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CLARK COUNTY, NEVADA

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CLERK

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 13  
VOLUME XIII**

**WEDNESDAY, SEPTEMBER 27, 2006**

**COURT RECORDER:**

**LISA LIZOTTE  
District Court**

**TRANSCRIPTION BY:**

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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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1 LAS VEGAS, NEVADA WEDNESDAY, SEPTEMBER 27, 2006

2 **PROCEEDINGS**

3 (THE PROCEEDINGS BEGAN AT 10:45:45)

4 (Jurors are present)

5 THE COURT: Good morning, The record shall  
6 reflect that we're resuming trial in State versus Kirstin Blaise  
7 Lobato under case number C-177394. In the presence of the  
8 defendant together with her three counsel, the two  
9 prosecuting attorneys and the ladies and gentlemen of the  
10 jury.

11 As Dr. Laufer will be returning on Thursday and was  
12 not able to be here with us today we are returning to the  
13 State's case in chief and resuming with the testimony by  
14 Detective Thomas Thowsen at this time. Would the bailiff  
15 please call the hall for the detective to return to the witness  
16 stand.

17 (Pause in the proceedings)

18 THE COURT: Yes, Ill take this opportunity to then  
19 discuss scheduling with the jury. The Court and counsel had a  
20 discussion at the end of the day yesterday about the pace of  
21 the proceedings and where we're at in terms of meeting our  
22 timeline to be concluded by this Friday. It appears now that it  
23 would be very late Friday evening when all of the testimony  
24 would be concluded. After the testimony is concluded, as the

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NAME DIRECT CROSS REDIRECT RECROSS

STATE'S WITNESSES

Thomas Thowsen 5 83 140 162

A \* \* \* \* \*

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THOWSEN - DIRECT

1 Court advised you at the start of the trial, the Court will then  
2 instruct you on the areas of law that you need to be instructed  
3 on. Thereafter you would hear the closing arguments from  
4 both sides and initiate your deliberations thereafter. I think  
5 this would put us into the early morning hours of Saturday if  
6 we do that, Detective Thowsen has now arrived so I am going  
7 to be speaking with you later this afternoon about that.

8 The witness may return to the stand and the clerk  
9 will be placing him under oath at this time,

10 **THOMAS THOWSEN, STATE'S WITNESS, SWORN**

11 THE CLERK: Please be seated. State your name  
12 and spell it for the record, please,,

13 THE WITNESS: My name is Thomas Thowsen,  
14 T-H-O-W-S-E-N.

15 **DIRECT EXAMINATION (continued)**

16 BY MR. KEPHART:

17 Q Detective, when we broke during your testimony on  
18 Monday we were at the point where you were discussing with  
19 the jury that you had contacted the defendant, had identified  
20 the defendant in the courtroom and you had contacted her at  
21 her parents' residence. Do you recall that testimony?

22 A Yes, I do.

23 Q As -- now you indicated that you went there with a  
24 sheriff from Pioche, that's the Lincoln County Sheriff's

X111-5

THOWSEN - DIRECT

1 Department?  
 2 A I believe it was a sergeant from the Lincoln County  
 3 Sheriff's Department.  
 4 Q Showing you Exhibit 182, you indicated that this was  
 5 the house that you went to Do you also recall testifying that  
 6 the sheriff actually went into the garage and came into contact  
 7 who you believed to be the defendant's sister?  
 8 A That's correct  
 9 Q Okay. How is that you gained entrance to the  
 10 house? A I believe once he had a conversation with the  
 11 sister in the garage that we were invited in the house and  
 12 followed him through the garage into the house,  
 13 Q Okay. And you were with Detective LaRochelle, is  
 14 that correct?  
 15 A Yes, it is.  
 16 And the sheriff was with you as well?  
 17 A Yes.  
 18 And you said that the crime scene analyst stayed  
 19 outside?  
 20 A Yes, she was sitting in her vehicle just down the  
 21 road.  
 22 And was there anybody else with you and  
 23 LaRochelle and the sheriff?  
 24 A No.

X111-6

THOWSEN - DIRECT

1 and introduced myself as a homicide detective from Metro  
 2 Police and my partner, LaRochelle, as a homicide detective  
 3 from Metro Police as well.  
 4 Q And what happened after you introduced yourself?  
 5 A I explained to her that we were there to talk to her  
 6 about an incident that had recently happened in Las Vegas in  
 7 which I'd understood that she'd been attacked and had to  
 8 defend herself and mentioned that I noticed that her car was -  
 9 parked out front and that the license plate was very distinct.  
 0 At that point she made a comment that somebody could have  
 1 been borrowing her car. I immediately followed with the  
 2 statement that I knew that she'd been hurt in the past and  
 3 with that she began to sob and lowered her head,  
 4 Q And what did she say then?  
 5 A She said that I didn't think anybody would miss him.  
 6 Q And you hadn't said anything to her about who the  
 7 attacker was or anything like that, had you?  
 8 A Nothing at all.  
 9 Q You hadn't said anything to her that you were  
 10 investigating a murder or anything like that, did you?  
 11 A No,  
 12 Q Now after she had explained to you that she didn't  
 13 think anybody would miss him, what did you do after that?  
 14 A At that point I gave her a "Rights of Person Arrested

X111-8

THOWSEN - DIRECT

1 Q Okay. And there came a point in time that you said  
 2 that when you got into the house you waited for a period of  
 3 time until the defendant came out of the shower, I guess you  
 4 were told?  
 5 A That's —  
 6 Q Isn't that another room?  
 7 A Yes.  
 8 Q And where were you waiting during this period?  
 9 A In the livingroom area.  
 10 Q Okay. And were you waiting with the sheriff and the  
 11 sister at that time?  
 12 A And Detective LaRochelle.  
 13 Q Okay. There came a point in time that the sheriff  
 14 and the sister left?  
 15 A Yes  
 16 Q And went where?  
 17 A I believe back into the garage area.  
 18 Q Okay.  
 19 A It was out of our view.  
 20 Q Okay. And at what point in time did that occur?  
 21 A Once Ms. Lobato came out from the back.  
 22 Q Okay. Tell us what happened once she came out of  
 23 the back again?  
 24 A When she came out of the back I approached her

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THOWSEN - DIRECT

1 card and asked her if she would read it aloud to me, which she  
 2 did, and then she signed it and dated ft. I asked her if she  
 3 understood and was willing to speak with us and she said that  
 4 she was  
 5 Q Okay.  
 6 MR. KEPHART: May I approach the witness, Your  
 7 Honor?  
 8 THE COURT: Yes.  
 9 BY MR. KEPHART:  
 10 Q Okay. I'm going to show you what's been marked  
 11 as State's Proposed Exhibit 123 and I'm also going to leave up  
 12 here State's Proposed Exhibit 124 because I'm going to talk to  
 13 you about that in a minute here. But could you look at State's  
 14 Proposed Exhibit 123 and tell me if you can -- tell me what  
 15 that is?  
 16 A The card at the top is xeroxed copy of the Rights of  
 17 Person Arrested card that I gave to Ms. Lobato on that date.  
 18 Q Okay. How can you recognize that as one that you  
 19 gave to her?  
 20 A It has my signature and P number at the bottom. It  
 21 has Ms. Lobato's signature as well as the date of 7/20/01, the  
 22 time of 5:55 p.m., and then I've put the event number of the  
 23 case below that,  
 24 Q Okay. And who wrote in her signature, the time,

X111-9

THOWSEN - DIRECT

1 and the date?  
 2 A Ms, Lobato did,  
 3 Q Okay, And you indicated that this is something that  
 you give to individuals to discuss with them or to advise them  
 of their rights?  
 6 A That's correct  
 7 Q Okay, At this point in time had she been arrested?  
 8 A No,  
 9 Q And also on 123 is a series of photographs?  
 10 A Yes\_  
 11 Q And what are those photos taken of?  
 12 A Those are pictures of Ms. Lobato's face taken with  
 13 the camera at the jail.  
 14 Q At the jail?  
 15 A Yes,  
 16 Q Okay  
 17 MR. KEPHART: Your Honor, move to admit  
 18 Exhibit 123,  
 19 MR. SCHIECK: No objection, Your Honor.  
 20 THE COURT: Granted.  
 21 (State's Exhibit No. 123 admitted)  
 22 BY MR. KEPHART:  
 23 Q And can you look at 124 as well? Can you tell us  
 24 what that is?

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THOWSEN - DIRECT

1 THE COURT: Is it Proposed 124?  
 2 MR. KEPHART: State's Proposed Exhibit 124, Your  
 3 Honor, Yes.  
 4 THE COURT: Thank you,  
 5 THE WITNESS: Yes, I can.  
 6 BY MR. KEPHART:  
 7 Q What is it?  
 8 A These are consent to search cards signed by Ms,  
 9 Lobato,  
 10 Q Okay, And when were those executed?  
 11 A On 7/20/2001.  
 12 Q Okay. Do you recall at what point in time you  
 13 executed those cards when -- in reference to the Rights of  
 14 Person Arrested?  
 15 A I do,  
 16 Q At what time? At what --  
 17 A I have -- even though there's not a place for the  
 18 time I always put the time on here because it's always asked.  
 19 Q Okay,  
 20 A And it's 18:41 hours which would be 6:41 in the  
 21 evening\_  
 22 Q Okay. Now she had written here 5:55 p.m., 7/20.  
 23 That was when you gave her her Rights of Persons Arrested  
 24 card --

XIII-11

THOWSEN - DIRECT

1 A Yes,  
 2 Q -- or had her read that?  
 3 A Yes.  
 4 Q And then that one is what, 6:41?  
 5 A Yes.  
 6 Q Okay. So I take it something transpired in between  
 7 those and this?  
 8 A Yes,  
 9 Q And what was that?  
 10 A That was a conversation and a taped statement with  
 11 Ms. Lobato.  
 12 Q In between who?  
 13 A Between myself, Detective LaRoche and Blaise  
 14 Utak).  
 15 Q Okay. In reference to the Rights of Arrested --  
 16 Rights of Persons Arrested here on this card that you had --  
 17 A Yes,  
 18 Q -- her sign, is that something that you provide or is it  
 19 -- is it a standard card that is provided by, at least in this case,  
 20 a detective when asking a person giving a person their rights  
 21 in reference to questioning them?  
 22 A Yes, it is,  
 23 Q And in this particular case you actually had the   
 24 defendant sign it and then she dated and put the time in. Is

XIII-12

THOWSEN - DIRECT

1 that -- is the date and time in the correct place?  
 2 A No, it's not.  
 3 Q Okay. But it is her handwriting that she did --  
 4 A Yes, it is.  
 5 Q -- you witnessed her do that? Did you ask her  
 6 whether or not she understood what she was signing here?  
 7 A Yes, I did.  
 8 Q Okay, Now you indicated that she signed this card,  
 9 How do you give it to somebody? I mean do you read it to  
 10 them, do you -- do you have them read it? Does somebody  
 11 else read it or tell us how it happened?  
 12 A The method that I prefer to do is ask the person,  
 13 you know, if they can read and write the English language. If  
 14 they can I will present the card to them and ask them to read  
 15 it to me out loud. This way I know that they're taking their  
 16 time to read the card, that I didn't read it too quickly for them,  
 17 they didn't understand something. They can take their time  
 18 and just read it as many times as they need to to make sure  
 19 that they're clear on it. Once they have read it ask them if  
 20 they understand that and they're willing to speak with me.  
 21 And at that point if they are they will sign the card and date  
 22 and time it, return it to me, and place it in the file --  
 23 Q Okay,  
 24 A -- at that point,

XIII-13

THOWSEN - DIRECT,

1 Q Okay. So she indicated to you that she understood  
2 what she was signing?

3 A Yes,

4 Q And she understood that and agreed that she would  
5 be speaking with you?

6 A Yes,

7 Q Okay. And up to this point you hadn't discussed  
8 anything in reference to the actual murder of Duran Bailey,  
9 had you?

10 A No.

11 Q Okay. After she signed the card was she placed  
12 under arrest?

13 A No, she was not.

14 Q And --

15 A I should also point out that as I give this card to  
16 someone that I'm going to interview and I explain to them,  
17 even though it says Rights of Person Arrested card that they're  
18 not under arrest, that they're willing to talk to them [sic] about  
19 a serious situation that could possibly result in that, and they  
20 need to be aware of these particular rights to begin with.

21 Q That's what you did here?

22 A Yes.

23 Q Okay.

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

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THOWSEN - DIRECT

1 A It was in the livingroom. She was actually sifting, I  
2 believe, on the ottoman and I think I was sitting on the couch  
3 right next to it.

4 Q The ottoman would be what? Something that you  
5 put your feet on in front of the couch?

6 A Yes, in front of a chair.

7 Q Okay. And where was Detective LaRoche?

8 A He was off to my right side somewhere behind me.

9 Q Okay. Before questioning her you realized that she  
10 had just come out of the shower?

11 A That's what we were told and she looked like her  
12 hair was still damp, like she'd just come out of a shower.

13 Q Okay. Did she indicate to you that she had any  
14 concerns or anything with her health that would prevent her  
15 from being able to talk to you?

16 A No, not at all

17 Q She give you any indication to you at all that would  
18 cause you some concern with questioning an individual in —  
19 under the nature of the type of charges that you knew were  
20 involved her?

21 A No.

22 Q And you had testified earlier that when you talked to  
23 Laura Johnson you had actually tape recorded her statement  
24 and you have a copy of the tape recorded statement in your

XIII-16

THOWSEN - DIRECT

1 THE COURT: Yes,

2 MR. KEPHART: Your Honor, move to admit  
3 State's Proposed Exhibit 124,

4 MR, SCHIECK: No objection.

5 THE COURT: Granted.

6 (State's Exhibit No. 124 admitted)

7 BY MR, KEPHART:

8 Q Now, detective, after the defendant had read her  
9 rights and you discussed them with her, did she -- she told you  
10 she would talk to you?

11 A Yes, she did.

12 Q Did she at any time ever ask that her parents be  
13 present or anything like that?

14 A No, she did not.

15 Q Okay, You're aware that she was an adult?

16 A Yes.

17 Q Okay. And do you recall during any period of time  
18 that you -- before you started to question her whether or not  
19 her sister came back in the room?

20 A Not that I recall.

21 Q Okay. The sheriff, did he come back in the room?

22 A No,

23 Q Okay And where did it take place, the discussion  
24 and the signing of the rights within that house? Where was it?

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THOWSEN - DIRECT

1 file?

2 A Yes, I do.

3 Q Okay. And we talked a little bit that in this particular  
4 case your assignment was to interview the witnesses?

5 A Yes,

6 Q And that you would tape record statements that they  
7 would provide?

8 A That's correct.

9 Q Jumping ahead a little bit, do you remember even  
10 going back up to Panaca and recording a statement given to  
11 you by a Ms, Allen -- Diann Allen?

12 A Yes,

13 Q Okay. And you recorded that?

14 A Yes.

15 Q Okay. But that was some time later but it was  
16 during the same investigation?

17 A Yes, there were several people back up there that  
18 we contacted and took statements from,

19 Q Okay. In this particular case did you inform the  
20 defendant your intention of tape recording her?

21 A Once I'd spoken with her for a few minutes and  
22 she'd explained to me basically what had happened I told her  
23 that what I would like to do now is to get a tape recorded  
24 statement from her so we have exactly in her words what she

XIII-17

THOWSEN - DIRECT

1 wants to express.  
 2 Q Okay, Can you — do you have a copy of her tape  
 3 recorded statement with you?  
 4 A Of the transcribed part?  
 5 Q Transcribed portion?  
 6 A Yes, I do.  
 7 Q Can you turn to that in your file?  
 8 A I can.  
 9 (Pause in the proceedings)  
 10 Q Are you at it yet?  
 11 A Tam.  
 12 Q Okay. With respect to the transcription of the  
 13 statement that's -- this is something provided by the Las Vegas  
 14 Metropolitan Police Department?  
 15 A The statement is, yes,  
 16 Q Yeah. And on the cover of the statement insignia,  
 17 "Voluntary statement," do you give information as to who the  
 18 person is that's giving the statement?  
 19 A Yes.  
 20 Q Do you have their name?  
 21 A Yes,  
 22 Q Other identifiers as well?  
 23 A Yes.  
 24 Q Like address, Social Security number, and a date

X111-18

THOWSEN - DIRECT

1 A That's correct,  
 2 Q So there's approximately 12 minutes in between the  
 3 portion where she signs this until you tape record it?  
 4 A That's correct,  
 5 Q Okay. Tell us what is happening in that 12 minutes  
 6 with regards to -- now you did say that you discussed some  
 7 things with her. Tell us what you talked to her about?  
 8 A Yes. As I explained previously whenever we talked -  
 9 with her -- it's a suspect or a witness, what we will do is before  
 10 we take a tape recorder and put it in front of them that might  
 11 make them uneasy is we will talk to them about what  
 12 information they have. That way we can sort of make an  
 13 outline as the information they have, it helps us get  
 14 information from them so that they don't just clam up right  
 15 away and not want to talk to us. Just in case after we get  
 16 done asking them they don't want to actually give a tape  
 17 statement we'll at least have that information from them. And  
 18 it give us an outline to go by So that we have a feel for in what  
 19 order we're going to ask certain questions to make sure that  
 20 everything is explained and if we see a discrepancy we can  
 21 then mention, previously did you mention "A" to me and now  
 22 you've said something differently,  
 23 Q Okay, And in this particular case after discussing  
 24 things with her for approximately 12 minutes do you feel that

XIII-20

THOWSEN - DIRECT

1 of  
 2 A Date of birth  
 3 Q -- date of birth and stuff? Okay. And do you also  
 4 give information or put information on there as to what times  
 5 the actual statements take place, who's with you, that type of  
 6 information?  
 7 A Yes,  
 8 Q Is that done in this particular case here?  
 9 A Yes, it is.  
 10 Q Okay. And can you tell us just what information is  
 11 presented in -- at least in the heading of this to tell us who  
 12 was there and who -- at what time did you give this, and what  
 13 date?  
 14 A On the first page I can tell that it was on 7/20 of  
 15 2001 at 18:07 hours, which is 6:07 in the evening. The person  
 16 giving the statement is Kirsten Blaise Lobato and also present  
 17 is Detective Jim LaRochelle. And location is at her home  
 18 address at 670 Calloway in Panaca, Nevada.  
 19 Q Okay, Detective, with regards to the Exhibit 123  
 20 you'd indicated that she wrote the time of when she signed  
 21 that What time is that?  
 22 A That time is 5:55 p.m.  
 23 Q And you've testified that the statement that was  
 24 recorded is on the same day at 6:07, is that correct?

X111-19

THOWSEN - DIRECT

1 you developed that rapport with her that you needed for  
 2 purposes of getting her to give you a taped statement?  
 3 A Yes,  
 4 Q And she agreed to give you a taped statement?  
 5 A Yes,  
 6 Q Okay. The tape recorder that you use -- that you  
 7 used back at least in July of 2001 do you recall was it a  
 8 handheld type model or can you tell us about that a little bit?  
 9 A Yes, The tape recorder I would have been using in  
 10 2001 is a -- Lanier is the brand and it's a small black micro-  
 11 cassette recorder.  
 12 Q Is it something that you would put out on the table  
 13 in front of somebody, something you'd leave concealed in your  
 14 jacket or what?  
 15 A My habit would be to hold it in my hand that way I  
 16 could -- as I'd ask a question, ask them, I would hold it a little  
 17 bit closer to them to make sure that it would pick up the sound  
 18 as possible.  
 19 Q Have you had on occasion situations where you're  
 20 recording somebody's statement and it's hard to hear the  
 21 statement given by the other -- by the individual you're asking  
 22 questions of?  
 23 A Yes, Sometimes people are talking very quietly or  
 24 they'll have an air-conditioning sound in the back that makes it

THOWSEN - DIRECT;

1 difficult to hear.

2 Q In this particular case did you have any of those  
3 difficulties with the tape recording the statement given by the  
4 defendant?

5 A I don't believe so,

6 Q Okay. And you haven't -- you've had -- you have  
7 had an opportunity to review that since then?

8 A Yes,

9 Q And you've heard that tape recording?

10 A Yes

11 Q Okay.

12 MR. KEPHART: May we approach, Your Honor.

13 THE COURT: Yes,

14 (Off-record Bench Conference)

15 BY MR. KEPHART:

16 Q Detective, prior the case being submitted to the  
17 District Attorney's office for prosecution were you involved in  
18 generating copies not only the transcriptions but -- and the  
19 tapes as well of individuals that had given statements here?

20 A Yes,

21 Q And you're aware that a tape was actually generated  
22 with the interview of Kirstin Blaise Lobato?

23 A That's correct,

24 MR. KEPHART: Okay. I move to admit 125A, Your

X111-22

THOWSEN - DIRECT

1 Q A little too fast, okay. But that is -- and you had an  
2 opportunity to review the transcript as it -- as it played. Was it  
3 consistent with the -- what's shown with the words on the  
4 transcript as well?

5 A Yes, it is.

6 Q Okay. And that is your voice but going a little fast?

7 A Yes, it is.

8 Q And we're talking about the actual interview of the  
9 defendant on July the 20<sup>th</sup> of 2001 at her house, which you  
10 just testified about prior as you were prior -- giving her her  
11 Rights of Persons Arrested card?

12 A Yes,

13 Q Okay.

14 MR. KEPHART: Go ahead and play it then, Your  
15 Honor.

16 (State's Exhibit No. 125A is played)

17 MR. KEPHART: Your Honor, with respect to 2001  
18 would the Court take judicial notice of what I would say two  
19 weeks prior to July 20<sup>th</sup> of 2001 would be -- what the date  
20 would be?

21 THE COURT: The clerk has just retrieved the  
22 calendar, July 20<sup>th</sup>, 2001 the Court takes judicial notice was a  
23 Friday, two weeks prior would be Friday, July 7th,

24 MR. KEPHART: Okay. And in June what day is

XIII-24

THOWSEN - DIRECT

1 Honor..

2 MR. SC.HIECK: Based on discussions at the bench,  
3 Your Honor, no objection.

4 THE COURT: Granted.

5 (State's Exhibit No, 125A admitted)

6 MR. KEPHART: Your Honor, at this time we had  
7 prepared the actual statement in a scrolling form to allow the  
8 jury to hear the full statement and we wanted to present that  
9 at this time.

10 THE tOURT: You may proceed.

11 MR. SCHIECK: For the record, Your Honor, we  
12 reviewed that.

13 THE COURT: Thank you,

14 MR. SCHIECK: No objection,

15 BY MR. KEPHART:

16 Q Detective, I'm going to play a portion of this, I'm  
17 going to -- and then I'm going to stop it and ask you if you can  
18 identify this, okay?

19 (State's Exhibit No. 125A is played)

20 BY MR. KEPHART:

21 Q Okay. Detective, do you recognize who that voice is  
22 in reference to this --

23 A It's sounds like my voice being played a little bit fast  
24 on the machinery.

X111-23

THOWSEN - DIRECT

1 Father's Day, if it's the third Sunday in June 2001, Your Honor?

2 THE COURT: Court takes judicial notice that the  
3 third Sunday in June of the year 2001 was June 17th,

4 MR. KEPHART: Would the Court also take judicial  
5 notice of what day -- Friday the 13<sup>th</sup>, is there any Friday the  
6 13ths in May, June or August?

