

EIGHTH JUDICIAL DISTRICT COURT
CIVIL/CRIMINAL DIVISION T, 01
CLARK COUNTY, NEVADA

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 14
VOLUME XIV**

THURSDAY, SEPTEMBER 28, 2006

COURT RECORDER:

**LISA LIZOTTE
District Court**

TRANSCRIPTION BY:

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

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EXHIBITS

iIDM ITTED

THURSDAY, SEPTEMBER 28, 2006

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THURSDAY, SEPTEMBER 28, 2006

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1 LAS VEGAS, NEVADA THURSDAY, SEPTEMBER 28, 2006

2 **PROCEEDINGS**

3 PROCEEDINGS BEGAN AT 13:11:22

4 (Jurors are present)

5 THE BAILIFF: Department II is now in session, the
6 Honorable Valorie J. Vega presiding. Please be seated.

7 THE COURT: Good afternoon. The record shall
8 reflect that we're resuming in State versus Lobato under
9 C177394, in the presence of the defendant, her three counsel,
10 one of the prosecutors,

11 MS. DiGIACOMO: Right here.

12 THE COURT: Oh.

13 MS. DiGIACOMO: I'm sorry, Your Honor. I'm trying
14 to find a photograph.

15 THE COURT: Okay,, Both of the prosecuting
16 attorneys and ladies and gentlemen of the jury.

17 We received a juror's note which Court and counsel
18 have reviewed in chambers. It will be marked as the Court's
19 next in number.

20 THE CLERK: 63.

21 THE COURT: Okay. As we recessed yesterday, the
22 Court had asked Mr. Arieno who's in chair Number 1 to see if
23 he could rearrange his schedule for next week.

24 Were you able to accomplish that?

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1 JUROR ARIENO: I need some times and dates, if
 2 possible, for the schedule next week so I can go tomorrow
 3 morning and call the customers and try to reschedule, 'cause
 4 yesterday it was kind of left that it was Monday, Tuesday,
 5 Wednesday, without any times.
 6 THE COURT: All right,
 7 JUROR ARIENO: So if there's a way I can at least
 8 get Monday and Tuesday's times, that would be awesome,
 9 THE COURT: Okay. Ill, on the next -- on the next
 10 break, work with my secretary and my law clerk to go into the
 11 computer and take a look at how many cases we've got
 12 scheduled in the morning on the days for next week and then
 13 let the jury know what the schedule would be.
 14 JUROR ARIENO: Thank you.
 15 THE COURT: Thank you, Mr. Arieno.
 16 As I told you yesterday, a trial is an animal that
 17 sometimes takes on its own characteristics. We had believed
 18 that we would be starting with Dr. Laufer at this time. He's
 19 coming out of the Bay area, They had fog roll in to the airport
 20 which has delayed his arrival. Because of that, we're going to
 21 proceed in calling another witness out of order at this time
 22 until Dr. Laufer arrives
 23 And this is a prior testimony that was under oath,
 24 preserved in writing from a prior court proceeding that is going

X1V-6

PARKER - DIRECT

1 to be read at this time. And this witness is being called as a
 2 defendant's witness.
 3 MR, SCHIECK: Ms, Alzora Jackson will be the reader
 4 today, Your Honor.
 5 THE COURT: All right, Ms. Jackson, you may
 6 assume the seat in the witness stand.
 7 MS. DIGIACOMO: Your Honor, I apologize. There's
 8 an exhibit I need but I can't find it.
 9 COURT REPORTER: Can you spell your first name,
 10 please?
 11 MS. JACKSON: A-L-Z-O-R-A,
 12 COURT REPORTER: All right.
 13 THE COURT: Did you find it?
 14 MS. DiGIACOMO: I did, Your Honor. Thank you.
 15 **DIANE PARKER, DEFENDANT'S WITNESS,**
 16 **PREVIOUS TESTIMONY READ INTO RECORD**
 17 **DIRECT EXAMINATION**
 18 BY MS. ZALKIN:
 19 "Q Would you state your name, spelling it for the
 20 record, please?
 21 "A Diane Parker, P-A-R-K-E-R.
 22 "Q Good morning, Ms Parker. Would you please tell
 23 the jury where do you reside, where do you live?
 24 "A 4255 West Viking Road, Apartment 816.

XIV-7

PARKER - DIRECT

1 "Q And do you live with anyone else?
 2 "A My roommate, Stephen King,
 3 "Q Steven with a V or P-H?
 4 "A P-H, I think.
 5 "Q I'm going to show you what's been marked as
 6 Defense Exhibit I and ask if you recognize this,
 7 MS, ZALKIN: "One moment, please. May I
 8 approach, Your Honor?
 9 THE COURT: "You may."
 10 BY MS. ZALKIN:
 11 "Q Do you recognize this?
 12 "A Yes.
 13 "Q Would you please describe it?
 14 "A He's the one I knew as St. Louis,
 15 "Q Was there also another name that you knew him by?
 16 "A Duran.
 17 "Q And is that how he pronounced it?
 18 "A Yes.
 19 "Q Is that your signature underneath that picture?
 20 "A Yes.
 21 MS. ZALKIN: "Move to admit Defense Exhibit
 22 MS. DiGIACOMO: "No objection,
 23 THE COURT: "Granted."
 24 (Defendant's Exhibit I admitted)

