pockets. Also were some other items that were actually recovered from the body that you impounded as well?

A Yes.

Q Specifically, I'm talking about Item 13 in your report,

A May I refer to -- to my report?

Q You have that with you now?

A Yes,

Q And what were those?

XI-55

THOMAS - DIRECT

A They were three cigarette butts which were in the body bag.

Q In the body bag?

A Yes.

Q Were they -- they weren't stuck to him or -- if you know?

A According to my report, it was in the coroner's body bag,

Q Okay, Anything else?

A There was a used match that was found on the victim's upper -- upper left thigh.

Q Okay.

A Did you want me to continue down the list?

Q Yes. Uh-huh.

A A book of matches,

Q Okay, you testified about that, right? That was one of the items?

A Left rear pocket of the pants. An orange matchbook with — which was also in the pants pocket. A brown wallet which was in the pants pocket -- one of the pants pockets. A piece of paper with miscellaneous writing was in the right rear pocket — pants pocket again,, A piece of metal which was tucked in his left sock. A yellow Post-it note, strip of green paper, which I just testified to, was also in the coroner's body

XI-56

THOMAS - DIRECT

bag. The nail clippers or nail cutter was in the front right pocket of his pants,

Q And that's it? Is that right?

A Yes.

Q Okay. And with reference to -- to these items and having any further tests done on them, that would be something that you would request or something that would be requested by maybe the DA's office or homicide at a later time?

A That would have been requested by either the detectives or DA's office.

Q Okay. Now, you had another task in this case as well, Do you remember traveling to Panaca, Nevada, on the 20th of July, 2001?

A Yes,

Q Okay. And what was the reason for you going to Panaca, Nevada?

A The homicide detectives assigned to the case had asked me to go with them to take photographs of Ms. Lobato, and also to follow the vehicle back to the crime lab. There was a particular vehicle that the detectives wanted followed and processed. So my job in this particular case was to follow the vehicle back to the lab and turn it over to the crime scene investigator that would have processed that vehicle.

XI-57

THOMAS - DIRECT

1 Q Did you travel with the homicide detectives to
 2 Panaca or did you drive in your own car?
 3 A I drove in my own car.
 4 Q Okay, Were you requested to come up to Panaca,
 5 Nevada, after the detectives were there or did you follow
 6 them?
 7 A I followed them.
 8 Q Okay.
 9 A If I remember correctly, I followed them.
 10 Q Okay. And were you aware of any particular
 11 information or did you know what you were going to do before
 12 you left?
 13 A I don't recall that information.
 14 Q Is it common at times that you're called out by
 15 detectives to take photographs or —
 16 A Follow-ups?
 17 Q to document certain things?
 18 A Yes. A follow-up to a -- to the crime scene, yes.
 19 Q Does that usually happen after detectives have
 20 contact with individuals and determine that they need you to
 21 come out or have you went out with them before then?
 22 A Yes. Based on their investigation, they have
 23 information that I may not have —
 24 Q Okay.

XI-58

THOMAS - DIRECT

1 Q Okay. And where did that take place?
 2 A At the residence. The 670 Callaway Street in
 3 Panaca.
 4 Q Okay, Now --,
 5 MR. KEPHART: If I may approach, Judge?
 6 THE COURT: You may.
 7 BY MR. KEPHART:
 8 Q I have a couple photos here, State's Proposed
 9 Exhibits 103 and 104. Can you take a look at those?
 10 A Yes.
 11 MS, DiGIACOMO: Your Honor, may I approach the
 12 Clerk?
 13 THE COURT: Yes.
 14 MR. KEPHART: May I approach again?
 15 THE COURT: Yes.
 16 BY MR, KEPHART:
 17 Q I'm also showing you what's been admitted as
 18 State's Exhibits 196 and 197, and ask you if you recognize
 19 those as well?
 20 A Yes. These are photographs that the homicide
 21 detectives asked me to take, of Ms. Lobato, showing her
 22 abdomen, her hands, and then her — identification photograph
 23 of the face.
 24 Q Okay. With respect to the two exhibits -- Proposed

XI-60

THOMAS - DIRECT

1 A — or wouldn't have, and they would contact us and
 2 say we need additional follow up, from our end, which would
 3 indicate photography, documentation of what's — what is
 4 found, any additional information they may need, et cetera.
 5 Q Okay. And do you recall going to the Lobato's house
 6 in Panaca, Nevada?
 7 A Yes.
 8 Q And that would have been specifically 670 Callaway
 9 Street in Panaca, Nevada?
 10 A That's correct.
 11 Q And you indicated that you had a couple different
 12 tasks that you were asked to do, is that right?
 13 A Yes.
 14 MR, KEPHART: I'm having trouble finding some
 15 photos, Judge,
 16 BY MR. KEPHART:
 17 Q Can you tell me what you did with respect to taking
 18 photos? You said "I took photos of the defendant or "Ms.
 19 Lobato" is the word you used.
 20 A Yes,
 21 Q Tell me about that.
 22 A The detectives had requested that I take
 23 photographs of her, showing some injuries that were on her
 24 person, and that's -- that's what I did,

XI-59

THOMAS - DIRECT

1 Exhibits 104 and 103, these are photos that you took?
 2 A Yes,
 3 Q And they accurately depict what you remember of at
 4 least the defendant's hands at that time?
 5 A Yes,
 6 MR. KEPHART: I move to admit 103 and 104.
 7 MR. SCHIECK: No objection,
 8 THE COURT: Granted.
 9 (State's Exhibit 103 and 104, admitted)
 10 BY MR. KEPHART:
 11 Q Matter of fact, in Exhibits -- 197 is the photograph of
 12 the defendant herself, and she's standing in her living room, is
 13 that correct?
 14 A I don't recall if it was the living room but she was in
 15 the residence.
 16 Q In her house?
 17 A Yes.
 18 Q Okay, And you said you were asked, as well, to take
 19 some photographs of her car and then follow her car back to
 20 the crime lab?
 21 A Yes, If I remember correctly, that was her car. And
 22 the detectives had asked me to document the condition of the
 23 car, place seals on it, and just follow it back to the crime lab,
 24 which is what I did. And there was further processing

XI-61

THOMAS - DIRECT

1 conducted there by another crime scene investigator.
 2 Q Okay. I'm showing what's been admitted as State's
 3 Exhibit 106. Is that a photograph of her car?
 4 A Yes, This was the vehicle,
 5 Q Okay. Now I'm going to show you State's Proposed
 6 Exhibits 178, 179 and 182, and ask you if you can identify
 7 those as well?
 8 A Yes This was the vehicle parked in front of the
 9 residence.
 10 Q And those accurately depict, as you recall, the car to
 11 be on the 20th of July 2001?
 12 A Yes.
 13 Q Okay, And that shows in the background —
 14 MR. KEPHART: Move to admit 178, 179 and 182,
 15 Judge.
 16 MR, SCHIECK: No objection.
 17 THE COURT: Granted.
 18 (State's Exhibits 178, 179, 182, admitted)
 19 BY MR, KEPHART:.
 20 Q These photos also show basically the layout of her —
 21 the outside of her -- of where she was living at that point, is
 22 that correct?
 23 A Yes.
 24 Q Or where her parents were living? Is that correct?

XI-62

THOMAS - DIRECT

1 defendant?
 2 A Yes,
 3 Q Okay,, And it was just one particular pair of shoes?
 4 There wasn't, you know, all of her shoes in her bedroom or
 5 anything, was it?
 6 A No, one particular pair.
 7 Q Okay. Did you go into a particular room in the
 8 house to get them or did she hand them to you?
 9 A She handed them to me, according to my reports. I
 10 don't recall -- but according to my report, she handed them to
 11 me.
 12 Q I'm showing you also what's -- State's Proposed
 13 Exhibit 154, and ask you if you can identify that?
 14 A Yes, It's a pair of black high-heel sandals with
 15 apparent blood, and it also has the case number, the location
 16 where I recovered the shoes, and the date.
 17 Q Okay,, And these are what were provided to you by
 18 the defendant at her house?
 19 A Yes,
 20 MR. KEPHART: Your Honor, I moved to admit 154.
 21 MR. SCHIECK: No objection,
 22 THE COURT: Granted,
 23 (State's Exhibit 154, admitted)
 24 ///

XI-64

THOMAS - DIRECT

1 A Yes.
 2 Q Okay. And it has the house that you took pictures of
 3 her inside?
 4 A Yes.
 5 Q And then -- that's Exhibit 182. And then 179 would
 6 show, what, a photo of the neighbor's house?
 7 A Yes,
 8 Q In the background?
 9 A In the background.
 10 Q And then behind her car was, what, the detective's
 11 vehicle? Do you know?
 12 A I don't recall if that was their vehicle or not. Sorry.
 13 Q Did you do anything with regards to -- did you take
 14 any additional evidence from the Lobatos on the 20th when you
 15 were photographing her car and her in the house?
 16 A Yes. The detectives had asked Ms. Lobato to give
 17 me a pair of black shoes, and she gave those to me,
 18 Q Were you present at all during any time of -- type of
 19 conversation or statements that the defendant had made to
 20 the detectives?
 21 A No
 22 Q Okay. So based on what the detectives were asking
 23 you to do in reference to these shoes, these are something as
 24 far as you know, were provided to the detectives by the

XI-63

THOMAS - DIRECT

1 BY MR. KEPHART:
 2 Q On the bag, as well, there's little blue seals. What's
 3 your understanding what those are?
 4 A This would have been additional processing done by
 5 the forensic lab, for either DNA or whatever other type of
 6 analyses would have been requested.
 7 Q Okay. Now, when you followed the — when the car
 8 was taken back to Las Vegas, was it towed? Did someone
 9 drive it? Do you remember?
 10 A It was towed.
 11 Q Was it put up on a trailer or the back of a truck or
 12 was it towed by lifting up the front end and towing it —
 13 A I believe that it was lifted.
 14 Q Put up on a trailer or something?
 15 A Yes, I believe so
 16 Q Okay. And do you recall before it was -- before it
 17 was taken to Las Vegas, if you did anything to secure it?
 18 A Yes. We placed seals on the doors.
 19 Q Okay. The trunk as well?
 20 A Yes. There may be photographs of all the seals. I
 21 don't --
 22 Q So the orange seals that the -- that Louis -- Louise
 23 Renhard —
 24 A Right,

XI-65

THOMAS - DIRECT

1 Q testified about, would have been your seals?
 2 A Yes, Yes,
 3 Q Okay. And do you recall when you -- did you follow
 4 it all the way back to the crime scene lab?
 5 A All -- yes. I was directly behind the vehicle, and I
 6 could see it until we arrived at the crime lab, So it never left
 7 my sight,
 8 Q Okay, So it was there — you were there when it
 9 actually got rolled into the -- into the bay where they — where
 10 they looked at it?
 11 A Yes, I was,
 12 MR. KEPHART: Court's indulgence, Your Honor?
 13 THE COURT: Yes,
 14 MR. KEPHART: Pass the witness, Your Honor.
 15 THE COURT: Can counsel approach?
 16 (Off-record Bench Conference)
 17 THE COURT: The parties stipulate that all of the
 18 evidence bags and envelopes which today have been moved
 19 and admitted through this witness into evidence, pertain to
 20 those exterior items and their contents.
 21 Ladies and gentlemen, we'll be taking our afternoon
 22 recess and resuming at 1:15. The witness may step down
 23 from the stand, and we'll resume with you at 1:15
 24 Ladies and gentlemen, during this recess you are

XI-66

THOMAS - DIRECT

1 Analyst Maria Thomas remains on the stand. The Court
 2 reminds her she remains under oath.
 3 The witness had been passed just as we were taking
 4 the lunch recess. So the defense may proceed with cross.
 5 MR. KEPHART: Your Honor, I asked Mr. Schieck if --
 6 I had a couple other — a couple other -- not ideas but
 7 information I needed to get from this witness before I passed
 8 her.
 9 THE COURT: You're going to ask to repp'en then?
 10 MR. KEPHART: Yes.
 11 MR. SCHIECK: No objection,
 12 THE COURT: Granted., State reopens. Mr. Kephart
 13 may proceed.
 14 MR. KEPHART: May I approach, Your Honor, the
 15 witness?
 16 THE COURT: Yes,
 17 DIRECT EXAMINATION (Continued)
 18 BY MR. KEPHART:
 19 Q I'm showing you for the record what's been marked
 20 as State's Proposed Exhibit 256 and 257. Could you take a
 21 look at that for a moment, please? Do you recognize those —
 22 A Yes.
 23 Q as photos that you took?
 24 A Yes.

XI-613

THOMAS - DIRECT

1 admonished that you are not to talk or converse among
 2 yourselves nor within anyone else on any subject connected
 3 with this trial. You're not to read, watch or listen to any report
 4 of or commentary on the trial or any person connected with
 5 the trial by any medium of information, including, without
 6 limitation, newspaper, television, radio and Internet, and
 7 you're not to form or express any opinion on any subject
 8 connected with the trial until the case is finally submitted to
 9 your
 10 At 115 please be in the hallway. The bailiff will
 11 meet you there to return you to your seats in the courtroom.
 12 The Jury may exit at this time.
 13 (Jurors recessed at 12:02:57)
 14 THE COURT: We will go off the record and resume
 15 at 1:15,
 16 (Court Recessed at 12:03:37 until 13:27:23)□
 17 (Jurors are present)
 18 THE BAILIFF: Department II is back in session.
 19 Please be seated,
 20 THE COURT: The record shall reflect that we're
 21 resuming trial in State versus Lobato, under Case Number
 22 C177394, in the presence of the defendant and her three
 23 counsel, the two prosecuting attorneys, the ladies and
 24 gentlemen of the jury, and the witness Senior Crime Scene

XI-67

THOMAS - DIRECT

1 Q And do they fairly and accurately depict what -- do
 2 you recall what's depicted on the photos?
 3 A Yes,
 4 MR. KEPHART: Move to admit 256 and 257, Your
 5 Honor.
 6 MR. SCHIECK: No objection, Your Honor,
 7 THE COURT: Granted,
 8 (State's Exhibits 256 and 257, admitted)
 9 BY MR. KEPHART:
 10 Q These photographs here are what are depicted in
 11 the exhibit that's on the desk right there in front of you, is that
 12 correct?
 13 A Yes,
 14 Q And what's the exhibit that you're looking at now?
 15 A A pair of black high-heel sandals with —
 16 Q And in 256 -- that's what it shows here, is that
 17 correct?
 18 A Yes.
 19 Q Now, also at the -- now, this is what you took from
 20 the defendant's house. She actually brought them to you and
 21 gave them to you?
 22 A Yes,
 23 Q It wasn't the detectives or anything, right? It was
 24 her?

XI-69

THOMAS - DIRECT

1 A Nor They were handed to me by her,
 2 Q She didn't bring any other shoes to you, did she?
 3 A No.
 4 Q Okay, Were you asked to take photos of any other
 shoes?
 5 A No
 6 Q And in reference to the autopsy, you had testified
 7 about numerous items that were taken during the autopsy. Do
 8 you recall whether or not a sexual assault kit was done on the
 9 victim?
 10 A Yes, there was a sexual assault kit done.
 11 Q Okay, In conjunction with the sexual assault kit,
 12 what is taken?
 13 A If I can read that from my report? Would that be
 14 okay?
 15 Q Okay,
 16 A We took blood files, head hairs, combed pubic hairs,
 17 pulled pubic hairs, oral, rectal and penile swabs, and fingernail
 18 scrapings and hand swabs.
 19 Q Okay, Now, the jury has seen some photographs
 20 with the — with Duran's body laying in -- on the table at the
 21 autopsy, and his hands appear to be in manilla envelopes. Is
 22 that
 23 A They were in paper bags.
 24

XI-70

THOMAS - CROSS

1 A Yes.
 2 Q I will just display 256 to you. Is that the pair of
 3 shoes that you recovered from Ms. Lobato's house in Panaca,
 4 Nevada, on July 20th, 2001?
 5 A Yes.
 6 Q There appears to be — well, let's do it this way.
 7 Where was this picture taken at? Do you know?
 8 A At the crime lab.
 9 Q Okay, And let me show you 257 real qua. That's a
 10 side view of the same shoes?
 11 A Yes,
 12 Q Now, in 256 we see a — what appears to be an
 13 arrow on some type of sticky type —
 14 A Yes. Yes.
 15 Q Correct?
 16 A Yes, that's correct.
 17 Q What is the purpose for that?
 18 A That's to indicate that I had observed a stain on that
 19 shoe,
 20 Q Was it — you put that sticky on there, then?
 21 A Yes,
 22 Q Is it because of a stain or because it had tested for
 23 apparent blood?
 24 A The arrow is to indicate where the stain was. That

XI-72

THOMAS - CROSS

1 Q Paper bags?
 2 A Uh-huh. Paper bags.
 3 Q Okay. And that -- what is that called?
 4 A We bag the hands to preserve any evidence that
 5 may be -- any trace evidence that may be on the hands.
 6 Q And that would entail the reason for the nail
 7 clippings and the hand swabs?
 8 A Yes.
 9 Q Okay, In hopes that maybe you find some evidence
 10 involving -- wdi the assailant?
 11 A That's correct.
 12 Q Okay. And you don't know whether or not anything
 13 was found in this case, do you?
 14 A That's correct, I do not know.
 15 Q Okay, That would be for somebody else to testify?
 16 A Yes,
 17 MR. KEPHART: Pass the witness, Your Honor.
 18 Thank you, Your Honor.
 19 THE COURT: Mr, Schleck may cross.
 20 MR. SCHIECK: Thank you, Your Honor.□

CROSS-EXAMINATION

21 BY MR, SCHIECK:
 22 Q You were just asked some questions about Exhibits
 23 256 and 257, which are the shoes?
 24

XI-71

THOMAS - CROSS

was then tested for -- that was then tested for apparent blood.
 2 And only a very small minute amount would have been tested
 3 for apparent blood because whatever else was on those shoes
 4 was submitted for any potential DNA analyses later on by the
 5 forensic lab.
 6 Q And that's the only location where you showed any
 7 apparent blood, is that correct?
 8 A That's the only location where I visually observed a
 9 stain that may possibly be apparent blood.
 10 Q Okay. And that's all that you did, then, on this pair
 11 of shoes?
 12 A Yes. Yes, that's it.
 13 Q You didn't observe any blood anywhere else on the
 14 -- on the sides of the shoes?
 15 A No, I did not
 16 Q And even though we only have a photograph of one
 17 side of the shoes, we assume that you looked at the other side
 18 also?
 19 A Yes. That's correct.
 20 Q And, likewise, no blood there?
 21 A That's correct, no blood.
 22 Q And is the location where you found the small
 23 apparent spot of blood — was that sort of where the big toe of
 24 the shoe would normally be?

XI-73

THOMAS - CROSS

- 1 A That's correct.
- 2 Q So if an individual was wearing that pair of high-heel
3 sandals, their big right toe would be resting where you saw
4 that stain?
- 5 A Yes,
- 6 Q Are you aware of whether or not that stain was
7 tested for DNA?
- 8 A No, I don't recall,
- 9 Q What would the normal procedure be if it was to be
10 tested for DNA?
- 11 A Normally, homicide detectives or the DA's office
12 would request any DNA analyses be done on any of the
13 evidence,
- 14 Q And if they were to test the item of evidence, they
15 would get the evidence bag out of impound, I assume?
- 16 A Yes,
- 17 And then they would take it to their lab to do the
18 testing?
- 19 A Yes, They would maintain the chain of custody,
20 And if they opened the bag, they would leave some
21 markings on the bag indicating that they had opened and
22 resealed the bag?
- 23 A That's correct,
- 24 Q And you would recognize those markings?

XI-74

THOMAS - CROSS

- Q Are you aware that his results show that was the
2 blood of Ms. Lobato?
- 3 A I -- I don't recall that information,
- 4 Q Okay. And who is Joel Geller?
- 5 A He's one of the latent print examiners,
- 6 Q Does he also do footwear impression examinations?
- 7 A Yes, I believe he does,
- 8 Q So if someone were to be comparing this pair of
9 black shoes to footprints found at a crime scene, it would be
10 Mr. Geller that would do that?
- 11 A Yes, I believe he would be one of the persons. That
12 would be --
- 13 Q Okay. And the condition of the evidence bag tells us
14 that he's done something to these shoes?
- 15 A Yes.
- 16 Q Do you know the results of his comparisons?
- 17 A No, I do not,
- 18 Q And you had talked about these shoes as being a
19 pair of shoes that were handed to you by Ms. Lobato, is that
20 correct?
- 21 A Yes.
- 22 Q And that was there in her house?
- 23 A I believe so. They may have been in her car. She
24 gave those to me.