7 THE COURT: The Court takes judicial notice that  
8 there are no Friday the 13ths in the year 2001 during the  
9 months of May, June or August,

10 MR. KEPHART: Is there one in July?

11 THE COURT: The Court takes judicial notice that in  
12 the month of July of the year 2001 there is a Friday the 13th,

13 MR. KEPHART: Thank you, Your Honor.

14 BY MR., KEPHART:

15 Q Detective, after the defendant finished her  
16 statement with you was she placed under arrest?

17 A Yes, she was.

18 Q And this was all right here at the -- at her parents  
19 house in Panaca?

20 A Yes.

21 Q Okay. After she was placed under arrest, then what  
22 happened?

23 A We had the crime scene analyst, Maria Thomas,   
24 drive down to the house, come in and take some photographs

X111-25

THOWSEN - DIRECT

1 of Ms. Lobato We then placed her in handcuffs and started to  
2 escort her from the house,

3 Q Okay, Did there come a point in time where you  
4 actually showed her a photograph of the -- of the victim in this  
5 matter?

6 A Yes, it was prior to exiting the house, before leaving  
7 that room,

8 Q And what was the photo, where did you get the  
9 photo? A It was a photo from police records of the victim  
10 in this case, Duran Bailey,

11 Q It wasn't one of the ones of him at the scene or  
12 anything?

13 A No, it was taken in life,

14 Q Okay. And do you recall the date of when that  
15 photo was taken?

16 A It would be on the photograph I believe.

17 Do you have that with you?

18 A I do.

19 Can you -- can you look at that?

20 A I believe the date of the photo should be 10/18 of  
21 1999,

22 MR. KEPHART: Approach the witness, Your Honor?

23 THE COURT: You may,

24 //1

X111-26

THOWSEN - DIRECT

1 laughing a little bit and she'd kind of settled down a little bit,  
2 When I showed her the photograph her eyes began to tear up  
3 all over again and she said something to the effect, I can't  
4 recognize him, I put him out of my mind.

5 Q Okay. And now you indicated that you had called  
6 for the crime scene analyst and she came in and she took  
7 photos of the defendant at her house?

8 A Yes,

9 Q And did you also have the crime scene analyst take  
0 photographs of the car as well?

1 A Yes,

12 Q Did you know the car that was going to be towed?

13 A Yes,

14 Q Okay, And with respect to the statement that was  
15 just given, there were points in there you could hear some  
16 clicking and that. At any time were you -- did you turn the  
17 tape recorder off other than what you actually -- is actually  
18 seen on the tape where you turn the tape over?

19 A No. As a matter of fact that's why when she asked  
20 if she could blow her nose, what happened is she got up from  
21 the ottoman, walked down the hallway into the bathroom, and  
22 Detective LaRoche and I got up with her and walked along  
23 next to her with the tape recorder hanging out here for two  
24 reasons. So we could show the tape recorder was still going in

X111-28

THOWSEN - DIRECT

1 BY MR, KEPHART:

2 Q I'm showing you State's Exhibit Number 16. Do you  
3 recall that photo of Mr. Bailey at the scene?

4 A Yes, I do

5 Q Okay, And the photograph that you have from  
6 1999, that was approximately two years earlier --

7 A Yes

8 Q -- or less -- or a little less than two years?

9 A Yes

10 Q Oka. The photo of the -- at the scene, does he  
11 appear -- other than the fact that he's not alive any longer  
12 does it appear to be a difference in appearance in him  
13 specifically with his hair?

14 A His hair appears to be quite similar,

15 Q Okay.

16 A Especially he has a large -- like a balding area on the  
17 side there.

18 Q Okay, And the photograph that you showed the  
19 defendant -- after you showed her the photograph what was  
20 her response?

21 A She looked at the photograph and upon seeing it her  
22 eyes began to tear up again because she'd been crying initially  
23 during our contact with her and then as time went on, as you  
24 heard when she's blowing her nose in the bathroom, she was

X111-27

THOWSEN - DIRECT

1 case there's any conversation and so that we could keep an  
2 eye on her because there were so many things on the walls we  
3 were concerned about.

4 Q Okay, Let me -- let me get at that. You said there  
5 were so many things on the wall, so you actually walked down  
6 the hallway of the house?

7 A Yes,

8 Q Matter of fact you got a consent to search from the  
9 defendant as to her room of the house, is that correct?

10 A That's correct.

11 Q And you got a consent to search from her for the --  
12 for the Firebird?

13 A Yes,

14 Q And you got one -- you got a buccal swab from her?

15 A I believe it's a Fiero rather than a Firebird,

16 Q Oh, I'm sorry, detective. I said Firebird? A Fiero --  
17 a Pontiac Fiero, Okay, And so you said that you followed her  
18 down the hall, Now she had -- she had just -- prior to her  
19 blowing her nose she had just indicated about using her knife  
20 and cutting this man's penis. Did she -- you'd asked her about  
21 the knives and if she was familiar with the butterfly knife, and  
22 did you have the indication or sense based on what she was  
23 telling you that she knew how to use a knife?

24 A Yes.

X111-29



THOWSEN - DIRECT

1 Q Okay. And you said there was some things on the  
2 wall and it gave you some concern?

3 A Yes,

4 Q Tell us about that?

5 A The walls of the house were decorated with various  
6 straight razors, knives, different martial arts weapons,  
7 nunchuku, would be the piece of wood with a chain or a rope  
8 in the middle and another piece wood. Like two short batons,  
9 tonfa, which is like a side-handled baton, like the police would  
10 use only it's shorter and made strictly out of wood. These  
11 things were all over the walls in the house,

12 Q Okay. Something easily accessible?

13 A You just reach on the wall and grab it

14 Q Okay. So you followed her down the hall?

15 A Yes.

16 Q All right. And now before you left to come back to  
17 Las Vegas, obviously you said that you had arrested the  
18 defendant. Did you place her in handcuffs?

19 A Yes, just prior to walking out to the police car,

20 Q Okay. Did anything else happen after the taped  
21 statement inside the house prior to walking out?

22 A As we were walking out her mother had come home  
23 and spoke briefly — walked up to us and spoke briefly to us  
24 and we'd explained that Blaise was under arrest for a crime

XIII-30

THOWSEN - DIRECT

1 A No.

2 Q Never told you anything that would -- that would  
3 cause you concern --

4 MR. SCHIECK: Objection, asked and answered,  
5 Your Honor. He said she didn't say anything.

6 THE COURT: Sustained.

7 BY MR. KEPHART:

8 Q Never said anything?

9 A No.

10 Q Okay. Were you able to then walk her to the -- to  
11 your police vehicle and bring her back to Las Vegas?

12 A As we walked to the front yard then her father, Mr  
13 Lobato, had arrived at this residence —

14 Q Okay,

15 A -- and he asked if he could kiss her goodbye in our  
16 presence.

17 Q And did that happen?

18 A That did happen.

19 Q And was there any conversation between the two?

20 A Yes.

21 Q Did the defendant say anything?

22 A Yes, and again I have a quote if you'd like me to  
23 refer to the quote.

24 Q That was on page 18 of your report?

XIII-32

THOWSEN - DIRECT

1 and going back to Las Vegas. And Blaise spoke with her  
2 mother in front of us and said something to the effect that she  
3 told her she'd done -- did what she did and now she has to  
4 pay for it. Something to that effect.

5 Q Detective, do you have a copy of your police report?

6 A I do.

7 Q Could you look at page 17 for a minute? Is it --  
8 you're testifying that she said "something to the effect," I  
9 want you to tell us whether or you documented what was said  
10 exactly?

11 A Yes, I have the exact quote here,

12 Q Can you tell us what was said exactly?

13 A "Mom, I did it, now I have to do what I have to do,

14 Q Okay. And what was her demeanor -- the  
15 defendant's demeanor when she told her mom that?

16 A She was upset,

17 Q What was the -- her mother's demeanor when she  
18 was told that?

19 A Pretty quiet actually.

20 Did she ever say anything to you, the defendant's  
21 mother?

22 A No

23 She stop you -- try to stop you from taking her  
24 daughter?

XIII-31

THOWSEN - DIRECT

1 A Yes, it is,

2 Q Okay. Can you tell me exactly what she told her  
3 dad?

4 A "She began to cry and she said, 'I'm sorry, daddy.  
5 Told you I did something awful.'"

6 Q "I'm sorry, daddy. Told you I did something awful?"

7 A That's correct

8 Q Now in her statement she indicated that she had  
9 gotten rid of her clothes, do you remember that?

10 A Yes.

11 Q And she indicated however though she had her  
12 shoes? A Yes,

13 Q And that — were you there when she provided some  
14 shoes to the crime scene analyst?

15 A Yes.

16 Q And you said that the -- that the crime scene analyst  
17 had come in and taken photos of the defendant and we've  
18 seen some photos here, Do you -- do you know why she  
19 would have been taking pictures of her hands?

20 A To document any injuries that would be present.

21 Q I'm showing you Exhibits -- well, 103. See that?

22 A Yes.

23 Q And 103 shows the -- her palms of her hands?

24 A That's correct,

XIII-33

THOWSEN - DIRECT :

1 Q And 104 is the back of her hands?  
 2 A Yes.  
 3 Q Is that right, do you have 104? She wearing any  
 4 type of jewelry or anything there?  
 5 A No, she is not.  
 6 Q And she indicated to you that the jewelry and  
 7 everything that she had nothing had been taken from her or  
 8 anything like that?  
 9 A That's what she said, yes,  
 10 Q Okay. Now with respect to leaving the house and  
 11 taking her to the car and knowing what you had talked about  
 12 inside the car, you said that you ran into her father?  
 13 A Yes.  
 14 Q Did you have concerns about her father?  
 15 A Yes,  
 16 MR. SCHIECK: Objection, relevance, Your Honor,  
 17 MR, KEPHART: Can we approach?  
 18 THE COURT: Counsel, may approach,  
 19 (Off record Bench Conference)  
 20 THE COURT: The objection's overruled.  
 21 BY MR. KEPHART:  
 22 Let me -- let me back up a little bit before that In  
 23 listening to the tape there comes a point in time where you  
 24 come to a conclusion of the tape and you end it. The tape —

X111-34

THOWSEN - DIRECT

1 hearsay,, Everything that he asked him is now hearsay as what  
 2 was told to him.  
 3 THE COURT: Sustained.  
 4 MR. SCHIECK: I asked that it be stricken.  
 5 THE COURT: Motion to strike granted. The jury will  
 6 disregard it.  
 7 BY MR, KEPHART:  
 8 Q There came a point in time that you actually left the  
 9 house?  
 10 A Yes.  
 11 Q And when you came back to Las Vegas tell us how  
 12 you were able to -- how did you get back to Las Vegas?  
 13 A We drove in my unmarked police vehicle which was  
 14 a Jeep Grand Cherokee at the time  
 15 Q And when you say "we" who are you talking about?  
 16 A Myself driving, Blaise Lobato in the front passenger  
 17 seat, and Detective LaRochelle riding in the back seat  
 18 Q Detective, you -- I've shown you Exhibit 181, does  
 19 that have your police vehicle in the back?  
 20 A Yes, it is.  
 21 Q Okay. And where you've parked, do you recall  
 22 whether or not you parked in front of the Lobato's house? Are  
 23 you in front of the neighbor's house?  
 24 A It's in front of the Lobato's house I believe

XIII-36

THOWSEN - DIRECT

1 the conversation or the discussion with the defendant was  
 2 relatively short, is that correct?  
 3 A Yes,  
 4 Q Was there any particular reason at this — in this  
 5 juncture that in this particular case this statement was short?  
 6 A Yes.  
 7 Q Why was that?  
 8 A We had concerns that Mr., Lobato would be returning  
 9 to the household once he figured out the police were in town  
 10 to speak to his<sup>A</sup> daughter and we tried to prevent the police  
 11 from having anything to do with her.  
 12 Q Okay, And you had indicated going down the  
 13 hallway you had seen multiple weapons in the house as well  
 14 Did you have information that gave you that concern in  
 15 reference to the father?  
 16 MR, SCHIECK: Objection, to hearsay, Your Honor.,  
 17 THE COURT: Sustained.  
 18 BY MR. KEPHART:  
 19 Q What was your concern based on?  
 20 A Our concern was based on our information and  
 21 gathering information on who all lived at the house and if  
 22 there were any potential dangers and if family members would  
 23 be the type that would be involved,  
 24 MR. SCHIECK: Objection, Your Honor, that's all

X111-35

THOWSEN - DIRECT

1 Q And you said that the defendant sat in the front  
 2 seat, Detective LaRochelle's in the back seat, and you were  
 3 driving is that correct?  
 4 A That's correct.  
 5 Q During the trip back to Las Vegas did you have any  
 6 further conversation with the defendant?  
 7 A Yes,,  
 8 Q Tell us what she told your  
 9 A She explained at one point that she recalled that the  
 10 knife that she used was actually a Christmas present that she'd  
 11 received from her father.  
 12 Q Now in her statement she said it came from a friend  
 13 so that wouldn't be correct?  
 14 A That would not be correct,  
 15 And was there any other discussion with her coming  
 16 back?  
 17 A There was.  
 18 And what was that?  
 19 A I believe she discussed the incident in which she was  
 20 victimized when she was five years old and she was upset that  
 21 nothing was ever done about that  
 22 Q Okay, Now prior to leaving you said that you  
 23 contacted her mother or her mother came to the door as you  
 24 were leaving, was it — did she give the defendant anything or

X111-37

THOWSEN DIRECT

1 ask permission to give her anything?  
 2 A Yes, she did,  
 3 Q And what was that?  
 4 A Medication.  
 5 Q Okay. And do you know what that medication was?  
 6 A One was for Prozac and one was for -- it may have  
 7 been Lorazepam. I have it documented in the file,  
 8 Q Can you look and see what that was?  
 9 A I can,  
 10 (Pause in the proceedings)  
 11 A Prozac is the one and Lorazepam is the second one.  
 12 Q Okay, And even to the point when you got back to  
 13 the jail those came into play as well, is that correct? Do you  
 remember?  
 15 A At the jail,  
 16 Q Did she take any medication?  
 17 A On the way to the jail,  
 18 Q Okay. So during the time that she was in the car  
 19 with you?  
 20 A Yes,  
 21 Q And how did that -- how did that happen?  
 22 A It was a certain time of the night as we were driving  
 23 back and she said that it was the time that she's scheduled to  
 24 take her Prozac and wanted to know if she would be allowed

X111-38

THOWSEN - DIRECT

1 any subject connected with the trial. And you're not to read,  
 2 watch or listen to any report of or commentary on the trial or  
 3 any person connected with the trial by any medium of  
 4 information including without limitation newspaper, television,  
 5 radio, and Internet. And you're not to form or express any  
 6 opinion on any subject connected with the trial until the case is  
 7 finally submitted to you.  
 8 Court's in recess until 1:15.  
 9 (Court recessed at 11:58 p.m. until 1:28 p.m.)  
 10 (Jurors are not present)  
 11 THE COURT: The record shall reflect that we're  
 12 convened outside the presence of the jury at the request of  
 13 counsel in State versus Lobato under C-177394 in the  
 14 presence of the defendant together with her three counsel, the  
 15 two prosecuting attorneys, and Detective Thowsen is upon the  
 16 stand under oath. Who -- well, Ms. DiGiacomo is standing so it  
 17 appears she wished to make a record on something.  
 18 MS. DIGIACOMO: That's correct, Your Honor. First,  
 19 with regard to Diann Parker's testimony, and I just spoke to  
 20 counsel about this, the only thing the State feels that needs to  
 21 be redacted before it's read in is bottom page 26, line 24 over  
 22 to page 27, all the way from line 1 to line 14. I just wanted to  
 23 make a record of that I don't believe there was any  
 24 objection.

X111-40

THOWSEN - DIRECT

1 to do that and she was allowed to do that.  
 2 Q Did you allow her to take her Prozac?  
 3 A Yes,  
 4 Q Okay. Now do you recall when it was that you  
 5 arrived at the jail?  
 6 A I don't recall off the top of my head. It would be  
 7 documented in other reports,  
 8 Q Okay, That same night?  
 9 A Yes.  
 10 Q Be the same night?  
 11 A Yes.  
 12 Q Okay  
 13 A A couple of hours later.  
 14 Q Okay. And --  
 15 THE COURT: I'm going to interrupt counsel here to  
 16 take a lunch recess. I have a Judges meeting today,  
 17 We'll be resuming at 1:15. You may step down from  
 18 the stand and I'll see you at 1:15.  
 19 THE WITNESS: Thank you, Your Honor,  
 20 THE COURT: Ladies and gentlemen of the jury,  
 21 please be in the hallway at 1:15 and the bailiff will return you  
 22 to your seats in the courtroom,  
 23 During this lunch recess you are admonished not to  
 24 talk or converse among yourselves nor with anyone else on

X111-39

THOWSEN - DIRECT

1 MR, SCHIECK: No, that's fine, Your Honor,  
 2 THE COURT: Okay,  
 3 MS. DIGIACOMO: Also, Your Honor, with regard to  
 4 DNA testing, when defense counsel gave she opening  
 5 statement and we realized that the cigarette butts found on  
 6 the body were never tested, which we had thought we'd asked  
 7 for more than a year ago, we had asked Kristina Paulette if it  
 8 was possible to do it, she said she'd try to, We don't have a  
 9 report or anything but she did e-mail me the results this  
 10 morning so I wanted to put it on the record so the defense  
 11 would know. There -- it's actually only two cigarette butts,  
 12 one -- the third piece is a piece that fell off one of the cigarette  
 13 butts. One of the cigarette butts comes back to an unknown  
 14 male DNA, if I'm getting this right. The other cigarette butt  
 15 there's a mixture, major portion is Duran Bailey, the minor  
 16 portion is someone else. It's not the same as the other  
 17 cigarette butt. She believes it's a male but can't tell for sure  
 18 and she didn't state it but I'm assuming Kirsten Blaise Lobato  
 19 is excluded from both of those. So I just want to put on the  
 20 record that that has been done. I don't have a finalized report  
 21 and give it to the defense as soon as they know in case it  
 22 makes a difference to their case,  
 23 The last thing, and this is kind of premature, but we  
 24 got -- before we left on the break we got a new PowerPoint

X111-41

THOWSEN - DIRECT

1 presentation for their expert — what's his name? Brent  
 2 Turvey, First of all the State's going to be objecting to the  
 3 majority of what it appears he's going to testify to and as well  
 4 as most of his PowerPoint presentation. It doesn't appear that  
 5 he's coming in to lend any expert opinion. What he appears to  
 6 be doing is just taking what other witnesses have said and  
 7 putting his own spin on it, how he concludes that evidence is  
 8 which is really in the province of the jury. It's up to them to  
 9 decide what weight to give the fact that -- for instance, and  
 10 under his finding, "No physical evidence associated with  
 11 Kirsten Blaise Lobato, The crime scene: Fingernail scrapings,  
 12 negative for Lobato. Chewing gum, negative for Lobato,"

13 He's basically just taking what other witnesses have  
 14 testified to and trying to conclude it and give legal conclusions  
 15 to the jury. And that appears to be the majority of his  
 16 testimony,

17 THE COURT: I don't see that he is a witness on the  
 18 stand right now —

19 MS, DIGIACOMO: No

20 THE COURT: -- that we need to leave the jury  
 21 waiting to —

22 MS. DiGIACOMO: And I agree,

23 THE COURT: -- do this But, we —

24 MS. DiGIACOMO: It's premature but I figured we're

XIII-42

riLOWSEN - DIRECT

MS. DiGIACOMO: We don't come back until 1:00,  
 2 do you want to -- or are we coming back at 10:30?

3 MR, KEPHART: No, 1:00,

4 MS. DiGIACOMO: 10:30 on Friday for us,

5 MR. KEPHART: Yeah,

6 THE COURT: No, I haven't had that -- I haven't  
 7 finished that discussion with the jury yet about time for Friday  
 8 or into next week. I did leave next week open from the  
 9 calendar calls on my civil stack this morning. I have the first  
 10 trial starting the 9th.

11 MS, DiGIACOMO: Oh, okay.

12 (Jurors are present)

13 THE COURT: The record shall reflect that the bailiff  
 14 is returning the ladies and gentlemen of the jury to the  
 15 courtroom at this time.

16 Ladies and gentlemen, please return to your seats in  
 17 the jury box area and when you arrive there you may be  
 18 seated.

19 Resuming the direct examination of Detective  
 20 Thowsen. Mr. Kephart, you may proceed,

21 MR. KEPHART: Thank you, Your Honor

22 DIRECT EXAMINATION (Continued)

23 BY MR. KEPHART:

24 Q Detective, before we left for lunch I had just gotten

XIII-44

THOWSEN - DIRECT

1 outside the presence, I'd just bring it up now.

2 THE COURT: We're going to need — we're going to  
 3 need to address it outside the presence but we don't need to  
 4 do so right at this particular moment I appreciate the heads  
 5 up on it

6 MS. DIGIACOMO: Okay.

7 THE COURT: -- but the bailiff will bring the jury in  
 8 and reseat them at this time. I'm going to ask defendant's  
 9 counsel to let me know before you would call him as a witness  
 10 so that we can address that.

11 MS. ZALKIN: May we address this at the end of  
 12 today?

13 THE COURT: Okay.

14 MS, ZALKIN: Thank you,

15 THE COURT: He's not going to be a witness today?

16 MS ZALKIN: No,

17 MR. SCHIECK: He's not planned to right now, Your  
 18 Honor.

19 THE COURT: Okay. All right.

20 MR, SCHIECK: You never know,

21 MS, ZALKIN: Yeah, I was just --

22 MR.. SCHIECK: I wouldn't anticipate getting to him.

23 THE COURT: Okay. Thank you. I've got to leave  
 24 right at 5:00 so we may have to do it in the morning.

XIII-43

THOWSEN - DIRECT

1 to a point where you had indicated that the defendant had  
 2 been arrested and then brought back down to Las Vegas.  
 3 Now was the -- defendant's car was also brought back to Las  
 4 Vegas?

5 A Yes, it was sealed by the crime scene analyst, it was  
 6 photographed as it was seen, seals were placed on it, and it  
 7 was towed back to the crime lab in Las Vegas for processing.

8 Q And was that a tow truck that you had brought up  
 9 from Las Vegas with you or?

10 A That was one we utilized from one of the local tow  
 11 truck places,

12 Q In Panaca?

13 A In Panaca,

14 Q Okay. Also the photograph that you were testifying  
 15 to about the victim, you had a copy of that in your file, is that  
 16 a color photograph?

17 A Yes,

18 Q Now when you got back to the jail what process do  
 19 you go through in putting somebody in jail once you get to the  
 20 jail?

21 A What we would do is we complete some booking  
 22 paperwork for the jail indicating the person's name, what the  
 23 charges are going to be, and in a situation like this where  
 24 someone is arrested for a homicide, we would have the crime

XIII-45

THOWSEN - DIRECT

1 scene analyst oftentimes take photographs and sometimes  
2 even impound their clothing We would check for any sort of  
3 marks or wounds they might have on their person and we  
4 would document those.

5 Q Okay. Were you aware that that was also done at  
6 her house?

7 A Yes

8 Q Checking for marks and that type of thing on her?

9 A And mostly we looked at her hands at the house, we  
10 didn't document all of her scrapes and that that she had on  
11 her abdomen and that at the house,, That was mostly her  
12 hands, anything that might be altered or changed by the time  
13 we put the handcuffs and drive all the way back to Las Vegas.

14 Q Okay. And you said that in the -- in the booking  
15 process when you go into jail -- I know this jail's got quite a  
16 few people in it.

17 A Yes,

18 Q I -- what do you do with reference to somebody that  
19 like in this case, t<sup>st</sup>r Elefendant, you were -- brought her down  
20 here for suspicion of murder. Can you tell me what you -- is  
21 there anything you do different with individuals that are  
22 arrested for murder?