XIV-8

PARKER - DIRECT

1 BY MS. ZALKIN:
 2 "Q Ms. Parker, do you recall what date you signed this
 3 photograph?
 4 "A The 23rd.
 5 "Q Of which month?
 6 "A July.
 7 "Q And last year?
 8 "A Yes.
 9 "Q And where did you sign this photograph?
 10 "A At my apartment,
 11 "Q How did you come to get this photograph?
 12 "A From the police detective.
 13 "Q What was your understanding of why they brought
 14 this picture for you to identify?
 15 "A Because they wanted to know if he was the one that
 16 had raped me and that had been murdered.
 17 "Q He wanted to confirm that the man that was raped
 18 was also the man that was murdered?
 19 "A Yes.
 20 "Q And did you confirm that for them?
 21 "A Yes,
 22 "Q When did Duran rape you?
 23 "A On July 1,
 24 "Q Do you remember what day of the week that was?

XIV-9

PARKER - DIRECT

1 "A Sunday,
 2 "Q And where did you first see him on July 1st?
 3 "A I think he was outside my apartment building talking
 4 to some Mexicans.
 5 "Q What were you doing?
 6 "A Walking outside. And he called me over there and I
 7 started talking to him.
 8 "Q Did he do anything to you at that moment?
 9 "A Not at that moment. When I went over to one of
 10 the guy's apartment to drink a beer with them, then he walked
 11 over there and he got mad because I was sitting there and
 12 talking to him, to the guy. And he walked in and he slapped
 13 me real hard,
 "Q And when he slapped you, where did he slap you?
 15 "A In the face, on the ear.
 16 "Q And was this outside in the courtyard or in one of
 17 the apartments?
 18 "A It was in gne of the apartments.
 19 "Q Whose apartment?
 20 "A I don't remember his name.
 21 "Q Can you describe him?
 22 "A He's probably about nineteen years old, about 145
 23 pounds, about 5'7 , 8".
 24 "Q Do you know how you described him to the police,

XIV-10

PARKER - DIRECT

1 THE COURT: Page 13?
 2 MS. DiGIACOMO: 14, Your Honor, line 15.
 3 THE COURT: "Sustained,"
 4 BY MS. ZALKIN:
 5 "Q Who else was outside when you went back to your
 6 apartment?
 7 "A There were two other Mexican guys. One was
 8 standing at the bottom of the stairs by the tree that's there
 9 and another one was like standing upstairs. They Were
 10 watching to make sure I got in the house okay.
 11 "Q When did you see Duran again?
 12 "A On the 4th of July.
 13 "Q Okay. Are we talking about the day that he raped
 14 you was July 1?
 15 "A Yes.
 16 "Q After you get back safely to your apartment, did you
 17 ever see Duran again that day?
 18 "A Yes.
 19 "Q And when was that?
 20 "A July 1.
 21 "Q And how did you see him?
 22 "A I went to the Laundromat to do my laundry, And I
 23 was coming back home, and he confronted me. And I told
 24 him he wasn't welcome there anymore and he — you know, for

mV-12

PARKER - DIRECT

1 what nationality he was?
 2 "A A Mexican.
 3 "Q And so after you were slapped by Duran in the face,
 4 what happened next?
 5 "A The guy talked to him outside and -- and told him,
 6 you know, to -- to leave, and all of that, and -- and not to do
 7 that. I didn't hear everything that he said.
 8 "Q Okay. So you're talking about the young Mexican
 9 man that you were visiting with?
 10 "A Yes.
 11 "Q And did that cause Duran to do anything?
 12 "A He left. And then I -- I left right after that.
 13 "Q And when you left, where did you go?
 14 "A I went back home.
 15 "Q And how did you feel as you were going back to
 16 your apartment?
 17 "A I was scared.
 18 "Q Who were you scared of, the Mexican or Duran?
 19 "A Duran.
 20 "Q Did anyone else know that you were afraid to go
 21 back to your apartment?
 22 MS. DiGIACOMO: "Objection, speculation."
 23 THE COURT: Give me the page and the line.
 24 MS. DiGIACOMO: 14, Your Honor, line 15.