XI-76

THOMAS - CROSS

- 1 A Yes, I would.
- 2 Q I'm going to show you —
- 3 MR. SCHIECK: If I may approach, Your Honor?
- 4 THE COURT: You may.
- 5 BY MR. SCHIECK:
- 6 Q -- what's been admitted as State's Exhibit 154, and
7 ask if there's any indication whether or not that bag has been
8 opened?
- 9 A Yes.
- 10 Q And that is the pair of black shoes we're talking
11 about, correct?
- 12 A Yes.
- 13 Q Okay. Who's opened that bag?
- 14 A Two different people. Thomas Wahl and Joel Geller,
15 who are both in the forensic lab,
- 16 Q Okay, Do you know what the speciality of Mr. Wahl
17 is?
- 18 A He's — DNA.
- 19 So this would indicate that Mr. Wahl tested these
20 shoes?
- 21 A It appears to be that way, yes,
- 22 Q And that would be the spot of blood on the big toe
23 area that you referred to?
- 24 A I'm not quite sure what else may have been tested.

XI-75

THOMAS - CROSS

- 1 Q You weren't inside the house while the detectives
talked to Ms. Lobato?
- 3 A I may have been inside the house but I don't recall
4 any conversation that took place between the detectives and
5 Ms, Lobato, no.
- 6 Q Did the detectives request for you to go into her
7 room and look for any other shoes in her house?
- 8 A I don't remember them doing that.
- 9 Q Did you do that?
- 10 A No, I -- I didn't.
- 11 Q Were you asked to take any photographs of any
12 shoes that might have been in her room?
- 13 A No, No, I was not.
- 14 Q Okay. Were you only, then, in the front room area?
- 15 A They had requested that I impound the shoes and
16 take photographs of her, So I do not recall what specific areas
17 of the house I was in,
- 18 Q So the detectives never asked you to impound any
19 other shoes?
- 20 A That's correct, they did not.
- 21 Q And you certainly would have had impound bags
22 and been able to impound any shoes they wanted you to,
23 correct?
- 24 A That's correct,

XI-77

THOMAS - CROSS

1 Q And you had your camera, you could have
 2 photographed any shoes they wanted you to photograph?
 3 A That's correct.
 4 Q Okay. But they only asked you to impound that one
 5 pair of shoes, correct?
 6 A Yes,
 7 Q Do you recall whether or not Ms. Lobato was
 8 wearing a pair of shoes at the time you talked with her and
 9 she gave you that black pair of sandals?
 10 A I do not -- I do not recall.
 11 Q You did not accompany her to the jail, is that
 12 correct?
 13 A No, I did not.
 14 Q And you had no further contact with her and her
 15 processing after that point?
 16 A That's correct, I did not have any contact,
 17 Q And who is Jennifer Carr? Are you familiar with that
 18 name?
 19 A Jennifer Carr was also a crime scene investigator
 20 with our department. And she's no longer with us, She's
 21 transferred to another section of the police department, last I
 22 heard,
 23 Q Okay. Are you aware of her impounding anything in
 24 this case?

X1-78

THOMAS - CROSS

1 A Yes.
 2 Q And that's the way she was dressed when you were
 3 there at her house?
 4 A Yes.
 5 You also took some photographs of some injuries to
 6 her stomach area?
 7 A Yes,
 8 Q I'm showing you what's been admitted as State's
 9 196. Are those the scrape marks to her stomach area that you
 10 photographed?
 11 A Yes, Those markings were on her abdomen there,
 12 Q Okay. And she pulled up her shirt that she was
 13 wearing to display those for you so you could photograph
 14 those?
 15 A Yes.
 16 You also took photographs of the red Hero car that
 17 was parked in front of the house there at 670 Callaway,
 18 correct?
 19 A Yes,
 20 And the car was there in open view, correct?
 21 A Yes.
 22 Parked right along the side of the street?
 23 A Right in front of the residence.
 24 I'm showing you what's been admitted as Exhibit

X1-80

THOMAS - CROSS

1 A No, I'm not aware of that.
 2 Q You haven't seen any reports from her?
 3 A No.
 4 Q Now, you did take photographs of Ms. Lobato there
 5 at her house, is that correct?
 6 A Yes.
 7 Q And that's at 670 Callaway Street in Panaca?
 8 A That's correct,
 9 Q You took photographs of her hands?
 10 A Yes:
 11 Q I'm going to display for you what's been marked and
 12 admitted as 104. Are those photograph -- a photograph that
 13 you took?
 14 A Yes.
 15 Q Of her hand? Correct?
 16 A Yes. Yes,
 17 Q And then 103 would be the opposite side or the
 18 palm side of her hands?
 19 A Yes.
 20 Q And she cooperated with you in showing her hands
 21 and flipping them over for you?
 22 A Yes, she did.
 23 Q You also took a -- just a general photograph of
 24 Ms. Lobato, marked as 197?

X1-79

THOMAS - CROSS

1 178. That is the red Hero?
 2 A Yes.
 3 Q And that's the residence where you went in and got
 4 the sandals -- the black sandals and took photographs,
 5 correct?
 6 A Yes.
 7 Q And this is an outside shot,, It looks like it was a
 8 sunny day when you were out there?
 9 A I beg your pardon?
 10 Q Was it a sunny day?
 11 A Yes.
 12 Q It appears to be quite bright out,
 13 A Yes. Yes, it was
 14 Q And that would be the garage portion of the house
 15 that's shown over the top of the red Fiero? Is that correct?
 16 A Yes.
 17 Q Okay, And it appears there's at least two cars and
 18 maybe three in the driveway?
 19 A Yes.
 20 Q Did you look inside of the garage at all?
 21 A No,
 22 Q I'm showing you another angle of the vehicle, which
 23 would be State's Exhibit 179, That's the same vehicle just
 24 from a different angle? Correct?

X1-81

THOMAS - CROSS

1 A Yes, Yes.
 2 Q And that shows the front corner portion of the
 3 Lobato residence and then the next-door neighbor's house, is
 4 that correct?
 5 A Yes.
 6 Q Okay. We can see the front door and the windows
 7 of that house next door?
 8 A Yes,
 9 Q Did you go over and stand on the front porch of that
 10 house and take pictures back toward the red Fiero?
 11 A I'd have to review my photographs. I don't recall.
 12 Q To your recollection, right now, do you recall?
 13 A I -- I don't recall.
 14 Q Would it be fair to say that from the front door of
 15 that residence next door, the red Fiero would be in open view?
 16 A Yes.
 17 Q I mean, other than that one little tree that appears
 18 to be in the corner of the yard, it's a clear shot to look at that
 19 car?
 20 A I would say it's probable,
 21 Q Nothing obstructing the view?
 22 A Not from this angle.
 23 Q And both houses appear to have chain-link-type
 24 fencing that you can see through easily?

XI-82

THOMAS - CROSS

1 A Yes,
 2 Q And it was your recollection on direct examination,
 3 that you were to go up there to take some photographs and
 4 then follow a vehicle back to Las Vegas?
 5 A Yes,
 6 Q You understand that -- you understood that to be
 7 your responsibility when they called you and arranged for you
 8 to go?
 9 A Yes, I believe they had indicated to me something
 10 about following the vehicle back. Whether or not that was
 11 confirmed at the time before we left or not, I don't recall.
 12 Q But certainly they had contacted you and requested
 13 you to go with them to Panaca?
 14 A Yes.
 15 Q Did you go with them when they talked to any other
 16 persons up in Panaca?
 17 A No, I -- I don't believe having been present during
 18 any of their questioning of anyone.
 19 Q Did you go to Pioche with them and talk to a lady by
 20 the name of Laura Johnson?
 21 A No.
 22 Q You don't recall that?
 23 A No,
 24 Q Do you recall them meeting with anyone else in

XI-84

THOMAS - CROSS

1 A Yes.
 2 Q I'm going to show you 106. Parked in front of the
 3 Fiero there's some type of -- I don't want to call it a vehicle,
 4 but some type of wheeled item. Are you familiar with what
 5 that was or do you recall what it was?
 6 A I don't recall,
 7 Did it have a trailer hitch on it, do you recall?
 8 A I believe in the other photograph there was some
 9 indication --
 10 Q I'm doing to show you 179.
 11 A I --
 12 Q Is that sort of a -- look like a trailer hitch there?
 13 A It does look like that to me, yes,
 14 Q So that's some type of vehicle or some type of
 15 apparatus that's towed by another vehicle? Is that --
 16 A Yes.
 17 Q Okay. Now, you indicated that you were contacted
 18 to go to Panaca by the detectives on the case, is that correct?
 19 A Yes.
 20 Q And who contacted you?
 21 A It would have been either Detective Thowsen or
 22 Detective LaRochelle. I don't recall which one specifically
 23 contacted me.
 24 Q And you followed them up to Panaca?

XI-83

THOMAS - CROSS

1 Panaca before they went to the Callaway residence of the
 2 Lobatos?
 3 A I don't recall that,
 4 Q That was beyond, really, the scope of your
 5 responsibilities as a crime scene analyst?
 6 A That's correct,
 7 Q Now, you also indicated that you were present for
 8 the autopsy, correct?
 9 A Yes.
 10 Q And you did not go to the crime scene?
 11 A No, I did not.
 12 Q Your responsibility was to be there at the coroner's
 13 office during the autopsy and impound any evidence that you
 14 found during the autopsy or that was found during the
 15 autopsy?
 16 A Yes. And the homicide detectives were also present.
 17 Q Did they direct you on what items to impound or did
 18 you do that on your own?
 19 A It was basically discussed amongst us as to what
 20 type of evidence we were observing and the type of evidence
 21 we should recover based on information they had at the time,
 22 regarding the crime,
 23 Q And do you recall which detectives were there at the
 24 autopsy?

XI-85

THOMAS - CROSS

1 A I believe Detective Thowsen was there. And I'm not
2 sure if Detective LaRoche arrived with him or arrived after
3 him, but they were both there at some point during the
4 autopsy.

5 Q I'm going to show you what's been admitted as
6 State's Exhibit 221. Do you recognize that as a photograph
7 you took during the course of the autopsy?

8 A Yes.

9 Q And it appears -- and correct me if I'm wrong -- on
10 the -- what would be the right upper buttock of the individual,
11 there appears to be a silver type of paint or some substance
12 adhering to the skin, is that correct?

13 A Right.

14 Q Okay Did you collect that?

15 A No, we did not collect that because there is some of
16 the same type of residue on the shirt.

17 Q Okay. Did you --

18 A And the shirt was collected and we determined that
19 it appeared to be the same type of substance or residue or
20 whatever it may be. So that's why we collected the clothing,

21 Q So it was the consensus opinion there at the autopsy
22 that whatever the silver substance on his bare upper right
23 buttock, was the same as was on the shirt that was
24 impounded?

X 86

THOMAS - CROSS

1 as State's Exhibit 130, and ask if you can examine that?

2 A It's a plaid shirt with vegetation and other debris
3 with apparent blood.

4 Q Is there any indication that that has been opened?

5 A Yes, it appears to have been opened.

6 Q Does it show who opened it?

7 A It would be -- it's Paula -- I don't know how to
8 pronounce her last name. But there is a Paula in the forensic
9 lab, so I'm assuming this would have been done by her.

10 Q Okay, In parenthesis what does she indicate?

11 A View,

12 Q View. What does that mean?

13 A I don't know,

14 Q That it was opened in order to view the shirt?

15 A Possibly,

16 Q Is there any blue crime scene -- any blue tape on
17 that bag like is on the other bag?

18 A No, I don't see any blue tape,

19 Q So on the shoes it had blue tape from the forensic
20 lab when they did the testing but there's no blue tape on this
21 item, is that correct?

22 A That's correct,

23 Q Was the silver substance wet to the touch still or
24 was it dry? Do you know?

X1-88

THOMAS - CROSS

1 A It appeared to be of the same type, yes,
2 Okay. Did you obtain any scrapings or swabs or
3 anything of the area that was on the skin to determine what
4 that substance was?

5 A No.

6 Q And you did a sexual assault kit where you took
7 swabs and scrapings and other type of things?

8 A Actually that's collected by the coroner's office, It
9 would have been one of their investigators that would have
10 done that

11 Q Did the coroner's office while you were watching and
12 taking photographs, collect any swabs or any other residue
13 from the silver item that's on the skin?

14 A No.

15 Q Do you know whether or not the shirt has ever been
16 tested to see what that substance is?

17 A I do not know if it was tested,

18 Q That would have been beyond your responsibility?

19 A That's correct.

20 Q But you did impound the shirt?

21 A Yes.

22 Q And so it would be available for testing?

23 A Yes, It's here

24 Q Okay, I'm going to show you what's been marked

XI-87

THOMAS - CROSS

1 A I don't recall.

2 Q You don't recall?

3 A No.

4 Q What about on the shirt? Was it wet on the shirt or
5 do you recall that?

6 A I believe the shirt was still wet. I don't know if that
7 specific area was still wet but due to the blood the shirt was
8 still --

9 Q Still damp from the blood?

10 A Yes

11 Q Now, you indicated that it's your responsibility to
12 collect the evidence that comes with the body to the crime
13 lab? And we've got --

14 A Along with homicide detectives who are also
15 present. And of course the pathologist.

16 Q Okay. And that's the plastic that is still adhering to
17 the body, is that correct?

18 A Yes, that's correct,

19 In fact, the white sheet is still partially over the leg
20 area?

21 A Yes,

22 Q Would this have been fairly soon after the body was
23 removed from the body bag then?

24 A Yes.

X1-89

THOMAS - CROSS

1 Q And so that's the condition that the body was
 2 transported to the coroner's office?
 3 A Yes.
 4 Q With that plastic stretched from one hip to the other
 5 hip?
 6 A Right From like the lower -- lower abdomen across
 7 the hips there,
 8 Q I believe 222 also shows the plastic from a different
 9 angle?
 10 A Yes.
 11 Q You did impound that piece of plastic, correct?
 12 A Yes,
 13 Q And you took a photograph of it before you
 14 impounded it?
 15 A Yes.,
 16 Q Showing you State's Exhibit 217. Is that the piece of
 17 plastic that you impounded at the autopsy?
 18 A Yes,
 19 Q And so -list so we're clear, this piece of plastic
 20 that appears -- as it appears in the photograph, is the same
 21 piece of plastic that we see fully stretched and opened across
 22 the body in Photograph Number 222?
 23 A Well, there were some folds over the body,, It
 24 wasn't -- it wasn't taut and nicely placed over the body. There

X1790

THOMAS - CROSS

1 Q Okay. Has that been opened by anybody else?
 2 A No, it has not
 3 Q And there's no notation on the front side where we
 4 would expect to see -- if it had been opened, someone would
 5 note that?
 6 A That's correct. And there isn't anything on here.
 7 Q Okay. So there's nothing on the chain of custody
 8 indicating this has ever been tested for anything?
 9 A That's correct
 10 Q And it wasn't tested at the autopsy?
 11 A No, It wouldn't be tested at the autopsy,
 12 Q Were there other items adhering to the body, that
 13 you recovered?
 14 A If I may refer to my property impound again?
 15 Q If you would, please.
 16 A Adhering to the body, specifically?
 17 Q Yes,
 18 A Well, his clothing was on him. And the plastic bag.
 19 And there was a used match that was on the victim's upper
 20 left thigh,
 21 Q That was on the body after the body came out of
 22 the body bag?
 23 A Yes,, And he had the piece of metal tucked in the
 24 left sock.

XI-92

THOMAS - CROSS

were some folds to the plastic.
 2 Q Okay, But it was stretched from hip to hip? Is that
 3 fair to say?
 4 A Yes.
 5 Q And then when it got impounded it looked like in this
 6 Photograph 217?
 7 A Right. Because it had stuck to the body,
 8 Q And did you do any testing on that plastic there
 9 during the autopsy —
 10 A No. A
 11 Q -- or before the autopsy?
 12 A No.
 13 Q You just impounded it?
 14 A That's correct,
 15 Q And that was marked into evidence, correct?
 16 A Yes.
 17 Q Okay. And you've been shown that here today?
 18 A Yes,
 19 Q I'm going to show you what's been marked —
 20 MR. SCHIECK: If I may approach, Your Honor?
 21 THE COURT: Yes,
 22 BY MR. SCHIECK:
 23 Q — State's Exhibit 255.
 24 A It's a clear plastic bag with apparent blood

XI-91

THOMAS - CROSS

1 Q Now, there were also recovered from inside the
 2 body bag, three cigarette butts?
 3 A That's correct.
 4 Q Do you know whether or not those were on the body
 5 when it was placed in the evidence bag?
 6 A No, I do not know that,
 7 Q Would you expect the -- either the crime scene
 8 analysts or the homicide detectives at the scene to pick up
 9 cigarette butts and put them into the body bag if they weren't
 0 on the body?
 1 A I'm -- I don't understand the question.
 12 Q Well, usually at the crime scene they're not going to
 13 put items of evidence into the body bag that isn't associated
 14 with the body, correct?
 15 A That's correct,
 16 Q They would separately impound those items into an
 17 evidence bag?
 18 A It depends on — on the circumstances at the crime
 19 scene. Each case is specific,, So it would depend on what
 20 information they had at the time. What information they had
 21 gathered with homicide and other personnel there. So we may
 22 or may not send certain items with the body. It also depends
 23 on the pathologist. They may have contacted the pathologist.
 24 I don't know what was done at the crime scene. I was not

XI-93

THOMAS - CROSS

1 there,
 2 Q So you really can't tell us why those three cigarette
 3 butts were in the evidence bag?
 4 A That's correct.
 5 Q Other than it's fair to assume that the evidence bag
 6 was clean before they started, and it came from the crime
 7 scene?
 8 A Yes,
 9 Q Was there any effort on your part to compare the
 10 match that was recovered from the body, to the book of
 11 matches that were found in the pocket?
 12 A No, That would be done at the forensic lab.
 13 Q Did you have any difficulty getting the items out of
 14 the pockets of that pair of pants?
 15 A I don't recall having any problems with that.
 16 Q You were shown a photograph that indicated that
 17 the right-hand upper pocket, in the front, had kind of been
 18 pulled out a little bit when you removed —
 19 A Right,
 20 Q -- the watch?
 21 A Right, That's typically the case when we remove
 22 things from pockets. We may have that problem.
 23 Q From the left front pocket you'd removed nine cents
 24 and a dollar bill, but you didn't leave that pocket out. Was

XI-94

THOMAS - CROSS

1 to comb the pubic hairs. Anything that falls out of that
 2 section, the groin, will be collected by that piece of paper, and
 3 then it's folded and preserved for any further analyses of any
 4 type that'd be necessary,
 5 Q Then someone else would do the analysis, not you?
 6 Correct?
 7 A That's correct,
 8 Q Did you notice or recover at the autopsy, any white -
 9 paper towels that were in the area of the dismemberment?
 10 A No, I did not.
 11 Q So no white paper towels were transported with the
 12 body?
 13 A That's correct, No white paper towels.
 14 Q But three cigarette butts were transported?
 15 A Yes.
 16 Q And when you testified last week I think you
 17 indicated that you work day shift, is that correct?
 18 A Yes,
 19 Q So you would have been called out first thing in the
 20 morning to go to the autopsy?
 21 A Yes. Well, I wouldn't be called out. I would be
 22 assigned the case,
 23 Q Okay, And do you recall whether the body had been
 24 refrigerated prior to starting of the autopsy?