23 A As far as?

24 Q Are they placed in a cell with other people? Are they

X111-46

YHOWSEN - DIRECT

1 MR, SCHIECK: No objection, Your Honor,

2 THE COURT: Granted.

3 (State's Exhibit Numbers 99, 100, 101, 102 admitted)

4 BY MR, KEPHART:

5 Q I'm showing you what's been marked as State's  
6 Proposed Exhibits 134, 135, and 136 and ask you to take a  
7 look at those. Do you recognize what those are taken of?

8 A Yes, I do,

9 Q And do those fairly and accurately depict What  
10 they're -- what's shown in the photograph?

11 A Yes.

12 Q And how it looked on September 20<sup>th</sup> I mean July  
13 20<sup>th</sup> of 2001?

14 A Yes,

15 MR. KEPHART: Move to admit 134, -35, and -36,  
16 Your Honor.

17 MR. SD-HECK: No objection,

18 THE COURT: Granted.

19 (State's Exhibit Nos, 134, 135, 136 admitted)

20 BY MR, KEPHART:

21 Q Now you indicated that the crime scene analyst at  
22 the -- that came there -- was it -- who was it that was at the  
23 jail? Do you remember what crime scene analyst it is, was?

24 A I probably need to look at the crime scene report to

X111-48

THOWSEN - DIRECT

1 -- are they kept separate or do you remember?

2 A After this Ms. Lobato was photographed and that.  
3 When she was actually booked and turned over to the jail we  
4 had them place her on suicide watch and place her in an  
5 isolated area

6 Q Okay. And prior to that you hold them in a holding  
7 cell, is that correct?

8 A That is not actually a place that she was held in.

9 That was a place that she was taken to be photographed,

10 Q Okay'. Well, let me -- could I approach, Your Honor?

11 THE COURT: Yes,

12 BY MR. KEPHART:

13 Q Let me show you which has been marked as  
14 Proposed Exhibit 99, 100, 101, and 102. Will you take a look  
15 at those? A Yes.

16 Q Okay. Do these photographs fairly and accurately  
17 depict what they -- what is shown in the photographs?

18 A Yes, they do,

19 Q And you were there present when they were taken,  
20 while she was in the jail?

21 A Yes.

22 Q Okay.

23 MR, KEPHART: Move to admit 99, 100, 101, and  
24 102.

X111-47

THOWSEN - DIRECT

1 make certain rather than --

2 Q Could you do that?

3 A Yes,

4 (Pause in the proceedings)

5 A That would be crime scene analyst Jenny Carr.

6 Q Okay. And now she was also the individual that  
7 impounded whatever clothing or whatever shoe -- type of  
8 shoes or anything that the defendant had at that time as well,  
9 is that correct?

10 A Yes.

11 Q Okay, Did she impound her tennis shoes?

12 A May I refer to the report again?

13 Q Will that refresh your memory?

14 A Yes, it would.

15 Q Yeah.

16 A Yes, the tennis shoes and a buccal swab kit,

17 Q Okay. And Exhibit 100, is that a picture -- what  
18 does that picture show?

19 A That shows Ms, Lobato as she's being photographed  
20 showing a side profile at the jail,

21 Q Okay, That better?

22 A Yes.

23 Q And what is 101 show?

24 A That's Ms. Lobato in the same room in the jail being

X111-49

THOWSEN DIRECT

1 photographed from the front.  
 2 Q Okay. And 102?  
 3 A Again, Ms. Lobato in the same area photographed  
 4 from the rear,  
 5 Q Okay. And you said in the -- in the holding cell  
 6 where you take photos at, can you tell by the bench here, is  
 7 that what you're describing?  
 8 A Yes.  
 9 Q Okay. Now I'm showing you what's been admitted  
 10 as -- well, let me -- let me back up. Okay. Now until the jail  
 11 actually takes custody of her in this particular case, were you  
 12 present with her during the process of when they were  
 13 booking her *in*?  
 14 A Yes.  
 15 And that would include these photographs that were  
 16 taken?  
 17 A That's correct,  
 18 Q Okay. Did she have any further discussions with you  
 19 while at the jail?  
 20 A She did.  
 21 Q What did she tell you?  
 22 A While she was standing in this room getting  
 23 photographed she looked around at it and she made the  
 24 comment that this looked similar to the structured area where

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THOWSEN - DIRECT

1 Q Does it go all the way around the whole structure?  
 2 A I believe that it does. I know it goes at least on two  
 3 walls cause it is in that corner where the body was originally  
 4 located.  
 5 Q Okay. And inside -- I'm showing you what's been  
 6 marked as Exhibit 134, is this the outside of the holding cell  
 7 where the defendant was held?  
 8 A Yes.  
 9 Q Okay. And then inside -- this would be Icioking --  
 10 136 would be looking in through from the door?  
 11 A Yes, that's correct,  
 12 Q Okay. Is there any similarities about this  
 13 photograph with reference to the inside of the jail -- I mean  
 14 inside of the structure?  
 15 A Yes, As you're looking at this you'll note that the  
 16 floor and a lower area here has a painted area that is similar to  
 17 the look. If you look at the actual crime scene and you see  
 18 the look of the ground and the curb before the block wall. Q  
 19 Okay. show you Exhibit 135, Does that show that  
 20 better?  
 21 A Yes. If you this area right here where it's similar  
 22 size and distinct looking as the curbing would be.  
 23 Q So that'd give you an impression of some kind of  
 24 curb there or something? I mean —

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THOWSEN - DIRECT

1 the attack had occurred and made the comment that she could  
 2 look up and see the covered parking from the parking lot from  
 3 the position.  
 4 Q Okay. Now Exhibit 118 you had testified about that  
 5 in the beginning of your testimony. Do you recall that when I  
 6 talk about the crime scene?  
 7 A Yes, I do  
 8 Q And you described the area to the left of this  
 9 photograph being above the dumpster area as the parking  
 10 structure? A  
 11 A Yes.  
 12 Q Okay. You'd been at the scene?  
 13 A Yes, I had  
 14 Q And you had seen that before?  
 15 A Yes,  
 16 Q So when she told you that she had — where she was  
 17 looking up saying, yeah, you could see the structure, is this  
 18 what come [sic] to mind with you?  
 19 A Yes  
 20 Q And also the inside of the structure itself, the inside  
 21 of where the dumpster's at, does it appear — what's it appear  
 22 to be down there at the bottom? Do you see my finger down  
 23 there?  
 24 A Yes, there's a curbing that runs along the edge.

THOWSEN - DIRECT

1 A Yes,  
 2 Q Okay, In reference to her explanation how it looked  
 3 similar to the inside of the structure where the dumpster was  
 4 located and where the —  
 5 A Yes.  
 6 Q -- body was found?  
 7 A Both that and size —  
 8 Q Okay.  
 9 A — was my impression.  
 10 Q And that was something that she just volunteered to  
 11 you?  
 12 A Yes,  
 13 Q Okay, Now after the defendant was booked into the  
 14 jail over here then — does that -- does your investigation stop?  
 15 A No,  
 16 Q Did it continue in this case?  
 17 A Yes, it did.  
 18 Q And how was it that it continued, what did you do?  
 19 A We continued back to Panaca and Pioche and  
 20 interviewed several other witnesses and interviewed other  
 21 witnesses in town. We submitted items for testing through our  
 22 crime lab and continued in that manner.  
 23 Q Okay. Did there come a point in time where you  
 24 actually spoke to an individual by the name of Dixie Tienken?

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THOWSEN DIRECTI

1 A Yes  
 2 Q And you had -- you had testified earlier that you had  
 3 learned her name through Laura Johnson, is that correct?  
 4 A That is correct.  
 5 Q Okay. Now the defendant in her statement to you  
 6 indicated that she had not told anybody else about the attack.  
 7 MR, SCHIECK: I'm going to objection, Your Honor,  
 8 that misstates the evidence. We heard the statement, she said  
 9 she didn't know, she couldn't remember.  
 10 THE COURT: Sustained  
 11 BY MR KEPHART:  
 12 Q Oh, in reference to that did she give you any  
 13 indication that she had told anybody else other than she didn't  
 14 remember or she couldn't remember?  
 15 A She did not and I believe in her statement she said  
 16 that she did not tell anybody else.  
 17 Q Okay. In addition to "I don't remember?"  
 18 A Yes  
 19 Q And -- but you did learn some information from  
 20 Laura that she had apparently talked to Dixie?  
 21 A Yes  
 22 Q Okay. And through your investigation did it lead you  
 23 to other people?  
 24 A Yes, several other people,

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THOWSEN - DIRECT

1 interview with the defendant?  
 2 A With the defendant it didn't go long enough that I  
 3 had to turn the tape over. It went tit we though we were at  
 4 the end, we stopped the tape, and then she mentioned  
 5 something afterwards that we wanted to go ahead and include  
 6 on the  
 7 tape --  
 8 Q Okay,  
 9 -- so we turned it back on and documented that  
 10 information.  
 11 Okay, So wit Dixie you had to actually turn the tape  
 12 over?  
 13 A Yes.  
 14 Q Okay. Do you recall whether Dixie ever described to  
 15 you at any point in time during your discussion with her before  
 16 the tape about the defendant telling her that the attacker was  
 17 big?  
 18 A No,  
 19 Q Did you recall any time other than what was on the  
 20 tape, any time other than the -- that Dixie ever told you that  
 21 her and the defendant looked through newspapers dating back  
 22 to June 15t?  
 23 A No.  
 24 Q Now after talking to Dixie, Laura, Michelle, Rusty,

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THOWSEN - DIRECT

1 Q And that would include Michelle Austria?  
 2 A Yes.  
 3 Q Paul Brown?  
 4 A Yes.  
 5 Q And during the period of time that you spoke to  
 6 those individuals did you -- you've already testified that you  
 7 did tape them and you have copies of their -- of their  
 8 transcribed tapes here and matter of fact you have copies of  
 9 their tapes and you told us the techniques that you use or the  
 10 standard that You usually follow when you're doing it. Did  
 11 anything change with regards to talking to other individuals?  
 12 A No  
 13 Q Okay, While you were questioning Dixie did you  
 14 ever stop the tape multiple times during the portion of the  
 15 time that you were questioning her?  
 16 A I didn't stop the tape anytime until the -- towards  
 17 the end as with the Lanier recorder as you approach the end  
 18 of the tape there's some sort of sensor that knows you have  
 19 like a minute, minute and a half left and it'll start a beeping  
 20 noise to warn you And you'll hear me stop the tape, turn it  
 21 over, and restart the tape indicating what the time is still at a  
 22 certain time meaning that it was less than a minute to just  
 23 take the tape, put it back over, turn it back on again,  
 24 Q As similar to what happened with regards to your

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THOWSEN - DIRECT

1 the defendant and knowing what had occurred here and from  
 2 being at the crime scene, did you do any further investigation  
 3 with respect to determining whether or not there was any  
 4 other individual that had been injured in this way? With his  
 5 penis being cut off or penis being slashed?  
 6 A Yes, I did,  
 7 Q Detective --  
 8 MR, KEPHART: Well, Your Honor, I'm going to ask  
 9 the Court to take judicial notice of NRS 629..031 and 629.041.  
 10 May I approach the witness, Your Honor?  
 11 THE COURT: Just a second.  
 12 (Pause in the proceedings)  
 13 THE COURT: I have the four volumes on criminal  
 14 law in the -- in the courtroom here but I don't have the full  
 15 NRS. Those are in chambers. Do you have copies of them?  
 16 MR. KEPHART: I'll give you this one, Judge, and I'll  
 17 just -- based on these.  
 18 THE COURT: The Court takes judicial notice of NRS  
 19 629.031, a copy of which shall be marked as Court's Number  
 20 56; and NRS 269,041 which shall be marked as Court's 57.  
 21 MR. KEPHART: Judge, is that 269 or 629?  
 22 THE COURT: 629 --  
 23 MR, KEPHART: Thank you,  
 24 THE COURT: --.031 and 629,041 if I misspoke.

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THOWSEN - DIRECT

1 MR. KEPHART: Can I -- can I use the Court's  
2 exhibits as well, Your Honor?

3 THE COURT: Yes,

4 MR. SCHIECK: Could we approach, Your Honor?

5 THE COURT: Yes,

6 (Off-record Bench Conference)

7 BY MR KEPHART:

8 Q Detective, you're familiar with NRS 629.041 which  
9 was -- is -- which is called -- entitled, "Provider of Healthcare  
10 Report, Persons Having Certain Injuries," are you not?

11 A Yes, I am,

12 Q As a matter of fact you've had discussions with the  
13 State about this?

14 A Yes,

15 Q Matter of fact you've even testified specifically about  
16 this statute on a previous occasion?

17 A That's correct,

18 Q And in that statute since it is -- The judge has made  
19 it Exhibit 57 for the court, it says:

20 "Every provider of healthcare to whom any person  
21 comes or is brought for treatment of an injury which  
22 appears to have been inflicted by means of a firearm or  
23 knife, not under accidental circumstances, shall promptly  
24 report the person's name if known, his location, and the

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THOWSEN - DIRECT

do anything to determine whether or not there was any other  
2 report of an injury involving a knife wound to a man's penis?

3 A Yes, I did.

4 Q And what did you do?

5 MR, SCHIECK: Objection, could we have -- I  
6 withdraw the objection, Your Honor,

7 THE COURT: okay,

8 BY MR, KEPHART:

9 Q What did you do?

10 A I researched it through police records to locate any  
11 sort of documentation on an injury such as that, which would  
12 be a stabbing or a severing of a penis or groin area

13 Q Okay, How far did you research that?

14 A It was a period of time, I don't remember the exact  
15 date off the top of my head at this point

16 Okay. Do you recall how far back you went before  
17 July 8th?

18 A I don't recall,

19 Okay.

20 (Off-record colloquy)

21 In reference to -- we're going to look for that.

22 A Okay.

23 Do you recall testifying about that in --

24 Yes, Yes, I do,

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THOWSEN - DIRECT

1 character and extent of the injury to an appropriate law  
2 enforcement agency,"

3 Is that correct?

4 A That is correct

5 Q And 629.031 defines provider of healthcare as:

6 "A physician licensed pursuant to this Chapter 630,  
7 630A or 633 of NRS, dentist, licensed nurse, dispensing  
8 optician, optometrist, practitioner of respiratory care,  
9 registered physical therapist, pediatric physician, licensed  
10 psychologist, licensed marriage and family therapist,  
11 chiropractor, athletic trainer, doctor of Oriental medicine  
12 in any form, medical laboratory director or technician,  
13 pharmacist or licensed hospital as the employer of any  
14 such person,"

15 With regards to that, these two, is this basically  
16 what they call a mandatory reporting statute that requires the  
17 healthcare -- any healthcare provider to report injuries  
18 involving, in this case, a knife or firearm or knife? Is that  
19 correct?

20 A That is correct.

21 Q Okay, And in respect to that, you had indicated that  
22 you had done other investigations with regards to speaking to  
23 Dixie and Michelle and Laura; other individuals in this case; the  
24 defendant; who gave you her confession, and you -- did you

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THOWSEN - DIRECT

1 Q Okay. And in reference to the area where this  
2 occurred up off of Flamingo is -- there's other police agencies  
3 in the Valley, is that correct?

4 A Yes, there are,

5 Q Okay, This area here up in -- on West Flamingo  
would have been in Metro's jurisdiction?

7 A Yes,

8 Q Okay. And the area in which the defendant gives  
9 you statement about Budget Suites?

10 A Yes,

11 Q You were talking to her and she talks about Boulder  
12 Highway and that?

13 A Yes.

14 Q Is that also in Metro's jurisdiction?

15 A Yes, it is.

16 Q And would that have been police records that you  
17 had looked at too to determine whether or not any type of  
18 injury like this occurred --

19 A Yes,

20 Q -- in any of those records? Do you recall whether or  
21 not you did any investigation with regards to other police  
22 agencies?

23 A It would be anywhere in -- within Clark County.

24 Q Clark County? Okay. Anywhere?

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THOWSEN - DIRECT(

1 A Anywhere which would include North Las Vegas,  
2 Henderson, Boulder City.

3 Q Do you recall if you were able to -- were you  
4 successful? Did you find any other injury caused by a knife to  
5 an individual's penis?

6 A I found no slashed or severed penis,

7 MR KEPHART: Your Honor, may I approach the  
8 witness with regards to his previous testimony?

9 THE COURT: You may. Would you just identify the  
10 EM, the date, the page, and the line number?

11 MR. !KEPHART: Okay It's Volume 3, page 82, Your  
12 Honor, And I'm talking about question 5 through -- be on line  
13 5 through line 14, If I may approach, Your Honor?

14 THE COURT: You may,

15 BY MR, KEPHART:

16 Q I'm showing you what appears to be from previous  
17 testimony Volume 3, page 82. Would you take a look right  
18 here at page -- I mean question number 5 and read through  
19 that and tell me Whether or not that refreshes your memory as  
20 to what you had done before?

21 A Yes, it does,

22 Q Okay, Does that refresh your memory as to how far  
23 you looked back for purposes to determine whether or not  
24 anybody had received an injury, recorded it in the Valley here

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THOWSEN - DIRECT

1 THE COURT: Yes.

2 BY MR. KEPHART:

3 Q I'm showing you -- how you describe it, what  
4 appears to be a silver chrome type of object. It's in this plastic  
5 bag. Now you didn't bring it in a plastic bag, did you?

6 A No, I did not.

7 Q Okay. That's something that the court placed it in?

8 A Yes,

9 Q Could you take this out and tell me if this the object  
10 that you brought to court today?

11 THE COURT: The clerk did it because it was a  
12 difficult item to mark,

13 MR. KEPHART: Okay. Judge, I'm not making it for -  
14 - and admitting it, we're using it for demonstrative purposes  
15 only and I'm going to be asking the Court to allow the officer  
16 to take it with him when he leaves.

17 THE COURT: Okay,

18 MR. SCHIECK: I'm going to ask if it's going to be  
19 demonstrated to the jury it be marked and admitted, Your  
20 Honor.

21 BY MR, KEPHART:

22 Q Do you care about that, officer?

23 A No, I don't

24 MR. KEPHART: Okay. That's fine then. I don't see

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THOWSEN - DIRECT

1 or in Clark County?

2 A Yes

3 Q When did you look?

4 A May, June, and July,

5 Q Okay. So you looked the three months?

6 A Yes.

7 Q Now the defendant had indicated in her statement  
8 that she used a butterfly knife?

9 A Yes,

10 Q And she talked to you about her father giving it to  
11 her for a Christmas present, that type of thing?

12 A That's correct.

13 Q Okay. And are you familiar with butterfly knives?

14 A Yes.

15 Q Would -- did you -- were you asked by the State to  
16 bring one with you today for purposes of demonstration?

17 A Yes, I was,

18 Q Okay. And before you came in today, was that  
19 deposited with the Court?

20 A Yes, it was.

21 MR, KEPHART: Your Honor,

22 THE COURT: You may approach the clerk, □

23 (Off-record colloquy)

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

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THOWSEN - DIRECT

1 any need to have it marked, it's not -- it's not evidence but it is  
2 for purposes of demonstration, I guess maybe they might  
3 want to deal with it themselves back in the jury room so that's  
4 fine. We'll mark it then as next in order for the State,

5 THE CLERK: 262,

6 MR, KEPHART: Okay, I move to admit 262.

7 MR, SCHIECK: No objection, Your Honor,

8 THE COURT: 262 is admitted.

9 (State's Exhibit No. 262 admitted)

0 MR, KEPHART: All right.

1 BY MR. KEPHART:

2 Q Now 262 that you have with you now that is what  
3 you understand to be a butterfly knife?

4 A Yes, it is.

15 Q And it is a -- in this particular case a one-sided  
16 bladed butterfly knife?

17 A Yes,

18 Q And she said that that's what she had when she did  
19 this?

20 A Yes,,

21 Q And for -- now you haven't -- have you used this  
22 type of knife before or did -- worked with it before?

23 A Only for about a day,

24 Q Okay. Can you -- can you show the jury how it is

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THOWSEN - DIRECT'

1 that you would open a knife like that?  
 2 A Yes. And as you can see it has two handles and in a  
 3 closed position it keeps the blade from harming you so you  
 4 could have it in your pocket or in your hand and it won't cut  
 5 you. To open it -- may I stand up, Your Honor?

6 THE COURT: Yes,

7 THE WITNESS: To open it all you do is holding it in  
 8 your hand spin it around and it's open. You're holding onto  
 9 both handles and the blade is secure and very rigid.

10 BY MR KEPHART:

11 Q Okay. Now it's --

12 THE COURT: I'm going to -- I'm going to interrupt.

13 When you walked forward you went off of the camera line

14 THE WITNESS: I'm sorry, Your Honor,

15 THE COURT: So, that's better. Thank you

16 THE WITNESS: Yes, ma'am,

17 BY MR, KEPHART:

18 Q Okay, Now it's possible to open the knife obviously  
 19 with both hands?

20 A Yes.

21 Q Okay, But the way it's designed to be able to use it  
 22 with one hand, is that correct?

23 A It's designed to be used with one hand.

24 Q Okay. And these knives come in -- some of them

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THOWSEN - DIRECT

1 A Yes, It's beveled on both edges coming to the edge,  
 2 Q As — would be sharpened on both sides?

3 A Correct.

4 Q Okay, There's not a fiat side on the back with a  
 5 sharp side on one side, is there?

6 A The edge of the blade is beveled on both sides.

7 Q I'm showing you Defense Exhibit CCCC and ask you  
 8 if the blades on those scissors are -- they're one-sided blades, -  
 9 is that correct?

10 A Yes,

11 Q Their not sharpened in the center are they, like the  
 12 knife?

13 A No, it's flat on one side and then bevels on the other  
 14 side,

15 Q Okay. And so there's a fiat area to the whole face of  
 16 the -- of the scissor with a beveled area on one side?

17 A Yes.

18 Q Okay. Not like the knife itself?

19 A Not like the knife. The knife is completely different,  
 20 sharpened from both sides.

21 Q Okay. Hand that back. Do you want to close that  
 22 up? Detective, how many homicides have you investigated?

23 A Probably between -- around 4- and 500.

24 Q Okay, How many confessions have you taken?

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THOWSEN - DIRECT

1 have double sided blades, two -- a double-edged blade?

2 A Some can have two-sided blades, Some can be  
 3 curvy. Q Okay,

4 A They can have serrated edge,

5 Q Okay, And they come in multiple colors?

6 A Yes,

7 Q She described her as blue?

8 A As the handles as being blue with other colors --

9 Q Okay

10 A -- and a silvensh plate.

11 Q Okay, Do you recall her telling you that she actually  
 12 used it with her right hand?

13 A Yes.

14 Q And when you just demonstrated it you used it with  
 15 your right hand?

16 A Yes, I did,

17 Q Okay, Okay, Detective, thank you. Detective, will  
 18 you open that again, please? I'm sorry, The knife. Now the  
 19 blade that -- on there it -- like I was talking or asking you  
 20 earlier, it's a one-sided blade, right?

21 A Yes, on this edge over here,

22 Q The blade is in the center of the piece of metal so to  
 23 speak of the blade, is that correct? The sharp portion of the  
 24 blade is in the center of the knife?

X111-67

THOWSEN - DIRECT

1 MR. SCHIECK: Objection, relevance, Your Honor,

2 THE COURT: Counsel approach,

3 (Off-record Bench Conference)

4 BY MR. KEPHART:

5 Q Detective, how many statements have you taken  
 6 from some -- from individuals that are suspects in homicides?

7 A Lots,

8 Q Okay. Give me an estimate?

9 A That were actually suspects in homicides would have  
 10 to be in the hundreds,

11 Q Okay, Do you find it uncommon for an individual to  
 12 minimize their statements when they're giving you statements  
 13 in reference to crimes that they've committed?