XIV-11

PARKER - DIRECT

1 him not to ever come back, and everything. And he just kept
 2 on talking and talking. And then I had to open the door to get
 3 in to, you know, my laundry, And he pushes on, you know,
 4 pushed himself in behind me.
 5 "Q Did he tell you why he was upset?
 6 MS, DiGIACOMO: "Objection, hearsay.
 7 THE COURT: "Sustained,"
 8 BY MS. ZALKIN:
 9 "Q After he pushed his way into the apartment, what
 10 happened next?
 11 "A He said he was gonna rape me.
 12 MS. DiGIACOMO: "Objection, Your Honor, as to
 13 what he said. She can't state what Duran did next,
 14 THE COURT: "Sustained.
 15 MS, ZALKIN: "Your Honor, I think the question was
 16 what happened next.
 17 MS. DiGIACOMO: "Right, But the response was
 18 non-responsive.
 19 THE COURT: "Would you repeat the question?
 20 MS. ZALKIN: "Yes,"
 21 BY MS. ZALKIN:
 22 "Q After he pushed -- after Duran pushed his way into
 23 your apartment, what happened next?
 24 THE COURT: "It's not what did he say. It's what

XIV-13

PARKER - DIRECT

1 happened, What did he do,
 2 THE WITNESS: He pushed me, He said he was
 3 gonna rape me and he pushed me down on the bed. And I
 4 said, you know, I said no to him, and all that, and -- and he
 5 said, 'Well, I'm gonna get what I want this time,' And so he
 6 proceeded to rape me, And then when I got up, I ran outside
 7 and yelled for help, and all of that. And then he came outside
 8 and he grabbed me by the mouth, and all that, and pulled me
 9 back in and he threw me in the bedroom -- I mean, in a -- in a
 10 bathroom, and then he threw me down and started -- he
 11 kicked me and started beating me up. And then he said what
 12 he was gonna rape me in three different ways."

13 BY MS. ZALKIN:

14 "Q Okay, Ms, Parker, when he raped you on the bed,
15 did he use any kind of protection?

16 "A Yes.

17 "Q What did he use?

18 "A A condom,

19 "Q Did he use any weapon when he was raping you?

20 "A Not at that point.

21 "Q Did he at any point use a weapon?

22 "A Yes

23 "Q What was that?

24 "A A knife.

XIV-14

PARKER - DIRECT

1 (Off-record bench conference at 13:22:36 until 13:23:53)

2 BY MS. ZALKIN:

3 "Q You said he couldn't perform in the bathroom. What
4 do you mean by that?

5 "A He couldn't get it hard.

6 And so how many times did he attempt to sodomize
7 you?

8 "A About three or four times,

9 "Q Did he make any threats to you?

10 "A Yes, He told me he was going to kill me,

11 "Q Now that was on July 1. You -- did you go to the
12 police right away?

13 "A No, I didn't.

14 "Q When did you see him again?

15 "A I think on the 4th.

16 "Q And what did he do on the 4th?

17 "A He banged on the door and the window.

18 "Q And how did you react?

19 "A I was scared, That's when I called the police,

20 "Q Did you open the door or speak to him at all that
21 day?

22 "A No,

23 "Q And did the police eventually come to your
24 apartment?

XIV-16

PARKER - DIRECT

1 "Q And you indicated that you tried to scream and run
2 away but he brought you back in?

3 "A Right.

4 "Q Was there anyone who heard your screams or --

5 "A Yes. There was a Mexican lady walking by but she
6 just ignored me.

7 "Q When he brought you back into the apartment, you
8 indicated that he brought you not back on the bed but on a
9 different -- in a, different area of your apartment?

10 "A Yes. In the -- in the bathroom.

11 "Q And what happened in the bathroom?

12 "A He tried to rape me again and -- but he couldn't
13 perform,

14 "Q When he tried to rape you that time, was that the
15 same way that he raped you on the bed?

16 "A No

17 "Q How did he rape you on the bed?

18 "A Vaginal.

19 "Q Is that that he penetrated you vaginally?

20 "A Yes,

21 "Q And how did he try to rape you in the bathroom?

22 "A Anally,"

23 MS. DiGIACOMO: Your Honor, may we approach?

24 THE COURT: Yes,

XIV-15

PARKER - DIRECT

1 "A Yes.

2 "Q Do you recall when that was?

3 "A 4th or 5th.

4 "Q Would it refresh your recollection to take a look at
5 your taped statement?

6 "A Yes.

7 MS. ZALKIN: "May I approach the witness, Your
8 Honor?

9 THE COURT: "Yes."

10 BY MS. ZALKIN:

11 "Q Does that refresh your recollection?

12 "A 7/05.

13 MS. DiGIACOMO: "Counsel, what page was that?"

14 MS. ZALKIN: "Of the hearing, first page,

15 MS. DiGIACOMO: "Thank you,"

16 BY MS. ZALKIN:

17 "Q And what happened when the police came to take
18 your statement?

19 "A They just asked me the questions, what was -- you
20 know, what happened and everything. Then they took me to
21 UMC.

22 "Q And they took you to UMC, the hospital?

23 "A Yes.

24 "Q And what happened there?