XI-96

THOMAS - CROSS

1 that easier to get into or —
 2 A It may be that I tucked the white cloth part back.
 3 It's possible,
 4 Q So it's possible you did that on the left and not on
 5 the right?
 6 A Yes, It was the — my objective was to photograph
 7 the pants.
 8 Q And then you straightened the pants out before you
 9 photographed them?
 10 A Yes.
 11 Q Did you have difficulty -- or did you remove the
 12 pants from the body or was that the coroner?
 13 A With the assistance of one of their investigators,
 14 Q Did you have difficulty removing the pants?
 15 A Most of the time we do have difficulty removing any
 16 clothing from a decedent.
 17 Q Now, as part of the sexual assault kit, you did a
 18 pubic combing, is that correct? Or the coroner —
 19 A Well, the coroner's office would have done that, yes,
 20 Q Okay, Can you tell us what that consists of?
 21 A Basically, they place a sterile sheet from a sterilized
 22 kit -- sexual assault kit -- they place that underneath the
 23 buttocks area, and with a comb that's also included in the
 24 sexual assault kit -- that is sterilized also -- they use that comb

XI-95

THOMAS - REDIRECT

1 A Most of the time the body is refrigerated,
 2 Q But do you recall in this case whether it had been?
 3 A Na
 4 Q Thank you.
 5 MR, SCHIECK: Nothing further, Your Honor,
 6 THE COURT: Redirect.
 7 REDIRECT EXAMINATION
 8 BY MR. KEPHART:
 9 Q Ms. Thomas, in your evidence recovery report, you
 10 have it set up in two sections. One side says "evidence," one
 11 side says "location recovered,"
 12 A Yes,
 13 Q Is that correct? And —
 14 THE COURT: The record shall reflect she nodded
 15 her head up and down,
 16 THE WITNESS: Yes.
 17 MR. KEPHART: Okay.
 18 BY MR, KEPHART:
 19 Q When you use the term "evidence," that's just
 20 something that is in the report already and you write down
 21 something that could potentially be evidence?
 22 A That's correct
 23 Q Okay, In this particular case, in your report, page 3,
 24 you talk about Item 20, which is inside of Exhibit 167, a yellow

XI-97

THOMAS - REDIRECT

1 Post-it note, a strip of green paper?
 2 A Yes,
 3 Okay. And it says that was in the coroner's body
 4 bag?
 5 A That's correct,
 6 And then the next one, 21, which is also in 167, is a
 7 nail cutter which was in the right front pants pocket of Item 5,
 8 which is the -- those pants --
 9 A Yes.
 10 Q -- that he had on?
 11 A Yes,
 12 Q The yellow Post-it note, strip of green paper, did
 13 that have any type of significance as far as you -- I mean, was
 14 there anything on it, any kind of writing, anything like that,
 15 that -- that you could see with regards to that piece of paper?
 16 A I believe there's a copy attached to the report as to
 17 that Post-it note,
 18 Q Okay.
 19 A And, at the time, we did not know what that meant.
 20 So it was impounded as evidence. And I'm not sure whether
 21 the homicide detectives looked into any of that or what was
 22 done with that
 23 Q But this wasn't found in his pocket?
 24 A No, the Post-it note was not, No,

THOMAS - REDIRECT

1 Q So, as far as you know, it could have been as Mr.
 2 Schieck's words, maybe "adhered to his body" when they put
 3 him into the bag?
 4 A Yes.
 5 Q And same with Item 13, the three cigarette butts,
 6 Item 14, the used match -- you said that the used match was
 7 on his upper left thigh?
 8 A Right,
 9 Q I'm to assume it was stuck to him or --
 10 A It was stuck to him, yes.
 11 Q Okay, And you -- you did know some information
 12 about the crime scene, didn't you, of where he came from?
 13 A Yes,
 14 Q That he was in the garbage?
 15 A Yes.
 16 Q Regardless of that, you still collected all of those
 17 items that were with the body, is that correct?
 18 A Yes.
 19 Q How many homicides since you've been a senior
 20 crime analyst, have you been asked to either process the
 21 scene or actually take photographs? The homicide scene itself,
 22 not the autopsies.
 23 A Hundreds,
 24 Q Hundreds. How many have you been -- have you

XI-99

HOMAS - REDIRECT

1 been asked to go to the autopsy and do what you did in this
 2 case, take photos of everything that was accompanying the
 3 body?
 4 A The same. This is the fourth year. So --
 5 Q Hundreds?
 6 A Yes. Four years of autopsies, So --
 7 Q Okay, And, now, with respect to documenting
 8 evidence that you may find at a scene, is it uncommon for
 9 items of evidence that are found at a scene -- which you call
 10 evidence -- to have no relationship whatsoever to the actual
 11 perpetrator of the crime?
 12 A Yes, that's common.
 13 Q Similar to that on -- in the autopsy, finding evidence
 14 from the autopsy which you deem to be evidence, would be --
 15 have no connection whatsoever to the perpetrator?
 16 A That's correct.
 17 Q That's not uncommon, is it?
 18 A It's not,
 19 Q Matter of fact, at some crime scenes, you find
 20 nothing to do with the perpetrator, do you?
 21 A That's correct.
 22 Q The shoe that you looked at, that I started redirect
 23 with you, these black sandals --
 24 A Yes,

XI-100

THOMAS - RE CROSS

1 Q You have no idea when that blood got on the shoe,
 2 do you?
 3 A I do not.
 4 You have no idea how the blood got on the shoe
 5 other than if we were to tell you it is the defendant's blood, do
 6 you?
 7 A That's correct,
 8 MR. KEPHART: Pass the witness, Your Honor,
 9 THE COURT: Recross,
 10 MR. SCHIECK: Yes, Your Honor. Thank you,
 11 RE CROSS-EXAMINATION
 12 BY MR. SCHIECK:
 13 Q It's not your job to determine whether an item of
 14 evidence is or is not important in a case, is that correct?
 15 A I don't understand that question,
 16 Q Well, if something comes to you at the coroner's
 17 office and it's in the body bag, you're going to note it,
 18 photograph it and impound it, correct?
 19 A Yes. Yes.
 20 Q And it's up to the DNA analyst or the fingerprint
 21 analyst or whoever else has contact with that evidence, to
 22 determine what value it is, correct?
 23 A Yes
 24 Q Whether it includes or excludes someone in a case?

XI-101

THOMAS - FURTHER REDIF

1 A That's correct.
 2 MR, SCHIECK: Nothing further, Your Honor.
 3 MR, KEPHART: One more question, Your Honor,
 4 THE COURT: You may,
 5 **FURTHER REDIRECT EXAMINATION**
 6 BY MR. KEPHART:
 7 Q In reference to Mr. Schieck's question as to it's not
 8 your job to determine what evidence is important or not, it's
 9 your job though to collect everything, is that right?
 10 A Yes.
 11 Q And oftentimes in your job -- let's use this case for
 12 similarity. In reference to collecting bags and bags of trash
 13 and finding that there's absolutely no evidentiary value
 14 whatsoever with those bags of trash, does that frustrate you
 15 sometimes?
 16 A Yes,
 17 Q But you continue to collect everything that you can
 18 collect to see whether or not you could find whether -- or have
 19 somebody find whether or not it connects to the person who
 20 did the killing in a homicide?
 21 A That's correct.
 22 Q And that's -- that's for every case?
 23 A Right,
 24 Q Burglaries, robberies, rapes, on and on and on?

XI-102

GELLER - DIRECT

1 A That's correct.
 2 MR. SCHIECK: Nothing further.
 3 THE COURT: Redirect?
 4 MR, KEPHART: No, Your Honor,
 5 THE COURT: You may step down from the stand.
 6 The State may call their next witness.
 7 MR, KEPHART: Thank you, Your Honor, The State
 8 would call Joel Geller.
 9 THE BAILIFF: I'm sorry, who?
 10 MR. KEPHART: Joel Geller.
 11 **JOEL GELLER, STATE'S WITNESS, SWORN**
 12 THE CLERK: Please state your first and last name,
 13 spell your last name for the record,
 14 THE WITNESS: Joel Geller, G-E-L-L-E-R.
 15 **DIRECT EXAMINATION**
 16 BY MR. KEPHART:
 17 Q Mr. Geller, how are you employed?
 18 A I am a latent print examiner with the Las Vegas
 19 Metropolitan Police Department.
 20 Q And how long have you been a latent print examiner
 21 with the Las Vegas Metropolitan Police Department?
 22 A Over eight years.
 23 Q And what are your duties as a latent print examiner?
 24 A I examine latent prints that are submitted to the

XI-104

THOMAS - FURTHER RE CROSS

1 A That's correct.
 2 Q You do everything you can to try to -- try to find
 3 out whether or not there's anything to connect -- and
 4 oftentimes you don't find any evidence to connect a person to
 5 a crime?
 6 A That's correct.
 7 Q Even ones where you know that they were in a
 8 building or in a room and you don't find any fingerprints?
 9 A That's correct.
 10 Q Even^s ones that you know a person was in the car
 11 and you find no fingerprints? □
 12 A That's correct,
 13 MR, KEPHART: Pass the witness, Your Honor.
 14 THE COURT: Recross.
 15 MR. SCHIECK: Yes, Your Honor.
 16 **FURTHER RE CROSS-EXAMINATION**
 17 BY MR, SCHIECK:
 18 Q You didn't go to the crime scene, though, right?
 19 A I did not,
 20 Q You don't know what they collected and what they
 21 didn't collect?
 22 A That's correct.
 23 Q You don't know what they decided wasn't important
 24 and what they decided was important?

XI-103

GELLER - DIRECT

1 laboratory, I examine evidence for latent prints. I also
 2 conduct footwear and tire track examinations, render reports
 3 and testify in court.
 4 Q What is a latent print?
 5 A A latent print is the reproduction of the ridges of an
 6 end joint of a finger or thumb, normally in oil or grease, on an
 7 object it has touched.
 8 Q Okay, Now, you said that you've been employed
 9 with the Las Vegas Metropolitan Police Department for how
 10 long? Eight years? Is that --
 11 A Over eight years, sir.
 12 Q Eight years, And how many -- have you been
 13 employed in this same field prior to the Las Vegas Metropolitan
 14 Police Department?
 15 A Yes, sir.
 16 Q Where was that?
 17 A I was trained by the United States Army Criminal
 18 Investigation Laboratory. I also worked at the Florida
 19 Department of Law Enforcement, the Kansas Bureau of
 20 Investigation, Santa Clara County Police Department, Colorado
 21 Springs Police Department, and presently with Las Vegas
 22 Metropolitan Police Department.
 23 Q So how many years have you been doing this?
 24 A Approximately twenty-six plus.

XI-105

GELLER - DIRECT

1 Q What training did you receive in reference to latent
2 print examinations?

3 A I completed the 104-week latent print training
4 course given by the United States Army Criminal Investigation
5 Laboratory, I attended the fingerprint classification course, the
6 advanced latent print techniques course and the administrative
7 advanced fingerprint school given by the Federal Bureau of
8 Investigation. I also attended numerous seminars and training
9 conferences pertaining to latent prints, footwear and tire
10 tracks,

11 Q Have you previously testified in a courtroom before
12 as a latent print examination?

13 A Yes, sir,

14 Q How many times?

15 A I would estimate over a hundred.

16 Q And are you a member of any type of professional
17 organizations relating to latent prints?

18 A Yes, sir. I am a member of the International
19 Association for Identification, and the Nevada Division of the
20 International Association for Identification.

21 Q Are you a certified latent print examiner?

22 A Yes, sir,

23 Q Who certified you as a latent print examiner?

24 A I was certified by the U.S. Army Criminal

XI-106

GELLER - DIRECT

1 Investigation Laboratory, the Florida Department of Law
2 Enforcement, Metropolitan Police Department in Las Vegas and
3 the International Association for Identification.

4 Q Now, you've also just testified that you've -- you're
5 involved in footwear and tire track examinations as well,

6 A Yes, sir,

7 Q Have you had to do any additional training other
8 than a latent print examine -- examiner?

9 A Yes. That's part of my training as a latent print
10 examiner with (he United States Army Criminal Investigation
11 Laboratory, I also attended numerous symposiums and
12 educational conferences hosted by the Federal Bureau of
13 Investigation and the International Association for
14 Identification,

15 MR. KEPHART: Your Honor, I'm going to offer Mr.
16 Geller as an expert in latent print examination, as well as
17 footwear and tire track.

18 MR. SCHIECK: No objection, Your Honor.

19 THE COURT: Granted,

20 MR. !KEPHART: Thank you,

21 BY MR. KEPHART:

22 Q Now, Mr, Geller, I want to draw your attention back
23 to September 24th, 2001, and ask you if you authored a report
24 in reference to fingerprint examinations that were conducted

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GELLER - DIRECT

1 by you in reference to a case with a defendant's name of
2 Kirstin B, Lobato, Case Number 0107082410?

3 A May I look at my reports?

4 Q Do you have them there?

5 A Yes, sir.

6 Q Okay.

7 A My original report on Case Number 0107082410,
8 dated September 24th? Is that the one you're referring to?

9 Q Yes, I am.

10 A Yes, sir,

11 Q Okay, And what was -- what were you trying to do
12 in reference to that report?

13 A I was requested to compare latent prints to the
14 victim, Duran, D-U-R-A-N, Bailey, B-A-I-L-E-Y, and Kirstin
15 Lobato, K-I-R-S-T-I-N, L-O-B-A-T-O,

16 Q Okay. And how many prints did you actually look
17 at? How many lift cards were submitted to you?

18 A There were 22 latent lift cards that were submitted.

19 Q Okay. And do you have a report as to the various
20 locations of where they were found?

21 A It's reflected in my notes.

22 Q Okay. Can you tell us just go down through the
23 22 and tell us what they were?

24 A May I ask a question?

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GELLER - DIRECT

1 Q In reference to what?

2 A Should I list the lift number that I placed on the
3 individual lift cards first?

4 Q That's fine. Whatever would help you. I just want
5 to know if you have information as to where the latents were
6 lifted from?

7 A The latent lift card that I marked JG-1 was
8 recovered from the top of surge suppression box from trash
9 pile on victim. 3G-2 was recovered from the side of
10 Milwaukee's Best beer can adjacent to the north wail of
11 enclosure. 3G-3 was recovered from the side of box bottom
12 for 81/2 by 11 paper from trash pile at victim's feet. 3G-4 was
13 recovered from the same location. 3G-5 was recovered on the
14 interior of the right door window,, 3G-6, 3G-7, 3G-8, 3G-9, JG-
15 10, JG-11, 3G-12 was recovered from the same location. 3G-
16 13 was recovered on the exterior of the left door window, 3G-
17 14 was recovered on the interior of the left door window. 3G-
18 15, 3G-16, JG-17, 3G-18 and 3G-19 was recovered from the
19 same area. JG-20 was recovered on the left side front hood.
20 3G-21 was recovered on the left door threshold. And 3G-22
21 was recovered on the exterior left side of the trunk area. I see
22 in my notes that there was another lift that was recovered,
23 which I marked JG-23. Was recovered from the south edge of
24 north door of dumpster enclosure.

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GELLER - DIRECT

1 Q Okay. With reference to your numbers 5 through
2 22, is it safe to say that those have to do with a vehicle? 5
3 through 22.

4 A I believe so, sir,

5 Q It starts right door window and then you end with
6 exterior trunk as 22?

7 A According to my notes, they were recovered from a
8 1984 Pontiac Fiero, F-I-E-R-O, Nevada license I believe
9 4NIK8ER.

10 Q Okay. And then in reference to your numbers 1, 2,
11 3, 4 and 23, those -- or at least safe to say, were taken from
12 some items or something from the crime scene? Or do you
13 know?

14 A JG-1 through JG-4, according to my notes, was
15 recovered from the ID Lab by CSA Ford,

16 Q Okay.

17 A And JG-23 was recovered by CSA Renhard,
18 R-E-N-H-A-R-D, at 4240 West Flamingo Road,

19 Q Okay, NSW, of those 23 fingerprints -- latent prints -
20 - now, this is something that you get that comes to you on a
21 card?

22 A Yes, sir.

23 Q Okay, And can you tell me, of those 23, were any of
24 them not useable? And we'll get into that -- if you can tell me

XI-110

GELLER - DIRECT

1 Q Now, do you know what -- what is AFIS?

2 A Excuse me?

3 Q What is AFIS?

4 A AFIS stands for Automated Fingerprint Identification
5 System, That is a system where we can encode a fingerprint
6 into the system. It is searched against a database and
7 provides a list of possible candidates. It's up to the examiner
8 who reviews the list of candidates to see if there is a match or
9 not, If it's determined that there is a match, the examiner will
10 sit down and do a one-to-one comparison with the latent
11 fingerprint and the ink print. Once an identification is made, it
12 is subsequently reviewed by another examiner based on our
13 quality control issue before a report is rendered,

14 Q Okay, Were you able to -- did you have any quality
15 prints, enough to where you could submit them to AFIS?

16 A According to my report, that they would be
17 submitted into ABS upon request,,

18 Q Okay. And was that done here?

19 A Yes, I believe there's a subsequent report in which I
20 did enter latent prints into AFIS,

21 Q And were you able to find any kind of match with
22 regards to your search through AFIS?

23 A Yes. In a report that I rendered, Supplemental
24 Report Number 3, Case Number 0107082410, dated April 29th,

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GELLER - DIRECT

1 about that,

2 A The latent lift cards I marked JG-11 and JG-12, on
3 the interior of the right front door window, were not of value
4 for identification. And the lift that I marked JG-23 which was
5 from the south edge of north door of dumpster enclosure, was
6 also not of value for identification.

7 Q Okay. So of the twenty-three, at least three of them
8 are no good?

9 A Three of the lift cards had no latent prints of value.

10 Q Okay'. Now, did you have - were you given any
11 type of prints that were on file? Meaning known fingerprints,

12 A I was requested to conduct a comparison with the
13 fingerprints of -- one moment, please -- Duran Baily and Kirstin
14 Lobato,

15 Q Okay. With reference to Duran Bailey, were you
16 able to identify any prints belonging to him throughout these
17 numbers here?

18 A I did not identify him.

19 Q And that includes the actual -- Items 1, 2, 3 and 4?

20 A Yes, sir.

21 Q And were you able to identify whether or not any of
22 these were identified with Kirstin Lobato?

23 A None of the latent prints were made by Kirstin
24 Lobato,

XI-111

GELLER. - DIRECT

2002, I rendered a report where an identification was effected
2 to Shadi, S-H-A-D-I, Gallaher G-A-L-L-A-H-E-R, who was
3 identified on the interior of the left door window of the 1984
4 Pontiac Fiero.

5 Q Was that one print?

6 A One moment, please. There was one latent lift card
7 which I marked 3G-16 which identified two fingerprints of
8 Gallaher,

9 Q And that was found on the interior of the Pontiac
10 Fiero?

11 A On the interior of the left door window of the Pontiac
12 Fiero.

13 Q And with exception of the - Number 11, Number 12
14 and Number 16, the other items that were associated with the
15 car, Number 5, 6, 7, 8, 9, 10, 13, 14, 15, 17, 18, 19, 20, 21
16 and 22, you did not find a single match with those, to Kirstin
17 Blaise Lobato?

18 A No, I did not effect any identifications to Ms. Lobato.

19 Q And these were all fingerprints that you felt were of
20 use, except for the one found on the dumpster and then the
21 two, 11 and 12?

22 A That's correct, sir,

23 Q Now, with respect to footwear impressions or tire
24 track impressions, were you called upon in this particular case

XI-113

GELLER - DIRECT

1 to examine certain footwear impressions taken in this case?

2 A Yes, sir.

3 Q Can you tell me what you did with regards to that?

4 Tell me what you looked at

5 A In the supplemental report dated October 3, 2001,
6 Case Number 0107082410, I looked at a pair of high-heel
7 shoes, a pair of Air Nike athletic shoes, a pair of sandals, a
8 piece of cardboard bearing footwear tracks, two lifts bearing
9 known footwear tracks, four strips of known tire tracks, crime
10 scene photographs by CSA Main, M-A-I-N and CSA Ford, and
11 photographs taken by myself at the forensic laboratory.

12 Q Okay. And what were you trying to do with regards
13 to that information in reference to this case that you've just
14 talked about, your report being written?

15 A I was asked to compare the footwear tracks and the
16 tire tracks to footwear crime scene tracks and tire tracks found
17 at the crime scene to see if there was a match or an
18 identification. I conducted comparisons, and I believe I
19 determined that n We' of the footwear tracks were made by the
20 footwear that was submitted for examination, and none of the
21 crime scene tire tracks were made by any of the known tire
22 tracks that were submitted for examination.

23 Q Okay. Now, the tire track photographs, are those
24 something that you took?

XI-114

GELLER - DIRECT

1 4 on April •30th, 2002, Case Number 0107082410, where I
2 looked at a pair of athletic shoes, a pair of Nike athletic shoes,
3 a pair of brown boots, and a pair of Teva, T-E-V-A, black
4 sandals.

5 Q Okay, And what report is that? What date?

6 A April 30th, 2002, Supplemental 4.

7 Q Okay, I'm asking you about Supplemental 2. I think
8 we jumped ahead of ourselves here, Did you do a
9 Supplemental 2 of October 4, 2001?

10 A Yes, sir_ But it did not pertain to footwear or tires,

11 Q Okay. All right, I -- I'm sorry, Mr, Geller. That was
12 my fault. I'm just trying to go chronological of when you
13 checked things, So, October 4th of 2001, did you examine
14 something else? Were you asked to examine something else?

15 A I was requested to examine a hair pick for presence
16 of any latent prints of value.

17 Okay. Were you able to come up with anything
18 there?

19 A No latent prints of value for identification were
20 present or developed on the hair pick.

21 Q Okay, And after October did you conduct any
22 additional tests? Any -- at request of -- I guess it would be the
23 detectives.

24 A On Supplemental 3, dated April 29, 2002, Case

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GELLER - DIRECT

1 A No, sir, I believe they were taken by the crime
2 scene analyst,

3 Q Okay. But then you were asked to compare them to
4 photographs of -- well, let me -- let me back up. Did you take
5 any photos of the actual tires?