14 A It's very common for people to minimize in their  
 15 statements.

16 Q Give me an example of what you mean by  
 17 "minimizing?" Those are words I used.

18 A What a person will do is if they determine they're  
 19 going to give a statement and they are telling portions of that  
 20 statement that show that they have involvement in that  
 21 particular crime many times they will tell you things that you  
 22 feel you already know and then they will try to minimize by  
 23 justifying their actions in why they had to do something like  
 24 that.

X111-69

THOWSEN - DIRECT

1 Q Sometimes they're not as detailed as maybe you  
2 have learned through your other investigations?

3 A Correct,

4 Q And in reference to your investigation of homicides  
5 do you know how many statements you've taken from  
6 individuals that have claimed that they were under the  
7 influence of methamphetamine when they're committing their  
8 crime?

9 MR, SCHIECK: Objection, relevance, Your Honor,

10 THE COURT: Overruled,

11 THE WITNESS: Several.

12 BY MR. KEPHART:

13 Q Okay, Did you find any -- can you give me an idea  
14 of what you see would effect their statement?

15 A Especially --

16 MR, SCHIECK: Objection, Your Honor, again, This  
17 is outside his scope of expertise.

18 MR KEPHART: My question is based on his  
19 experience and the number that he has taken with regards to  
20 statements.

21 THE COURT: Overruled,

22 THE WITNESS: Could you restate your question for  
23 me again, please,

24 ///

MOWSEN - DIRECT

1 Q And she specifically said that she doesn't recall  
2 putting anybody -- putting them in it?

3 A That's correct,

4 Q Do you recall that? Then she said she didn't think  
5 she could?

6 A That's correct,

7 Q Okay. Would that appear to be knowledge that  
8 somebody would know if they truly blacked out?

9 A No.

10 Q Now do you remember asking her whether or not  
11 she -- what she did with the knife? Do you recall that?

12 A Yes,

13 Q She indicated that she either had -- she didn't  
14 remember if she'd thrown it away or if she had sold it for --  
15 trade it --

16 A Drugs.

17 Q for drugs? Okay. And then do you remember  
18 talking her where she offered you the baseball bat?

19 A Yes.

20 Q Okay. And then she told you that she didn't know  
21 whether either of the items were?

22 A Yes.

23 Q That was the knife and the bat?

24 A Yes.

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THOWSEN - DIRECT

1 BY MR KEPHART:

2 Q Okay, My question is is what do you see with  
3 statements from individuals that claim that they're on  
4 methamphetamine at the time that they're committing the  
5 crime when they're talking to you about particulars in the  
6 crime? Any similarities?

7 A Yes.

8 Q And what is it?

9 A It's not uncommon that they'll jumble things  
10 together and take something over it and put it together with  
11 something completely unrelated and especially if it's a situation  
12 where an individual has been on a binge for several days  
13 which is pretty common. That it's not that uncommon for  
14 them not to be able to remember certain things and to  
15 remember things strangely sometimes,

16 Q Okay, Now do you remember recalling her  
17 statement when she told you that she had blacked out?

18 A Yes,

19 Q Remember that? Then after that she was able to  
20 give you a little more detailed discussion about certain  
21 questions that you asked in reference to let's say the  
22 dumpster, whether or not she was near a dumpster. Do you  
23 recall that?

24 A Yes.

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THOWSEN - DIRECT

1 Q Okay. Do you recall in her statement where she --  
2 (Off-record colloquy)

3 Q Where she talked about wanting to get cleaned up?

4 A Yes,

5 Q And she went to -- said she went to --

6 MR. SCHIECK: Your Honor, I'd object to the  
7 continual reading of questions,

8 THE COURT: Sustained,

9 BY MR. KEPHART:

10 Q Do you remember if she said anything about  
11 wanting to get cleaned up in her statement?

12 A Yes, she did,

13 Q And do you recall what she said?

14 A That she got into her car and took off all of her  
15 clothing so she was basically naked in her car and drove to her  
16 friend's house so she could clean up.

17 Q Did she indicate where she was going to go after  
18 she cleaned up? Do you remember?

19 A I'm trying to recall from the different conversations  
20 and -- I'm trying to recall from what she said and from what I  
21 learned from speaking with other witnesses that -- from  
22 reading the reports again and again and again and again over  
23 the last few days.

24 Q Okay. Now when you first stated your statement

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THOWSEN DIRECT

1 with her before you talked -- before you started the tape you  
 2 indicated that you discussed with her for approximately 12  
 3 minutes about -- what did you discuss?

4 A I asked her basic —

5 MR, SCHIECK: Objection, asked and answered,  
 6 Your Honor,

7 THE COURT: Overruled.

8 BY MR. KEPHART:

9 Q What did you ask? What did you talk to her about in  
 10 those 12 minutes?

11 A Similar things that we'd talked about then when it  
 12 went on tape as to what happened in Las Vegas,

13 Q Okay, And in the actual statement you talked about  
 14 something happened a couple of weeks ago?

15 A Yes,

16 Q Okay. And this was on the 20<sup>th</sup> of July that you  
 17 were talking to her?

18 A Yes,

19 Q Okay, And she answered to you, "yes," and then  
 20 proceeded to tell you about this attack, is that correct?

21 A That's correct.

22 Q Okay, Now when you went to the crime scene you  
 23 saw Duran Bailey's body, was there anything about the crime  
 24 scene itself that has significance with you? I mean this was

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THOWSEN - DIRECT

1 you indicated that you gave her an opportunity to give you her  
 2 statement, when it came to that point when she told you that,  
 3 did that — what did that cause you to think with reference to  
 your investigation in this case?

5 MR. SCHIECK: Objection, relevance of what he  
 6 thinks,

7 MR. KEPHART: Your Honor, he's the actual arresting  
 8 detective here. I think that this is -- this is certain relevant,

9 THE COURT: Overruled.

10 THE WITNESS: As I said it was highly significant,  
 11 Not only had she known this person's penis was severed and  
 12 that he was a black man and older, that this particular strong  
 13 odor made it clear in my mind that this was connected to the  
 14 same incident.

15 BY MR, KEPHART:

16 Q Now while you were at the crime scene you had an  
 17 opportunity to actually view Mr., Bailey's body, is that correct?

18 A That's correct,,

19 Q And do you recall -- there's been some testimony or  
 20 questions by the defense about whether or not there was any  
 21 paper towels up against his penis -- stuffed in his penis  
 22 underneath the plastic that was across his waist. Do you recall  
 23 anything like that?

24 A First off, his penis wasn't in the plastic by his waist,

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THOWSEN - DIRECT

1 five years ago. Has significance with you other than the fact  
 2 that he had his penis severed that reminded you of this  
 3 particular crime scene?

4 MR. SCHIECK: Objection, Your Honor. I'm not sure  
 5 what the question, it's vague and ambiguous.

6 MR, KEPHART: I think if he —

7 THE COURT: Overruled,

8 BY MR. KEPHART:

9 Q Okay,

10 A With this particular crime scene and with Mr. Bailey  
 11 there was something that stood out in my mind with him that  
 12 became readily apparent as I was speaking with Ms, Lobato.  
 13 And that was when she made the comment that he had  
 14 smelled like old alcohol and dirty diapers because different  
 15 bodies can smell different. Sometimes if someone's been for,  
 16 you know, several weeks and really in late stages of  
 17 decomposition there's a certain decomposition smell and  
 18 sometimes people smell like colognes and that. And she  
 19 described this alcohol and dirty diaper combination and he had  
 20 a smell to me that my first thought was like a old smell socks  
 21 that somebody hadn't changed in two weeks.

22 Q Okay,,

23 A It was very significant,

Q Okay, And based on your discussion with her, now

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THOWSEN - DIRECT

1 his penis was several feet from his body.

2 Q Okay.

3 A The location of his wound —

4 Q Oh, I'm sorry. His -- the — yeah, you're right.  
 5 Where the penis would have been, okay?

6 A Where the penis would have been What happens is  
 7 the ID personnel are documenting the scene, they're taking  
 8 photographs and they'll remove a little bit and take  
 9 photographs, and remove and photograph. I don't recall  
 10 seeing that and then reviewing photographs I have not seen a  
 11 photograph showing anything on the wound like that,

12 Q Okay. You recall the plastic being over top of that  
 13 area though?

14 A Yes.

15 Q Okay, And in this particular crime scene, Exhibit  
 16 Number 29, we've had the crime scene analyst talk about --  
 17 would you have made any decisions as the detective as  
 18 whether or not you would need to take, for instance, this cup  
 19 and this bottle and this cup here and this cup and there's other  
 20 photos with food debris, a can, all these items. Would you  
 21 have had any decision making with regards to whether or not  
 22 to collect that?

23 A That may be something that traditionally we would  
 24 discuss with the crime scene supervisor on crime scenes and

XIII-77

THOWSEN - DIRECT"

1 normally when there's so much garbage they're not going to  
 2 process each individual thing. You try and find something that  
 3 appears to be connected and of significance. So select items  
 4 may be chosen that look like it's something that could be  
 5 connected rather than just routine garbage that has been  
 6 dumped,

7 Q Okay. And in regards to this here there's a  
 8 possibility that without taking everything you may have missed  
 9 something?

10 A That's a possibility if you didn't take every single  
 11 piece,

12 Q Okay. And when I mean miss something maybe  
 13 something that had the defendant's DNA on it or something\_  
 14 There's a possibility of that?

15 A There's a possibility of that but there's a possibility if  
 16 you took everything in here you still wouldn't find the  
 17 defendant's DNA or our DNA from being there after the  
 18 defendant,

19 Q And in slot of the crime scenes that you've been to  
 20 before has it been — it's common that you don't find anything  
 21 connects an individual at that point to the crime, is that  
 22 correct?

23 A That's correct,

24 Q Matter of fact, many of your crimes are solved by

X111-78

THOWSEN - DIRECT

1 A It was, I believe, lower than one foot.

2 Q Okay,

3 MR. KEPHART: Court's indulgence, Your Honor,  
 4 THE COURT: Yes,

5 (Off-record colloquy)

6 MR, KEPHART: Just a couple more questions,  
 7 Judge, and then I'll pass the witness.

8 BY MR. KEPHART:

9 Q Detective, I am sorry. When I — when I 'questioned  
 10 you earlier I asked you when you spoke to Dixie. I said, do  
 11 you recall whether the -- whether she ever told you the  
 12 defendant had told her and described her attacker as big?  
 13 And I said, do you recall and you said, no. My question is, did  
 14 Dixie ever tell you that the defendant told her and described  
 15 her attacker as big?

16 A No, I believe what Dixie told me was --

17 MR. SCHIECK: Objection, hearsay.

18 THE COURT: Sustained,

19 BY MR KEPHART:

20 Q So her answer's no?

21 A No.

22 Q Okay. And same with -- did Dixie ever tell you that  
 23 her and the defendant were looking in papers back -- dated  
 24 back to June 1'?

X111-80

THOWSEN - DIRECT

1 words that are spoken by the defendants themself?

2 A Yes.

3 Q Do you remember the blood spatter in the crime  
 4 scene itself? Do you remember that?

5 A Yes, I do.

6 Q Okay. Do you recall how high the blood spatter  
 7 went up?

8 MR, SCHIECK: I'm going to object, Your Honor,  
 9 Could we approach?

10 THE COURT: Yes.

11 (Off-record Bench Conference)

12 BY MR. KEPHART:

13 Q Detective, did you notice in the crime scene blood  
 14 droplets, maybe some of them like in teardrops and on any  
 15 portions of the walls in the back?

16 A Yes,

17 Q Okay. And do you know what terminology that  
 18 somebody would use to call blood droplets like on the wall or  
 19 anything like that?

20 A There's different terminology, Basically, it's spatter -  
 21 - blood spatter.

22 Q Okay, Okay. And did you see that in this case?

23 A I did,

24 Q And how high was it on the wall, do you recall?

X111-79

THOWSEN - DIRECT

1 A No,

2 Q Now you indicated that during your trip back to Las  
 3 Vegas the defendant here had requested of you to allow her to  
 4 take some medication. Do you recall that testimony?

5 A Yes, I do.

6 Q Okay. And you said that you did allow her to take it,  
 7 Do you recall specifically what it was and did she describe to  
 8 you — were you aware of when she got the prescriptions?  
 9 Page 18 of your report if you don't recall maybe that will help  
 10 you refresh your memory?

11 A That would, I remember what the drug was and I  
 12 know that it's documented in that report so I will get it for you,  
 13 (Pause in the proceedings)

14 Q Fourth paragraph down on page 18. Can you read  
 15 that to yourself?

16 A Yes.

17 Q Does that refresh your memory as to one, what  
 18 were the types of drugs that she was taking?

19 A The two types of drugs; yes, it does.

20 Q Mm-hmm, Okay. What were they?

21 A Lorazepam and Prozac.

22 Q Okay, And when were the prescriptions dated?

23 A July 13<sup>th</sup>, 2001,

24 Q Did it have the doctor's name as well on the

X111-81

THOWSEN - DIRECT

1 prescription?  
 2 A Yes.  
 3 Q Who would that be?  
 4 A Dr. Syed Kama!,  
 5 THE COURT: Could you spell that, please?  
 6 THE WITNESS: Yes. Syed is S-Y-E-D. Kamal is  
 7 K-A-M-A-L  
 8 THE COURT: Thank you.  
 9 THE WITNESS: You're welcome.  
 10 BY MR. KEPHART:  
 11 Q Now you had just testified that based on the  
 12 defendant's description of what she remembered of the -- of  
 13 Duran -- of the attacker as smelling like alcohol and dirty  
 14 diapers, was there ever any time that she in her -- during her  
 15 statement that lead you to believe that she was not talking  
 16 about the same instance that occurred with Duran Bailey?  
 17 MR. SCHIECK: Objection, that calls for a conclusion.  
 18 THE COURT: Sustained.,  
 19 MR, KEPHART: Pass the witness, Your Honor.  
 20 Thank you, detective.  
 21 THE WITNESS: You're welcome.  
 22 THE COURT: Who will be conducting the cross for  
 23 the defense?  
 24 MR. SCHIECK: I will, Your Honor.

XIII-82

THOWSEN - CROSS

1 Q So you leave some things out of it?  
 2 A Not that we would leave things out of it but it serves  
 3 as an outline to us,  
 4 Q The things that are in there we can rely upon being  
 5 an accurate reflection of your recollection?  
 6 A I would say yes.  
 7 Q Okay, And we'll go to a couple of things in your  
 8 statement. You had talked about -- excuse me, in your report:  
 9 You had talked about when you got Ms. Lobato to the jail that  
 10 she had made some comments concerning the cell she was in  
 11 or the holding area she was in while she was being  
 12 photographed?  
 13 A Yes,  
 14 Q Okay, And that she made some statement about it  
 15 reminding her of the area of the attack?  
 16 A Yes, something to that effect,  
 17 Q Didn't she in fact specifically tell you that the area —  
 18 the location of the — of the attack did not have covering?  
 19 A Yes.  
 20 You left that out when you testified before, was that  
 21 just an error on your part? That she said it did not have  
 22 covering?  
 23 A I don't recall exactly what she said verbatim. That's  
 24 why I said it was something to that effect,

XIII-84

THOWSEN - CROSS

1 THE COURT: You may proceed, Mr., Schieck, □  
 2 **CROSS-EXAMINATION**  
 3 BY MR. SCHIECK:  
 4 Q And just so I'm clear and we're on the same page,  
 5 detective, the report that you've been referring is a 28-page  
 6 report?  
 7 A Yes, it is  
 8 Q And that's your officer's report in this case?  
 9 A Yes, it  
 10 Q I'd ask you was -- along with the Detective  
 11 LaRochelle?  
 12 A That's correct.  
 13 Q In fact, you both signed off on it so it's sort of a joint  
 14 report between the two of you?  
 15 A It is.  
 16 The two of you got together and put together the  
 17 report?  
 18 A Yes, that's pretty much standard the way we do it.  
 19 Q And you put everything in there that is relevant and  
 20 that you could remember and that should be in a report in a  
 21 case like this?  
 22 A It actually serves more of an outline for things that  
 23 we might not remember otherwise but it's certainly not  
 24 everything.

XIII-83

THOWSEN CROSS

1 Q Could you look at your report and tell us —  
 2 A Certainly,  
 3 Q I mean your report would have verbatim what she  
 4 said, right?  
 5 A If it's in quotes it would be verbatim,  
 6 Q Okay, Well, this isn't in quotes, it just said -- and  
 7 this is on page 18, fifth paragraph down, next to the last  
 8 sentence\_  
 9 A Yes, that is correct,  
 10 Q She said, "did not have covering?"  
 11 A "Did not have covering."  
 12 Q And there was covering over this area, wasn't it?  
 13 A There's a chain-link fence that you can see through,  
 14 yes.  
 15 Q And it covers the entire top of the enclosure,  
 16 correct?  
 17 A That's correct.  
 18 Q And when you're in that enclosure it's very obvious  
 19 that there's a chain-link fence with bars going across over your  
 20 head, correct?  
 21 A It may not be obvious if you're laying on your back  
 22 looking up at night, you could just see the lighted part above  
 23 it,  
 24 Q So you're saying if you're laying on your back at

XIII-85

THOWSEN - CROSS

1 night you can't see the covering that's over your head?  
 2 A I'm just saying it may not be as apparent as you're  
 3 pointing out in the photograph.  
 4 Q Okay, But if you're standing inside that enclosure  
 5 it's pretty apparent that there's a chain-link fence over your  
 6 head?  
 7 A If we walked there in the daylight today you'd see  
 8 that chain-link fence I would say, yes,  
 9 Q Okay, And at night it become invisible or is it still  
 10 visible at night?  
 11 A I would assume it would depend on the lighting and  
 12 various conditions,  
 13 Q But in any event she did not describe any type of  
 14 covering being over the area she was in and specifically said  
 15 there was no covering?  
 16 A In that remark she said there was no covering, that's  
 17 correct  
 18 And she said that you could see the metal covering  
 19 of a carport area: Okay, from inside of the bin area there  
 20 what part of the carport can you see?  
 21 A Looks like the metal covering,  
 22 Q Can't you only see the side of the -- the side of the  
 23 covering?  
 24 A No, I believe you can see the underneath portion of

X111-86

THOWSEN CROSS

1 Q Isn't it more than likely there's more than a lot of  
 2 carports in Las Vegas?  
 3 A I would give you that there are a lot of carports in  
 4 Las Vegas,  
 5 Q There are carports at the Budget Suites?  
 6 A Yes,  
 7 Q Did you go out to the Budget Suites on the Boulder  
 8 Highway?  
 9 A Yes, I did,  
 10 Q Okay. And there are carports out there, correct?  
 11 A Yes,  
 12 Q That are visible from the parking lot area?  
 13 A Yes,  
 14 Q Would you describe inside that dumpster with the  
 15 dumpster across the front as a parking area or a parking lot or  
 16 would you describe it as a dumpster enclosure?  
 17 A I would describe it as a dumpster enclosure in a  
 18 parking lot.  
 19 But clearly not an area where a car's parked?  
 20 A Clearly not an area where a car's parked, no.  
 21 Clearly not an area where if you were to park your  
 22 car and be attacked within a few feet that you would be inside  
 23 the dumpster area behind the dumpster, correct?  
 24 A You'd absolutely if you were attacked a few feet

XIII-88

THOWSEN - CROSS

1 the covering,  
 2 Q You went back and had a picture taken during  
 3 daylight hours, is that correct?  
 4 A That's correct.  
 5 Q And that photograph would be the best -- the best  
 6 reflection of how it looked? Show you what's been marked as  
 7 State's Exhibit 17, We're talking about the same area, correct?  
 8 A Yes.  
 9 Q And if we can see, the carport doesn't actually  
 10 extend over the top of the garbage bin, doesn't it?  
 11 A No, it does not  
 12 Q It ends before you get to the garbage bin?  
 13 A Yes, it does.  
 14 Q And then there's a side to that carport, is that  
 15 correct, that hangs down?  
 16 A What do you mean by a side exactly?  
 17 Q A side portion, perpendicular to the ground,  
 18 A There's an edge of a carport, is like a foot,  
 19 Q And that's visible from inside?  
 20 A Yes, as is the underneath,  
 21 Q There's a lot of carports in Las Vegas?  
 22 A Probably,  
 23 Q Probably?  
 24 A Yeah,

X111-87

THOWSEN - CROSS

1 from the dumpster area, you'd be — the dumpster's right  
 2 there.  
 3 Q Well, you'd have to go around the dumpster to get  
 4 behind the dumpster, correct?  
 5 A If you were to get behind the dumpster you would,  
 6 yes,  
 7 Q Well, that's where Mr. Bailey was found, correct?  
 8 A Yes, that's where he was found after he was killed.  
 9 Q You're aware that the first officer on the scene, Mr.  
 10 Testa, moved the dumpster because it was position in such a  
 11 manner that he couldn't get around either side, is that correct?  
 12  
 13 MR. KEPHART: Your Honor, I'm going to object,  
 14 That's not the testimony. It's incorrect.  
 15 MR. SCHIECK: I'll rephrase the question, Your  
 16 Honor,  
 17 THE COURT: Very well, withdrawn,  
 18 BY MR, SCHIECK:  
 19 Q Are you aware that he moved the dumpster when he  
 20 arrived?  
 21 A Yes.  
 22 Q Now you were asked a question about where Ms.  
 23 Lobato indicated she obtained the knife, correct?  
 24 A Yes,

X111-89

THOWSEN - CROSS

1 Q And you indicated that a -- it was your recollection  
 2 that she said a friend gave it to her initially in her statement?  
 3 A I believe yes,  
 4 Q Do you have the statement there in front of you?  
 5 A The report or the statement?  
 6 Q Her statement, page 10. Last line,  
 7 A Yes,  
 8 Q Okay, And in that statement she doesn't say a  
 9 friend gave it to her, just "somebody gave it to me?"  
 10 A Yes, In that sentence, yes,  
 11 Q And then later in the car as you were driving back  
 12 from ipanaca she corrected that and told you that she now  
 13 recalled that her father had given it to her for Christmas?  
 14 A She didn't say that she now recalled but she just  
 15 said the knife was a present from her father at Christmas.,  
 16 Q So she just volunteered that out of the clear blue sky  
 17 with no preface to it, just blurted those words out first thing?  
 18 A I don't know what the conversation was but I just  
 19 recall that she added that in there.  
 20 Q Okay. She gave you that information voluntarily  
 21 during this car ride on the way back, correct?  
 22 A It was -- certainly we were speaking with her about  
 23 various different things. I don't remember -- it wasn't a  
 24 questioning session it was a conversation just on the way back

X111-90

THOWSEN - CROSS

1 A Yes.  
 2 Q And do you recall what her answer was?  
 3 A That she did not --  
 4 Q That she did not tell anyone?  
 5 A That she did not tell anyone,  
 6 Q Can you turn to page 17 of her voluntary statement?  
 7 About two-thirds of the way down. Do you recall her telling  
 8 you, "No," and then in parenthesis, "(crying) not that I can  
 9 remember. I mean, I -- I -- I really don't know." It that what  
 10 her answer was?  
 11 A Yes,  
 12 Q Not that she didn't tell any anybody that she can't  
 13 remember and she really don't know?  
 14 A Actually she answers first, "No," that she didn't tell  
 15 anybody and then she changes it and has the other part in  
 16 there as well,  
 17 Q Okay. So the full answer, just so we're clear, is,  
 18 "No," and then in parenthesis it says, "(crying) not that I can  
 19 remember. I mean I -- I -- I really don't know." That's the full  
 20 answer?  
 21 A That's the full answer.  
 22 Q Okay. She was crying on and off throughout the  
 23 interview, is that correct?  
 24 A At times, yes.