XIV-17

PARKER - DIRECT

1 "A They took pictures,
 2 "Q I'm showing you what's —
 3 MS. ZALKIN: "Your Honor, may I approach the
 4 witness?
 5 THE COURT: "Yes."
 6 BY MS, ZALKIN:
 7 "Q I'm showing you what's marked as Defense
 8 Proposed Exhibit 3. Do you recognize that photo?
 9 "A Yes,
 10 "Q And could you please describe that?
 11 "A My neck, where he had the knife.
 12 "Q Does that adequately represent you and the neck
 13 wound?
 14 "A Yes,
 15 MS. ZALKIN: "Move to admit Defense Exhibit.).
 16 MS, DiGIACOMO: "No objection, or submit it,
 17 Your Honor,"
 18 MR. KEPHART: The Court let it in.
 19 THE COURT: "It will be received."
 20 (Defendant's Exhibit 3 admitted)
 21 MS. ZALKIN: "May I approach, Your Honor?"
 22 THE COURT: "Yes."
 23 BY MS. ZALKIN:
 24 "Q Do you recognize what's been marked as Defense

XIV-18

PARKER - DIRECT

1 THE COURT: Very well.
 2 MS. ZALKIN: "May I approach, Your Honor?"
 3
 4 THE COURT: "Yes."
 5 BY MS. ZALKIN:
 6 "Q I'm showing you what's marked Defense Exhibit L.
 7 Do you recognize that photo?
 8 "A Yes.
 9 "Q And what does it depict?
 10 "A My leg.
 11 "Q And what's on your leg?
 12 "A Bruises.
 13 "Q And does that adequately reflect your leg and the
 14 bruises?
 15 "A Yes.
 16 MS. ZALKIN: "Move to admit Defense Exhibit L.
 17 MS. DiGIACOMO: "Submit it, Your Honor,
 18 THE COURT: "Granted,"
 19 (Defendant's Exhibit L admitted)
 20 MS. ZALKIN: For the record, I'm publishing Defense
 21 Exhibit L.
 22 BY MS. ZALKIN:
 23 "Q And I'm showing you what's marked as Defense
 24 Exhibit M. Do you recognize that?"

XIV-20

PARKER - DIRECT

1 Exhibit K?
 2 "A Yes. That's my shoulder, That's where he kicked
 3 me.
 4 "Q I'm sorry?
 5 "A That's where he kicked me.
 6 "Q He kicked you in the shoulder?
 7 "A Yes,
 8 "Q Does this adequately reflect the bruise that you
 9 sustained from him?
 10 "A Yes.
 11 MS. ZALKIN: "Move to admit Defense Exhibit K.
 12 MS. DIGIACOMO: "Submit it, Your Honor.
 13 THE COURT: "K will be received,"
 14 (Defendant's Exhibit K admitted)
 15 MS. DiGIACOMO: And, Your Honor, for the record
 16 she's publishing, I know it's not reflected here, but she just
 17 published 3 and now she's publishing K.
 18 THE COURT: It had been stipulated earlier in the
 19 trial that once an exhibit was admitted that there need not be
 20 a motion to publish so --
 21 MS. DiGIACOMO: No, I understand that, but I'm
 22 just making a record that it's on the screen. She wasn't doing
 23 that.
 24 MS. ZALKIN: do that in the future, Your Honor,

XIV-19

PARKER - DIRECT

1 "A Yes.
 2 "Q Would you please describe it?
 3 "A It's my arm where he beat me up and was bruising
 4 me.
 5 "Q Does that adequately reflect your arm and the
 6 bruises you sustained?
 7 "A Yes.
 8 MS. ZALKIN: "Move to admit Defense Exhibit M.
 9 MS. DiGIACOMO: "Submit it.
 10 THE COURT: "It will be received,"
 11 (Defendant's Exhibit M admitted)
 12 MS. ZALKIN: For the record, I'm publishing Exhibit
 13 M to the jury,
 14 BY MS, ZALKIN:
 15 "Q And I'm showing you what's marked as Defense
 16 Exhibit N. Do you recognize that?
 17 "A Yes.
 18 "Q Would you please describe it?
 19 "A That's where he gave me the two black eyes.
 20 "Q Does that adequately reflect the bruises on your face
 21 that he --
 22 "A Yes,
 23 "Q inflicted?
 24 MS, ZALKIN: "Move to admit Defense Exhibit N.

XIV-21

PARKER - DIRECT

MS. DiGIACOMO: "Submitted,
THE COURT: "Granted."

(Defendant's Exhibit N admitted)

MS_ ZALKIN: Your Honor, may I publish these to
the jury?

THE COURT: Yes.

BY MS. ZALKIN:

"Q I'm showing you what's marked as Defense
Exhibit" —

MS, ZALKIN: May we approach, Your Honor?

THE COURT: Yes.

(Off-record bench conference at 13:29:01 until 1130:49)

MS, ZALKIN: "May I approach the witness, Your
Honor?

THE COURT: "Yes,"

BY MS. ZALKIN:

"Q I'm showing you what's marked as Defense Exhibit
1 Would you please describe for the jury what it is that we're
viewing?

"A Where he put the knife to my throat, and he put it
to it like a couple of times, two or three times. But the one
puncture where there is — where, mainly, where he had the
knife. He had the knife right here on the right side of my vein,

"Q So on the side of your vein, is that your carotid

XIV-22

PARKER - DIRECT

artery?

"A Yeah,

"Q And this picture was taken on the ^{5,} so that was
four days after you actually sustained the injury?

"A Yes

"Q Showing you Defense Exhibit K. What are we
looking at there?

"A My shoulder.

"Q And how did you sustain that?

"A That's where he kicked me.