6 A No, sir.

7 Q Okay. So you were asked to compare photographs
8 of the tires from one vehicle to the tire tracks at a scene? Is
9 that right?

10 A That's correct,

11 Q Okay. And you weren't able to make any kind of
12 identification with that, were you?

13 A No, sir, They were different tire track designs,

14 Q Okay, Are you able to determine from photographs
15 at what point in time a tire track is left?

16 A No, sir.

17 Q So you couldn't tell whether or not the tire tracks
18 you were looking at were fresh tire tracks or something that
19 had been there for a period of time or something that had
20 came after the body was dead?

21 A I don't have that ability.

22 Q Okay, You did another report as of October 4th of
23 2001, is that correct?

24 A Yes, sir. I think I rendered a -- Supplemental Report

XI-115

GELLER - DIRECT

1 Number 0107082410, I reported the results of the AFIS entry
2 which identified Shadi Gallaher,

3 Q Okay, Any other reports after that?

4 A Yes. Supplemental 4, dated April 30th, 2002, Case
5 Number 0107082410.

6 Q And what did you do with that?

7 A That's when I compared a pair of athletic shoes, a
8 pair of Nike athletic shoes, a pair of brown boots, Red Wing
9 shoes, a pair of Teva, T-E-V-A, black sandals,

10 Q You weren't able to get any type of positive findings
11 with that and what was found at the crime scene, is that
12 correct?

13 A I compared the known footwear with the footwear
14 tracks from the crime scene and no identification was effected,
15 In fact, let me reiterate. They were not made by the footwear
16 submitted.

17 Q Okay, Do you remember whether or not based on
18 your report, there was more than one footwear track that was
19 submitted to you from the scene?

20 A There was more than one footwear track but I did
21 determine that the footwear tracks were all similar in design.

22 Q You couldn't determine whether or not they were all
23 made by the same, just all similar in design, is that correct?

24 A A similar design.

XI-117

GELLER - DIRECT

1 Q Okay, It's not your opinion that they were made by
2 the same person, are you?

3 A No, I couldn't say that.

4 Q Okay.

5 MR. KEPHART: Court's indulgence, Your Honor?

6 THE COURT: Yes.

7 MR, KEPHART: Pass the witness, Your Honor.

8 THE WITNESS: Your Honor, may I — may I clarify
9 one of my answers? One of my replies to the prosecutor? □

10 THE COURT: If he wishes to reopen.

11 MR. KEPHART: That's fine. I — what question had I
12 asked that you —

13 THE COURT: Any opposition?

14 MR, SCHIECK: No. He can go ahead and clarify.

15 THE COURT: State may reopen.

16 THE WITNESS: A latent print is the reproduction of
17 the ridges of an end joint of a finger or thumb, normally in
18 sweat or perspiration or an oily substance, on an object that is
19 touched.

20 MR. KEPHART: Okay.

21 **DIRECT EXAMINATION (Continued)**

22 BY MR, KEPHART:

23 Q And those are affected by our climate, are they not?

24 A Yeah, there are three basic factors.

XI-118

GELLER - CROSS

1 fingerprint in your own vehicle, would you?

2 A That's correct.

3 MR. KEPHART: Pass the witness, Your Honor,

4 THE COURT: Cross.

5 MR. SCHIECK: Thank you, Your Honor.

6 **CROSS-EXAMINATION**

7 BY MR. SCHIECK:

8 Q Let me see if I've got these right -- good afternoon- -

9 A Good afternoon, sir.

10 Q Subject, environment, and transposal?

11 A Right.

12 Q Those are the three factors? Okay. And subject, I
13 think you pretty well covered. It depends on what's on your
14 fingers to leave a print or not to leave a print?

15 A And the type of surface, sir.

16 Q And there are some surfaces that are much better
17 than other surfaces?

18 A That's correct, sir.

19 Q For instance, this wooden podium -- correct me if
20 I'm wrong — would be a pretty good surface for a print to be
21 left on?

22 A Yes, sir,

23 Q Whereas the padded wall behind you, probably not
24 so good?

XI-120

GELLER - DIRECT

1 Q And is there certain surfaces versus other surfaces
2 that may render a fingerprint better than others?

3 A There are three basic factors; subject factors,
4 environmental factors and transposal factors, The subject
5 factors: Whether or not the hands were sweaty or they have
6 any oil on their fingers from touching their forehead or any
7 hairy part of their bodies where they can pick up sebaceous
8 sweat, sebaceous oil or grease; whether or not the fingers are
9 contaminated; whether or not they wore gloves. The
10 environment factors: Was it indoors, outdoors, high humidity,
11 rain, so on and so forth. And transposal factors: What
12 medium or what method was used to recover the latent prints,
13 and the type of surface, was it porous or non porous surface.

14 Q Okay_ Would our climate in the middle of the
15 summer, specifically in July, affect a fingerprint to some
16 degree?

17 A It might, But again, a latent fingerprint -- it's a
18 chance impression. The variables have to be present when an
19 object gets touched, to leave an impression of the ridge
20 structure on a finger or palms_

21 Q Okay. So a lot of things basically have to be present
22 before you leave a fingerprint?

23 A That's correct.

24 Q Matter of fact, you may not even leave your own

XI-119

GELLER - CROSS

1 A Again, it depends whether or not there's any
2 contaminants on the fingers or hands.

3 Q For the padded surface, it would take some other —
4 I mean some type of contaminant or something like that to
5 leave a print?

6 A Yes, sir. Also, if someone's really sweaty, if they just
7 touched their forehead. And again, if the item is processed in
8 a timely basis and if a correct method is used to process that
9 item of evidence.

10 Q A print can dry up over the passage of time? Is that
11 fair to say?

12 A That's correct, sir.

13 Q It's ninety-some-odd percent moisture?

14 A 983 to 99 percent is moisture as a result of your
15 perspire. There's basically three types of sweat: gustatory,
16 thermal and emotional. Gustatory -- if you eat hot peppers
17 you're going to sweat. Thermal is when it's hot you're going
18 to sweat- And emotional, if you're doing something you
19 shouldn't be doing you're going to perspire,

20 Q But it's the same perspiration?

21 A Basically, yes, sir.

22 Q I mean, you can't differentiate between perspiration
23 as to what is causing you to sweat, right?

24 A No, sir,

XI-121

GELLER - CROSS

1 Q Hope not, Okay. So if a print is on an exposed
2 location in a hot climate and the wind's blowing, that print is
3 going to disappear quicker than a print in a closed in space
4 with moisture?

5 A Yes, to a certain degree. And it also depends on
6 how soon you can process the item of evidence and what
7 technique you're going to use on the evidence.

8 Q The interior of a car has a whole variety of different
9 surfaces?

10 A That's correct, sir.

11 Q From carpeting to vinyl padding to gear shift knobs,
12 for instance? They're all different type surfaces usually?

13 A That's correct, sir.

14 Q Windows, however, are pretty consistent in all cars,
15 being glass, correct?

16 A Yes, sir.

17 Q And that's a pretty good surface to get a print from?

18 A Yes, sir.

19 Q And in this case I believe you got -- or you were
20 -- submitted to you, a number of prints from the glass on a
21 vehicle, correct?

22 A That's correct, sir.

23 Q Okay, And that would be -- on your numbering □
24 system, if I'm correct, is Numbers 13 -- excuse me — Number

XI-122

GELLER - CROSS

1 A On a subsequent date I entered the latent prints into
2 AFIS to see if I could make a match,

3 Q Your initial examination report is dated September
4 24th, 2001, and the AFIS hit is on a report is April 29th, 2002, is
5 that correct? It will be Supplement 3.

6 A That's correct, sir,

7 Q What was the reason for the delay in submitting the
8 request to AFIS to try to get a match on all of those prints?

9 A The initial request only asked for a comparison with
10 Duran Bailey and Kirstin Lobato.

11 Q And when was the AFIS request made? And again,
12 does the homicide detective or someone else have to request
13 that you submit it to AFIS?

14 A Normally, if a suspect is identified initially then we
15 don't enter anything into AFIS,

16 Q Okay. In this case it was entered into AFIS. Was
17 that upon a request of someone else or did you do it on your
18 own?

19 A I believe I did it on my own because the request
20 that was dated -- one moment please -- 9/28/01 by Detective
21 LaRochelle, L-A-R-O-C-H-E-L-L-E -- excuse me, that's the
22 wrong one. A request from Detective Thowsen, T-H-O-W-S-E-
23 N, on 4/11/02, Case Number 0107082410, requested that I
24 look at five -- four individuals. And at that time when I did not

XI-124

GELLER - CROSS

1 5 through Number 22?

2 A That's correct, sir,

3 Q The question -- I may be jumping the gun here, but
4 Number 21, you said on the left door threshold. Was that on a
5 window or was that somewhere else?

6 A I cannot answer that,, That would have to be
7 answered by the CSA that recovered it,

8 Q CSA recovers it, puts it on a latent print card and
9 that's what you get is whatever description he gives you or she
10 gives you, when you get the card?

11 A Yes. I have a bad habit -- I reflect verbatim what
12 they put on the lift card. Of course, sometimes I can't read
13 the lift card. So if I write it in my own handwriting I can
14 definitely read it.

15 Q Okay, But you're trying to recreate exactly what
16 they've written on the print card?

17 A I transcribe what they wrote on the latent lift card,
18 yes, sir.

19 Q And in this case none of the prints submitted to you
20 matched Kirstin Lobato's known samples, correct?

21 A That's correct, sir,

22 Q And you submitted these samples to AFIS for
23 testing, a much broader database to look for a match, is that
24 correct?

X1-123

GELLER - CROSS

1 make any identification to them, I entered the latent prints into
2 AFIS and effected the identification to Shadi Gallaher,,

3 Q I'm sorry, what date was that request again?

4 A The request from the detective --

5 Q Yes,

6 A -- was on 4/11/02,

7 Q So, some seven months after the initial request?

8 A Yes, sir.

9 Q And that request was on four specific individuals?

10 A Yes. A Trevor, T-R-E-V-O-R, Adamson,
11 A-D-A-M-S-O-N; a Richard Shott, S-H-O-T-T; Douglas Twining,
12 T-W-I-N-I-N-G; and Diann, D-I-A-N-N, Parker, P-A-R-K-E-R.

13 Q And all them came up negative and then you got an
14 AFIS hit for Shadi Gallaher?

15 A That's correct, sir.

16 Q Okay. And you were requested with respect to the
17 hair pick, to make a comparison -- or to make an examination
18 to see if there was any latent prints on that hair pick? That
19 would be your Supplement Number 2.

20 A Yes, sir,

21 Q And there were no prints on the hair pick?

22 A No prints were present or developed.

23 Q And when did you get the request to check the haii
24 pick?

XI-125

GELLER - CROSS

A That request was 9/28/01 from Detective
 2 La Rochelle, L-A-R-O-C-H-E-L-L-E,
 3 Q And then you were asked to -- which would be your
 4 Supplement 1 -- make some comparisons with respect to tire
 5 tracks and footwear impressions, correct?
 6 A Are you referring to the basic supplemental on
 7 October 3rd, 2001?
 8 Q Yes.
 9 A Okay. Yes, sir
 10 Q And do you recall the description of the shoes that
 11 you compared? The sandals.
 12 A Yes, sir.
 13 Q Would you recognize them if I showed you a
 14 photograph of them or --
 15 A One moment, sir. Yes, Ull probably -- would
 16 recognize them.
 17 Q I'm showing you what's been marked and admitted
 18 as 256. You can look on the -- actually there's a screen next
 19 to you also. I'll show you 257,
 20 A I recognize JG-3, which is the sandals, based on a
 21 Xerox copy I made of the outsole, So I'm looking at the
 22 bottom. I'm not concerned with the uppers which is the upper
 23 portion of a shoe. The outsole is the design on the bottom on
 24 a shoe. I did make a photocopy, and I'm -- which I'm looking

X1-126

GELLER - CROSS

1 A No, sir.
 2 Q You're just relying upon what the crime scene
 3 analysts collected?
 4 A I examined what the crime scene analysts
 5 submitted.
 6 Q Okay, And so you wouldn't know what surfaces they
 7 did and didn't test within the Fiero?
 8 A No, sir, I would not know,
 9 Or what testing they used to find fingerprints inside
 10 the car?
 11 A No, sir, I wouldn't know,
 12 Q And you wouldn't know whether there was any
 13 indications that the car had or hadn't been wiped down at any
 14 point in time?
 15 A I would have no knowledge, sir.
 16 I mean, it is possible to wipe down a surface so no
 17 prints can be recovered, is that correct?
 18 A That is correct, sir,
 19 Q A fingerprint is much different than other trace
 20 element in that it can be easily removed?
 21 A If it's on a nonporous surface it could be wiped
 22 down, and there's very limited possibility of recovering a latent
 23 print after an item's been wiped clean.
 24 Q Such as a window. If I were to take a cloth and

X1-128

GELLER CROSS

1 at now in my notes.
 2 Q It appears to match the shoes we're looking at?
 3 A If that is what I marked JG-3, pair of sandals,
 4 Again, I'm looking at the outsole which is the bottom of a
 5 shoe.
 6 Q You would have had an evidence impound bag that
 7 would have your markings on it if you had examined it,
 8 correct?
 9 A That's correct, sir,
 10 MR. SCHIECK: May I approach, Your Honor?
 11 THE COURT: You may,
 12 BY MR. SCHIECK:
 13 Q Showing you what's been admitted as State's Exhibit
 14 154. Does that indicate it's a pair of sandals that you tested?
 15 A Black heel sandals with apparent blood. That's
 16 marked JG-1. Which, again, I'm looking at the outsoles.
 17 Q Does it show your name on it as --
 18 A Yeah. That's -- that's the item, sir. I have it written
 19 up as a pair of black high-heeled shoes, with a label on top
 20 surface of shoe which reads Club Zone.
 21 Q Okay,
 22 A Okay,
 23 Q All right, Thank you, And you didn't examine the
 24 Fiero yourself?

X1-127

GELLER - CROSS

1 wipe a window down, I would probably destroy any fingerprint
 2 evidence?
 3 A Most likely, sir.
 4 Q Whether I used a cleaning substance or not? Just
 5 the actual act of wiping with a porous cloth could obliterate
 6 fingerprints?
 7 A That's correct, sir,
 8 Q Now, you'd indicated that on the prints of Shad'
 9 Gallaher there were actually two prints on one latent print
 10 card?
 11 A That's correct, sir.
 12 Q Is it common that more than one print will be affixed
 13 to a single latent print card?
 14 A Again, latent prints are a chance impression. Just by
 15 chance a finger or a palm or the sole of a foot comes in
 16 contact with a surface and leaves ridge detail, So I can't
 17 answer if there's going to be one, two, three, four or more
 18 fingerprints on an area that is touched by an individual.
 19 Q Now, the two prints that matched up to Gallaher on
 20 Item Number 16, do we know what fingers those were? Are
 21 those indicated on the print cards or in your report?
 22 A According to my notes, Finger Number 2, which is
 23 the right index, and Finger Number 4, which is the right ring
 24 finger, were identified.

XI-129

GELLER - REDIRECT

Q And they were placed on Number 16, the same latent print card?

A Yes, sir.

Q So when we talk about fingerprints, we're not really talking that a single latent print card might have just one finger impression on it, it could have multiple impressions on it?

A Yes, sir.

Q Thank you,

MR, SCHIECK: That's all I have, Thank you, very much, sir,

THE WITNESS: Thank your

THE COURT: Redirect,

REDIRECT EXAMINATION

BY MR. KEPHART:

Q Mr Geller, just so we clear this up and there's no confusion, JG-1 in your report of October 3rd, 2001, that's the black high-heel shoes you're talking about in Exhibit Number 154, is that right?

MR. KEPHART: May I approach, Your Honor?

THE COURT: Yes.

THE WITNESS: Yes. I recorded it in my notes as a pair of black high-heel shoes.

/1/

XI-130

3ELLER - REDIRECT

Q Okay.

MR. KEPHART: Court's indulgence, Your Honor?

THE COURT: Yes.

BY MR, KEPHART;

Now, you indicated that a print can dry up, is that right?

A Yes, sir,

It would go away when it dries up, wouldn't it?

A Well, I have to clarify that. Sometimes you can actually see a visible latent print, which they call patent, P-A-T-E-N-T, and then slowly over a period of time -- it could be hours or days -- it's no longer visible. It becomes invisible. That's where the proper technique must be applied, even though it may be outdoors in the direct sunlight. And if you use the proper technique you may have the opportunity to develop a latent print.

Q Okay. Now, you say "use the proper technique" — are you familiar with crime scene analysts from the Las Vegas Metropolitan Police Department -- specifically let's talk about Louise Renhard and Dan Ford, Are you familiar with those two?

A Yes, sir,

Do you know whether or not they've been taught the proper technique to recover —

XI-132

GELLER - REDIRECT

BY MR. KEPHART:

Q And you also said there was something else on them, "Club" something? You wrote that there was something written on the shoes, "Club" something? Remember saying that?

A One moment, please. Yes. According to my notes, pair of black high-heel shoes, with label on top surface of shoe which reads "Club Zone."

Q I don't think you can see that there. Well zoom in, Can you read that right there where it says "Club?"

A Yes, That's the label that was on the insole of the shoe,

Q That's Exhibit 256, for the record. So that's the black shoes we're talking about as JG-1?

A Right

Q And you said you also looked at a pair of Air Nike athletic shoes and a pair of sandals.

MR, KEPHART: May I approach, Your Honor?

THE COURT: You may,

BY MR. !KEPHART:

Q With respect to State's Exhibit 159, does this have your seal on it and your name in the chain?

A Yes, sir. This is the item I marked JG-3, Item 6, pair of sandals.

XI-131

GELLER - REDIRECT

MR. SCHIECK: Objection. That calls for hearsay, Your Honor,

MR. KEPHART: Judge, I think in his field as an expert he could testify as to whether or not there's proper techniques or not, and he's testifying to that.

MR. SCHIECK: He's asking him whether or not they have been trained in those techniques. That was his question.

THE COURT: His question was "do you know," He may answer the question yes or no,

BY MR, KEPHART:

Q Do you know whether or not they've been tested -- I mean whether or not they've been trained in the proper techniques of latent print recovery?

A Yes, sir,

Q Okay, And have you also even been involved in possibly giving them continuing training in latent print recovery? Do you discuss it with them?

MR. SCHIECK: Objection, Compound question, Your Honor.

THE COURT: Sustained,

BY MR, KEPHART:

Q Have you been involved in giving them training?

A I have, but basically in footwear and tire track recovery, casting.

XI-133

GELLER - REDIRECT

1 Q Okay. Do you feel confident in the -- in their latent
 2 print recovery, that you've dealt with them in the past?
 3 A Yes, sir.
 4 Q Now, you also said that -- when I asked can a print
 5 dry up -- and you kind of talked about it a little bit, and you
 6 said that given -- over a period of time -- may affect it as well?
 7 Is that your testimony?
 8 A That's correct, sir,
 9 Q Okay. So maybe the longer the print's there, the
 10 better chance it's going to dissipate?
 11 A Yes, sir.
 12 Q Maybe even go away?
 13 A That's correct, sir.
 14 Q And you've already told us that it's fairly easy to
 15 wipe a surface to destroy a fingerprint?
 16 A That's correct, sir,
 17 Q Do toes or your feet give prints?
 18 A Yes, sir,
 19 Q Are those consistent with fingerprint impressions?
 20 A The same principle for fingerprint identification
 21 applies to palms, toes and soles,
 22 Q Okay, When a latent print is submitted to you --
 23 meaning that they've picked it up with a sticky or whatever
 24 they use -- it's been processed -- is that better? Sorry.