X111-92

THOWSEN - CROSS

1 to Las Vegas,  
 2 Q Now you brought a butterfly knife here to court  
 3 today that's a single edge knife, is that correct?  
 4 A That's correct  
 5 Q Okay. Is it your testimony that she told you it was a  
 6 single edge or a double edge butterfly?  
 7 A A single edge butterfly knife.  
 8 Q Did she tell you that in the tape recording or is this  
 9 something that wasn't recorded?  
 10 A It would have either been a tape recording or in the  
 11 portion before the tape started.  
 12 Q Okay, So if it's not in the tape statement it would  
 13 have had to been before the tape was started?  
 14 A Yes.  
 15 That she specified it was a double edge or a single  
 16 edge?  
 17 A Yes.  
 18 Okay, It's your recollection she said single edge?  
 19 A Yes. And not serrated but plain.  
 20 You were also asked whether or not she had told  
 21 anyone else about the attack --  
 22 A Yes.  
 23 Q -- during her taped statement to you? Do you recall  
 24 being asked that?

X111-91

THOWSEN - CROSS

1 Q Okay. And when you first got there to her house  
 2 you were -- you had some information already about her, is  
 3 that correct?  
 4 A Yes,  
 5 Q That you had pulled some police reports concerning  
 6 her being a victim?  
 7 A Yes, that's correct.  
 8 Q Okay, You were aware of that incident?  
 9 A Yes,  
 10 Q That was an incident that according to reports was  
 11 when she was a younger child?  
 12 A Yes.  
 13 Q Okay. And you actually had physical possession of  
 14 those reports?  
 15 A Yes.  
 16 Q Okay. And had made the connection that this was  
 17 the same victim in those reports that you were going to be  
 18 talking with?  
 19 A That's correct.  
 20 Q Okay, And very early on in your contact with her  
 21 you brought up that she had been hurt in the past and you  
 22 were aware of it?  
 23 A Yes.  
 24 Q And that was before you had her sign the Miranda

X111-93



THOWSEN - CROSS

1 card, is that correct?  
 2 A That is correct.  
 3 Q Okay. And as soon as you told her that she started  
 4 crying?  
 5 A Yes.  
 6 Q In recalling apparently the events you referenced  
 7 she started to cry?  
 8 A Only in being told, "I know she'd been hurt in the  
 9 past,"  
 10 Q And at that point --  
 11 A And it involved more than just that incident.  
 12 Q Okay. And it was after that you had told her about  
 13 this information you had about her unfortunate past and that  
 14 she started crying that you pulled out the Miranda cards and  
 15 read it her and had her sign it, is that correct?  
 16 A I didn't tell her any information about her  
 17 unfortunate past.  
 18 Q You said, "I know you've been hurt in the past?"  
 19 A Yes  
 20 Q Okay. And in fact you guys talked about that on the  
 21 way back from Panaca, is that correct? That she had been a  
 22 victim of a sexual assault at the hands of her mother's  
 23 boyfriend?  
 24 A Yes, I believe at that point she brought up.

X111-94

THOWSEN - CROSS

1 Q A lot of traffic drives that road a little bit faster than  
 2 the speed limit, is that a fair statement?  
 3 A That's probably a fair statement.  
 4 Q Okay. So during that two and half hours that you  
 5 were in the car with Detective LaRochelle you didn't turn on  
 6 the tape recorder and take any other information from Ms.  
 7 Lobato?  
 8 A No.  
 9 Q You certainly could have, you had the reorder still?  
 10 A Certainly could have,  
 11 Q Okay. So you had two and a half hours without  
 12 being disturbed that you could have recorded further  
 13 information if you so desired?  
 14 A Yes.  
 15 Q Okay, And you didn't?  
 16 A No,  
 17 Q And when you got to the jail and you were going  
 18 through this booking process you actually had a crime scene  
 19 analyst come out and meet you at the jail, correct?  
 20 A That's correct,  
 21 Q Okay. And for the purpose of taking her shoes and  
 22 taking photographs?  
 23 A And a buccal swab,,  
 24 Q Okay. And a buccal swab is to match DNA?

X111-96

THOWSEN - CROSS

1 Okay, But it was brought up in the car on the trip  
 2 back?  
 3 A As I said, I believe she brought it up.  
 4 Okay, And she was emotional when she brought it  
 5 up then too, wasn't she?  
 6 A Yes.  
 7 Q How long did that trip take on the way back from  
 8 Panaca?  
 9 A About two and a half hours probably.  
 10 Q OkaY, And of course you guys are driving the speed  
 11 limit. That's about average speed if you're -- I mean average  
 12 time if you're driving the speed limit?  
 13 A Yeah.  
 14 Q Okay. Were you driving or was Detective  
 15 LaRochelle? A I was driving.  
 16 Q And even on that stretch of road, which is kind of  
 17 wide open and empty in a lot of places, did you stick right at  
 18 the speed limit or did maybe you go a little bit faster than the  
 19 posted speed limit?  
 20 A You know, being under oath and sitting here five, six  
 21 years later, I can't tell you quite how fast I was  
 22 going --  
 23 Q Okay,  
 24 A — that particular night.

X111-95

THOWSEN - CROSS

1 A It's to take a DNA sample to test for DNA, yes,  
 2 Q Okay. And certainly once you got to the jail you  
 3 could have set her down in a room and taken a further  
 4 statement from her, correct?  
 5 A Yes.  
 6 Q And you didn't do that?  
 7 A No.  
 8 Q Okay. The only statement you took for [sic] her was  
 9 a statement that you took in Panaca in her front room?  
 10 A Yes.  
 11 Q So there was no follow up questioning by you on  
 12 tape concerning the events?  
 13 A No,  
 14 Q Was there any question at all by you or was there  
 15 just general conversation during the trip and once you got to  
 16 the jail?  
 17 A No conversation.  
 18 Q Okay. So you didn't pose any specific questions to  
 19 her about any information on the case?  
 20 A No, she was actually upset and asking to take her  
 21 Prozac. You know we have a responsibility for her well-being  
 22 and safety as well. We were mostly trying to make sure she  
 23 was calm and wasn't going to do anything bad to hurt herself  
 24 and pretty much told her to wait and let the process take its

X111-97

THOWSEN - CROSS

1 course and don't do anything foolish,  
 2 Q Okay. Now let's talk about the statement you took  
 3 from her and you got a lot of information during that  
 4 statement which typed up is 27 pages?  
 5 A Yes,  
 6 Q And you started recording at 6:07 p.m, and ended at  
 7 6:37 p.m.?  
 8 A Yes  
 9 Q So it was a 30-minute statement?  
 10 A Yes,  
 11 Q And during that statement she described the man  
 12 that attacked her as being really big, "seemed like a giant" to  
 13 her, correct?  
 14 A Yes.  
 15 Q Okay. And you're familiar with the information on  
 16 Mr. Bailey, he was not what you'd describe as a giant?  
 17 A He was not small by any means.  
 18 Q But certainly not the description that she would have  
 19 given you saying he was really big, "seemed like a giant" to  
 20 her?  
 21 A From interviewing victims for 29 years, often people  
 22 perceive the person as much larger,  
 23 Q Okay. And so because her description doesn't match  
 24 Mr. Bailey you're just saying she perceived him as being much

XIII-98

THOWSEN - CROSS

1 area?  
 2 A Not 'di she was at the jail.  
 3 Q And at the jail she said this room reminds of where I  
 4 was attacked?  
 5 A Yes.  
 6 Q She didn't reference dumpster, she said it reminds  
 7 me of where I was attacked?  
 8 A Yes and it did not look like a parking lot, it looked -  
 9 like a room.  
 10 Q Okay. And again, because the wall was painted up a  
 11 few inches up with the gray paint that they use in the jail for  
 12 the floor and the wall, you figured that looked like a curb, the  
 13 same type of curb that was in the -- in the enclosure?  
 14 A Yes,  
 15 Q When you're inside of those rooms at the jail that  
 16 have the gray paint that goes up a few inches off the floor,  
 17 you don't mistake that wall and that gray paint for a curb, do  
 18 you?  
 19 A No.  
 20 Q You've never thought, wow, that's a curb there and  
 21 it turned out it wasn't?  
 22 A No,  
 23 Q And she told you that this incident happened at the  
 24 Budget Suites, correct, on Boulder Highway?

XIII-100

THOWSEN - CROSS

1 larger -- the person that attacked her much larger than Mr.  
 2 Bailey?  
 3 A Her description does match Mr. Bailey, And he is  
 4 older, he was smelly, he was African American, and he was  
 5 much bigger than her. She was approximately 100 pounds by  
 6 her count and his records indicated he was normally about 160  
 7 prior to being removed of his blood.  
 8 Q Okay That's -- he was 136 at the autopsy?  
 9 A Yes.,  
 10 Q So he lost 24 pounds of blood, is that your —  
 11 A No, he didn't lose 24 pounds of blood but I'm sure  
 12 that he lost some in there.  
 13 Q Okay, And so it's your testimony that he was really  
 14 big and seemed like a giant?  
 15 A I don't believe I gave that testimony, no.  
 16 Q She told you that she was attacked in a parking lot,  
 17 correct?  
 18 A Yes.  
 19 Okay, And the incident that caused Mr. Bailey's  
 20 death occurred in a dumpster, is that correct?  
 21 A In a parking lot, yes,  
 22 Q In a dumpster area in a parking lot?  
 23 A Yes.  
 24 Q She didn't describe being attacked in a dumpster

XIII-99

THOWSEN - CROSS

1 A Yes, that's what she believed.  
 2 Q Where she was attacked?  
 3 A Yes,  
 4 Q Okay. And certainly she didn't mention Nevada  
 State Bank?  
 6 A She did not mention Nevada State Bank, no,  
 7 Q And she didn't mention West Flamingo to you?  
 8 A At one portion she couldn't recall what side of town  
 9 it was and that she was not very good with directions in the  
 10 town.  
 11 Okay. She said she wasn't familiar with Las Vegas  
 12 at all?  
 13 A Correct,  
 14 Q Pretty much is what she said?  
 15 THE COURT: The record shall reflect that the  
 16 detective nodded his head up and down,  
 17 BY MR. SCHIECK:  
 18 Q And she talked about two locations, correct? But  
 19 both of them she said were Budget Suite on Boulder  
 20 HIGHWAY?  
 21 A That's two different comments there, I believe,  
 22 being taken out of context,  
 23 Q Okay. What part am I taking out of context?  
 24 A One portion she's talking about two different

XIII-101

THOWSEN - CROSS

1 locations and when she was discussing Budget Suites we were  
2 trying to pinpoint which Budget Suites it was because there  
3 were two on Boulder Highway and one of them was closer to  
4 Sam's Town and she indicated that the Budget Suites that she  
5 was referring to, that she stayed at, was closer to Sam's Town.

Q But she did talk about two Budget Suites, correct?

A Correct.

Q Both on Boulder HIGHWAY, correct?

A Yes And actually if I may correct myself not so  
10 much that she talked so much about two Budget Suites but  
11 when she was talking about Budget Suites on Boulder Highway  
12 we were trying to clarify there are two Budget Suites on  
13 Boulder Highway, is it closer to Sam's Town or further than  
14 Sam's Town

Q But she said it's the one across from Sam's Town?

A Or closer to Sam's Town. I don't remember the  
17 exact wording.

Q And she said that where the attack on her took place  
19 was like right around from the fountain at the Budget Suites, is  
20 that correct?

A That's correct

Q Okay, There's wasn't a fountain anywhere around  
23 the Nevada State Bank parking lot?

A No, there was not.

X111-102

THOWSEN - CROSS

1 A Correct.

2 Q She never said she used the baseball bat?

3 A She did not.

4 Q In fact her first answer was, "No," and then she  
5 volunteered that she did have a bat?

A Yes, she did.

7 Q And that bat turned out to actually be in her car?

A Yes.

9 Q And she indicated to you that the individual that had  
10 attacked her that she had used the butterfly knife to repel was  
11 still alive when she left, correct?

A Yes.

13 Q He was crying when she left?

A Yes,

5 Q And you're aware of the facts of -- that have been  
16 brought out here in court as in fact that Mr. Bailey was  
17 deceased at the time he was dismembered?

A That is correct,

19 Q So that doesn't fit the description of what happened  
20 to Mr. Bailey, that he would have still be alive and crying when  
21 the person left?

A No, that would be somebody minimizing.

23 Q Okay. Okay, So every time she says something that  
24 doesn't match Mr. Bailey she's minimizing and every time she

X111-104

THOWSEN - CROSS

1 Q So that description doesn't match the area where  
2 Mr. Bailey was found also?

A No, that matches where she lived that she couldn't  
4 recall the apartment number even after living there for a  
5 period of time.

Q Well, the question where the fountain came up was  
specifically where the assault took place and she said, "Right  
around from the fountain?"

A Yes.

Q So she was describing where her assault took place?

A At that particular question,

Q Do [sic] you ask her if she recalled hitting him with  
13 anything else besides the knife, correct?

A I don't recall if that was me particularly or —

Q Okay

A -- Detective LaRochelle.

Q It was Detective LaRochelle, That question was  
18 asked of her?

A Yes, it was asked of her.

Q And her answer was, "No," and then she qualified  
21 that answer, correct?

A Correct,

Q Stating, "But it's -- I have a baseball bat that I keep  
24 behind my seat or had a baseball bat," correct?

X111-103

THOWSEN - CROSS

1 says something that sort of matches then that verifies, is that -

3 MR, KEPHART: Your Honor, I'm going to object to  
4 argumentative.

5 THE COURT: Sustained.

BY MR, SCHIECK:

7 Q She indicated to you that after she was attacked by  
the individual that she described as a giant, at the Budget  
9 Suites near the fountain in the parking lot, after that attacked  
10 she left in her red Fiero, correct?

A If she left in her red Fiero, that part's correct.

Q And she took the car to Jeremy's house, correct?

A Yes.

Q And you interviewed Jeremy?

A Yes.

Q And you verified that her car was in fact left at  
17 Jeremy's house at one point?

A At point it was; yes.

Q At one point during the interview she as asked  
20 whether or not there was a dumpster, correct?

A Yes.

Q And she indicated that there were dumpsters that  
23 were some distance away and then said, I don't think I could  
24 have put someone in a dumpster or words to that effect?

X111-105

THOWSEN CROSS

1 A Words to that effect; yes,  
 2 Q Did it seem to you like she thought that this  
 3 individual had been found in a dumpster and was saying,  
 4 couldn't have been me that put him in the dumpster?  
 5 A I don't know what she was thinking. We certainly  
 6 had not mentioned anybody being in a dumpster or anything  
 7 about a dumpster. That was the first time the dumpster was  
 8 mentioned,  
 9 Q Okay. So she brought up "in a dumpster" as  
 10 opposed to you guys bringing it up?  
 11 A That is correct.  
 12 Q And that again, there's nothing that was found in the  
 13 dumpster in this case?  
 14 A No, in this case --  
 15 Q Other than garbage?  
 16 A -- the garbage was removed from the dumpster  
 17 since apparently the individual couldn't be put into the  
 18 dumpster,  
 19 Q And at the end of the interview, just before you  
 20 switched the tape off the second time, Ms. Lobato had told you  
 21 a concern -- told you information concerning a Mumblelina, a  
 22 young lady that mumbles a lot that had also been attacked in  
 23 the same area, correct?  
 24 A I don't recall if it was the same area but there was

X111-106

THOWSEN - CROSS

1 Q So clearly she was talking at a -- at a point in time  
 2 much earlier than July 8' or 9th?  
 3 A At that particular sentence, yes.  
 4 Q There was no follow up question to that by you?  
 5 A No, there was not  
 6 Q And when you started the interview or the tape  
 7 portion of the interview with her it was actually you that  
 8 indicated the term, "a couple of weeks ago in Las Vegas,"  
 9 correct?  
 10 A Yes, that's correct.  
 11 Q That was not what she said on the tape statement,  
 12 that's what you said, "a couple of weeks ago in Las Vegas?"  
 13 A That's correct,  
 14 Q And then later on at the end of the interview she's  
 15 talking about more than a month ago?  
 16 A Yes.  
 17 Q Those are her words?  
 18 A Those are her words.  
 19 Q And that's minimizing also?  
 20 A Actually, it is. Yes, it is.  
 21 Q So she -- by telling you a different place, a different  
 22 time, a different description, a different location she's  
 23 minimizing what she's telling you she did?  
 24 A Yes.

X111-108

THOWSEN - CROSS

1 another attack she was talking about by a person by the name  
 2 of Mumblelina,  
 3 Q And she was asked, "How soon was it that you  
 4 talked to her before you were attacked?" And she said, "It  
 5 was afterwards already," correct? Do you recall that?  
 6 A I recall a conversation, I'm not sure the way you  
 7 said is what is on there,  
 8 Q Can you turn to page 27?  
 9 A Thank you,  
 10 Q Is that what it says? "It was afterwards already?"  
 11 A Yes, that's what it says.  
 12 Q And you -- your question was, "After you'd been  
 13 attacked?"  
 14 A Yes  
 15 Q And her answer was, "Yes -- or yeah, this has  
 16 already been over a month ago?"  
 17 A Yes, that's correct,  
 18 Q And at that point you asked if there's anything else  
 19 you can think of, she asked to blow you [sic] nose, and you  
 20 ended the statement, correct?  
 21 A Yes, that's correct,  
 22 Q And this statement was on July 20<sup>th</sup> of 2001 and July  
 23 8<sup>th</sup> was certainly not over a month prior to that?  
 24 A That's correct.

X111-107

THOWSEN - CROSS

1 Q Okay, You talked about what stood out in your mind  
 2 was that when you were back behind that dumpster that it --  
 3 that it was -- I take it, smelled quite a bit?  
 4 A Not the dumpster, Mr. Bailey.  
 5 Q Okay. Is it uncommon that individuals that are  
 6 homeless have an odor about them?  
 7 A No, it's not,  
 8 Q In fact, it's quite common?  
 9 A Yes, it is,  
 10 Q And it's not uncommon during the summer time in  
 11 Las Vegas for individuals to -- especially if they're not  
 12 showering, to have an odor about them?  
 13 A Yes,  
 14 Q And there are certainly a large number of individuals  
 15 in Las Vegas besides being homeless over consume alcohol as  
 16 part of their homelessness?  
 17 A Only one with their penis removed though,  
 18 Q That wasn't the question I asked you so would you  
 19 like to answer the question I asked you?  
 20 A Could you ask it again for me, please?  
 21 Q Okay, There are -- there are quite a number of  
 22 people in Las Vegas that are homeless and also overindulge in  
 23 alcohol?  
 24 A Yes,

X111-109

THOWSEN - CROSS

1 Q And while we're talking about individuals that have  
2 had injuries to their penis, you were shown a statute that's a  
3 mandatory reporting statute, is that correct?

A That is correct.

5 Q Okay. So -- and let's just use the general term,  
6 "healthcare provider" We don't need to go through all the  
7 different mandatory reporters, let's just say "healthcare  
8 providers," okay? Someone comes in and has a gunshot  
9 wound, they have to report that?

A Yes

Q Mandatory?

A Mandatory,

Q What if it's an accidental gunshot wound?

A They have to report it.

Q What if there's a knife wound, a cut?

A If they have a knife wound it's reported.

Q Even if it's accidental?

18 A I guess it's to be determined whether it's accidental  
19 or not

20 Q Okay. And so someone at the healthcare provider  
21 makes that determination whether it's accidental or not?

22 A Well, no, generally they would report it and it would  
23 be determined whether it was accidental or not.

24 Q Well --

XI11-110

THOWSEN - CROSS

1 A I cannot tell you what another person is going to  
2 think or do, What I am told, according to the statute, is that if  
3 a knife wound appears to be non-accidental that it would be  
4 reported to the police?

(Off-record colloquy)

6 Q It's 629.041, Indicates that if you have -- and I'll  
7 paraphrase the first part and I'll show this you to be fair, an  
8 injury which appears to have been inflicted by means of a  
9 firearm or knife, not under accidental circumstances, shall  
10 promptly report the person's name, if known; his location; and  
11 the character and extent of the injury, So if it's under  
12 accidental circumstances according to the statute there's no  
13 requirement to report?

A Correct.

15 Q Okay. And so someone at the healthcare provider  
16 must make that determination whether or not it's accidental  
17 circumstances?

A Okay.

19 Q Okay. So is that a fair statement?

A That's fair.

21 Q Now tell us what you did to determine that there  
22 were no reports generated of a knife wound to as Mr. Kephart  
23 said the groin area or to the penis during May, June, and July  
24 of 2001?

X111-112

THOWSEN - CROSS

1 A Is my understanding,

2 Q -- we're talking about generally,

3 A Okay.

4 Q Somebody has to make that determination whether  
5 or not it was accidental or not?

6 A My understanding is if someone comes in with a  
7 knife wound it would be reported,

8 Q Every single knife wound?

9 A That's my understanding,

10 Q I hate to confess that when I cook I tend to quite  
11 often cut myself and have even done so to the point that I've  
12 needed stitches.,

13 MR, KEPHART: Your Honor, is Mr. Schieck  
14 testifying? If he is then we should probably have him sworn  
15 in. This is -- I'm objecting to the form of that question if  
16 that's a question,

17 THE COURT: Sustained.

18 BY MR SCHIECK:

19 Q Hypothetically, if a -- if a person is at home cooking  
20 and slicing tomatoes and induces themselves to slice a -- not  
21 only the tomato but a large piece of their finger that requires  
22 stitches and goes to a healthcare provider and says I was  
23 cuffing tomatoes when I cut my finger, is it your testimony  
24 that that is going to be reported to Metro?

XIII1-111

THOWSEN - CROSS

1 A I had it researched through the various record  
2 sections --

3 Q Now when you say you had it researched, you had  
4 someone else do this research?

5 A Yes,

6 Q Okay. It wasn't done by you?

7 A No, I can't do every single thing. Some things have  
8 to be delegated.

9 Q Okay. So someone else did the research and  
10 reported it to you?

11 A Correct.

12 Q Okay. Did they --

13 A I didn't go to each individual hospital and read all of  
14 their records, I didn't go to each records and ask if I could  
15 read through each of the reports that had come in. It has to  
16 be at some point given to other people to report back  
17 accordingly,

18 Q So someone else reported to you that there were  
19 no --

20 A Yes,

21 Q You didn't personally go out and do this yourself?

22 A I personally telephoned hospitals. I didn't personally  
23 look at every single report but I made the determination  
24 through investigation that it was not reported,

X111-113

THOWSEN - CROSS

1 Q Okay. You indicated just a minute ago that you had  
2 someone else do this and report back to you?

3 A Yes, some things I would do myself; some things I  
4 may have the secretary do,

5 Q And she would tell you what her results were?

6 A Yes,

7 Q Okay, And did you prepare a report on the results  
8 of this investigation?

9 A I did not Because it was negative I reported to the  
10 District Attorney's office and there was nothing found,

11 Q So you generated no report whatsoever on this  
12 additional investigative work you did on this case?

13 A I did not

14 Q Okay. And besides perhaps your secretary going out  
15 and talking to whoever she talked to and reporting back to  
16 YOU, who else was out there doing this?