"Q Showing you Defense Exhibit L. What is that a
picture of?

"A My legs. The bruises that he —

"Q And did Duran inflict those bruises?

"A Yes,

"Q And this is Defense Exhibit M. What are we looking
at there?

"A My arm.

"Q And what's on your arm?

"A The bruises that he gave me.

"Q And were those bruises inflicted by Duran?

"A Yes.

"Q And this is Defense Exhibit N,"

MS, ZALKIN: For the record, I'm publishing N.

XIV-23

PARKER - DIRECT

BY MS. ZALKIN:

"Q What is that a picture of?

"A My face. It's where he gave me two black eyes,

"Q When the cops came to take your statement, did
you tell them where they could find Duran?

"A I told them whereabouts that he hung around.

"Q And where was that?

"A He usually stayed behind the bank on the back side -
of Terrible's,

"Q When you say the bank, what are you -- which bank
are you talking about?

"A Nevada State Bank.

"Q And do you know what any of the streets are, cross-
streets there?

"A Flamingo and Aiville.

"Q And about how far away is that from your
apartment?

"A About a half a block,

"Q And did you offer to take the police over there to
that area to show him?

"A Yes.

"Q And what did the police do?

MS. DiGIACOMO: "Objection, Your Honor.

THE WITNESS: "They -- they said later,"

X1V-24

PARKER - DIRECT

MS. DiGIACOMO: Wait. Am I on the wrong page?

THE COURT: The objection's withdrawn.

MS DiGIACOMO: Well, I'm not sure where we are
now,

MS. ZALKIN: **24**, I asked, "What did the police do?"

MS, DiGIACOMO: "And what did the police do?"

And she says, "They said later."

And I'm objecting, Your Honor, as to what the police
said. The question was, "What the police did,,"

BY MS, ZALKIN:

"Q Did the police ever take you to ride along?

"A No."

MR. KEPHART: Objection again.

MS, DIGIACOMO: Right. That I -- and then I object
and withdraw it.

BY MS- ZALKIN:

"Q And did you describe to police officers what Mr.
Duran Bailey looked like?

"A Yes,

"Q What did you tell them?

"A That he was missing teeth, that he usually wore a
red hat.

Do you recall what you told them about his missing
teeth? Was it on the top, the bottom?

XIV-25

PARKER - DIRECT

1 "A Both.
 2 "Q Besides his hat, was there any other article that
 3 came up about -- that was unique to him?
 4 "A No,
 5 "Q Were you asked about a watch?
 6 "A Yes.
 7 "Q Did you recall him ever wearing a watch?
 8 "A No.
 9 "Q Did you know where else Mr. Duran Bailey lived?
 10 "A He used to go to a house behind the Palms. I don't
 11 know the address or anything.
 12 "Q Did he have relatives living at that home?
 13 "A No.
 14 "Q Do you know why he went to that home?
 15 "A For drugs,
 16 "Q Did you know him to take drugs?
 17 "A Yes.
 18 "Q What kind of drugs did he use?
 19 "A Crack cocaine, marijuana, alcohol,
 20 "Q Did you ever know him to use methamphetamine?
 21 "A No
 22 "Q Did you ever know him to be a drug dealer?
 23 MS. DiGIACOMO: "Objection, Your Honor, this is
 24 getting leading and it's not relevant to the proceedings here.

XIV-26

PARKER - DIRECT

1 THE COURT: "The Court will sustain as to leading,"
 2 BY MS. ZALKIN:
 3 "Q While you were with the police, did you speak to any
 4 other individuals, not what they said just did you speak to any
 5 other individuals?
 6 "A While I was with the police? No.
 7 "Q After the police left, did you speak to any of your
 8 neighbors or any other individuals?
 9 "A When the police came over -
 10 "Q When the officer came over?
 11 "A Yes. He told him -- he told me to show him where
 12 the apartments were that -- the apartment that I was at,
 13 "Q And is this the apartment that you were at when you
 14 were slapped?
 15 "A Yes,
 16 "Q And did you show him which apartment it was?
 17 "A Yes.
 18 "Q Was there more than one?
 19 "A Yeah, Well, I showed him that one, And I told him
 20 the other guy that was watching out for me was up on the top,
 21 upstairs.
 22 "Q Okay. So there's two different men watching you
 23 that lived at two different apartments?
 24 "A Right

XIV-27

PARKER - DIRECT

1 "Q And both these men, they were watching out for
 2 you, are they both Hispanic?
 3 "A Yes.
 4 "Q When you spoke with police, did you refer to them
 5 as Mexicans?
 6 "A Yes.
 7 ^{171:2} Do you know their names?
 8 "A No,
 9 "Q Ms, Parker, do you recall when you first found out
 10 that Duran might have been killed?
 11 "A Yes. When my roommate came home -- come home
 12 from work.
 13 "Q Do you know what day that was?
 14 "A On the 1 -- no, I'm sorry. On the 8th,
 15 "Q And what was your reaction?
 16 "A Uh, he -- he described what they had said on the
 17 news. And I was curious if it was to him. And I went and I
 18 talked to a policeman and a detective at the crime scene.
 19 "Q So when you went to the crime scene the police
 20 were still there?
 21 "A Yes.
 22 "Q And did you get confirmation at that time from --
 23 without telling me what they said, but did you get confirmation
 24 at that time that they were both the same person?