XI-134

GELLER - REDIRECT

1 A G3-21 was recovered on the left door threshold,
 2 Q Okay. Could you tell there whether or not that
 3 -- I mean, obviously, that's not a 9' wall or anything like that.
 4 That is a -- the threshold of the door. And we had a crime
 5 scene analyst tell us earlier what she meant by that. Could
 6 you tell just based on your report -- or what you saw, whether
 7 or not that was a fingerprint or a toe print?
 8 A It was a palm print.
 9 Q A palm print. Okay. As if somebody maybe is
 10 putting their hand in to -- like this?
 11 A Yes, sir,
 12 Q Okay.
 13 MR, KEPHART: Court's indulgence, Your Honor,
 14 BY MR, KEPHART:
 15 Q One last question. On your report of October 3rd of
 16 2001, you indicated that you looked at a pair of Air Nike
 17 athletic shoes, and they're your G3 -- or JG-2? October 3rd,
 18 A May I ask which --
 19 Q October 3rd.
 20 A -- supplemental report it was in?
 21 Q Yeah. The October 3rd supplemental. And you
 22 have it as 3G-2.
 23 THE COURT: I think he's asking you is it
 24 Supplement 1, 2, 3 --

XI-136

GELLER - REDIRECT

1 A Yes, sir,
 2 Q And they submit it to you, do you know whether or
 3 not it is a fingerprint or a toe print? Can you tell?
 4 A Well, basically you can tell the difference between a
 5 finger, a palm, a sole on a toe, First of all, the difference is
 6 the size, even in a partial print that may be recovered.
 7 Sometimes it's very easy to see it's from the palm because the
 8 type of ridge characteristics that are present, the thickness of
 9 the ridge, the flow of the ridge detail.
 10 Q Okay, That's with reference to the palm. Is it that
 11 simple to tell the difference between, say, the tip of my finger
 12 versus the tip of one of my toes? If all you had was just that
 13 given to you. You're the expert.
 14 A It could be difficult based on a partial print, for
 15 instance, the tip of a finger to a tip of a toe. But it also
 16 depends on the type of surface it's recovered from. For
 17 instance, if you recover it on a wall that's eight feet high I
 18 doubt very much if I would call it a latent toe print. I'll
 19 probably just refer to as a latent fingerprint or latent finger tip.
 20 Q Okay. Now, in the car, you talked about a
 21 threshold. Do you remember that? It's in -- I don't know
 22 which number it was. One of your G3s -- or 3G numbers, You
 23 said the left door threshold, is that right?
 24

XI-135

GELLER - RE-CROSS

1 MR, KEPHART: Well, he -- the way it's numbered,
 2 Your Honor, he's got the report and then supplemental. And
 3 he's got Supplemental 2 --
 4 THE WITNESS: Yes, sir. 3G-2, a pair of Air Nike
 5 athletic shoes, size U.S. 7.5,
 6 BY MR, KEPHART:
 7 Q And who booked those in?
 8 A CSA Carr, C-A-R-R.
 9 Q Okay, Okay,
 10 MR, KEPHART: Nothing further, Your Honor.
 11 RE-CROSS-EXAMINATION
 12 BY MR, SCHIECK:
 13 Q Those size 7.5 Nike shoes, those were women's
 14 shoes, correct?
 15 A I can't answer that
 16 Q But it's size 7.5?
 17 A Yes, a pair of Air Nike athletic shoes, size 7.5,
 18 Q When you were examining the footwear impressions
 19 that were submitted to you, did you attempt to size those
 20 items to see what size they were?
 21 A No, sir.
 22 Q Is there some place that does that type of work, to
 23 size shoes?
 24 A If I was requested to do so I could have rendered a

XI-137

GELLER - RECROSS

1 report based on information that I have, as reference material.
 2 Give an estimate of the size of the shoe,
 3 Q So if you had been asked, you could have
 4 determined the size of those shoe print impressions that were
 5 submitted to you?
 6 A Within a range that is given as a reference material.
 7 Q But even though you were given these Nike 7,5
 8 shoes, you were never asked to check the impressions to see
 9 what size they were?
 10 A No, sir,
 11 Q You didn't submit those to the FBI or anyplace else
 12 for sizing?
 13 A I wasn't requested to do so.
 14 Q But you did compare the 7,5 shoes to the
 15 impressions that you had from the scene, and they didn't
 16 match, did they?
 17 A That's correct, sir.
 18 Q So you didn't really need to size them to know they
 19 didn't match because you looked at them and they didn't
 20 match?
 21 A The crime scene footwear tracks were a different
 22 outsole design — that's the design on the bottom of a shoe —
 23 than the footwear that was submitted for examination.
 24 Q So we can eliminate that Nike 73 pair of shoes?

X17138

G'ELLER RECROSS

Q Was that done in this case?
 2 A I don't believe so. I think they just photographed —
 3 provided me with strips, which was sufficient enough to
 4 eliminate the tires.
 5 Q Okay. When you say "provided you with strips,"
 6 what are the strips?
 7 A I'm sorry. Film strips which were -- produced prints,
 8 and I compared that with the tire tracks at the scene,
 9 Q Okay. And when they're taking the photographs
 0 from the tire tracks at the scene, they use a tripod and a black
 1 and white camera positioned over the tire track in order to get
 2 a good photograph? Is that fair?
 3 A Actually the camera must be perpendicular and
 4 parallel to the plane where the surface of the tire track or
 5 footwear track is on. And they normally use -- in the olden
 6 days, black and white film or even color film, a .35mm camera
 7 or 4 by 5 camera. Now they have since gone to a digital
 8 camera, which, again, has to be perpendicular and parallel to
 9 the plane of the surface in order to reproduce a one-to-one
 10 image of the tire track or footwear track.
 11 Q And which was used in this case for the ones that
 12 you compared?
 13 A I believe, back then, they didn't have any digital
 14 cameras. They probably used a .35mm camera,

XI-140

GELLER - RECROSS

1 A We can eliminate all the shoes, sir,
 2 Q All the shoes that were submitted to you?
 3 A That's correct, sir,
 4 Q Now, you indicated that you have been doing some
 5 training classes with the crime scene analysts on tire track
 6 impressions?
 7 A Yes, sir,
 8 Q Okay. Which is sort of a specialty sub-field of latent
 9 print examiner? Is that a fair statement?
 10 A No, ir. It's a sub-discipline assigned to someone
 11 who's willing to do it. Or who was trained to do it.
 12 Q And you're willing and were trained to do it?
 13 A That's right, sir,
 14 Q And you had -- they take some type of impression
 15 from a tire -- and forgive me for being very simplistic. But you
 16 have a tire — do you just, like, ink it up and roll it on a piece of
 17 paper? Or how do you do that to get the impression you're
 18 going to compare to what's been recovered?
 19 A That is probably the simplest way of doing it, is to
 20 put ink on the surface of the tire and roll it on 11 to 15' of
 21 white paper to record the complete circumference of a tire so
 22 an effective comparison and examination can be conducted.
 23 You need the entire circumference of a tire to effect a
 24 comparison.

XI-139

GELLER - RECROSS

1 Q That they used in the olden days? Is that what
 2 you're —
 3 A Yes, sir,
 4 Q And that gives -- they can reproduce a one-to-one
 5 photograph, then, that you can compare to --
 6 A As long as the camera is perpendicular and parallel
 7 to the plane.
 8 Q In this case you were able to exclude the Fiero as
 9 leaving those prints behind?
 10 A Yes. The tire tracks were not made by the tire
 11 standards that were submitted for examination,
 12 Q And you were asked some questions about whether
 13 or not you could tell when those were left. The darker that the
 14 -- the skid mark, it's more likely the sooner it's been left? Is
 15 that a fair statement?
 16 A I can't answer that, sir,
 17 Q And I've got to ask this: Were there any toe prints
 18 recovered in this case?
 19 A None that I was able to recognize, sir.
 20 Q Okay, Certainly if you were walking around
 21 barefooted I suppose on garbage you could leave toe prints
 22 behind?
 23 A Yes, you can actually leave footprints behind.
 24 Q But there were none submitted to you in this case?

XI-141

GELLER - RECROSS

A No, sir.

Q And when an individual is wiping a surface with the intent to remove latent prints, is it easy to remove some and leave others behind?

A That's possible,

Q It's possible but is it easy to do when you're talking about latent prints which can't be seen?

A It all depends on the frame of mind of the person who's rubbing down an item, if they're thorough or not. So it's a hypothetical question. I really can't give a yes or no to that, sir,

Q Is plastic a good surface to lift a print from?

A Yes, sir.

Q Thank you.

MR, SCHIECK: Nothing further.

THE COURT: Redirect,,

MR. KEPHART: Court's indulgence, Your Honor.

THE COURT: Yes,

MR. KEPAART: Nothing further, Your Honor.

THE COURT: You may step down,,

THE WITNESS: Thank you,

THE COURT: State may call their next witness.

MS. DiGIACOMO: Kristina Paulette,

1/1

XI-142

JAULETIE - DIRECT

1 also took additional classes at North Carolina State University's Statistical Institute of Genetics for the summer of 2002,

Q Other than what you've already explained, what is your -- the rest of your education and training with regard to DNA?

A I received a bachelor's degree in biology from the University of Texas. I then went on to the University of Alabama at Birmingham and received a master's degree in forensics with a concentration in DNA studies.

Q Have you attended any courses with regard to DNA?

A I have. I just completed a complex mixture interpretation class in Colorado at the end of August. And, additionally, I took a mitochondria' DNA workshop in Dallas, Texas. And I continue to do educational training and workshops at our American Academy of Forensic Sciences meetings every year with -- in the DNA realm,

Q Have you ever testified as an expert regarding DNA analysis before?

A Yes, I have.

Q And where was that?

A In Boise, Idaho, and Jacksonville, Florida,,

Q Is this your first time testifying in Nevada?

A Yes, it is.

MS, DiGIACOMO: Your Honor, at this time the State

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PAULETTE - DIRECT

KRISTINA PAULETTE, STATE'S WITNESS, SWORN

THE CLERK: Please state your first and last name and spell your last name for the record.

THE WITNESS: Kristina Paulette, P-A-U-L-E-T-T-E.

THE COURT: Do you spell your first name with a C or a K?

THE WITNESS: With a K.

THE CLERK: Thank you,

THE COURT: State may proceed.

MS, DiGIACOMO: Thank you,

DIRECT EXAMINATION

BY MS. DiGIACOMO:

Q How are you employed?

A I'm a criminalist with the Biology DNA Unit of the Las Vegas Metropolitan Police Department's forensic lab.

Q How long have you been so employed?

A I've been with Metro for about fifteen months.

Q And do you have any experience with regard to DNA prior to coming to Metro?

A Yes, I do,, I was employed by Orchid Cellmark in Dallas, Texas, as a DNA analyst for two years.

Q Any experience before that?

A I had an internship with Orchid Cellmark for four months while I was in graduate school, as a DNA analyst. I

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PAULETTE - DIRECT

would offer her as an expert witness with regard to forensic DNA analysis.

MS. GREENBERGER: No --

MR. SCHIECK: No objection.

MS, GREENBERGER: Sorry. No objection.

THE COURT: Granted,,

MS, DiGIACOMO: Thank you.

BY MS. DiGIACOMO:

Q Now, directing your attention to this case, were you asked to do any DNA analysis?

A Yes, I was.

Q What was that?

A I was asked to examine a pubic hair combing from the sexual assault kit,

Q And that was taken from a person by the name of Duran Bailey?

A Yes,,

Q Okay, Were you asked to test anything else within the kit itself?

A No, I was not,

Q Okay. Do you know why you weren't?

A No, I do not,

Q Okay, You're not aware that the rest of it had already been tested?

XI-145

PAULLE - DIRECT

1 A Oh, yes, I was aware of that,
 2 Q But the only thing that hadn't been tested for
 3 possible foreign DNA was the pulled pubic hairs?
 4 A Right. And I wasn't asked to retest any of the other
 5 items.
 6 Q Okay, And explain how you went about your
 7 testing.
 8 A As I received the evidence I opened it up and
 9 examined the pubic hair brushing, and in there was a comb —
 10 it was basically a paper towel, wrapped up. There was a comb
 11 inside with several pubic hairs. I looked at all the hairs and
 12 looked for ones that varied in both texture and color, to
 13 identify possible — possibly any foreign hairs. Once I located a
 14 hair that looked to be foreign I further examined it under a
 15 stereo microscope and ended up testing this hair,
 16 Q Okay, This hair that you ended up testing, did it
 17 have any root portion on the hair,
 18 A It appeared to have a root,
 19 Q And what was the conclusions of your testing?
 20 A The — may I refer to my notes?
 21 Q If that would refresh your recollection.
 22 A The hair tested ended up being a DNA mixture, and
 23 the major portion of the mixture was from the victim and the
 24 minor portion of the mixture is from an unknown individual.

XI-146

PAULETTE - DIRECT

1 comparison based on numbers at each locus, and hers do not
 2 match the foreign alleles present,
 3 Q Okay. So she can be excluded even though you
 4 can't determine who the person is?
 5 A Yes,
 6 Were you able to tell what the foreign DNA was
 7 from?
 8 A Not at all,
 9 Q Are you able to tell who the hair belongs to?
 10 A As far as we know, it belongs to the victim.
 11 Q Okay. But you can't tell what the foreign DNA is,
 12 such as blood, saliva, et cetera?
 13 A No.
 14 Q Now, were you also asked by Kathy Gunther [sic]
 15 regarding chewing gum and whether or not it could be uplifted
 16 to CONS? Do you recall that?
 17 A Yes, I do,
 18 Q Okay, And explain to the jury what CODIS is.
 19 A CONS is a database compiled of convicted offenders
 20 -- their DNA profiles, basically. So we enter all these profiles
 21 into the database, and then when we have a foreign DNA that
 22 we find, we upload it into this database to see if we get any
 23 matches. So, basically, to see if any of the foreign DNA we
 24 find matches to any other offender that we have already in our

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PAULETTE - DIRECT

1 Q Now, the unknown individual -- are you able to tell
 2 what sex this -- the person that had given the foreign DNA is?
 3 A No, I can not.
 4 Q Are you able to tell any identifiers as to who the
 5 person might be?
 6 A No, I can not
 7 Q Okay, When -- let's just talk generally. When you're
 8 doing DNA analysis, there's thirteen different -- is it loci?
 9 A Uh-huh.
 10 Q Is that how you make your comparisons?
 11 A Yes,
 12 Q Okay Were you able to determine any loci for the
 13 foreign DNA?
 14 A Yes, I was,
 15 Q And how many of those were you able to determine?
 16 A Of the thirteen, I was able to locate additional -- or
 17 foreign alleles at two different loci.
 18 Q All right. Now, were you able to compare what you
 19 could extract of the foreign DNA, to the DNA profile of Lobato?
 20 A Yes, I was.
 21 Q What was your conclusion there?
 22 A She is excluded as a contributor to this minor profile,
 23 Q And how is it that you can exclude her?
 24 A Because she -- in order to — we make the

XI-147

PAULETTE - DIRECT

1 database,
 2 Q If you upload your foreign DNA that's not from an
 3 offender —
 4 A Uh-huh.
 5 Q -- does it stay in the CODIS system?
 6 A No, it does not,
 7 Q Okay. And is it possible -- other than offenders
 8 being in CODIS -- that there's also DNA that's foreign that's
 9 not been identified?
 10 A Yes. And actually I misspoke. If there's a DNA
 11 profile that is unknown, it can get uploaded if it doesn't match
 12 anybody else's. But it has to meet certain criteria, For
 13 instance, it can't be a victim profile or anything like that
 14 Q Okay. And when — what other criteria does it take
 15 to upload it?
 16 A It must have at least ten loci available to upload it to
 17 the national level. Additionally, it must not be victim. It must
 18 not be -- if there's a consensual sex partner, it can't be that
 19 person. So if they know there's a consensual sex partner —
 20 but we can't eliminate them. That can not be uploaded.
 21 Q Okay, So, for instance, with regard to the minor
 22 foreign DNA on the pulled pubic hair, could that be uploaded
 23 into CODIS —
 24 A No,

XI-149

PAULETTE - DIRECT

1 Q -- to see if there's a match?
 2 A There's not enough -- there are not enough loci
 3 present in order to upload.
 4 Q Now, are you familiar with a piece of chewing gum
 5 that was tested previously by Dave -- or, excuse me, Tom
 6 Wahl?
 7 A Yes, I am,
 8 Okay. Was the foreign DNA detected in the chewing
 9 gum able to be uplifted into COD'S?
 10 A No
 11 Q And why not?
 12 A Because there were not enough alleles present in
 13 order to upload it to CODIS,
 14 Q Now, do you as part of your job, ever have to work
 15 with luminol or phenolphthalein?
 16 A I work with phenolphthalein,
 17 Q And how do you work with it?
 18 A I use it as a presumptive test for the identification of
 19 blood,
 20 Q Before you would actually try and extract and see if
 21 there's DNA?
 22 A Exactly,
 23 Q Are you aware of any false positives that are called
 24 [sic] by phenolphthalein?

XI-150

PAULE E - CROSS

1 immediately turn pink rather than waiting for the hydrogen
 2 peroxide to be added,
 3 MS. DiGIACOMO: Court's indulgence. Pass the
 4 witness.
 5 THE COURT: Cross.
 6 MS. GREENBERGER: Thank you, Your Honor.
 7 CROSS-EXAMINATION
 8 BY MS. GREENBERGER:
 9 Q Good afternoon, How long have you been working
 10 with Metro?
 11 A About fifteen months.
 12 Q And where did you come from before then?
 13 A I was with Orchid Cellmark in Dallas, Texas.
 14 Q What is Orchid Cellmark?
 15 A Orchid Cellmark is a private DNA testing facility,
 16 Q I see in your resume you have a lot of continuing
 17 education from -- going back to 2002 to 2006, Is that correct?
 18 A Yes, I do.
 19 Q And how much continuing education is required?
 20 A We are required to have forty hours per year of
 21 continuing education.
 22 Q Is most or all of it concentrated in the area of DNA?
 23 A Yes.
 24 Q You have some knowledge of phenolphthalein which

XI-152

PAULETTE - DIRECT

1 A Yes,
 2 Q What are they?
 3 A Any item that could possibly be an oxidizing agent
 4 could react with phenolphthalein. However, usually just
 5 copper,
 6 Q All right And when you — you're talking about
 7 oxidizing agents. How does that play into the actual test itself,
 8 when you do the phenolphthalein?
 9 A The phenolphthalein test that we use is a two-step
 10 process. Phenolphthalein is a clear color indicator. And what
 11 we do is we usually swab the area of interest that is supposed
 12 to have blood on it, and then we drop a drop of the
 13 phenolphthalein liquid on it And then we add hydrogen
 14 peroxide. Hydrogen peroxide is also a clear liquid and it is an
 15 oxidizing agent, So when it hits the blood, it oxidizes the iron
 16 in the blood and then causes the phenolphthalein color reactor
 17 to turn pink, So if there's no blood there, you get no reaction
 18 and it doesn't turn pink. So if there's another oxidizing agent
 19 there, already present, on the application of the
 20 phenolphthalein color reagent, it turns pink immediately rather
 21 than waiting for the hydrogen peroxide to be added.
 22 Q And would copper be such an oxidizing agent?
 23 A It's such a strong oxidizing agent that most likely
 24 when added -- if you added phenolphthalein to it, it would

XI-151

PAULETTE - CROSS

1 you just mentioned on direct examination, correct?
 2 A Yes.
 3 Q You didn't conduct any phenolphthalein testing in
 4 this case, did you?
 5 A No, I did not.
 6 Q You are aware that phenolphthalein is a presumptive
 7 test, correct?
 8 A Yes,
 9 Q Not a confirmatory test.
 0 A Right,
 1 Q Can you explain to the ladies and gentlemen the
 2 distinction between the two?
 3 A Sure. A presumptive test simply indicates that
 4 whatever you are looking for might be there. In our case, with
 5 blood. A phenolphthalein positive test indicates that it very
 6 well might be blood but we don't know for sure. A
 7 confirmatory test is something that is a test that actually goes
 8 and confirms that it actually is indeed blood, we know for sure.
 9 Q A confirmatory test would be a hundred percent
 0 confirmation?
 1 A Yes.
 2 Q And phenolphthalein is just an indicator that there
 3 might be something, but until you do a confirmatory, you can't
 4 make that conclusion?