17 A Well, I also spoke with urologists in the Valley since  
18 a urologist would be involved in having to repair and/or  
19 replace an individual's penis had they actually survived, and  
20 determined that nobody had reported any severed penises that  
21 they had reconstructed,

22 Q You talked to every urologist in Las Vegas?

23 A I talked to several of them and asked that they  
24 would communicate amongst themselves at their various

X111-114

THOWSEN - CROSS

1 Q How often does it happen?

2 A It doesn't. That's why it's a big deal,

3 Q Okay, It's never happened before?

4 A It does not happen often is what I'm saying,

5 Q Okay, Well, you're familiar with how often it has  
6 happened?

7 A No,

8 Q Okay, Are you aware of Dr. Simms' testimony that  
9 every case he's seen has been male on male amputation?

10 A I was not present for Dr. Simms' testimony,

11 Q Okay. You were never informed of that? No one  
12 ever informed you of that?

13 A The ones that he has seen?

14 Q Or read about?

15 A I have not been informed of that, no

16 Q You haven't done any reading on this type of  
17 amputation, you're just basing it on what you've heard and the  
18 Bobbitt case?

19 A I base this on my experience as a police officer  
20 investigating murders like this that don't involve severed  
21 penises and realizing that it doesn't occur but very rarely,

22 Q And as a — as a veteran homicide officer you know  
23 the importance of preparing reports of your investigation,  
24 correct?

X111-116

THOWSEN - CROSS

1 conferences and that, yes,

2 Q So your testimony is based on you asking others to  
3 go out and ask others whether or not they had seen a severed  
4 penis or fixed a severed penis or cut penis?

5 A As far as the urologists go, a town of this size  
6 doesn't have all that many urologists,

7 Q How many does it have?

8 A I can't give you an exact number.

9 Q But how do you know that there's not that many?

10 A Beca'use I've probably been to dinner with most of  
11 them at the same time

12 Q Okay. All right. Leaving out your dinner  
13 conversations your investigation in this case was to talk to  
14 some urologists and ask them to talk to other urologists?

15 A Yes,

16 Q Okay, And —

17 A Because that's something that is — would be talked  
18 about, If somebody's penis was severed and had to be  
19 reinstalled it's sort of like Lorena Bobbitt, I think pretty much  
20 everybody is familiar with her name because it's an unusual  
21 occurrence. It doesn't not happen very often and it's a big  
22 deal. If something like that happened and somebody did the  
23 surgery, everybody in that business would be knowing about it  
24 and talking about it,

X111-115

THOWSEN - CROSS

1 A I know that it's important to be able to testify to  
2 what has been done. In some cases it's done in a report so  
3 you can have it outlined. In some cases if it's something that  
4 stands out and you've discussed it with the District Attorney's  
5 office and it did not come up with any result that indicated  
6 there was an actual individual that was a victim with that  
7 injury, then no,

8 Q So you do all this investigation and don't document  
9 it anywhere?

10 A Well, I think it has been documented in prior  
11 testimony,

12 Q Other than coming to court —

13 A Forgive me, Your Honor, I thought this was  
14 completely off, (Turns off cellphone) I'm sorry, go ahead,

15 Q Other than coming to court and testifying at a prior  
16 proceeding, have you ever documented any of this  
17 investigation you did in this case?

18 A Yes, I've documented a lot of this investigation I've  
19 done.,

20 Q No, on the -- on the penis amputation or severance  
21 or lack of any reports being filed?

22 A It's not in a specific document, no,

23 Q Now let's say someone is -- suffers a stab wound,  
24 it's not directly to the penis but perhaps it's to the groin area

X111-117

THOWSEN - CROSS

1 without impacting the penis, how many of those happened  
2 during that three-month period?

3 A I don't know. Didn't see any.

4 Q Okay. Well, which ones did you look at?

5 A I asked for anything that would be reportedly attack  
6 of the groin.

7 Q Okay, Who did you ask for that information?

8 A The records bureaus of the various locations here in  
9 Clark County.

10 Q Okay. And they didn't report back to you in writing?  
11 They just called you up and said —

12 A Yes.

13 Q Okay, So it's based on what they told you during  
14 what, a phone call?

15 A A phone call or someone looking up on a computer  
16 terminal.

17 Q Well, they -- you mean sending you an e-mail saying  
18 didn't get any results?

19 A No, I didifot have any e-mails.

20 Q Okay. Well, how did you get the information back  
21 that there were no reports filed if it wasn't by phone call?

22 A That's what I'm telling you is that it would have  
23 been a conversation in person or on a telephone, There was  
24 not an e-mail,

X111-118

THOWSEN - CROSS

1 A Correct.

2 Q And you were asking questions concerning paper  
3 towels at the scene by Mr, Kephart, some white paper towels  
4 stuffed in the open wound in the penis area?

5 A Yes.

6 Q And it's recollection that you didn't see any of those?

7 A Not stuffed in any wounds, no

8 Q Okay, And Sergeant Manning was there at the  
9 scene?

10 A Yes, he was,

11 Q Okay, And he would have various responsibilities at  
12 the scene?

13 A His responsibility is to oversee the detectives and/or  
14 deal with the media if the media's there, and if we need  
15 additional equipment or something like that he'd be the one  
16 that would arrange that sort of thing,

17 Q Would he also deal with the coroner's investigator  
18 office?

19 A He may at times, yes.

20 Q And you had talked about the fact that when you do  
21 a media release on a homicide case that often times you will  
22 withhold certain information to verify if someone comes  
23 forward that they're telling you something that is true or  
24 they're just trying to volunteer so to speak?

X111-120

THOWSEN - CROSS

1 Q Okay, And there's no documentation to tell us who  
2 these persons were that gave you this information?

3 A No

4 Q How many instances were there where someone  
5 went to a healthcare provider during that time and indicated  
6 that they had accidentally cut themselves in that area?

7 A I have no idea.

8 Q Because the healthcare provider wouldn't have to  
9 report that?

10 A I think a severed penis would not be considered a  
11 potentially accidental cutting.

12 Q I was indicating the entire -- the area including cuts  
13 to the groin or the upper stomach, things of those nature  
14 where you go into the doctor and you say, you know, I was  
15 using my saber saw and it slipped and I cut myself, and the  
16 doctor believed that it was an accidental injury and didn't  
17 report it. How many of those happened during that period?

18 A None that I'm aware of,

19 Q But if it was determined to be accidental it wouldn't  
20 have been reported so there's no way you'd be aware of it,  
21 correct?

22 A No.

23 Q Unless you went to every single doctor in town and  
24 asked, you know, that somebody come in with that?

X111-119

THOWSEN - CROSS

1 A That's correct.

2 Q And would you also give directions to the coroner  
3 medical investigator not to release information to the next of  
4 kin concerning those type of things?

5 A Yes, that would be consistent as well,

6 Q If the next of kin was contacted and told that there  
7 was a severed penis, that information could get out to the  
8 public and you'd want to control that?

9 A That's true.

0 Q And so would Sergeant Manning, part of his  
11 responsibilities to be to tell the coroner's investigator what not  
12 to release to the next of kin or whoever they deal with?

13 A Yes, if in a case like this if we wanted to tell them  
14 not to release that the penis was severed he would do that  
15 Or, in a case of somebody that had been shot and not release  
16 what caliber it was, things like that so we'd know if somebody  
17 was talking about a specific caliber we'd know that we had  
18 somebody who knew what they were talking about,

19 Q And that's not uncommon in most homicides,  
20 correct? To withhold some information?

21 A That's correct.

22 Q And that certainly would be within Sergeant  
23 Manning's duty to make the determination what not to be  
24 released?

X111-121

THOWSEN - CROSS

1 A Yes,  
 2 Q And you've got what's called the homicide file in  
 3 front of you, is that correct?  
 4 A Yes.  
 5 Q And that file really should contain all of the reports  
 6 that are in connection with this case?  
 7 A Yes.  
 8 Q Generated by the police department?  
 9 A Yes  
 10 Q Okay. And that would include the coroner  
 11 investigator reports and follow up notes?  
 12 A We don't have anybody's notes, We have  
 13 investigator reports, we have a report from the doctor and a  
 14 pathology report that would have drugs and things like that in  
 15 the blood,  
 16 Q Would you have the follow up notes from William  
 17 Gaza with the Coroner's Investigator office?  
 18 A We would never have the follow up notes of  
 19 anybody. We would have their generated report that they  
 20 generate call it investigator's report or investigative report and  
 21 that would be it from them.  
 22 Q Okay, I'm going to show you just to see if this is in  
 23 your -- in your homicide book or whether or not it's the first  
 24 time you've seen it.

X111-122

THOWSEN - CROSS

1 Q Would -- I mean do the homicide detectives talk  
 2 with the coroner's investigators concerning the case as it's  
 3 progressing?  
 4 A No.  
 5 Do you talk with them concerning notification of next  
 6 of kin?  
 7 A Yes, that is their function is to notify the next of kin.  
 8 They're responsible for the body. Once we locate a body we -  
 9 can't touch the body or move the body until they get there.  
 10 They have responsibility for that body until it gets to the  
 11 Coroner's office and it's processed by the doctor and that and  
 12 then from that point on, And their function as far as we're  
 13 concerned is to have a body available and for us to be able to  
 14 move it and to — at some point get the person positively  
 15 identified and have them notify the next of kin.  
 16 Q Would there be any reason for the homicide  
 17 detectives to tell the coroner's investigator not to attempt  
 18 follow up on last known address or next of kin until the  
 19 investigation could be worked by homicide?  
 20 A I don't know unless they're trying to just keep the  
 21 part about the severed penis from somebody. I didn't tell  
 22 anybody that  
 23 Q Do you know whether Detective LaRochelle did?  
 24 A I have no knowledge of that.

X111-12.1

THOWSEN - CROSS

(Off-record colloquy)

1 MR. SCHIECK: May I approach, Your Honor? I'm  
 2 just going to determine if he's got these follow up notes in his  
 3 book, If he doesn't I'll mark it and --  
 4 THE COURT: Very well.  
 5 THE WITNESS: Yeah, we don't have anything ever -  
 6 - this is follow up notes.  
 7 BY MR. SCHIECK:  
 8 Q So you wouldn't have anything like this in your  
 9 homicide noteLok?  
 10 A No,  
 11 Q You wouldn't have anything -- if we could have this  
 12 marked as Defendant's —  
 13 (Off-record colloquy)  
 14 BY MR. SCHIECK:  
 15 Q This is four-page document — excuse me, five-page  
 16 document labeled follow up notes from the Clark County's  
 17 Coroner's office. And you indicate that you do not have that in  
 18 your detective notebook?  
 19 A I do not have that in my notebook. I have never  
 20 been provided that, that's not something we're normally given.  
 21 Q So the Coroner's office doesn't share information  
 22 with you concerning what they're doing on a case?  
 23 A They give us their report -- official report.  
 24

X111-123

THOWSEN - CROSS

1 Q Okay. And do you know whether or not Sergeant  
 2 Manning told the coroner investigator that there were white  
 3 paper towels stuffed in the open wound in the penis area?  
 4 A I have no knowledge of that either.  
 5 MR. KEPHART: Your Honor, I'm going to object as  
 6 to hearsay.  
 7 MR. SCHIECK: We ask if he has no knowledge of it,  
 8 Your Honor, so.  
 9 THE COURT: And the Court's sustains the objection,  
 10  
 11 MIL KEPHART: And I'm going to ask that it be  
 12 stricken as well, Your Honor.  
 13 THE COURT: Motion granted, stricken. The jury will  
 14 disregard it.  
 15 BY MR. SCHIECK:  
 16 Q So Sergeant Manning would be the one to ask that  
 17 question?  
 18 A Yes.  
 19 Q Okay. And the coroner investigator that he told it  
 20 to?  
 21 A Yes.  
 22 Q Okay. Now prior to having Ms, Lobato sign her  
 23 waiver of her rights card, the Miranda card, was there any  
 24 conversation before then? How long did it take?

X111-125



THOWSEN CROSS

1 A Only the part that I described as being in the □  
 2 livingroom with her was walking into the room, explaining who  
 3 I was, who Detective LaRoche was, and the comments  
 4 about wanting to talk about what happened in Las Vegas, and  
 5 understanding that she had been attacked and had to defend  
 6 herself, and the part about her car. And then when  
 7 mentioning that I knew that she had been hurt in the past and  
 8 as soon as she began to sob I took the rights card and said,  
 9 you know, we're going to talk to you about it and before you  
 10 do, you need to read this for us, please, out loud,

11 Q And it was open and obvious from what you  
 12 described before that you were from homicide?

13 A Yes. I even had -- actually have my actual notebook  
 14 that I carry if you'd like to see that? It's got "Homicide" in big  
 15 letters on it,

16 Q If you have it, if it's not inconvenient?

17 A It's right here

18 Q That's the one you had back on 2001?

19 A Yes,

20 MR. SCHIECK: For the record, Your Honor, he  
 21 displayed a brownish notebook that appears to say "Homicide"  
 22 on the front

23 THE COURT: The record shall so reflect,

24 MR SCHIECK: And his name.

X111-126

THOWSEN - CROSS

1 parents' house, is that correct?

2 A Yes,

3 Q And you didn't have their consent to search their  
 4 living portions of the house because they weren't home yet?

5 A They came home at the very end,

6 Q Okay, You'd already gotten the consent from Ms.  
 7 Lobato to search her bedroom though?

8 A Yes, that's correct.

9 Q And she in fact took you back into her bedroom?

10 A Yes, she did,

11 Q And the crime scene analyst was in the house at  
 12 some point to take her pictures, correct?

13 A Yes,

14 Q Did you have the crime scene analyst take any  
 15 photographs of shoes that were in her bedroom?

16 A I don't remember if she took pictures of them there  
 17 or when she got back,

18 Q Well, we know about the pair of black high heel  
 19 sandal shoes --

20 A Mm-hmm.

21 Q -- that were impounded. What about other shoes?  
 22 Were any other shoes impounded?

23 A I don't believe so at that point, just the shoes she  
 24 was wearing when we got to the jail.

X111-128

THOWSEN - CROSS

1 BY MR SCHIECK:

2 Q Now when you went up there to Panaca you called  
 3 and made sure that a crime scene analyst went with you?

4 A We called before we left We called the lab and  
 5 explaining we were going up there, we needed to take  
 6 somebody with us We would -- spoke -- spoken to a  
 7 supervisor at the crime lab. They assigned a crime scene  
 8 analyst and she got everything she needed, her equipment  
 9 loaded up in her car, and was ready to follow us out there.

10 Q Oka. So she followed you up there?

11 A Yes.

12 Q And she ended up taking photographs of the red  
 13 Fiero?

14 A Yes.

15 Q Okay. And she put the tape on that sealed the car  
 16 up, correct?

17 A That's correct,

18 Q Okay, And she also went into the house and took  
 19 some photographs?

20 A Yes, of Ms, Lobato.

21 Q Okay, And you had a consent to search Ms.  
 22 Lobato's room, correct?

23 A Yes, that's correct.

24 Q Okay. It wasn't Ms, Lobato's house, it was her

X111-127

THOWSEN - CROSS

1 Q Okay, And no other shoes in her room were  
 2 impounded or photographed?

3 A No, I don't believe so.

4 Q But you had a consent to search, you certainly could  
 5 have impounded and/or photographed any shoes that were in  
 6 her bedroom?

7 A Yes.

8 Q With her permission?

9 A Yes,

10 Q Do you recall what type of tow truck was used to  
 11 transport the Fiero? Whether it was the kind that tows the car  
 12 or the kind where you put the car up on the back?

13 A I know that we request the kind you put the car on  
 14 top.

15 Do you have a recollection of which kind was used?

16 A I believe it was the kind you put on top but it's been  
 17 quite a long time ago.

18 Q Now on June 9<sup>th</sup>, after you had cleared the scene  
 19 there at the Nevada State Bank and gone back to the  
 20 Homicide office you received a call indicating that there was a  
 21 person at the scene that was inquiring about the deceased?

22 A Yes.

23 Q And that was Diann Parker making the inquiries?

24 A Yes, it was.

X111-129

THOWSEN - CROSS (

1 And who was it that contacted with that  
 2 information? A It was one of the patrol officers there at  
 3 the scene.

4 Q Do you recall whether it could have been Crime  
 5 Scene Analyst Ford? Would your report reflect it?

6 A Yes, it would,

7 Q Okay. If you could turn to page 13 of your report,  
 8 last paragraph,

9 A Yes, that's correct, She approached the patrol  
 10 officer and then Ford had called -- made the phone call,

11 Q And you followed up on that information?

12 A Yes,

13 Q You went out to Diann Parker's apartment and  
 14 talked with her?

15 A Yes.

16 Q Did you do a tape interview with her?

17 A Not at that particular time.

18 Q You later did though?

19 A Yes.

20 Q Okay. And when you went out to her apartment --  
 21 well, let's back up a little bit. You had information that she  
 22 was making inquiries specifically about the deceased person as  
 23 being someone that she may have had contact with  
 24 previously?

X111-130

THOWSEN - CROSS

1 nothing appeared to be a Reebok type with the sort of shoe  
 2 impressions that we could see from the scene. Nothing  
 3 matched up and nothing had blood on it.

4 Q Did you use Lumina' on them -- on the shoes to test  
 5 for blood?

6 A No, we didn't.

7 Q Just visual inspection?

8 A It was visual inspection. You can visually inspect --  
 9 when you have a clear-cut pattern, say for example if you  
 10 have something that has circles on it, on the bottom of the  
 11 shoe that leaves a pattern, and you're looking at other people's  
 12 shoes and their shoes all have rather than circles big blocks,  
 13 you don't need to test it with five different things to be able to  
 14 tell that didn't make that impression. You can -- you can tell.

15 Q Wouldn't you want to know if any of the other pair  
 16 of shoes might have blood on them?

17 A We looked at the other shoes,

18 Q You just looked at them?

19 A Yes, we did,

20 Q But you even have a crime scene analyst to do the  
 21 Lumina' test, correct?

22 A If we felt at some point that we needed one because  
 23 something was leading that direction we would have done  
 24 that, however, nothing leaned that direction.

X111-132

THOWSEN - CROSS

A Yes.

2 Q Okay. And she was there while the patrol officers  
 3 and crime scene analysts were still on the scene?

A Yes.

4 Q And you determined it would be a good idea to go  
 5 out and talk with her right away?

6 A Yes.

7 Q Okay, So you did that?

8 A Yes, we did that,

9 Q It is you and Detective La Rochelle and you even  
 10 took your sergeant, Sergeant Manning, with you, correct?

11 A Yes.

12 Q Did you take a crime scene analyst?

13 A No.

14 Q And when you went into and talked with Diann  
 15 Parker she let you look around her house, correct?

16 A Yes

17 Okay. Take any photographs of any shoes in that  
 18 house?

19 A No, we did not,

20 Q Okay. Did you impound any shoes?

21 A No, we did not.

22 Q Take any measurements on any shoes?

23 A No, we did not. We examined the shoes and  
 24

X111-131

THOWSEN - CROSS

1 Q So it would be fair to say that you had someone that  
 2 was at the scene within the same 24-hour time period of Mr.  
 3 Bailey's death inquiring about him and you went out and talked  
 4 to that person and did not take a taped statement, did not  
 5 take a crime scene analyst, did not take any photographs but  
 6 two weeks later you -- when you went to Panaca you took a  
 7 crime scene analyst and took photographs and impounded  
 8 evidence, correct?

9 A Correct. That's how big it was that she knew that  
 10 somebody's penis had been severed.

11 Q And the information that you had when you went up  
 12 there was actually, according to what you were told, was that  
 13 Blaise or Ms. Lobato had told Dixie who had told Laura and  
 14 then Laura had told you?

15 A Yes.

16 Q Okay. That's the only source of information you had  
 17 when you went up there other than pulling the reports that  
 18 Ms. Lobato had been a previous victim?

19 A Yes,

20 Q Now where was Ms. Parker -- Diann Parker's house  
 21 or apartment in relation to the crime scene?

22 A It was an apartment complex that was located a  
 23 short distance to the north.

24 Q Directly to the north, the apartment complex?

X111-133

THOWSEN - CROSS

1 A I don't remember if it was directly but it was in the  
2 vicinity.

3 Within walking distance easily?

4 A Yes.

5 MR. SCHIECK: If I may approach the clerk, Your  
6 Honor?

7 THE COURT: Yes. Would this be a good point to  
8 take a stretch break?

9 THE CLERK: Yes,

10 MR. SCHIECK: That's fine, Your Honor.

11 THE COURT: Okay. Detective Thowsen, you may  
12 step down We're going to take a 10 minute stretch break.

13 Ladies and gentlemen of the jury, during the recess  
14 you're admonished not to talk or converse among yourselves  
15 or with anyone else on any subject connected with the trial.  
16 You're not to read, watch or listen to any report of or  
17 commentary on the trial or any person connected with the trial  
18 by any medium of information including without limitation  
19 newspaper, television, radio and Internet. And you're not to  
20 form or express any opinion on any subject connected with the  
21 trial until the case is finally submitted to you.

22 Court's in recess for 10 minutes.

23 (Court recessed at 3:29 p.m. until 3:51 p.m.) □

24 (Jurors are present)

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THOWSEN - CROSS

1 and I remember that we went to the north,

2 Q But it was somewhere to the north but fairly close?

3 A Yes. Yes, it was.

4 Q Okay. And as part of talking to Diann Parker you  
5 had indicated that you had also talked to the manager or the  
6 people in the office there at the apartment complex?

7 A Yes.

8 Q And that was [unintelligible coughing] some  
9 Hispanic individuals that you had reason to believe that might  
10 have some knowledge about the case or at least Diann  
11 Parker's incident with Mr, Bailey?

12 A Apparently, according to Diann Parker, the  
13 individuals had seen him being rough with her previously.

14 Q And so you've sort of checked those guys out —

15 A Yes.

16 Q is that? Okay. Did you make any notations of  
17 their names or if you ran them what the results were?

18 A I do remember running them. I don't have a  
19 permanent record of that.

20 Q Okay, Did you go and talk to any of them?

21 A Did not,

22 Q Did you go and look at any of their shoes?

23 A Did not,

24 Q Look at any of their footwear at all?

X111-136

THOWSEN - CROSS

1 THE COURT: The record shall reflect we're  
2 resuming trial in case number C-177394, State versus Lobato,  
3 in the presence of the defendant, her three counsel; the two  
4 prosecuting attorneys; the ladies and gentlemen of the jury;  
5 and Detective Thowsen who remains on the witness stand and  
6 under oath

7 Mr. Schieck may resume cross,

8 MR, SCHIECK: Thank you, Your Honor.

9 BY MR SCHIECK:

10 Q When we stopped I was just getting, I believe, this  
11 Exhibit 121 -- 121 which appears to be an aerial photograph of  
12 the Nevada State Bank and surrounding area, correct?

13 A Yes.

14 Q And do you recognize on there where Diann Parker's  
15 apartment would have been at?

16 A I can recall from going there at the time it was to  
17 the north. I don't recall specifically looking at a picture that —

18 Q This certainly was an apartment complex here just  
19 to the north of Nevada State Bank parking lot area?

20 A Yes.

21 Q Okay. Was it in that complex somewhere, to your  
22 recollection?

23 A And, again, it's been such a long time ago. I □  
24 remember, I believe, it was on Viking was the street address

X111-135

THOWSEN - CROSS

1 A No

2 Q Okay, Did — so you didn't go to any of their — any  
3 of those apartments?

4 A No, we did not,

5 Q Just based it on the information from the manager  
6 of the apartment complex as to who those individuals were?

7 A That's correct,

8 Q You never even confirmed that the individuals you  
9 checked on were in fact the same individuals that Ms. Parker  
10 was talking about?