XIV-28

PARKER - CROSS

1 "A No,
 2 "Q At what point did you find out that they were both
 3 the same person?
 4 "A When they brought that picture over.
 5 "Q When you say that picture, are you --
 6 "A Yeah.
 7 "Q -- talking about this picture marked Defense Exhibit
 8 I?
 9 "A Yes.
 10 "Q And was that the day that you signed your name?
 11 "A Yes.
 12 "Q And what date was that?
 13 "A The 23rd.
 14 MS, ZALKIN: "Pass the witness."
 15 MS, DIGIACOMO: "May I, Your Honor?"
 16 THE COURT: "Cross."
 17 MS. DiGIACOMO: "Thank you."
 18 CROSS-EXAMINATION
 19 BY MS. DiGIACOMD:
 20 "Q Ms, Parker, before today, have you spoken to either
 21 defense counsel?
 22 "A Yes.
 23 "Q How many times have you spoken to them?
 24 "A Four or five times,

XIV-29

PARKER - CROSS

1 "Q Okay.
 2 "A I'm not sure.
 3 "Q And did they explain to you why they're calling you
 4 as a witness here today?
 5 MS. ZALKIN: "Objection. It would be hearsay.
 6 MS, DiGIACOMO: "I just asked if they explained. I
 7 didn't say what they said.
 8 THE COURT: "Overruled.
 9 THE WITNESS: "Yes."
 10 BY MS, DiGIACOMO:
 11 "Q Now when you talked to the detective who was
 12 investigating this rape, you pointed out some, I guess, some
 13 apartments where some Mexicans lived?
 14 "A Yes.
 15 "Q Okay. How well do you know the Mexicans in that
 16 apartment?
 17 "A I didn't know them all that well.
 18 "Q Now defense counsel stated that they were watching
 19 out for you.
 20 "A After he slapped me.
 21 "Q Okay. After he slapped you, But before that you
 22 didn't know them very well?
 23 "A No.
 24 "Q And —

XIV-30

PARKER - CROSS

1 BY MS. DIGIACOMO:
 2 "Q Well, they didn't learn from you what -- that you had
 3 been raped by Duran?
 4 "A No."
 5 MS. DiGIACOMO: Your Honor, page 30, line 20.
 6 THE COURT: "Sustained."
 7 BY MS. DiGIACOMO:
 8 "Q Now one of the Mexicans who was looking out for
 9 you, was that the one that talked to the defendant or — or,
 10 excuse me, Duran after he had slapped you in their
 11 apartment?
 12 "A Yes,
 13 "Q Now when he talked to Duran, you said he — you
 14 didn't hear what they said?
 15 "A No,
 16 "Q Now, do you know if the Mexican ever did anything
 17 physical towards Duran?
 18 "A No.
 19 "Q You don't know or he didn't?
 20 "A I don't know. Not that I know of.
 21 Now, do you recall telling the police in your
 22 statement that he didn't touch him or he didn't hit him or
 23 nothing?
 24 "A Right,, Yeah, he didn't,

XIV-32

PARKER - CROSS

1 "A I didn't know them at all.
 2 "Q You didn't know them at all. After the incident, did
 3 you get to know them a little better, the Mexicans?
 4 "A No.
 5 "Q So that's why you don't — you don't know their
 6 names?
 7 "A Right.
 8 "Q Did you ever talk to these Mexicans about what
 9 happened between you and Duran, the rape?
 10 "A Yes. Well, they saw me.
 11 "Q All right. They saw you. But I'm asking, did you
 12 ever, after the 5^o of July, ever run into them or after the 1st of
 13 July, I'm sorry, and tell them exactly what happened between
 14 Duran and you?
 15 "A Not that I recall.
 16 "Q Okay, So they don't know that you had been rape,
 17 they" —
 18 MS DiGIACOMO: Excuse me.
 19 BY MS. DiGIACOMO:
 20 "Q So they didn't know that you had been raped by
 21 Duran?
 22 "A No.
 23 MS. ZALKIN: "Objection as to what they know,"
 24

XIV-31

PARKER - CROSS

1 "Q So the Mexican never touched Duran?
 2 "A No.
 3 "Q He just kind of told him to leave so that you could
 4 feel safe?
 5 "A Right, Yes.
 6 "Q Now you had actually known Duran for awhile,
 7 hadn't you?
 8 "A Yes.
 9 How long would you say you'd known him before
 10 July 1?
 11 "A About four or five months maybe.
 12 "Q Okay. And you'd actually had consensual sexual
 13 relationship with him before that date?
 14 "A Yeah,
 15 "Q So would you go so far as to characterize the
 16 relationship you had with Duran as dating?
 17 "A No,
 18 "Q How would you characterize it?
 19 "A Just as, you know, partying.
 20 "Q Partying? So drugs?
 21 "A Yeah.
 22 "Q So you knew him through the drug scene?
 23 "A Right.
 24 "Q You did drugs with Duran?