XI-153

PAULEITE - CROSS

1 A Correct.
 2 Q You examined gum in this case that Tom Wahl had
 3 analyzed?
 4 A I actually did not examine the gum.
 5 Q You are familiar with the fact there was gum in this
 6 case analyzed —
 7 A Yes.
 8 Q -- by Tom Wahl?
 9 A Yes.
 10 Q Are you familiar with the fact that that was analyzed
 11 around August 6, 2001?
 12 A Yes,
 13 Q Are you aware that the decedent in this case, Duran
 14 Bailey, was killed July 8, 2001?
 15 A I was not aware of when he was killed.
 16 Q The gum -- did you learn that Kirstin Lobato was
 17 excluded as a DNA contributor on the gum?
 18 A Yes, I did.
 19 Q Was — Were you aware that the gum was a mixture
 20 of saliva and blood?
 21 A No, I was not.
 22 Q Were you aware that the major contributor on the
 23 chewing gum was Duran Bailey, the decedent?
 24 A Yes,

XI-154

PAU E - CROSS

1 A Yes.
 2 Q What day did that request come to your attention?
 3 A The request was actually received on July 7th, 2006.
 4 Q Do you know why it came to you five years after the
 5 testing on the gum?
 6 MS. DiGIACOMO: Objection. Calls for speculation.
 7 BY MS. GREENBERGER:
 8 Q Do you have any personal knowledge of why?
 9 THE COURT: Withdrawn and restated.
 10 THE WITNESS: I was just asked by my supervisor
 11 to test this item,
 12 BY MS. GREENBERGER:
 13 Q What day did you conduct the test on?
 14 A The date of the examination or the date of the
 15 actual DNA?
 16 Q Well, both.
 17 A Okay. The examination was performed on August
 18 12', 2006, and the DNA test was actually run on August 23rd,
 19 2006.
 20 Q Did you prepare a report in this case?
 21 A Yes, I did.
 22 Q And what date did you prepare your report?
 23 A September 5th, 2006.
 24 Q Did you take a photograph in your analysis of the

XI-156

PAULETTE - CROSS

1 Q And with regard to Kirstin Lobato being excluded as
 2 a contributor on the gum, can you explain to the jury how you
 3 can exclude someone if there's not enough loci to identify
 4 someone else?
 5 A If there are not enough loci to upload into COD'S
 6 -- I think that's what you're referring to —
 7 Q Yes.
 8 A -- to where we might be able to get a hit on possibly
 9 another offender, we can exclude based on the alleles that are
 10 given. And baSically when we do our testing we end up with
 11 thirteen pairs of numbers, and we compare these numbers,
 12 and it's an all or nothing kind of thing. If they all match, it's
 13 considered basically an inclusion. If even one allele is off
 14 somewhere, or two, you have an exclusion, And in this case
 15 the -- there was no matching of alleles from the different loci
 16 that we were able to detect,
 17 Q What exactly is an allele?
 18 A And allele is assigned to the — we separate the DNA
 19 based on size. And so according to its size, the DNA's
 20 assigned a number, and we call this number that it's assigned,
 21 an allele.
 22 Q Following on, on comparisons, I'm going to turn to
 23 the pubic hair. You were requested to do analysis on the
 24 pubic hair in this case, is that correct?

XI-155

PAULETTE - CROSS

1 pubic hair combings you were examining?
 2 A Yes, I did.
 3 Q Did you get that photograph with your own camera?
 4 A The camera provided by our lab,
 5 Q What kind of camera is that?
 6 A It's a digital camera. I'm not sure of the model,
 7 Q Did it produce a color photograph?
 8 A Yes,
 9 MS. GREENBERGER: May I approach, Your Honor?
 10 THE COURT: You may
 11 BY MS. GREENBERGER:
 12 Q Showing you what's been marked as Defendant's
 13 next- in-order Proposed NN, do you recognize this?
 14 A Yes, I do.
 15 Q Is this a photograph that you took?
 16 A Uh-huh.
 17 Q Is it a fair and --
 18 THE COURT: Does that mean yes?
 19 THE WITNESS: Yes. Sorry.
 20 BY MS. GREENBERGER:
 21 Q Is it a fair and accurate depiction of what you saw?
 22 A Yes,
 23 Q Is this one photograph or multiple photographs?
 24 A It is multiple.

XI-157

PAULL I FE - CROSS

1 MS. GREENBERGER: I would move for admission of
2 this exhibit, Your Honor,

3 MS. DIGIACOMO: No objection.

4 THE COURT: Granted,

5 (Defendant's Exhibit NN, admitted)

6 BY MS. GREENBERGER:

7 Q Starting at the top corner, can you identify what it is
8 that you photographed?

9 A Certainly. The top left corner is a photo of the
10 evidence as it was received. When I opened up the pubic hair
11 combing it was, as I stated, a comb with pubic hairs -- and
12 they're black. I don't know that they show up very well on the
13 photo. And then a ruler next to it to show the size,

14 Q Is the comb provided in the kit that you used to
15 conduct your analysis?

16 A Yes, it is.

17 Q It's a sterilized comb? Never been used before?

18 A Yes.

19 Q And can you tell us what the second photo depicts?

20 A It's a closeup of the pubic hairs. As you can see,
21 there are numerous ones present,

22 Q When you're doing this analysis, are you using a
23 microscope? Or is it a visual examination?

24 A It's a visual examination at first.

XI-158

PAULETTE - CROSS

1 Q Would that be the fourth picture that's depicted?

2 A Yes.

3 Q That's the pubic hair under a microscope?

4 A Yes.

5 Q Now, I'm calling it a pubic hair. Did you determine
6 that it appeared to be a pubic hair?

7 A It appeared to be a pubic hair but I'm not a hair
8 expert so I can't say for sure,

9 Q Were there any other hairs that you examined that
10 looked different, besides this one?

11 A This was the only one that appeared to be different?

12 Q Can you identify by pointing on the screen in your
13 doseup of hairs, if you can see which hair it was that appeared
14 to be different?

15 A I can't tell in this photo.

16 Q You testified that it appeared to have a root in it?

17 A Yes.

18 Q What does that mean?

19 A A root is the portion of a hair that is -- attaches it to
20 the head, basically. And this area tends to have nuclear DNA
21 still remaining. Whereas the hair -- the shaft of the hair does
22 not have nuclear DNA in it.

23 Q How are you able to determine that there were
24 multiple sources of DNA on this hair?

XI-160

PAULETTE - CROSS

1 Q Can you tell the ladies and gentlemen of the jury
2 what you're specifically looking for when you're doing this type
3 of examination?

4 A I'm looking for anything that appears to be foreign
5 DNA, foreign hair. And basically it's just a visual examination
6 of the hairs. As you know, hairs can vary on your head or in
7 the pubic area. But basically we're just looking for something
8 that was foreign.

9 Q Was there anything specific that caught your
10 attention when you were doing this analysis?

11 A The color of the particular hair that's in the lower left
12 corner --

13 Q And can you identify -- you can touch the screen
14 and it will --

15 A Oh, This one,

16 Q And can you describe what you saw and why that
17 caught your attention?

18 A Sure. It seemed to vary slightly in texture and in
19 color. And upon looking at it under the stereo microscope, I
20 confirmed that

21 Q So the second portion of your analysis -- once you
22 determined there was something foreign, you looked at it
23 under a microscope?

24 A Correct,

XI-159

PAULETTE - CROSS

1 A Based on the DNA results that I obtained,

2 Q Can you explain what you did to make that
3 determination?

4 A Sure. When you're looking at a DNA profile we
5 expect to see a certain -- there are -- when we get a DNA
6 profile as I mentioned before, there are pairs of numbers that
7 we're looking at. And when we see more than a pair of
8 numbers at each site, we know that it is in fact a mixture. And
9 because there are more than one allele at -- or more than two
10 alleles at certain places, we know that this was a mixture.

11 Q Would the major component be the hair itself?

12 A Yes,

13 Q What would the minor component be?

14 A It could be anything from saliva to semen to blood
15 to -- anything.

16 Q How can you separate the major from the minor?

17 A When our profiles are presented, they're presented
18 in peak form, And when they're minor alleles, the ratio of the
19 peaks vary greatly. So the major profile, the peak height may
20 be a thousand, the minor profile will be at maybe a hundred.
21 So you'd see a distinct difference in the major versus the minor
22 profile.

23 Q Are there two peaks or one peak for the Y
24 chromosome?

XI-161

PAULETTE - CROSS

1 A There is one peak for the Y chromosome. But
 2 two peaks at that -- the sex determining locus.
 3 And is — what does Y represent in your field of
 4 study?
 5 A V represents a male. So if the profile reads XY, it's a
 6 male. If it reads just an X peak, it's just female,
 7 Q I want to refer you to page 3 of your report which is
 8 entitled -- or this is your lab notes -- identifier, profiler, co-filer,
 9 Are you at page 3?
 10 A Yes.
 11 Q I just have a question for you. On the third line
 12 from the bottom -- forgive me if I mangle the term —
 13 amelogenin --
 14 A Amelogenin.
 15 Q Amelogenin, What is that?
 16 MS. DiGIACOMO: Counsel, I'm sorry. Could you
 17 show me what you're referring to?
 18 (Off-record colloquy)
 19 BY MS. GREENBERGER:
 20 Q Can you define what that is?
 21 A Sure, Amelogenin is the sex-determining locus that
 22 we look at, And I mentioned pairs of numbers — we also get
 23 this target area of DNA that we're looking at. And when it is
 24 an XY, it's male, and when it's X, it's female.

XI-162

PAULETTE - CROSS

1 A Uh-huh.
 2 Q And when you conducted that analysis, can you tell
 3 us what you concluded?
 4 A I didn't do any analysis on the reference standards
 5 for Bailey or Lobato. I simply took the evidence that had been
 6 run earlier by another analyst and compared them to what I
 7 found,
 8 Q And what did you find with regard to Kirsten
 9 Lobato's DNA? Did it match or not match?
 10 A It was not consistent with what was found in the
 11 pubic hair.
 12 Q In fact, you state in your report you were able to
 13 exclude her as a possible contributor of the DNA obtained from
 14 the pubic hair, is that correct?
 15 A Yes,
 16 Q You can exclude her with certainty?
 17 A Yes.
 18 Q Were you ever asked to test plastic wrap seized in
 19 this case, for the presence of DNA?
 20 A I was not.
 21 Q In your own words can you explain exclusion?
 22 A When someone is excluded it means they can't
 23 possibly be a contributor to whatever it is we're looking at. Q
 24 Is it your testimony that there is no way to determine if

XI-164

PAULETTE - CROSS

1 Next to this you have KP1D. What does that stand
 2 for?
 3 A KP1D is the designation I gave to the pubic hair that
 4 I tested.
 5 Q And you identified that as XY?
 6 A Correct,
 7 Q Meaning male?
 8 A Male, Yes.
 9 Q And you knew that because -- did you know that
 10 because it belonged to the decedent in this case or did you
 11 know that from other testing?
 12 A Strictly based on the DNA. Because there's an XY
 13 there, it means there is male, But because it's a mixture, we
 14 don't know if it's male and female or just male,
 15 Q In the next box over, TAW11D, and you have
 16 reference blood Bailey. Is this your comparison chart to see if
 17 the major component matched Duran Bailey?
 18 A Correct,
 19 And you found it did?
 20 A Yes,
 21 Q And then TAW2, it says reference buccal Lobato.
 22 What is that?
 23 A That is the profile from Ms, Lobator Her DNA profile,
 24 Q Her DNA?

XI-163

PAULETTE - CROSS

1 the minor source of DNA on the pubic hair is male or female?
 2 A Yes, there's no way to determine that,
 3 Q Why is that?
 4 A When there's a mixture of DNA we can sometimes
 5 compare the peak height, as I mentioned before, of the X
 6 versus the Y and determine if there is a male present or
 7 female present. In this case the minor contributor is so minor
 8 that we can't use the peak ratios to determine if it is another
 9 male or if it's another female.
 10 Q Is the pubic hair combing done from the pubic hair
 11 area of the decedent?
 12 A Yes, it is,
 13 Q What is the significance, if any, that a possible root
 14 was detected?
 15 MS, DiGIACOMO: Objection, Your Honor. Asked
 16 and answered,
 17 MS, GREENBERGER: I don't believe I asked that
 18 question, Your Honor,
 19 THE COURT: Overruled. You may answer.
 20 THE WITNESS: By detecting a root, it allows us to
 21 determine whether or not we would be able to get a DNA
 22 profile from this root,
 23 BY MS. GREENBERGER:
 24 Q Are you familiar with any of the other sexual assault

XI-165

PAULETTE REDIREC1

1 testing that's been done in this specific case?
 2 A No, I'm not,
 3 MS. GREENBERGER: I don't believe I have anything
 4 further.
 5 THE COURT: Redirect.
 6 MS. DiGIACOMO: Thank you, Your Honor.□

REDIRECT EXAMINATION

8 BY MS. DiGIACOMO:
 9 Q When you say that somebody can be excluded, or
 10 even included — well, let's stick with — when you say
 11 somebody can be excluded, all that means is that they can't be
 12 the source of whatever DNA it is you're looking at?
 13 A Correct.
 14 You can't say what happened at a crime scene or
 15 who a perpetrator was, correct?
 16 A **No**
 17 Q Now, with regard to doing the phenolphthalein tests,
 18 is it common for you to be able to get a positive reaction for
 19 phenolphthalein bit then not be able to extract enough to find
 20 DNA?
 21 A It is possible.
 22 Q How much do you need to extract to find the DNA?
 23 A We need about .1 nanogram for a full profile, of
 24 DNA. So it's a very small amount but —

XI-166

AULETTE RECROSS

1 A Just by the phenolphthalein test. Correct.
 2 Q But once a confirmatory test is done, you can
 3 conclusively say, if it's negative, that it's not blood?
 4 A Not always. Because --
 5 Q What does that mean?
 6 A If you have a phenolphthalein positive and a
 7 confirmatory negative -- is that what you're asking?
 8 Q Yes,
 9 A If the DNA is very broken down or degraded, you
 10 may not get a positive confirmatory test — we use HemaTrace
 11 -- even though you get a positive phenolphthalein test. And
 12 you can think of it like if a dog gets a hold of a puzzle piece
 13 and chews it all up, it's not going to fit right in there. And so
 14 you might -- that's kind of like the antibody reaction we get
 15 with the HemaTrace test. So you're not going to end up
 16 getting a positive on that even though it might still be blood.,
 17 Q If there's a false positive and then a confirmatory
 18 negative, how does that affect your opinion?
 19 A If it's a false positive phenolphthalein and a — you
 20 would expect it to be a negative HemaTrace or a confirmatory
 21 test there. And so then we would go on to test it with DNA to
 22 see whether or not there really was something there.
 23 Q And again, we're just talking generically 'cause you
 24 haven't done any phenolphthalein type testing in this case?

xr-168

PAULETTE - RECROSS

1 Q But it is possible that you could —
 2 A It is possible that you can't — you can get a —
 3 phenolphthalein is very very sensitive. So it's very possible
 4 that you'll get a positive phenolphthalein reaction and no DNA
 5 whatsoever.
 6 Q Okay. And that's not -- that's not to say it's not
 7 blood; it's just that you can't confirm it's human blood?
 8 A Correct,
 9 MS. DiGIACOMO: Nothing further,
 10 MS. GREENBERGER: One moment, Your Honor,
 11 THE COURT: Yes, Recross?
 12 MS. GREENBERGER: Yes.

RECROSS-EXAMINATION

13 BY MS. GREENBERGER:
 14 Q Would you agree that if you have a positive
 15 phenolphthalein test that is not confirmed, you cannot say that
 16 it's blood?
 17 A If it's a positive phenolphthalein?
 18 Q Yes. That has not been confirmed as blood. You
 19 cannot testify it's blood, true?
 20 A You can say that it's blood. You don't know if it's
 21 human -- well, let me take that back. You don't know for sure
 22 if it's blood or not,
 23 Q By the phenolphthalein test?

XI-167

PAULETTE RECROSS

1 A Right,
 2 Q And in this case with regard to your assignment, you
 3 were specifically asked to analyze the pubic hair comings that
 4 were collected from Duran Bailey and to see if they excluded
 5 Kirstin Lobato? Is that correct?
 6 MS. DiGIACOMO: Objection, Your Honor. Beyond
 7 the scope.
 8 THE COURT: Overruled,
 9 THE WITNESS: I was asked to look for foreign DNA,
 10 BY MS. GREENBERGER:
 11 Q And your conclusion was that there was no match
 12 between the pubic hair -- the major and minor source detected
 13 on what you examined that appeared different with Kirstin
 14 Lobato?
 15 A True.
 16 MS. GREENBERGER: Nothing further,
 17 THE COURT: Redirect?
 18 MS, DiGIACOMO: Court's indulgence. Nothing
 19 further.
 20 THE COURT: You may step down.
 21 We're going to take a ten-minute stretch break at
 22 this time, ladies and gentlemen. In ten minutes please be out
 23 in the hallway. The bailiff will return you to your seats in the
 24 courtroom at that time.

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1 During the recess you're admonished not to talk or
 2 converse among yourselves nor with anyone else on any
 3 subject connected with the trial. You're not to read, watch or
 4 listen to any report of or commentary on the trial or any
 5 person connected with the trial by any medium of information,
 6 including, without limitation, newspaper, television, radio and
 7 Internet, And you're not to form or express any opinion on
 8 any subject connected with the trial until the case is finally
 9 submitted to you.
 10 Court's in recess for ten minutes,
 11 (Court recessed at 3:44:58 to 4:09:53)
 12 (Jurors are present)
 13 THE BAILIFF: Department II is back in session.
 14 Please be seated,
 15 THE COURT: The record shall reflect we're
 16 resuming trial in State versus Lobato, under C177.394, in the
 17 presence of the defendant together with her three counsel, the
 18 two prosecuting attorneys and ladies and gentlemen of the
 19 jury.
 20 State's proceeding forward with their case in chief
 21 case and may call their next witness.
 22 MR, KEPHART: Thank you, Your Honor. The State
 23 would Detective Tom Thowsen.
 24

XI-170

,HOWSEN - DIRECT

1 State Bank?
 2 A I did.
 3 Q Can you tell me how is it -- how does homicide with
 4 the Metropolitan Police Department -- back in August of 2001,
 5 how did they --
 6 MR. SCHIECK: Your Honor, do we mean July? Not
 7 August.
 8 MR, KEPHART: I'm sorry. I'm sorry, You're right,
 9 July 9th. Thank you, Mr. Schieck.
 10 BY MR. KEPHART:
 11 Q July 9th, 2001. And I apologize to you, Detective.
 12 Can you tell me how it was -- or how did the police
 13 department work in reference to the homicide investigations?
 14 Did you work in a team? Did you have multiple officers or —
 15 how did it work? Ho does that work?
 16 A Yes, Back in 2001 we worked in a team of two
 17 detectives and we'd commonly go with a sergeant.
 18 Q Is that how it worked in July of 2001?
 19 A Yes, it was.
 20 Q On this particular case did you have a partner?
 21 A Yes. My partner was Detective James LaRoche,
 22 Q Okay, And when you work with partners how do
 23 you divvy up the work, so to speak?
 24 A It alternates from case to case so that each time you

XI-172

THOWSEN - DIRECT

1 **THOMAS THOWSEN, STATE'S WITNESS, SWORN**
 2 THE CLERK: Please state your first and last name.
 3 Spell your last name for the record please,
 4 THE WITNESS: Thomas Thowsen, T-H-O-W-S-E-N,
 5 **DIRECT EXAMINATION**
 6 BY MR. KEPHART:
 7 Q Sir, how are you employed?
 8 A I'm a homicide detective with the Las Vegas
 9 Metropolitan Police Department
 10 Q And rlow long have you been employed as a
 11 homicide detective?
 12 A Fourteen and a half years,
 13 Q And prior to becoming a homicide detective, what
 14 did you do for the police department?
 15 A I was a robbery detective for three or four years.
 16 Prior to that, I was an investigative surveillance detective for a
 17 year. Prior to that, I was in the academy staff for three years.
 18 Prior to that, I was in K-9 for four years. And prior to that, I
 19 was in patrol.
 20 Q How long have you been a police officer?
 21 A A little bit — more than twenty-nine years.
 22 Q Draw your attention back to August 9th of 2001, and
 23 ask you if you had an occasion to respond to 4240 West
 24 Flamingo Road in reference to a homicide there at the Nevada

XI-171

THOWSEN - DIRECT

1 get to switch and have a different segment of the
 2 investigation. What will happen is, one of the detectives will
 3 be in charge of interviewing witnesses and/or suspects. The
 4 other detective will be in charge of working with the crime
 5 scene analyst to analyze the crime scene.
 6 Q And what -- in this particular case, what was your
 7 assignment?
 8 A To interview the witnesses and suspect.
 9 Q Okay, Does that mean that you don't go to the
 10 crime scene? That you don't get involved with that at all?
 11 A It does not mean that. You do go to the crime
 12 scene as well.
 13 Q Okay. Were you involved in the crime scene with
 14 this case?
 15 A Yes.
 16 Q Okay,
 17 MR. KEPHART: May I approach, Your Honor?
 18 THE COURT: You may,
 19 BY MR. KEPHART:
 20 Q I'm showing you what's been admitted as State's
 21 Exhibit Number 4, and ask you if you can -- if you can identify
 22 this?
 23 A Yes.
 24 Q Okay. And is that — what about that that causes

XI-173

THOWSEN - DIRECT

1 you to remember this particular case?

2 A This is the dumpster enclosure —

3 Q Let me -- I'll put it -- I'll put it up on the screen.

4 A Thank you.

5 Q Exhibit Number 4.

6 A Okay.

7 Q Can you see that okay from where you're at?

8 A I can.

9 Q Okay, Maybe I'll zoom in a little bit. Maybe that will
10 help. Okay. All right. Go ahead.

11 A This is the dumpster enclosure. You can see the
12 doors on both sides here, the actual dumpster, and three walls
13 over here, and then it has a chain link fence laying on top of it,
14 to secure the top.