11 A She knew the exact apartment numbers and the  
12 people and so we were confident it was the right individuals  
13 from that

14 Q She wasn't able to give you the names of the people  
15 though, correct?

16 A I don't recall that she did that; no,

17 Q And you had talked about in Ms. Lobato's statement  
18 that she gave to you, the tape statement, that she said she  
19 couldn't remember who she might have told about the assault?  
20 Remember I asked you some questions about that?

21 A Right.

22 Q I don't recall --

23 A Yes,

24 Q — type of answers?

X111-137

THOWSEN - CROSS

1 A Yes.  
 2 Q Okay. Did she at any time tell you names of people  
 3 that she had talked to about her assault?  
 4 A Are we talking about Ms. Lobato?  
 5 Q Yes,  
 6 A No,  
 7 Q Okay. And the reason I ask that is on page 22 of  
 8 your statement you're talking about your trip up to — your  
 9 second trip up to Panaca?  
 10 A Are you referring to the officer's report?  
 11 Q Yes.  
 12 A Page 22?  
 13 Q Yes  
 14 A And which portion, please?  
 15 Q It would be fourth paragraph, last part of it.  
 16 (Pause in the proceedings)  
 17 A Okay.  
 18 Okay, And that indicates that Ms. Lobato had listed  
 19 as individuals she had told about the homicide. The list  
 20 included the following: Michelle Austria, Rusty Brown, Heather  
 21 McBride, Shayne Kraft, Chris O'Conner [phonetic], and Chris  
 22 Carrington, Is that information that Ms. Lobato gave to you or  
 23 is that from some other source?  
 A In looking at this I believe this is information that

X111-138

IOWSEN - REDIRECT

1 Honor.  
 2 THE COURT: Redirect,  
 3 MR. KEPHART; Thank you, Your Honor, □  
 4 **REDIRECT EXAMINATION**  
 5 BY MR, KEPHART:  
 6 Q Now, Detective, when the defendant was talking to  
 7 you in reference to the inside of the -- when she was in the jail  
 8 cell and she was talking to you in reference to how it looked -  
 9 like the place where this occurred, what did you take that to  
 10 mean?  
 11 A The dumpster enclosure.  
 12 Q Okay. And when she said that it looked like the  
 13 place where this happened did that lead you to believe that  
 14 she was talking about the incident which she described earlier  
 15 in her statement about cutting a man's penis?  
 16 A Yes.  
 17 Q Okay. Do you have your -- do you have your  
 18 statement with you? Could you turn to page 18?  
 19 A Statement or officer's report?  
 20 Q I'm sorry, officer's report, page 18. And down one,  
 21 two, three, four, five paragraphs where it starts on 7/20/2001,  
 22 do you see that paragraph?  
 23 A Yes, I do,  
 24 Q Okay, Now looking at 1/18, when you look in

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THOWSEN - CROSS

1 Ms, Lobato gave to Dixie Tienken that gave it to us,  
 2 Q Okay So you got that information through Dixie —  
 3 according to Dixie from Ms. Lobato?  
 4 A Yes. Yes,  
 5 Q Okay. And did you talk to these individuals?  
 6 A Yes.  
 7 Q Did you talk to Michelle Austria, Rusty Brown,  
 8 Heather McBride, Shayne Kraft?  
 9 A Yes, I believe we spoke with each of those and took  
 10 statements from them.  
 11 Q When you were out there in Panaca did you  
 12 interview the neighbors on either side of the Lobato residence?  
 13 A No, we did not.  
 14 Q You interview anybody across from the Lobato  
 15 residence?  
 16 A Yes,  
 17 Who was that?  
 18 A I think that was Rusty Brown and perhaps Michelle  
 19 Austria It was across the street in close proximity.  
 20 A couple of houses up —  
 21 A Yes.  
 22 -- a side street?  
 23 A Yes,  
 24 MR SCHIECK: Thank you, That's all I have, Your

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THOWSEN - REDIRECT

1 regards to this photograph you can see the carport, is that  
 2 correct?  
 3 A That's correct.  
 4 Q And if you're standing inside the dumpster area you  
 5 can see the carport?  
 6 A Yes,  
 7 Q And you can see underneath the carport?  
 8 A Yes,  
 9 Q Now the carport is covered, correct?  
 10 A Yes,  
 11 Q Meaning that you cannot see through the carport up  
 12 into the sky —  
 13 A That is correct,  
 14 Q -- unlike the covering albeit which is on top of the  
 15 dumpster enclosure?  
 16 A Yes,  
 17 Q And she used the same words, she said that the  
 18 attack didn't -- the location of the attack did not have covering  
 19 and that she could see the metal covering of the carport area?  
 20 A That's correct,  
 21 Q So if you put the metal covering over top of the  
 22 dumpster you wouldn't be able to see through it, would you?  
 23 A No, you wouldn't,  
 24 Q Mr, Schieck had asked you about whether or not you

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## THOWSEN REDIRECT

1 were told that the dumpster had to be moved, do you recall  
2 that, in order to get back into the back area?

3 A Yes.

4 Q Okay. You're aware though that Richard Shott was  
5 actually back in the back area?

6 A Yes,

7 Q The knife that you had showed her earlier and  
8 demonstrated that for the jury, you had indicated that you've  
9 practiced with it? □

10 A Yes.

11 Q Okay, How long do you believe that you had to  
12 practice with it in order to open it the way you did?

13 A I practiced with it for an entire day.

14 Q Okay. You indicated in your report that the  
15 defendant told you that the knife that she got, when she was  
16 riding back in the car with you, it was from a Christmas  
17 present from her father?

18 A That's correct.

19 Q Okay, L66k at your report on page 18, the third  
20 paragraph down. In that same statement with you did she say  
21 anything else in reference to the knife and the Christmas  
22 present?

23 A Would you restate your question again, please?

24 Q In the same statement where she references the

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## IOWSEN - REDIRECT

1 you about -- or even when you were driving in the car, why  
2 didn't you flick on a tape recorder and when you got back to  
3 the jail why didn't you flick on the tape recorder. Did you see  
4 a need for any additional questioning in this case?

5 A No,

6 Q Okay, You indicated that there was a concern  
7 though, however, with her hurting herself and was put on  
8 suicide watch, is that correct?

9 A That's correct.

10 Q Detective, will you — will you pull open your report  
11 with regards to her statement and pull open her statement?  
12 Do you have your statement?

13 A I do.

14 Q Will you turn to page 21? Prior to the portion in  
15 which she talks about the baseball bat is there anywhere else  
16 that you talk about anything else that is used in this event —  
17 in this crime?

18 A No,

19 Q Matter of fact you asked, "Do you remember  
20 hitting," -- or Detective LaRochelle asked, "Do you remember  
21 hitting him with anything else besides your knife?" His own  
22 words, "hitting." And her response is, "No, but it's possible. I  
23 have a baseball bat that I keep behind my seat -- I had a  
24 baseball bat." And then she went onto say — you ask where it

XIII-144

## THOWSEN - REDIRECT

1 Christmas present from her father does she say anything else  
2 in relation to the knife?

3 A Yes.

4 Q What does she say?

5 A She refers to her sexual assault as a child at the  
6 hands of her mother's boyfriend and indicated the police had  
7 failed her because the suspect was never arrested and that he  
8 had previously molested children,

9 Q Detective, let me ask the question, listen to my  
10 question, okay?' In the same statement where she references  
11 the Christmas present from her father, I guess it would be the  
12 same sentence --

13 A Sentence.

14 Q -- does she -- does she reference anything with  
15 regards to the knife besides the fact that she got it from her  
16 father for a Christmas present? What does she say?

17 A She said that she had received the knife that she  
18 utilized in cutting off the man's penis as a Christmas present  
19 from her father,

20 Q So now she has actually told you beyond the  
21 statement that she gave recorded, she told you she cut the  
22 man's penis off?

23 A Yes.

24 Q When you got back to the jail Mr. Schieck had asked

X111-143

## THOWSEN - REDIRECT

1 is and she says she doesn't really know. Had you ever  
2 discussed any of the type of injuries that this man received?

3 A No.

4 Q Just whether or not she hit him with anything else?

5 A Correct

6 Q Can you turn to page 16? On page 16 there's a  
7 portion in there where you're asking her about whether or not  
8 she remembers the area where this occurred involving a  
9 dumpster. Do you see that portion?

10 A Yes,

11 Q Is it the bottom?

12 A Yes.

13 Q Her answer was, "No -- well, there was a dumpster  
14 not far away, it happened — where it happened but I don't  
15 remember putting him in it or anything. I don't think there's  
16 any way that I could have," Do you recall the scene in this  
17 case?

18 A I'm sorry?

19 Q Do you recall the crime scene in this case?

20 A Yes, I do.

21 Q Where the dumpster was located?

22 A Yes.

23 Q Do you recall your testimony in respect to it  
24 appeared that as if Mr. Bailey's body had been moved from the

X111-145

THOWSEN REDIREC1

1 backside of the dumpster area towards the dumpster?  
 2 A Yes.  
 3 Kind of drug maybe because there was this drag  
 4 marks across the wall?  
 5 MR. SCHIECK: Your Honor, I'm going to object.  
 6 This is all asked and answered and it's all leading,  
 7 THE COURT: Sustained,  
 8 MR, KEPHART: It -- to what regard, Your Honor? I  
 9 don't believe with regards to asked and answer, I wouldn't  
 10 have a right to recross him —  
 11 MR. SCHIECK: Your Honor, he's asking —  
 12 MR. KEPHART: -- and redirect him,  
 13 MR SCHIECK: -- him if you recall testifying to this,  
 14 do you recall testifying to this. Obviously it has been asked  
 15 and answered or he couldn't ask the question.  
 16 THE COURT: The Court has ruled and you may  
 17 move on.  
 18 BY MR. KEPHART:  
 19 Q Now when you were talking to her about where she  
 20 was living she explained to you she was living at the Budget  
 21 Suites, is that correct?  
 22 A That's correct,  
 23 Q Okay. And in reference to this attack if she was  
 24 living in Budget Suites then and this attack happened at

X111-146

IOWSEN - REDIRECT

1 "I cut his penis," And she says, "I remember that," didn't she?  
 2 Page 6.  
 3 MR. SCHIECK: Objection, Your Honor. These are all  
 4 leading questions. He's just reading the statement to the  
 5 detective,  
 6 THE COURT: Sustained.  
 7 BY MR. KEPHART:  
 8 Q Do you recall whether or not she discussed with you  
 9 or talked to you on the taped statement about what she had  
 10 done to this man's penis?  
 11 MR, SCHIECK: Objection, asked and answered,  
 12 Your Honor.  
 13 THE COURT: Overruled.  
 14 THE WITNESS: Yes.  
 15 BY MR, KEPHART:  
 16 Q Okay, What did she tell you in her statement in  
 17 reference to what she did and if she remembered doing  
 18 anything to this man's penis?  
 19 A She said that she cut his penis, that she  
 20 remembered that, and that she was -- she thinks she was  
 21 trying to cut it off but didn't know if she actually did.  
 22 Q Do you recall what she told you about when she left  
 23 whether or not the individual was standing or was on the  
 24 ground?

XIII-148

THOWSEN - REDIRECT

1 Budget Suites then her statement is is that she got in her car  
 2 and drove away from where she was living?  
 3 A That's correct.  
 4 Q Before you taped her statement you talked to her in  
 5 reference to what you wanted to talk to her about on the tape,  
 6 is that correct?  
 7 A Yes,  
 8 Q Okay. And on page 2 of her statement after you  
 9 read her or have her acknowledge that she had read her rights  
 10 and you asked her if she understood them, her answer was  
 11 "Yes" to that, is that correct?  
 12 A Yes  
 13 Q And then that is when you asked, "And you were  
 14 explaining to us what happened a couple of weeks ago in Las  
 15 Vegas " When you say, "you were explaining," are you talking  
 16 about the defendant explaining to you an incident that  
 17 happened a couple of weeks prior to July 20th?  
 18 A Yes,  
 19 Q And her response was, "Mm-hmm?"  
 20 A That's correct.  
 21 Q And you went on to talk to her about Las Vegas  
 22 more thoroughly, is that correct?  
 23 A That's correct,  
 24 Q Now she had indicated to you that her words were,

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THOWSEN - REDIRECT

1 A And once again, I have comments from her and I  
 2 also have comments from interviewing the other people that  
 3 she said so if you want to refer me to the page?  
 4 Q Would it refresh -- page 7. Down about two-thirds  
 5 of the way, her question says -- starts after you got done. Do  
 6 you see where I'm talking about?  
 7 A Yes,  
 8 Q Okay. Do you recall what she told you about  
 9 whether or not the man was standing or was on the ground?  
 0 A That he was on the ground.  
 1 Q Okay. And she said he was crying?  
 2 A That's correct.  
 13 Q Now when you spoke to her both on the tape and  
 14 before the tape, she indicated to you that she didn't —  
 15 MR. SCHIECK: Again we're leading,  
 16 THE COURT: Sustained.  
 17 MR. KEPHART: Okay.  
 18 BY MR, KEPHART:  
 19 Q What did she indicate to you about this particular  
 20 individual in both before the tape and after the tape in  
 21 reference of people remembering her, if you remember?  
 22 A In reference to —  
 23 Q Or missing him or something like that?  
 24 A Basically told me effect of that she didn't think that

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THOWSEN REDIREO

1 somebody would miss him or someone like him.  
 2 Q Okay. And that's past tense?  
 3 A Yes  
 4 And you questioned a lot about whether or not —  
 5 what you did to determine whether or not this had been  
 6 reported anywhere else throughout Clark County. Do you  
 7 remember that —  
 8 A Yes,  
 9 -- cross-examination? How big's the department?  
 10 A Around 4,000 employees, around 2,000 police  
 11 officers.  
 12 Q Okay. You also testified that this was a big -- it was  
 13 big information that you received from -- up in Panaca before  
 14 you left to cause you —  
 15 MR, SCHIECK: Objection, leading, Your Honor.  
 16 THE COURT: Sustained,  
 17 BY MR, KEPHART:  
 18 Q Okay. DR you remember telling -- testifying about  
 19 how this was a bib situation before you left?  
 20 MR. SCHIECK: Objection, asked and answered,  
 21 Your Honor.  
 22 THE COURT: Overruled,  
 23 BY MR KEPHART:  
 24 Q Do you remember that?

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IOWSEN - REDIRECT

1 to someone's penis unless it was a dead body?  
 2 A I'm not sure I understand your question there,  
 3 Q Okay.  
 4 A Sony.  
 5 Q Would the homicide department discuss -- if you  
 6 learned about information about an individual that got his  
 7 penis severed would that be a topic of discussion --  
 8 A Yes, it would.  
 9 Q -- at the homicide?  
 10 A Yes, it would,  
 11 Q Even if he wasn't dead?  
 12 A Absolutely.  
 13 Q Within the police department?  
 14 A Yes.  
 15 Q So that's a big thing, big deal?  
 16 A Yes.  
 17 Q Unique?  
 18 A Very unique,  
 19 Q Defendant had indicated to you that she was on a  
 20 meth binge, at the end of a meth binge and I guess her words  
 21 were three-day meth binge. Do you remember that testimony?  
 22 A Yes, I do.  
 23 Q She indicated -- not testimony, I mean her  
 24 statement, she indicated multiple times that she —

X111-152

THOWSEN - REDIRECT

1 A Yes.  
 2 Q Okay. Why was it so big?  
 3 A Because we had not put any information out, we'd  
 4 gone to lengths to make sure that nobody had known that we  
 5 had a victim that had his penis severed.  
 6 Q Did you think that a department investigated this  
 7 type of crime about a penis injury that would get around  
 8 through the department?  
 9 MR SCHIECK: Objection, speculation, Your Honor.  
 10 THE COURT: Sustained.  
 11 BY MR. KEPHART:  
 12 Q How long have you been a police officer now?  
 13 A Twenty-nine years-  
 14 Q Is this a big enough incident that that would be  
 15 something that would be discussed if it was something  
 16 investigated by the police department?  
 17 MR. SCHIECK: Question's vague as to who's  
 18 discussing it, Your Honor, Is it between homicide detectives or  
 19 the secretary at the —  
 20 MR, KEPHART: Judge, I said the police department,  
 21 THE COURT: Sustained.  
 22 MR, KEPHART: Okay.  
 23 BY MR. KEPHART:  
 24 Q Homicide, Would you necessarily discuss an injury

XI1I-151

THOWSEN - REDIRECT

1 MR. SCHIECK: Objection, leading, Your Honor,  
 2 THE COURT: Sustained.  
 3 BY MR. KEPHART:  
 4 Q She ever tell you that she was -- in her statement,  
 5 do you recall in her statement that there was -- she did a lot  
 6 for drugs?  
 7 A Yes.  
 8 Q Okay. Do you recall whether or not she told you  
 9 that she knew that she -- where to get them in Las Vegas?  
 10 A I don't recall that specifically.  
 11 Q Could you look to page 15? Do you see the top of it  
 12 you're talking about the topic of drugs?  
 13 A Yes.  
 14 Q And you see about the -- one, two, three, the third  
 15 answer down? Read that to yourself.  
 16 A Yes.  
 17 Q What's she telling you there?  
 18 A That she basically had to go back to her house in  
 19 Panaca because when she was in Las Vegas she knew where  
 20 to get drugs.  
 21 Q Okay. She needed to go to Panaca to get clean?  
 22 A Yes,  
 23 Q Also at — you knew from her statement she was  
 24 talking about two different places with respect to the Budget

XIII-153

THOWSEN - REDIRECI

1 Suites and then the place where Duran Bailey is dead?  
 2 A Yes.  
 3 Q On page 15 do you specifically go into that and ask  
 4 her about that?  
 5 A Yes,  
 6 Q Okay, Tell me what you were doing there and tell  
 7 me what you -- and tell me what her responses were?  
 8 MS. GREENBERGER: I'm going to object, that's  
 9 leading, Your Honor, and it misstates the evidence,  
 10 THE COURT: The Court will sustain the objection as  
 11 to leading.  
 12 BY MR. KEPHART:  
 13 Q Tell me what you were asking her there? Tell me  
 14 what her responses were?  
 15 A I was asking her if she was in two different locations  
 16 on different sides of town, if it's possible that she could be  
 17 mistaken on her location?  
 18 And were you talking about the Budget Suites there?  
 19 A Yes  
 20 Okay, And what was her response?  
 21 A That it was possible.  
 22 Q Okay.  
 23 A That she'd met up with people at both places and  
 24 that's where they tell her things have happened.

X111-154

iOWSEN - REDIRECT

1 MR, SCHIECK: Objection, asked and answered,  
 2 THE COURT: Overruled. You may answer,  
 3 THE WITNESS: That she'd been to both places.  
 4 BY MR. KEPHART:  
 5 Q Okay, Now you indicated you went and spoke to  
 6 Diann Parker, On your direct examination you talked about  
 7 what you had done and cross-examination they had asked  
 8 you. You did tape a statement from Diann Parker, didn't you? -  
 9 A Yes, I did.,  
 10 Q Okay, And you examined -- what did you do exactly  
 11 now?  
 12 A We examined not only Diann Parker but her  
 13 roommate, Steven King, We were allowed to look through  
 14 their apartment at their clothing in the hampers and the closet  
 15 at the shoes that they had in the apartment there. We looked  
 16 in their kitchen at the knives that they had. Pretty much they  
 17 were very cooperative with us.  
 18 Q And did they ever give you any indication that they  
 19 had any involvement whatsoever with what occurred to Duran  
 20 Bailey?  
 21 A Not at all. They were very helpful, They were not  
 22 anxious in any way. They were very helpful.  
 23 Q Certainly didn't tell you that they cut anyone's penis  
 24 off, did they?

X111-156

THOWSEN - REDIRECT

1 Q So she's telling you that she's actually met people at  
 2 both places?  
 3 MR, SCHIECK: Objection, leading, Your Honor.  
 4 MS, GREENBERGER: And vague and ambiguous as  
 5 to what place.  
 6 MR. KEPHART: How many -- how many people are  
 7 going to be objecting from the defense?  
 8 THE COURT: We should just have one designated  
 9 and the Court sustains the first objection.  
 10 BY MR. KEPHART:  
 11 Q This is the same place in the questioning that you  
 12 were talking to her about getting drugs, is that correct?  
 13 MR. SCHIECK: Objection, leading.  
 14 THE COURT: Sustained.  
 15 BY MR !KEPHART:  
 16 Q In this particular area in this in your questioning  
 17 what were you discussing with her?  
 18 A We had been speaking of drugs,  
 19 Q And she told you she could be in —  
 20 MR, SCHIECK: Objection, leading.  
 21 THE COURT: Sustained,  
 22 BY MR. KEPHART:  
 23 Q And what did she tell you in reference to the drugs  
 24 and locations?

XIII-155

THOWSEN - REDIRECT

1 MR. SCHIECK: Objection, leading.  
 2 THE COURT: Sustained,  
 3 BY MR. KEPHART:  
 4 Q Did they tell you anything about injuring anybody?  
 5 A They did not.  
 6 Q Ms. Lobato did though?  
 7 A Yes, she did.  
 8 Q Okay, These other individuals that were -- that  
 9 supposedly seen something happen to Diann Parker, what did  
 10 you do again to —  
 11 MR. SCHIECK: Objection, asked and answered.  
 12 THE COURT: Sustained,  
 13 MR. KEPHART: That's fine. I don't need to ask any  
 14 further questions.  
 15 MR. SCHIECK: I have no questions, Your Honor.,  
 16 MR. KEPHART: I'm done.  
 17 THE COURT: Did you pass the witness?  
 18 MR. KEPHART: Pass the witness, Your Honor, Pass  
 19 the witness,  
 20 THE COURT: Mr, Schieck has no further questions?  
 21 It appears that we're going to have some questions come out  
 22 from the jury.  
 23 (Pause in the proceedings)  
 24 THE COURT: Would counsel please approach.

X111-157



THOWSEN - REDIRECI

(Off-record Bench Conference)  
(Pause in the proceedings)

THE COURT: Detective Thowsen, ladies and gentlemen of the jury have posed various questions to you which the Court will be reading to you. After I read to you a question please answer the question. After the Court has had all of the questions answered then the attorneys for each side will have the opportunity to pose any follow up questions to you which they deem appropriate.

This one will be marked as Court's Number 58. Why specifically were Diann Parker's not at least spoken to?

THE WITNESS: At the time we had done this particular follow up we had very little -- there was no evidence that they were going to be involved, The information -- we wanted to gather a little bit more about their background when we were first there. Once we found out their names we wanted to go back and check them.

As an example, if we find out somebody's name like we do with Ms. Lobato, before we contact them we check on them to see what information we can garner about their past history. We want to go back to the office to check on these individuals,

When we learn that they did not have criminal histories and it did not seem to be a thing that was going to be

X111-158

-10WSEN - REDIRECT

1 indicated that she drove her car away from Jeremy's house  
2 later on and we know that that's not true because we were  
3 given a tow bill that was used to tow her vehicle from the  
4 location away from his house. And we spoke to him and his  
5 girlfriend and it was not in the same time frame and they had  
6 no information and we believe that was accurate.

THE COURT: Court's Number 61, When you interviewed Diann Parker did she reveal that she had been raped by the victim the week before?

THE WITNESS: Yes, she did,

THE COURT: There's a Court's Number 2 marked, follow up by the State?

MR, KEPHART: I do, Your Honor, just one question.,

REDIRECT EXAMINATION (continued)

BY MR. KEPHART:

Q Detective, you indicated that the reason why you didn't go interview or speak to these individuals or friends of Diann Parker and you said nothing pointed in the direction of these individuals?