XIV-33

PARKER - CROSS

1 "A Yes

2 "Q How often would you say you did drugs with Duran

3 during that four or five-month period?

4 "A I couldn't say.

5 "Q When you were doing the drugs with Duran, how

6 did you get the -- how did you guys get the drugs?

7 "A He went and got them.

8 "Q So he paid for them?

9 "A Yes,

10 "Q Did you ever pay for them?

11 "A No_

12 "Q You never gave him money?

13 "A No,

14 "Q Did you ever trade sex for drugs?

15 "A Yeah.

16 "Q How often? Was it every time that you traded sex

17 for drugs?

18 "A No,

19 "Q No, Okay. But more than once?

20 "A Oh, I'm sorry, I didn't understand that.

21 All right. When you were doing drugs with Duran

22 and you said sometimes you gave him sex in exchange for the

23 drugs because he had paid for them —

24 "A Yes,

XIV-34

PARKER - CROSS

1 knife?

2 "A Yes.

3 MS, DiGIACOMO: "Does counsel have those photos?

4 Thank you,"

5 BY MS, DiGIACOMO:

6 "Q Do you know where he got the knife from?

7 "A From my apartment.

8 "Q All right. From your kitchen maybe?

9 "A Yes,

10 "Q Yeah, Didn't you say that you went to grab for a

11 knife?

12 "A I went — yes. I went to go to get one to try to get

13 him out of there, and he got -- he —

14 "Q He used it on you?

15 "A Yeah.

16 "Q Okay. So and this is after he'd already raped you?

17 "A Yes.

18 "Q All right. And this is after he had already then tried

19 to sodomize you as well?

20 "A Yes.

21 "Q So this was awhile after he had first come into your

22 apartment?

23 "A Yes.

24 "Q All right. A couple of hours after is when the knife

XIV-36

PARKER - CROSS

1 "Q -- did that happen? How many times?

2 "A I don't know,

3 "Q More than once?

4 "A Yeah,

5 "Q More than probably five times?

6 "A Yes,

7 "Q So it happened quite a few times?

8 "A Yes.

9 "Q But at the time when he raped you, you were done

10 with him. You weren't doing — you weren't doing that

11 anymore?

12 "A Right,

13 "Q How long before he came and raped you did you tell

14 him no more, I'm done partying with you?

15 "A After he slapped me,

16 "Q So that day, on Sunday, was the first time you —

17 you were like I'm done with him?

18 "A Yes.

19 "Q Did you tell him that or —

20 Yes

21 "Q Okay, And so then when he came back that night,

22 that's why you said I don't want you around here anymore?

23 "A Right, I was coming back from the Laundromat.

24 "Q Okay, Now you said during the rape he used a

XIV-35

PARKER - CROSS

1 grabbed for?

2 "A I don't think it was that long.

3 "Q But it was some time after. He had already raped

4 you once and tried to rape you another time?

5 "A Yes,

6 "Q Now you had been shown Defendant's Exhibit

7 Number).

8 MS, DiGIACOMO: "May I approach, Your Honor?

9 THE COURT: "Yes,"

10 BY MS, DIGIACOMO:

11 "Q I'm just gonna refresh your memory. This is the

12 picture of your neck,

13 "A Uh-huh.

14 "Q And you said that it appears that there's bruises

15 there, but you also —

16 "A Okay,

17 "Q -- said there's —

18 "A Right there is the knife wound.

19 "Q Okay. I'm sorry. I didn't see that. It was too quick,

20 "A Oh. Right there

21 "Q Okay_ That's the knife wound and that's from where

22 he was holding it against your neck?

23 "A Yeah, He had me down and he had the knife to my

24 neck, like I said, right by the vein. And he said, 'Now I've got

XIV-37

PARKER - CROSS

1 to kill you.'

2 "Q Okay. But he never stabbed you with the knife,

3 though, did he?

4 "A He poked me, yeah.

5 "Q No, no. But I'm asking stabbed you, like this?

6 "A No.

7 "Q I mean, where it broke skin?

8 "A No.

9 "Q So he just held it against your throat and threatened

10 you. He never stabbed you in the neck?

11 "A No.

12 "Q He never stabbed you anywhere else on your body?

13 "A No.

14 "Q He never hit you with anything other than his foot or

15 fist Isn't that true?

16 "A True,

17 "Q And you also stated that you ran into him on the 4th

18 and you got scared and that's why you called the police

19 "A Yes.

20 "Q So he had not come back to your apartment, is it

21 fair to say" --

22 MS. DiGIACOMO: Excuse me.

23 BY MS, DIGIACOMO:

24 "Q So if he had not come back to your apartment, is it

XIV-38

PARKER - CROSS

1 MS, DIGIACOMO: "-- the witness?"

2 BY MS. DIGIACOMO:

3 "Q Okay. I'm gonna show you what's been admitted as

4 State's Exhibit Number 121. And this is the Nevada State Bank

5 right here.

6 "A Yes.