15 Q Okay, Did you go into this area to expect it -- to
16 inspect it?

17 A Yes, I did,

18 Q When you got there do you recall whether or not the
19 dumpster itself was in the position it's in now?

20 A I don't recall the exact position the dumpster was in.

21 Q Did you have some information that it was actually
22 moved?

23 A Yes,

24 Q And who was that that moved the dumpster?

XI-174

FHOWSEN - DIRECT

1 Q And when I say can you see through the top of it,
2 could you see through the chain link here?

3 A Yes, you can,

4 Q And what's that to the left of the dumpster enclosure
5 itself?

6 A This part right here is a covered parking area,

7 Q Matter of fact there's a car underneath the covered
8 parking area right there when this photo was taken?

9 A That's correct,

10 Q Now, you indicated that you actually went into the
11 crime scene -- right here -- that's Exhibit Number 4. Can you
12 tell me what you recall — what you remember of the crime
13 scene?

14 A Yes. I remember there was a great deal of blood
15 that was in the far corner of the crime scene. There was a lot
16 of garbage that looked like it had been probably taken out of
17 the dumpster and placed in a huge pile here that was on top
18 of the body and around the body to hide it apparently.

19 Q And did you actually look in the dumpster itself? Did
20 you?

21 A I did not, no,

22 Q Were you aware that crime scene analysts actually
23 got into the dumpster?

24 A Yes

XI-176

THOWSEN - DIRECT

1 A That -- I'd have to refer to the crime scene report,

2 Q Have you heard the name Officer Jay Testa before?

3 A Yes, He's the initial officer that arrived,

4 Q Do you recall whether or not he had moved it or
5 not?

6 A Yes, that would be the correct name.

7 Q Okay. Now, you indicated that -- that it has these
8 four door -- these two doors and then the three walls and then
9 the chain link over the top. So we're to assume that if you
10 shut the doors then it -- then it is closed off to the public?

11 A That's correct. Yes,

12 Q Unless, of course, the doors are not chained shut or
13 locked shut or anything like that?

14 A That's correct.

15 Q The chain link on the top, could you crawl through
16 it? Meaning, get in, if you crawled over the top.

17 A No- It looked like it was secure enough that it would
18 actually keep you from getting into it.

19 Q Okay, And could you -- could you see through the
20 chain link at all?

21 A Yes, you could.

22 Q Okay. Exhibit 118, does that show the dumpster
23 enclosure during the daylight?

24 A Yes, it does.

XI-175

THOWSEN - DIRECT

1 Q Okay, Now, in reference to -- to a individual — you
2 said the body -- that you found an individual in the -- in the
3 area. I'm showing you Exhibit Number 18. Is this consistent
4 with what you meant by all the garbage that was in there on
5 top of the body?

6 A Yes.

7 Q Okay. If you look in the back of the photo there,
8 can you see what appears to be a couple items with maybe
9 some red on them?

10 A Yes.

11 Q Can you draw a circle around them so I know what
12 we're talking -- yeah.

13 A Right here.

14 Q And do you know what those were?

15 A Those are socks,

16 Q Okay. Did you have an opportunity to examine the
17 area as they -- as they worked through the garbage?

18 A Yes.

19 Q Could you tell, based on what you saw, whether or
20 not it appeared that somebody was probably staying there?

21 A Yes.

22 Q Do you have an opinion as to that?

23 A Yes, That somebody was staying there,

24 Q Okay. And that's based on what?

XI-177

THOWSEN - DIRECT

1 A Based on the fact that you had an extra pair of
 2 socks here, you had a piece of cardboard that looked like
 3 somebody was using as a bed, which is common with
 4 homeless people to get off the pavement a little bit so they
 5 have a little bit of insulation between them and the hard
 6 pavement. There was a pornographic magazine, a pack of
 7 cigarettes and a pair of slip-on shoes.
 8 Q Okay. You didn't see any other shoes or anything
 9 that was found in that area, did you?
 10 A No,
 11 Q Okay. These particular slip-on shoes, do you
 12 remember anything particular about them or where they were
 13 found?
 14 A I know they were found closer towards the back
 15 area, and I know that they had blood spatter inside of them.
 16 Q Okay. Was there anything particular about the way
 17 that they were -- the way they were positioned?
 18 A I believe they were neatly together,
 19 Q Okay, As if they were placed there?
 20 A Yes,
 21 Q Okay. Now, I asked you earlier about whether or
 22 not the dumpster had been moved,
 23 A Yes.
 24 Q Do you know if anything had been moved in that

XI-178

THOWSEN - DIRECT

1 already been subject to cross-examination. I'm just going
 2 through his testimony again for the -- to allow the officer to
 3 describe what he did in reference to the statements that were
 4 made.
 5 THE COURT: You can ask him what he did.
 6 MR. KEPHART: Okay.
 7 BY MR. KEPHART:
 8 Q Based on what he told you -- let me get to this -- id'
 9 you do anything yourself or do you know of any other people
 10 that moved anything in there, before the police got there?
 11 MR, SCHIECK: I'm going to object, Your Honor. He
 12 is the police,
 13 MR. KEPHART: Before the police. Before anybody
 14 else got there. That's what I'm saying. Do you know if there
 15 was anyone else in there that moved anything?
 16 THE COURT: Overruled.
 17 MR. SCHIECK: Objection, unless it's to his personal
 18 knowledge, Your Honor. Otherwise it's based on hearsay,
 19 THE COURT: The Court will sustain the objection as
 20 to lack of foundation.
 21 BY MR. KEPHART:
 22 Q My question is, you had information about -- from
 23 Richard Shott --
 24 A Yes,,

XI-180

THOWSEN - DIRECT

1 crime scene with the exception of the dumpster and maybe
 2 the gates to be open, prior to you arriving?
 3 A Yes.
 4 Q Was something else moved?
 5 A Yes. Apparently -- if I recall correctly from the
 6 statement of the individual that discovered the body, he had to
 7 move a little bit for him to see that there was actually a
 8 person's waist there.
 9 Q Okay, And who was that?
 10 A His name was Ricky Star. He had another name but
 11 I believe it was -- Ricky Star was one of them.
 12 Q Okay, Have you had an -- Ricky Star, is that
 13 different than Richard Shaft?
 14 A That's Richard Shott.
 15 Q Okay. But this is the individual that you knew had --
 16 had actually called in --
 17 A Yes.
 18 Q -- the police? All right And from your questioning
 19 of him, you recall that he had indicated that he had to move --
 20
 21 MR, SCHIECK: Objection, what he indicated, Your
 22 Honor. It's hearsay.
 23 THE COURT: Sustained,
 24 MR, KEPHART: Well, Your Honor -- Your Honor, he's

XI-179

THOWSEN - DIRECT

1 Q -- and what he had indicated about moving
 2 something to get back in there --
 3 A Yes.
 4 Q to see the body?
 5 MR. SCHIECK: I object, Your Honor, he's going to
 6 state what he wants in --
 7 MR. KEPHART: Judge, that was testified to. That's
 8 part of Richard Shott's testimony.
 9 MR, SCHIECK: His testimony is before the jury,
 10 Judge. We don't need his out-of-court statements.
 11 MR. KEPHART: Those aren't out-of-court
 12 statements, Judge. They were --
 13 THE COURT: Sustained. You may rephrase the
 14 question,
 15 BY MR. KEPHART:
 16 Q My question to you is that -- Richard Shott testified
 17 in this hearing about when he went in he had to move
 18 something in order to see the body. My question of you is, did
 19 anyone else tell you that they were in there and moved
 20 anything?
 21 A No.
 22 Q Okay. Did you have any information from anyone
 23 else prior to you arriving, other than the dumpster being
 24 moved, that other things were moved?

XI-181

THOWSEN - DIRECT :

1 A No,
 2 Q Okay. Now, with respect to the victim himself, did
 3 there come a point in time that he was identified as Duran
 4 Bailey?
 5 A Yes.
 6 Q Okay. And now I —
 7 MR. KEPHART: That's Exhibit Number 16, Your
 8 Honor.
 9 BY MR_ KEPHART:
 10 Q And I'm showing you Exhibit Number 18 again_ That
 11 basically is the same photo as back of the photo of 16, is that
 12 correct? Kind of fit like that a little bit?
 13 A That's correct.
 14 Q Okay. And so that shows you the back portion of
 15 the -- of the enclosure with Mr. Bailey's body here. He's not
 16 covered any longer?
 17 A Correct.
 18 Q When you went in and first viewed this, it wasn't like
 19 this, is that correct?
 20 A That's correct_
 21 Q He was covered?
 22 A He was covered.
 23 Q Okay, And when I asked you about whether or not
 24 anything had been moved and you told me you didn't have

XI-182

-HOWSEN - DIRECT

1 A On the curb?
 2 Q Yes.
 3 A You see additional transfer over here,
 4 Q Okay. And then his -- his head actually --
 5 A His head would be over in this area here. With his
 6 body extending this way. I believe.
 7 Q You see the drip? There's the blood down here in
 8 the lower --
 9 A This part here?
 10 Q Yes.
 11 A Yes.
 12 Q Seen in conjunction of where his head is here?
 13 A Yes.
 14 Q Where would that be in that photo there?
 15 A That would be -- his head would be right here.
 16 Q Okay, So based on what you have observed and
 17 what we've talked about, can you tell me whether or not
 18 something else had been moved?
 19 A Yes. In that respect, his body had clearly been
 20 moved from the corner where it had laid and bled, to its
 21 location where it was found by the police and by Mr. Shott.
 22 Q And in the event that — when his body was moved
 23 from the back area, the back corner, what direction would he
 24 be — was there any particular object he would have been

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THOWSEN - DIRECT

1 any other information -- I want to show you — with regards to
 2 19 -- do you see this photograph? Can you see that?
 3 A Yes.
 4 Q You've been a homicide detective for how long?
 5 A A little more than fourteen years. Fourteen and a
 6 half years,
 7 Q How many homicides have you investigated?
 8 A Four to five hundred probably.
 9 Q Okay. With respect to this area here, can you tell
 10 me if based on your experience, it appears that something's
 11 been moved here?
 12 A Yes,
 13 Q Okay, And in reference to Mr. Bailey's body position
 14 in 16, that is away from Exhibit Number 19, is that correct?
 15 A That is correct,
 16 Q Okay_ So, furthermore, Exhibit Number 30, that's
 17 after the trash has been basically moved away?
 18 A Yes.
 19 Q Does that show -- Exhibit Number 19, here, does
 20 that show that in the photo as well?
 21 A Yes. That's right over here.
 22 Q Okay, And what do you see on down, lower on the -
 23 - on that curb? Lower in -- coming to the bottom of the
 24 picture?

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THOWSEN DIRECT'

1 moved towards?
 2 A Towards the dumpster.
 3 Q And that's what's shown in Exhibit Number4?
 4 A Yes.
 5 Q Okay. Do you recall how long it was that you -- or
 6 the Metropolitan Police Department was at the crime scene?
 7 A It was all night long, into the morning. I know they
 8 were still there finishing up -- we went back to the office as
 9 the sun was coming up, and then received a message from
 10 them that they had just located the penis there.
 11 Q Okay.
 12 MR., KEPHART: Can I have Exhibit -- 121, I think it
 13 is. Yeah, 121, Approach the witness, Your Honor?
 14 THE COURT: Yes.
 15 BY MR, KEPHART:
 16 Q You have to put on your high-powered glasses,
 17 Detective. Can you see that from over there?
 18 A I can,
 19 Q Okay. And you testified in reference to a parking
 20 structure in Exhibit 118, Can you see that on the screen
 21 there?
 22 A Yes.
 23 Q And 121 is an aerial of the Nevada State Bank. Are
 24 you familiar with that area there?

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THOWSEN - DIRECT

1 A I am.
 2 Q And you see it says -- already on there, it says
 3 "crime scene," and then there's like a yellow arrow that goes
 4 down there. Is that consistent with what you remember of the
 5 crime scene?
 6 A Yes, it is
 7 Q And the parking structure I'm talking about in 118, is
 8 that visible also in 121?
 9 A It is,
 10 Q Can you tell us where that is? Do you mind going
 11 over and pointing that out?
 12 A Certainly. This is the entrance to the parking lot
 13 here, As you drive straight back, this is going to be the
 14 dumpster enclosure with the gates facing that direction. And
 15 this white area here is the covered parking.
 16 Q Okay. Just -- I guess it would be just west of that,
 17 the parking structure, that area there, do you know what that
 18 was at that time?
 19 A A desert lot.
 20 Q Okay. And if you were to -- could you -- was there
 21 an access, if you recall, between the parking lot and the desert
 22 lot, like a -- like an opening in the wall or anything like that?
 23 A There was not
 24 Q There was not,

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THOWSEN - DIRECT

1 A Correct
 2 Q Okay. Have a seat. Now, you testified that you had
 3 interviewed Richard Shott and that he had given you some
 4 information about him being in that area. Did you do anything
 5 further with reference to Richard Shott -- and let me kind of
 6 back up a little bit. Inside the crime scene area, inside the
 7 dumpster area, were you aware or did you see any type of
 8 footwear impressions?
 9 A Yes,
 10 Q And that was something that was made in blood?
 11 A Yes,
 12 Q And what generally does that tell you?
 13 A That a shoe has stepped in a source of blood and
 14 then transferred that blood onto whatever we're seeing it on
 15 Q Okay. And when you say a shoe, you're not
 16 particularly saying that the killer in this particular case would
 17 have been the individual that transferred that particular blood?
 18
 19 A No, it's whoever's shoe stepped in the blood and
 20 steps on the surface.
 21 Q Okay. Now, you knew that Richard Shott was back
 22 in there?
 23 A Yes.
 24 Q And did you do anything with regards to Richard

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THOWSEN - DIRECT

1 A There was not.
 2 Q What about to the north of the parking lot of the
 3 Nevada State Bank, what is that area there?
 4 A This is an apartment complex with a parking area all
 5 around in here, and this would be tennis courts in this area
 6 here,
 7 Q For that parking -- for that apartment complex?
 8 A Yes,
 9 Q Do you know the name of the apartment complex?
 10 A I don't recall it now.
 11 Q Okay. And was there access through the wall from
 12 the Nevada State Bank into the parking -- I mean into the
 13 apartment complex?
 14 A No, there was not.
 15 Q Okay,
 16 A There was a low grate for the water to go through
 17 but it had metal bars and a person couldn't get through it.
 18 Even a small dog probably wouldn't fit through it.
 19 Q Okay. So in order to go to the dirt area to the west,
 20 you would have to walk out onto Flamingo or hop the wall?
 21 A Hop the wall or go around, yes.
 22 Q Okay. And in order to go to the apartment complex
 23 you would have to go out on to Wynn Road and go north or
 24 hop the wall?

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THOWSEN - DIRECT

1 Shott to determine whether or not he stepped in the blood?
 2 A Yes.
 3 Q What did you do?
 4 A We examined him from head to toe with flashlights
 5 to see if he had any blood spatter anywhere on his person.
 6 And we examined his shoes to see what they looked like, and
 7 the soles, to see if there was any blood that was in there
 8 anywhere, and had the crime scene analyst take an impression
 9 to be compared.
 10 Q Okay. Were you -- did you find any evidence that
 11 he had stepped in any blood or that he had anything on his
 12 clothing or on his hands or anything like that?
 13 A None.
 14 Q But he'd actually told you that he had touched the
 15 items and looked to see if he saw the individual laying in
 16 there?
 17 MR, SCHIECK: Objection, Hearsay, what he told
 18 him, Your Honor,
 19 THE COURT: Sustained,
 20 BY MR. KEPHART:
 21 Q Well, based on what he told you, you looked at his
 22 hands, you looked at his clothing, you looked at his shoes?
 23 A Yes,
 24 Q Okay_ If I was to tell you that he testified here and

XI-189

THOWSEN - DIRECT

1 said --

2 MR, SCHIECK: Objection, Your Honor.

3 THE COURT: You're objecting to the form of the

4 question?

5 MR. SCHIECK: Yes, Your Honor.

6 THE COURT: Sustained.

7 BY MR. KEPHART:

8 Q Now, how is it that you went about identifying

9 Duran's body?

10 A We had information that there was a person at the

11 bank that had an account there, that would come and get

12 money, and we also had information from a relative that he

13 had an account at that particular location. And I believe it was

14 through fingerprints that he was ultimately identified,

15 Q Okay. Do you remember when it was that he was

16 identified?

17 A I don't remember the exact date. It would be in the

18 coroner's reports.

19 Q Okay, Did there ever come a point in time where

20 you told the coroner to stop trying to identify who he was?

21 A I don't recall having a conversation with the coroner.

22 I mean, they're the ones that identify people so usually we

23 wouldn't have that sort of a conversation with them.

24 Q Okay, Did you ever tell the coroner to stop doing

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1 we're talking about had been reported to the Metropolitan

2 Police Department, is that right?

3 A That's correct.

4 Q And had an actual detective involved —

5 A Yes.

6 Q -- in the investigation of that case?

7 A Yes.

8 Q Okay. And based on information she related to you,

9 did you do anything to determine whether or not she was a

10 suspect in this case?

11 A Yes,

12 Q What did you do?

13 A Several things actually. One of which was actually

14 going to her apartment to speak to her and examine her to

15 see if she had any injuries on her that looked like she might

16 have been in some sort of an altercation with somebody. She

17 allowed us to look in her apartment and at her shoes in her

18 apartment, and to speak with her roommate.

19 Q Okay, And based on that, did you make any kind of

20 determination whether or not she was involved in this

21 altercation?

22 A It appeared -- there was nothing to indicate she was

23 involved in this altercation.

24 Q Okay. But she did have some injuries on her?

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THOWSEN - DIRECT

1 any investigations?

2 A No.

3 Q Okay Now, during your course of investigation, did

4 there come a point in time where you came into contact with

5 an individual by the name of Diann Parker?

6 A Yes

7 Q Can you tell how that was? How did that occur?

8 A That would have been later into the morning of the

9 T^h, after we'd been at the scene throughout the night and

10 then left. We learned that she had come to the scene and

11 contacted a patrol officer and was requesting information and

12 wanted to be contacted in case this was perhaps somebody

13 that she knew. We went to her house -- myself, Detective

14 LaRochelle, and Sergeant Manning -- and made contact with

15 her at her apartment.

16 Q Okay. And based on your conversation with her you

17 were able to determine that she knew that he'd stayed there

18 occasionally?

19 A Yes.

20 Q She also relayed to you some information in

21 reference to her and he from a previous incident?

22 A Yes.

23 Q Based on what she had indicated to you, did you do

24 anything -- well, let me ask you this: The previous incident

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THOWSEN - DIRECT

1 A From the previous attack.

2 Q Okay. You also said that she had a roommate?

3 A Yes.

4 Q Okay. Did you also talk to the roommate?

5 A Yes.

6 Q Was there anything in reference to their demeanor

7 with you that would give you any reason to believe that they

8 were involved in any type of incident like this?

9 A Not at all. They were both forthcoming and helpful.

10 In fact, she's the one that sought out the police to begin with

11 to make sure we would contact her to try and give us

12 information.

13 Q That's not something that you're accustomed to in a

14 homicide investigation, by the suspect, are you?

15 A No, it is not.

16 Q Okay. Did you also do any kind of investigation to

17 see -- determine whether or not there was any type of blood

18 or anything like that on them?

19 A Yes. Visually looking at them,

20 Q Okay, Anything else?

21 A I believe we looked throughout their kitchen for any

22 edge weapons that might be there to see if there was anything

23 that looked like it had blood on it or could have any

24 involvement, and there as nothing.

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THOWSEN - DIRECT

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1 Q Anything else?

2 A We contacted the apartment complex manager to

3 learn of occupant -- of some neighbors of hers that knew of

4 her incident, and tried to get a feel for whether they might be

5 involved in some sort of way. And all the information that we

6 got was that they were hardworking people. And upon

7 checking them further, found them to be without criminal

8 records and consistent with what we were told,

9 Q And with regards to Diann Parker's apartment, you

10 indicated that you checked the kitchen for knives to see if

11 there was any kind of blood or anything like that

12 A Right.

13 Q What about clothing? Did you look at any type of

14 clothing or --

15 A We looked at their clothing and at their shoes in the

16 closet

17 Okay. Clothing they were wearing or --

18 A Clothing ,they were wearing and their stack of

19 clothing that they had.

20 Q Okay, Anything -- was there any laundry that was

21 still around or --

22 A There was laundry and we did not find anything with

23 blood,

24 Q And you had been to the scene and saw that there

1 A I don't remember if they were right there. Normally,

2 the press shows up at our scenes and is kept back behind the

3 tape to limit their --

4 Q Okay. Well, maybe that's my -- I didn't ask the

5 question -- not right in the scene, but out -- out and about

6 around the edge. Was there press there that day?