A Correct.

Q And you held information or you held onto that information to see if anything ever did point in that direction?

A Yes.

Q Did anything ever point in that direction?

X111-160

THOWSEN - REDIRECT

involved at that point, it was something we could go back to at a later date. If something else in the chain evidence or the investigation lead in that direction we could do so but in the meantime there was nothing pointing in that direction.

We had been there working all night long through the next morning and into the early part of the morning towards the afternoon and, you know, at some point you get tired and it's time to take a break from it for a little bit,

THE COURT: Court's Number 59. Did you search the area near the Budget Suites for possible witnesses and did you ever locate where Blaise was living?

THE WITNESS: I contacted the Budget Suites and because Blaise did not use her name to register there and she could not give us a name other than I believe it was Michelle as a first name, we had no information. It's a huge place. They had no information on somebody described like Blaise.

They had not reports of incidents in their area. So there's no sense looking for a witness to something that we know didn't happen there. We know it happened on West Flamingo,

THE COURT: Court's Number 60. Since the defendant stated that she went to Jeremy's house after the attack, was his house ever searched for evidence?

THE WITNESS: His house was not searched because we were able to tell from other records she also

X111-159

THOWSEN RECROSS

A No, it did not.

Q Okay. Shortly thereafter it pointed in another direction, is that correct?

A That's correct.

Q And what direction was that?

A To Panaca, to Blaise Lobato.

Q Thank you

THE COURT: Any follow up by Mr, Schieck?

MR. SCHIECK: Yes, Your Honor,

RECROSS EXAMINATION

BY MR. SCHIECK:

Q You indicated that you'd gone over to Jeremy's Davis' house, correct?

A No, I don't believe I said that

Q Okay.

A I said we contacted him and his girlfriend,

Q Okay. And was he still living at the same residence?

A He was not living at the residence, no,

Q Okay, You talked to the individual that was living at the residence?

A Yes.

Q And you also had contact with Steve Pyszkowski, correct?

A That's correct.

X111-161

THOWSEN RECROSS

1 Q And had interviewed him, correct?  
 2 A That's correct  
 3 Q And he had given you a tow receipt, correct?  
 4 A Correct.  
 5 You were aware that he had been the one that  
 6 stopped the car from being towed, correct, on the tow receipt?  
 7 A Either he'd stop it from being towed or he had paid  
 8 the tow, I know he -- he's the one that had the tow  
 9 information for us.  
 10 Q Okay, And you were aware from him that he had  
 11 helped Blaise retrieve the car from Mr. Davis' home?  
 12 A Yes,  
 13 Q Okay. That it wasn't towed from the home, he had  
 14 helped her retrieve it from the home?  
 15 A I just -- I just recall a tow receipt indicating that  
 16 particular date that was removed from her home.  
 17 Q Do you have page 20 of your report, please? First  
 18 paragraph,  
 19 A Wrong report, Yes,  
 20 Q Okay. Does that refresh your recollection?  
 21 A Yes, it does,  
 22 Q Okay. In fact that the car was taken away from Mr.  
 23 Davis' house and hidden in an apartment complex?  
 A Yes, that's correct

X111-162

HOWSEN RECROSS

1 previously, which would have been in May?  
 2 A Yes.  
 3 Q Okay. And you had made a statement that with  
 4 respect to Budget Suites you had gone to the Budget Suites?  
 5 A Yes.  
 6 Q Okay. But you — and you talked to some people in  
 7 the manager's office or something like that?  
 8 A Yes,  
 9 Q Okay. But you never determined what apartment  
 10 Blaise was staying in?  
 11 A Correct,  
 12 Q Okay, And you never look for any physical evidence  
 13 on the ground, blood or anything else at the Budget Suites?  
 14 A I'd asked them if there was anything reported there  
 15 and they did not have anything. I did not personally go  
 16 looking on the ground of the Budget Suites,  
 17 Q Did you get a crime scene analyst out there to look  
 18 for anything?  
 19 A No.  
 20 Did you take any photograph of dumpsters?  
 21 A No, I did not. I had no reason to believe a crime  
 22 had occurred there,  
 23 Q Okay, Were there dumpsters there?  
 24 A Yes, they have dumpster there.

X111-164

THOWSEN RECROSS

1 Q And it was towed from that apartment complex, not  
 2 from Mr. Davis' house?  
 3 A That is correct,  
 4 Q And that he provided you with the original copy of  
 5 the tow receipt dated June 6, 2001?  
 6 A Yes.  
 7 Q Okay. And at some point in time did you actually  
 8 interview -- you said you did interview Mr. Davis, correct?  
 9 A Yes,  
 10 Q And he confirmed to you that the car was parked at  
 11 his house at one point, correct?  
 12 A That is correct, yes,  
 13 Q And it was over Memorial Day weekend?  
 14 A I believe that's correct, yes,  
 15 Q And he recalled that because he'd gone to Caliente  
 16 for a softball tournament?  
 17 A Yes  
 18 Q And when he came back the car was gone?  
 19 A Yes,  
 20 Q Okay, And then next we see the car when it's being  
 21 towed by Quality Tow on June 6?  
 22 A That's correct, yes.  
 23 Q Okay. And the incident therefore at Mr. Davis'  
 24 house you had put in your report had happened a month

X111-163

THOWSEN - RECROSS

1 Q And near the parking lot area?  
 2 A Yes, they do.  
 3 Q And they have -- I think we already established thi,  
 4 parking spaces that are covered?  
 5 A Yes, they do.  
 6 Q You take any photographs of those?  
 7 A I have an overhead photograph,  
 8 Q You have an aerial but that's —  
 9 A Yes.  
 10 Q You didn't take anything from the ground level?  
 11 A No.  
 12 Q And you didn't call a crime scene analyst out there'  
 13 A Did not,  
 14 Q You just totally rejected that as the crime scene and  
 15 moved on, is that correct?  
 16 A There was -- there was no crime scene found there  
 17 to document.  
 18 Q And you didn't look for a crime scene. You talked to  
 19 the manager and that was it?  
 20 A That's correct,  
 21 Q Okay. And that's —  
 22 A And there was —  
 23 Q -- because you knew that there had been no crime  
 24 committed there? That's what you just said a little while ago is

X111-165

## THOWSEN RECROSS

1 you knew that there was no crime committed there, You had  
2 made that determination. Had you made that determination?

3 A I had made a determination after checking for  
4 reported crimes in that location and talking with the  
5 management to see if they had any reported crimes in this  
6 densely populated apartment complex with lots of people  
7 walking and going at all times of night.

8 Q Did you prepare a report on that?

9 A No, I did not.

10 Q Okay. So you didn't prepare a report on the Budget  
11 Suites, you didn't prepare a report on the Hispanics you got  
12 names of and ran information on SCOPE on, correct? There's  
13 nothing to document those?

14 A That's correct,

15 Q Okay. And you just proceeded then — well, let me  
16 ask you this. When was it that you went out to Budget Suites  
17 and talked --

18 A I don't know the exact date,  
19 You don't even know when you went out there?

20 A We're talking 2001, it's been a little while ago.

21 Well, was it within first couple of months after you'd  
22 arrested Ms. Lobato?

23 A It would have been in very close proximity to  
24 arresting Ms, Lobato.

X111-166

## HOWSEN RECROSS

1 time,

2 THE COURT: Overruled,

3 BY MR. SCHIECK:

4 Q Your recollection it was prior to August 22<sup>nd</sup> but you  
5 didn't put it in your report?

6 A That's correct,

7 Q At some point in time did you actually run Diann  
8 Parker's -- have her fingerprints run to match the fingerprints -  
9 recovered in this case?

10 A I believe Laura Schell [phonetic] did, he's the one  
11 that submitted the request for that,

12 Q Was he submitting all the requests for — to have  
13 testing done?

14 A Yes,

15 Q Okay,

16 A Generally the person that does the scene portion will  
17 do that aspect.

18 Q Would you have input into the requests that are  
19 made? I mean the two detectives on a case would they talk  
20 and decide what's going to be submitted and what's not going  
21 to be submitted?

22 A Yes,

23 Q Okay. Is there any reason on the sexual assault kit  
24 that the entire kit wasn't tested the first time?

X111-168

## THOWSEN RECROSS

1 Q So closely thereafter?

2 A Within a few days.

3 Q Okay. Well, your report that you prepared, does it  
4 reflect that you had been out there within a few days?

5 A I don't believe my report reflects that,

6 Q I mean it reflects things all the way through the end  
7 of July, correct, into August? Correct?

8 A It reflects things that we did that we documented  
9 evidence, yes,

10 Q Okay. As late as August 2<sup>nd</sup> you were interviewing  
11 someone?

12 A Yes

13 Q Had you been to the Budget Suites before then and  
14 just not put it in this report or was it done afterwards and you  
15 just didn't generate a new report or an updated report?

16 A I would believe that I went prior to that.

17 Q Okay, But you didn't — you went prior to preparing  
18 the final report but you didn't put it in the report?

19 A The day of the report is 8/22 so I would say that I  
20 would have gone prior to the date of that report, yes,

21 Q But not put it in the report?

22 A Yeah,

23 MR. KEPHART: Your Honor, asked and answered,

24 MR, SCHIECK: Well, I was just trying to establish

X111-167

## THOWSEN - RECROSS

1 A I'm sorry?

2 Q Was there any reason why the entire sexual assault  
3 kit wasn't tested the first time?

4 A Which sexual assault kit and tested for —

5 Q The one taken on Duran Bailey at his autopsy?

6 A I'm not sure I understand your question.

7 Q Are you aware of a request being prepared to test  
8 the sexual assault kit collected at the autopsy?

9 A Yes,

10 Q Are you aware that the initial request was only to  
11 check his hands? His nail scrapings and his hand swabs and  
12 nothing else?

13 A No.

14 Q You weren't aware of that?

15 A No,

16 MR. SCHIECK: Nothing further, Your Honor.

17 THE COURT: Any questions by the State?

18 MR, KEPHART: Nothing further, Your Honor.

19 THE COURT: It appears there are no further  
20 questions by the jury either. You may step down,

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: Would counsel approach?

23 (Off-record Bench Conference)

24 THE COURT: Ladies and gentlemen, at this point in

X111-169

1 time it appears that it will be an impossibility for us to conclude  
2 this trial this week as had been anticipated. Is there any one  
3 of you who is unable to return next week?

4 JUROR ARIENO: I have appointments set up for --

5 THE COURT: Okay, We're going to have to do just  
6 like we did on the voir dire. I've got two hands up and we will  
7 be addressing you shortly.

8 The gentleman that was speaking was Mr. Arieno  
9 who's in Chair Number 1 and Michelle Moir who's in Chair  
10 Number 7 raised her hand as well. The Court's going to ask  
11 that the two of you remain the Court's going to excuse the rest  
12 of the jury for the evening recess,

13 We'll be resuming tomorrow at 1:00 o'clock and  
14 returning to Dr. Laufer, the defendant's first witness to resume  
15 with his testimony at that time.

16 Ladies and gentlemen, at 1:00 p.m, tomorrow  
17 please be in the hallway. The bailiff will meet you there to  
18 return you to your spats in the courtroom. During this evening  
19 recess you are admonished that you are not to talk or  
20 converse among yourselves nor with anyone else on any  
21 subject connected with this trial. And you are not to read,  
22 watch or listen to any report of or commentary on the trial or  
23 any person connected with the trial by any medium of  
24 information including without limitation newspaper, television,

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1 submitted to you,

2 The Court's going to ask that Mr\_ Arieno and Ms.  
3 Moir remain,, The rest of you are excused for the evening and  
4 we'll see you at 1:00 p.m,

5 (Jury Panel is excused at 4:48 p.m,  
6 except for Jurors Arieno and Moir)

7 THE COURT: Mr, Arlen° and Ms. Moir remained,  
8 The other jurors have now existed,

9 Michelle Moir, would you please wait just outside in  
10 the hallway and we'll be with you in a moment. While you  
11 wait outside you're under the admonishment from the Court,  
12 (Juror Moir exits the courtroom)

13 THE COURT: Mr, Arieno, you started to advise the  
14 Court that you have different appointments scheduled for the  
15 upcoming week?

16 JUROR ARIENO: Yes, I've pushed back this last  
17 three weeks into next week, my whole workload and I had  
18 deliveries scheduled, I have service appointments scheduled,  
19 mean I'm losing all kinds of money while I'm doing what I  
20 need to do. But to throw me into next week I'm going to end  
21 up losing all my customers pretty much.

22 THE COURT: When do you have your deliveries and  
23 appointments scheduled? How does that -- how does that  
24 work with your business?

X111-172

1 radio, and Internet. And you're not to form or express any  
2 opinion on any subject connected with the trial until the case is  
3 Finally submitted to you.

4 You all have a good evening. I've got a hand up  
5 from Mr. Ciciliano in Chair 6.

6 JUROR CICILIANO: Just a question if you have a  
7 schedule for next week or how many days you're thinking?

8 THE COURT: We don't know just yet. I hadn't  
9 anticipated that I would have to plan for this trial that far in  
10 advance and had to move another trial out for next week, But  
11 I do have a long motion calendar in the morning, Monday, and  
12 Wednesday and I do have criminal sentencings Tuesday and  
13 Thursday mornings but I've not yet looked at those calendars  
14 to see how many matters are scheduled or just what the time  
15 line would be but we would not be starting in the morning, I  
16 don't believe, prior to 1020.

17 During the recess you're admonished not to talk or  
18 converse among yourselves or with anyone else on any subject  
19 connected with this trial, You're not to read, watch or listen to  
20 any report of or commentary on the trial or any person  
21 connected with the trial by any medium of information  
22 including without limitation newspaper, television, radio and  
23 Internet And you're not to form or express any opinion on  
24 any subject connected with the trial until the case is finally

X111-171

1 JUROR ARIENO: I have my service calls are  
2 scheduled as I receive them or as I take them from the past  
3 couple of weeks and I schedule them pretty much every other  
4 hour starting at 9:00 a.m., and I have deliveries in the  
5 afternoon for a company called Fitness Beast delivering  
6 treadmills and ellipticals and bikes and I've been telling him  
7 just wait until next week, just wait until next week, meaning  
8 after the 29',

9 THE COURT: Mm-hmm,

10 JUROR ARIENO: I mean I'm financially going to go  
11 broke by -- if I don't get to these appointments I have no  
12 income.

13 THE COURT: So you start your appointments in the  
14 morning at 9 o'clock and do them until --

15 JUROR ARIENO: Til 5:00, 5:30. I've been doing  
16 trying to do deliveries after court but people don't want you in  
17 their house after 7 o'clock at night, 6 o'clock at night. And  
18 that's the problem that I'm running into.

19 THE COURT: So it's people that are ordering new  
20 equipment that needs to be set up --

21 JUROR ARIENO: Correct.

22 THE COURT: -- and put in place and assembled --

23 JUROR ARIENO: Sure,

24 THE COURT: -- that kind of thing?

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1 JUROR ARIENO: Yes.  
 2 THE COURT: Any questions by the State?  
 3 MR. KEPHART: No, Your Honor.  
 4 THE COURT: Any by the defense?  
 5 MR. SCHIECK: No, Your Honor.  
 6 THE COURT: Counsel, approach,  
 7 (Off-record Bench Conference)  
 8 THE COURT: Mr, Arieno, as you're aware we're not  
 9 going to be in session tomorrow morning nor Friday morning.  
 10 And we'll be starting at 1 o'clock both of those days. The  
 11 Court's going to ask that tomorrow morning you see if you  
 12 cannot rearrange your appointments that you have for  
 13 Monday, Tuesday, and Wednesday next week and see if you  
 14 can push them -- push them further out and reset them. And  
 15 then we'll come back to you to talk to you about that  
 16 tomorrow, okay?  
 17 JUROR ARIENO: All right.  
 18 THE COURT: You'll remain under the evening  
 19 admonishment from the Court. You have a good evening,  
 20 we'll see you tomorrow at 1:00,  
 21 JUROR ARIENO: Thank you.  
 22 THE COURT: You're welcome.  
 23 (JurorArieno recessed)  
 24 THE COURT: Ms. Moir.

X111-174

2 MS. ZALKIN: If the Court has a moment I would  
 3 welcome the opportunity to respond. If the Court needs to go  
 4 then we can go.  
 5 THE COURT: Okay. I do need to go, so\_  
 6 MS. ZALKIN: Okay,  
 7 THE COURT: It appears he's not going to get called  
 8 tomorrow so we have a little bit of time to come back to the  
 9 issue,  
 10 MS, ZALKIN: Sure,  
 11 THE COURT: Okay. Thank you.  
 12 MR, SCHIECK: Just so the Court knows, Your  
 13 Honor, and I know the Court's got to go and we can do this  
 14 tomorrow also, but we approached the bench and objected to  
 15 Detective Thowsen testifying concerning the reports of other  
 16 people that have had cuts in that area and then were  
 17 reporting. We'd object that it's hearsay and the Court allowed  
 18 him to testify. We want to renew that motion and make a  
 19 motion to strike his testimony in that regard because, in our  
 20 opinion, clearly based completely on hearsay where he's  
 21 talking to urologists and things like that, We can address that  
 22 tomorrow. I just wanted to make you totally aware I needed  
 23 to make a record.  
 24 MS. DiGIACOMO: We might be need to address that  
 because if that's the case we do have custodians from every

X111-176

1 (Pause in the proceedings)  
 2 THE COURT: Ms. Moir, you're encountering  
 3 difficulties for next week?  
 4 JUROR MOIR: Actually I just need another letter\_  
 5 THE COURT: We can do that.  
 6 JUROR MOIR: That's all I need, just another letter  
 7 stating that, you know, you didn't anticipate it to go this long  
 8 and as long as I have documentation.  
 9 THE COURT: Okay, Very good, we can provide that  
 10 to you  
 11 JUROR MOIR: Okay,  
 12 THE COURT: You'll remain under the admonishment  
 13 from the Court for the evening recess and we will see you at  
 14 1:00 o'clock tomorrow\_  
 15 JUROR MOIR: Okay. Thank you.  
 16 THE COURT: Thank you,  
 17 (Juror Moir recessed)  
 18 (Pause in the proceedings)  
 19 THE COURT: I just sent my JEA an e-mail. She  
 20 leaves at 5:00 so she's probably headed out the door for her  
 21 to do that letter tomorrow.  
 22 (Pause in the proceedings)  
 23 THE COURT: It doesn't appear that we're going to  
 24 be getting to Brent Turvey tomorrow

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1 hospital that were contacted and they had no incidence of a  
 2 penis being cut. We'll need to call all those witnesses then,  
 3 which probably would be another 10 witnesses, Because we  
 4 did go to each hospital emergency room in the Valley, do our  
 5 own investigation and ask regarding any injury to any penis  
 6 and there wasn't one, so. I mean we could leave it with  
 7 Detective Thowsen or we can, you know, go that route. We  
 8 just need to know.  
 9 MR. SCHIECK: Well, there's a lot more —  
 10 THE COURT: The —  
 11 MR\_ SCHIECK: -- healthcare providers than 10,  
 12 THE COURT: -- objection at sidebar was as to  
 13 hearsay and we had discussion at sidebar that -- cause my  
 14 initial impression was that Detective Thowsen himself had  
 15 called the hospitals and was going to rely what the hospital  
 16 personnel had told him and Mr. Kephart said, no, that that  
 17 was not the case. That he had internally reviewed reports  
 18 from Metro that were negative\_ And that is what Detective  
 19 Thowsen initially testified to so I want to go back to my notes,  
 20 MS. DiGIACOMO: It was on cross-examination, the  
 21 rest you know.  
 22 THE COURT: And that was solicited by the defense  
 23 rather than —  
 24 MS. DiGIACOMO: That's correct.

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1 THE COURT: — you can't object to what you solicit  
 2 yourself.  
 3 MR. SCHIECK: I solicited his information that he  
 4 testified to as if it was his own knowledge, was in fact based  
 5 totally on hearsay,  
 6 MS. DIGIACOMO: We didn't ask him about  
 7 contacting the hospitals,  
 8 (Pause in the proceedings)  
 9 THE COURT: His testimony on direct was that he  
 10 looked for reports through May, June, and July anywhere in  
 11 Clark County and found none, Found no other report.  
 12 (Pause in the proceedings)  
 13 THE COURT: That was where the State left it. It  
 14 was on -- it wasn't on cross-examination that he indicated that  
 15 he had delegated some of the research to the secretary who  
 16 reported back to him. That he had called hospitals and he had  
 17 called urologists. That was information that was solicited by  
 18 the defense so,  
 19 MR. SCHIECK: On cross-examination of his  
 20 statement that he had examined reports and that's what he  
 21 was basing his testimony. His testimony on cross was he  
 22 didn't examine any reports, he talked to people. He talked —  
 23 he had his secretary talk to people and didn't document any of  
 24 it, of course, but

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1 THE COURT: The motion to strike is denied, The  
 2 State limited either examination to avoid the hearsay. The  
 3 hearsay that was brought out was solicited by the defense so  
 4 the motion to strike is not appropriate.  
 5 MR. SCHIECK: Your Honor, for the record I would  
 6 note that when we did approach the bench I indicated that the  
 7 contents of reports would also be hearsay, that those reports  
 8 in fact are based on hearsay. That's hearsay information that'  
 9 related in the reports, so it's much broader than just who he  
 10 talked to —  
 11 MR. KEPHART: The testimony —  
 12 THE COURT: But the --  
 13 MR. SCHIECK: And I'm comfortable with the record  
 14 as it stands,  
 15 MR. KEPHART: Well, I'm not.  
 16 THE COURT: The State's position —  
 17 MR, KEPHART: The —  
 18 THE COURT: — was that it was a negative. That  
 19 there were no reports —  
 20 MR. KEPHART: Right.  
 21 THE COURT: -- that that is not hearsay. So —  
 22 MIRn KEPHART: That's our position.  
 23 THE COURT: Okay. We'll see everybody at 1  
 24 o'clock tomorrow.

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1 THE COURT: No, he didn't say he didn't refer to any  
 2 reports. He said he did refer to the reports and he did  
 3 additional things as well which —  
 4 MS. DiGIACOMO: The question was posed  
 5 generally,  
 6 MR, !KEPHART: As I recall specifically in that area  
 7 because I knew what Mr. Schieck was objecting to. His  
 8 testimony on direct was the searched for reports and that and  
 9 found -- and within the department and nothing had been  
 10 reported and it was left at that. Mr. Schieck went into, well,  
 11 what did you do? Did you make phone calls yourself? Did you  
 12 talk to hospital personnel? Did -- and then he got to the point  
 13 where they talking about — to urologist and how many  
 14 urologists did you talk to? Do you know all the urologists?  
 15 That's all cross-examination, That's Mr. Schieck's questions as  
 16 to what he did in talking to people, but he testified on direct  
 17 that he found no reports. And my specific direct was aimed as  
 18 to the statute as to whether or not there was any reports  
 19 made resulting in information about a person being stabbed or  
 20 cut with a knife and we talked here specifically about in the  
 21 groin area slashed with a knife or whatever and he said  
 22 nothing was reported like that. And now Mr. Schieck said,  
 23 well, what, did you talk to -- you know, he went on beyond  
 24 reports based on cross-examination.

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1 MS. ZALKIN: Thanks, Your Honor,,  
 2 THE COURT: Everyone have a good evening,  
 3 (Court adjourned at 5:08 p,m, until the following day,  
 4 September 28, 2006 at 1:00 p,m )  
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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,

Kay McCrea  
 Transcriber

4/29/07  
 Date

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**CERTIFICATION**

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

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Kay McCrea  
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 DATE

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