7 A Yes,

8 Q Matter of fact, when you spoke to Diann Parker, did

9 you learn some information in regards to her knowledge of this

10 from the -- about the press?

11 A Yes. Her roommate had actually seen some news

12 clips and had told her about it, and that's how she came to

13 realize that something had gone on over there.

14 Q Okay.

15 MR. KEPHART: Your Honor, may I approach the

16 witness?

17 THE COURT: You may,

18 BY MR. KEPHART:

19 Q I'm showing you what's been marked as State's

20 Proposed Exhibit 259, and ask you if you could take a look at

21 that?

22 A Yes.

23 Q Okay. Are you familiar with that?

24 A Jam,

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THOWSEN - DIRECT

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1 was quite a bit of blood in this particular case?

2 A Yes,

3 Q Other than that, what you just testified to, about

4 what you saw at the scene, talked to Richard Shott, talked to

5 Diann Parker, checked on some fellow acquaintances of hers, I

6 guess, and her roommate, did you have anything -- other

7 information that would help you with the investigation of this

8 case at that time?

9 A Not just at that time.

10 Q Now, when -- when the --

11 MR. KEPHART: I'm showing what's been marked as

12 259 to defense,

13 BY MR. KEPHART:

14 Q When the Metropolitan Police Department is involved

15 in these type of crimes -- investigating these type of crimes

16 -- do you recall specifically in this case if there was other

17 people at the particular scene on that day?

18 A Yes,

19 Q Other people other than police personnel? Do you

20 recall?

21 A Crime scene analysts. If that's what you're talking

22 about,

23 Okay. Were there any press -- was there any press

24 available -- out there at that time?

1 Q Is it part of your homicide book?

2 A This is a media release that was completed by

3 Sergeant Manning. That would be the information provided to

4 the press following our -- beginning of the investigation.

5 MR. KEPHART: Your Honor, Ill move to admit

6 Exhibit 259.

7 MR. SCHIECK: No objection.

8 THE COURT: Granted.

9 (State's Exhibit 259, admitted)

10 BY MR. KEPHART:

11 Q Now, what date is it that it is released?

12 A July 9th, 2001.

13 Q Okay. And it's talking about July 8, 2001, when you

14 received a 9-1-1 call?

15 A Correct.

16 Q Okay,, Now, in regards to Exhibit 259, it basically

17 goes through here and tells us where it occurred?

18 A Yes.

19 Q You had at that point, an unidentified black male,

20 5'8", 5'10', 160 pounds, balding dark hair. Tells what he was

21 wearing. Says he suffered trauma to the head and upper

22 body. He was located behind a dumpster, concealed under

23 debris with a dumpster enclosure. And it says anyone that

24 knows the victim's identity or mode of the circumstances

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THOWSEN - DIRECT

1 surrounding this crime, please contact secret witness.
 2 Now, when you went in there you had an opportunity --
 3 you actually saw the body -- and you just testified that on a
 4 later time they found they penis.
 A Yes.
 6 Q Okay, And so you were aware that the penis was
 7 severed from this -- from Mr. Bailey's body?
 A Yes.
 9 Q Okay, And, now, that's not in this media release,
 A On purpose.
 11 Q Okay, Tell me what that means.
 A In incidents like this when we have something that's
 13 extremely unusual, like a severed penis, we're withholding that
 14 information to see if we get feedback back from some other
 15 direction, if somebody has information. If they &Int know
 16 about this penis, then they're probably not telling us the truth.
 17 If they do know about it -- the only way they're going to know
 18 about it is firsthand-knowledge because we haven't put the
 19 information out
 20 Q Okay, Now, there came a point in time where you
 21 actually arrested somebody for this crime, is that correct?
 A That is correct.
 23 Q And is that person in the courtroom now?
 24 A Yes

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"HOWSEN - DIRECT

1 arrest report accompany that person when it goes to jail --
 2 when he goes to jail?
 A Yes.
 4 Q Okay, And the arrest report at that point in time
 5 becomes a public document, is that correct?
 A Yes, it does.
 7 Q Okay. And oftentimes has it been your experience
 8 that the media then gets that information --
 A Yes, they do.
 10 Q And that's oftentimes additional information than
 11 what you just said is given to the media?
 A That is correct,
 13 Q And the first time that the media would get any
 14 information involving him -- Duran Bailey's penis being
 15 severed, would have been once the arrest report has been
 16 made part of this case? Is that correct?
 A Yes, Once it's made public record.
 18 Q And that would have been at least -- sometime
 19 either on the 20th of July of 2001 or sometime after?
 A Correct
 21 Q Now, July 20 of 2001, you indicated that's when
 22 you arrested the defendant here, for --
 A Yes,
 24 Q -- for this murder in this case?

XI-200

THOWSEN - DIRECT

1 Q Can you tell us where that person is seated?
 2 A At the defense table, the second person from the
 3 left, wearing the pinkish-colored top.
 4 Q Okay. Do you know her name?
 A Blaise Lobato.
 6 Q Okay. And do you recall when it was that you
 7 actually arrested her?
 A On July 20th, 2001.
 9 THE OURT: The record shall reflect kentification
 10 of the defendant,
 11 MR. KEPHART: Thanks, Judge.
 12 BY MR. KEPHART:
 13 Q Now, when you arrest an individual, you're -- you
 14 draft an officer's report, is that correct?
 A We have an officer's report and we have an arrest
 16 report,
 17 Q Okay, And what's the arrest report? VVhat's the
 18 purpose of the arrest report?
 A The purpose of the arrest report is to establish a
 20 minimum amount of probable cause so that when the
 21 individual goes into the court process the judge can look at it
 22 and see that the crime represented -- being charged, is
 23 covered in the elements mentioned in the arrest report,
 24 Q Okay. And when you put somebody in jail, does the

X1-199

THOWSEN - DIRECT

1 A Yes, it is,
 2 Q Okay. Can you tell me how it was that you got
 3 information in reference to the defendant, cause you to follow
 4 up and eventually arrest her?
 A Yes. I had a telephone call in the office from a
 6 Lincoln County probation officer that began asking me
 7 questions, if we had a case involving someone that was
 8 murdered and their penis was severed. And I immediately told
 9 them tell me what you know. And she had information that --
 10 MR. SCHIECK: Objection to what -- he's going to
 11 say what she said, Your Honor, It's offered for what he did
 12 next but not for what she said.
 13 MR. KEPHART: Yeah, I'm not offering it for the
 14 truth. It's already been testified. They can decide that. But I
 15 want him to testify as to what he learned from her to lead him
 16 to the next step,
 17 MR, SCHIECK: That's hearsay, Your Honor, what he
 18 learned from her.
 19 MR. KEPHART: I'm not offering it for the truth, It's
 20 not being offered for the truth. I'm offering it to have the
 21 officer explain why -- what he -- what he did. The jury can
 22 decide -- she's already testified. They can decide the truth of
 23 it. But I'm not offering it from this officer for the truth.
 24 THE COURT: It will come in for the limited purpose

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THOWSEN - DIRECT

1 of developing the probable cause for the officer to proceed
2 with the arrest and not for any additional purpose. The Court
3 will overrule the objection with that caveat.

4 BY MR. KEPHART:

5 Q What were you told?

6 A I was told that a teacher in Panaca there had been
7 contacted by one of her former students named Blaise Lobato,
8 and been given information that she had cut off a person's
9 penis in Las Vegas.

10 Q And what did you do when you got that information?

11 A I found out what information I could find on Ms. □
12 Lobato, gathered up my partner, and drove to Lincoln County,

13 Q Okay. When you say your partner, you're talking
14 about Jim LaRoche?

15 A Yes.

16 Q Was there anyone else that went with you at that
17 point to Lincoln County?

18 A In a sepajpte car we had Maria Thomas following as
19 the crime scene analyst,

20 Q Okay, Why is it that you asked Maria Thomas to go
21 with you at this point in time?

22 A Because we felt that if there was any evidence that
23 would be located we would want it properly documented right
24 from the very beginning and have it photographed and

XI-202

-HOWSEN - DIRECT

1 A I do,

2 Q Can you look at it?

3 A Yes. Since it's a small town in Pioche, her home
4 address is a post office box.

5 Q Okay. And that's Pioche?

6 A Pioche.

7 Q Okay. So my question is, do you recall whether or
8 not you went to Pioche or you went to Panaca where she was
9 living? Do you recall?

10 A Are you talking about Laura Johnson or —

11 Q Laura Johnson.

12 A I believe that we went to Pioche, which she has as
13 her home address.

14 Q Okay. And then you said that you used the sheriff's
15 department to take you or --

16 A Yes.

17 Q -- over to the Lobatos?

18 A Yes,

19 Q Where are they located?

20 A In Pioche, Also at a post office box,

21 Q Okay. Now, you -- it indicated that when you spoke
22 to Laura Johnson over the phone, she told you about a teacher
23 named Dixie that had — was a teacher for Blaise and that
24 Blaise had went to her and told her what she had done?

XI-204

THOWSEN - DIRECT

1 collected properly,

2 Q Okay. And where did you go initially when you went
3 up to — you said you talked to Laura Johnson who is a Pioche
4 probation officer?

5 A Yes,

6 Q Where is Pioche in relationship to Panaca?

7 A Close by.

8 Q Okay. Caliente, have you heard of that as well?

9 A Yes. A

10 Q Okay. Were you told in reference to where Blaise
11 Lobato's parents were living at that time?

12 A We had — we were given an address, and after
13 speaking and learning the story, we contacted the sheriff's
14 department there and had them actually drive us to Ms.
15 Lobato's parents' house,

16 Q Okay. Did you go to — what was the first place you
17 went when you went up to that part of Nevada?

18 A I believe we went directly to Laura Johnson's house.
19 And then from there, went to the police station to meet with
20 the deputy that took us over.

21 Q Okay. Where was Laura Johnson living at that time?
22 Do you recall?

23 A It would be on her statement,

24 Q Okay. Do you have that with you?

XI-203

THOWSEN - DIRECT

1 A Yes.

2 Q Okay. When you went up and contacted Laura
3 Johnson do you recall whether or not you sat down with her
4 and discussed with her what she had talked to you over the
5 phone?

6 A With Laura Johnson?

7 Q Yes,

8 A Yes,

9 Q Okay. And while you were talking to Laura Johnson
10 do you remember whether or not — you already said it would
11 be in her statement -- is that a taped statement that you took
12 from Laura Johnson?

13 A Yes, it is,

14 Q Okay. In this particular case you took multiple taped
15 statements, is that correct?

16 A That's correct.

17 Q And is it true that one of them particularly came
18 from Laura Johnson?

19 A Yes.

20 Q Now, she didn't have any problem — you didn't have
21 any concern with her -- or she didn't have any concern with
22 you -- talking to you on tape?

23 A Not at all.

24 Q Now, when you tape somebody -- interview

XI-205

THOWSEN - DIRECT

1 somebody on tape, can you tell me how it is that you -- how
2 do you go about doing that?

3 A Normally what we do if we're going to take a taped
4 statement from somebody -- and back then it was on tape
5 with a microscope, now we use digital recorders, But, in any
6 event, what we would do is introduce ourselves -- I know who
7 it is and what we're going to talk about And we'll usually try
8 and sit down if the situation and time permits, and speak to
9 them for awhile to find out a little bit about them, to let them
10 kind of be at ease with us and get some rapport with them so
11 that they're more likely to speak to us. We've kind of found
12 that if you just walk up to somebody and introduce yourself as
13 a police officer, turn on a tape recorder and hold it in front of
14 them, people tend to get a little bit nervous and can clam up
15 and the story can be very short just because they're nervous
16 and they want to have an end to it.

17 Sowhat we find is that if we actually take the time to talk
18 with somebody for,avvhile to find out what the information is,
19 we can kind of get an outline of their information that they
20 have, and then say, okay, you've told us this, we'd like to go
21 back with your permission now and take a taped statement
22 from you so we can document it, in your words, what it is that
23 you have to say.

24 Q Did you do that here with Laura?

XI-206

HOWSEN - DIRECT

1 Lobatos before you spoke to Dixie?

2 A I was afraid if we talked to Dixie first she would
3 warn Blaise Lobato.

4 Q Now, there came a point in time that you -- did you
5 actually get to the Lobatos?

6 A Yes.

7 Q I'm showing you what's been admitted as Exhibit
8 182, Does that look familiar to you, Detective?

9 A Yes, it does.

10 Q And what is that?

11 A In the foreground there's a reddish-orangish-colored
12 Pontiac Fiero. That is Ms. Lobato's vehicle. In the background
13 there is a house that is portrayed. That is her parents'
14 residence.

15 Q Okay. And this is where you went to talk to the
16 defendant?

17 A Yes, it is.

18 Q I'm going to show you what's been marked as
19 State's Proposed Exhibit 258, and ask you if you can identify
20 what this is?

21 A Yes, I can .

22 Q What is it?

23 A This is a photograph of Ms. Lobato on the day that I
24 met her and spoke to her the first time.

XI-208

THOWSEN - DIRECT

A Yes.

2 Q Did you do that with all your interviews of the
3 individuals that you had in this particular case?

4 A Yes.

5 Q Okay. Now, Detective, you indicated that Laura had
6 told you about Dixie, who Blaise had went to?

7 A Correct.

8 After you spoke to Laura, you just told us that you
9 had the sheriff's department take you over to the Lobatos.

10 A Yes,

11 Q Is there any reason why you didn't go talk to Dixie?

12 A Yes.

13 Q Why is that?

14 A Because in speaking with Laura, it was Laura's
15 feeling that if we talked to Dixie --

16 MR. SCHIECK: Objection. Hearsay, Your Honor.

17 THE COURT: Sustained.

18 MR, KEPHART: Your Honor, I'm not offering that for
19 truth also. I'm offering it for —

20 THE COURT: Counsel approach.

21 (Off-record Bench Conference)

22 BY MR_ KEPHART:

23 Q Okay, Detective. Now, you indicated that you — you
24 went over to the Lobatos, Why is it that you went to the

XI-207

THOWSEN - DIRECT

1 Q Does this fairly and accurately depict how she looked
2 on the 20th of -- of July of 2001?

3 A Yes.

4 MR. KEPHART: Move to admit 238.

5 THE COURT: How about 258?

6 MR. KEPHART: 258. I can't read it right.

7 MR. SCHIECK: Can I ask a couple questions on voir
8 dire, Your Honor?

9 THE COURT: Yes-

10 VOIR-DIRE EXAMINATION

11 BY MIZ SCHIECK:

12 Q Where was that picture taken?

13 A That would either be -- it's hard to say because
14 booking photos are shown that way and we also have stand-
15 ups taken by ID. So if compared to my photographs that I
16 have from ID, and it shows a front and side view, it's
17 potentially that. But it could also potentially be a booking
18 photo based on position.

19 Q Was the photograph taken at her house?

20 A Some were taken at her house and some were taken
21 at the jail.

22 Q You took facial photographs of her at her house
23 when she was arrested, correct?

24 A Correct,

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THOWSEN - DIRECT

1 MR. SCHIECK: Nothing further, I have no
2 objection, Your Honor.

3 THE COURT: 258 is admitted.

4 (State's Exhibit 258, admitted)

DIRECT EXAMINATION (Continued)

6 BY MR. KEPHART:

7 Q Obviously, before that photo was taken, you had to
8 meet the defendant, is that correct?

9 A Yes.

10 Q Tell me about how that went.

11 A We arrived at the residence with the Lincoln County
12 Sheriff's deputy. He walked up with us and -- if I believe
13 correctly, the garage door was open and he began talking to
14 the younger sister of Ms, Lobato, And she told him and us
15 that Blaise was in the shower and she'd be out in just a
16 minute. And she invited us to step into the living room to
17 wait

18 Q Okay, Now, the sheriff with you from Lincoln
19 County, was he dressed in a uniform?

20 A Yes, he was.

21 Q And when you work investigations like this, do you
22 wear a uniform?

23 A No,

24 Q How do you dress?

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1 A It was not very long. It was probably less than five
2 minutes,

3 Q Okay. Was there anyone else there besides her and
4 her sister?

5 A No, not initially,

6 Q Okay. And what was your initial contact with her?
7 Did you say anything to her? Tell us how that went. What
8 happened?

9 A Yes, I should also point out, too, that when I say
10 that we're wearing plain clothes, we would also be armed with
11 a handgun and with a badge identifying us as police, on our
12 waist. I would have a leather notebook that is embossed with
13 a large badge on the front, and it says homicide on it. And
14 when Ms. Lobato first came out I introduced myself as a
15 homicide detective from Metro and then introduced my
16 partner. And I told her that we were here to talk to her about
17 what had happened a short time ago in Las Vegas, a few
18 weeks ago, and that I understood that somebody had attacked
19 her,

20 Q Okay. And what was her response to that, if
21 anything?

22 A Initially, she didn't start to say anything, and I
23 mentioned to her that her -- her vehicle and her license plate
24 was very distinct. With that, she started to offer that

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1 A We wear plain clothes. We'll either wear a suit
2 and tie or sometimes more casual without a tie. Just plain
3 clothes,

4 Q On this particular day do you remember how you
5 were dressed?

6 A It was plain clothes. Probably not a suit for a drive
7 to Panaca.

8 Q Okay, And you said that you were allowed to step
9 inside. Did the,sheriff go in with you?

10 A Initially he did,

11 Q Okay, So who was all there?

12 A When we first walked into the living room it was the
13 sheriff's deputy, myself and Detective LaRochelle, And then
14 the sheriff's deputy, I believe, stepped back into the other
15 room or the garage with Ms. Lobath's sister.

16 Q Okay. And where was the crime scene analyst?

17 A She was waiting outside in her car, down the road.

18 Q So she followed you as well?

19 A Yes,

20 Q All right, Now, you said the defendant here had
21 been in the shower and had come out from the shower?

22 A Yes,

23 Q Do you know how long it was that you were waiting
24 for her to -- before she came out of the shower?

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1 somebody could have borrowed her car. And at that point I
2 told her that I knew that she'd been hurt in the past and she
3 lowered her head and started crying. And she made the
4 statement that I didn't think anybody would miss him.

5 Q You hadn't indicated one way or the other whether
6 or not you were investigating a murder, did you?

7 A No,

8 Q You did say you were there as homicide?

9 A As homicide detectives.

10 Q And you didn't -- you certainly didn't tell her the sex
11 of the individual that was the victim, did you?

12 A No.

13 THE COURT: We're going to be breaking at this
14 time. You may step down from the stand.

15 THE WITNESS: Thank you, Your Honor,

16 THE COURT: Ladies and gentlemen of the jury, we'll
17 be resuming tomorrow at 11:00 a.m. At 11:00 a.m, please be
18 in the hallway. The bailiff will meet you there to return you to
19 your seats in the courtroom.

20 To accommodate a scheduling issue, we will be
21 calling a defendant's witness out of order at 11:00 o'clock and
22 then coming back to Detective Thowsen thereafter.

23 During the evening recess, the Court admonishes
24 you that you are not to talk or converse among yourselves nor

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1 with anyone else on any subject connected with this trial.
 2 You're not to read, watch or listen to any report of or any
 3 commentary on the trial or any person connected with the
 4 trial, by any medium of information, including, without
 5 limitation, newspaper, television, radio and Internet. And
 6 you're not to form or express any opinion on any subject
 7 connected with the trial until the case is finally submitted to
 8 you.

9 You all have a good evening. We'll see you at 11:00
 10 o'clock. The jury may exit at this time.

11 (Jurors recessed at 17:04:32)

12 THE COURT: Is there anything that needs to be
 13 made of record?

14 MS. GREENBERGER: Just briefly, Your Honor.

15 We just want to make sure -- 'cause I know the
 16 Court mentioned to the jury they may be staying late on Friday
 17 night, And we're just concerned 'cause we do have a number
 18 of witnesses and ws, haven't got to put on our case yet.
 19 Everyone, of course, can wait and stay in town, and we'll work
 20 with that, but we just wanted to give the Court notice that we
 21 just want an opportunity to present our case.

22 THE COURT: Obviously.

23 MS. GREENBERGER: That's all,

24 THE COURT: We'll see everybody at 11:00 o'clock

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AFFIRMATION
 Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Transcript filed in District Court, Case No. C177394 does not contain the social security number of any person.

Lori Lutz
 Transcriber

4/29/07
 Date

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1 tomorrow.

2 MS. DiGIACOMO: Have a good night.

3 THE COURT: You too.

4 COURT ADJOURNED, PROCEEDINGS CONTINUED TO
 5 SEPTEMBER 26, 2006
 6 * * * * *

CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A "ROUGH DRAFT" TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-EN1 I I-LED MATTER.

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