7 "Q Can you recognize what's depicted in this aerial

8 photograph?

9 "A Yeah, the bank and --

0 "Q And do you see where your apartments are?

1 "A Yes.

12 "Q Okay. This would be Wynn Road and Flamingo, just

13 to give you some bearings.

14 "A They're farther over.

15 "Q So this is --

16 "A See, that's Sunwood, I think,

17 "Q So these apartments right here that abut up to the

18 wall of the bank?

19 "A That's Sunwood.

20 "Q Those aren't your apartments?

21 "A No.

22 "Q So yours would be farther north?

23 "A Further back.

24 "Q Okay. And so if you can look at this and tell me

XIV-40

PARKER - CROSS

1 fair to say you would never have called the police about the

2 rape?

3 "A I'm not sure. I was, you know, going both ways.

4 "Q But you had waited four days at that point?

5 "A Yes

6 "Q All right.

7 "A Because I had a warrant and -- and I was scared to

8 call.

9 "Q Okay. Now that's fine. Now you were talking --

10 now you were talking about it was the 8th when you found out

11 that the person who raped you might be dead.

12 "A Might be.

13 N:(2) And you went over to the dumpster area?

14 "A No

15 S:C2 Where did you go?

16 "A I went to the police line,

17 "Q The police line. But that was surrounding the

18 dumpster area behind Nevada State Bank?

19 "A No. It was cut off right there at the bank.

20 MS, DiGIACOMO: "Your Honor, may I approach the

21 clerk?

22 THE COURT: "Yes.

23 MS. DiGIACOMO: "May I approach --

24 THE COURT: "Yes.

XIV-39

PARKER - CROSS

1 where the police line was that you indicated that you came up

2 to.

3 "A Right here.

MS. DiGIACOMO: "Okay. And, Your Honor, for the

5 record she pointed to the southwest corner of the parking lot

6 at the Nevada State Bank, directly south of where the

7 dumpster area is. Your Honor, may the record so reflect?

8 THE COURT: "The record shall so reflect."

9 BY MS, DIGIACOMO:

0 "Q And do you recall what time of day it was when you

1 went and talked to somebody that was at the scene?

12 "A Yes. I talked to a policeman there and he

13 remembered me from the rape.,

14 "Q Okay. But, no, I asked you what --

15 "A Oh.

16 "Q -- time of day it was. Was it light out or dark out?

17 "A It was light.

18 "Q Okay, So it's possible -- you said it was the 8th when

19 you went over there, but it's possible it was actually the 9th?

20 "A I -- I don't --

21 "Q On Monday morning?

22 "A Yes. It was Monday. I think it was Monday

23 morning.

24 "Q But you know it was in the morning after they had

XIV-41

PARKER - CROSS

1 found the body?

2 "A Yes, 'cause my roommate had come in from work.

3 "Q Okay, And the person you talked to, were they
wearing a uniform?

5 "A Yes. One of them was.

6 "Q And what was the other one wearing?

7 "A It was a man and a woman and they were just
8 wearing regular clothing with gloves on.

9 "Q Okay. So it's fair to say then that you talked to a
10 patrol officer and you talked to another woman?

11 "A To a detective. To a man, And he said that they
12 were going to have somebody sent over to my house.

13 "Q But it wasn't the detectives that were investigating
the case that you talked to?

15 "A No.

16 "Q Now, do you recall in your statement describing the
17 victim as a vagrant?

18 "A Yes.

19 "Q Do you also recall describing what he was wearing
20 when he came over to your apartment on July 1st?

21 "A I tried to, yes.

22 "Q Do you recall what that was?

23 "A I think it was something like a plaid-looking shirt.
24 It's been so long ago

XIV-42

PARKER - CROSS

1 "A Yes,

2 "Q Is it possible these are the ones he was wearing
3 when he came over to your house that night?

4 "A I can't recall.

5 "Q But these look familiar —

6 "A Yes.

7 "Q -- as to the kind of shoes he owned?

8 "A Uh-huh, Yeah, because I joked with him,

9 "Q So you joked around with him about these flip-flops?

10 "A Yeah. I said they looked like jail shoes.

11 "Q Okay. And I'm also going to show you State's
12 Exhibit Number 48 and 47. Now there's some blood on these
13 items, but do you recognize those being what he was wearing
14 that night?

15 "A Yeah. Yes.

16 "Q So those -- these look familiar as to what he could
17 have been wearing. You're sure? Now you stated you were
18 afraid of him?

19 "A Yes.

20 "Q Because of what he did to you?

21 "A Yes,

22 "Q Did you ever want to get revenge?

23 "A No. I just wanted him to stay away from me.

24 "Q Did you ever talk to anybody else about seeking

XIV-44

PARKER - CROSS

1 "Q Do you recall a plaid shirt and tan pants?

2 "A Yes, I think that's what he had on.

3 "Q Or tan shorts? Does that sound about right?

4 "A Yes.

5 "Q And flip-flops?

6 "A Yes. I don't know.

7 "Q I'm gonna show you page 6 of your voluntary
8 statement.

9 MS. DIGIACOMO: "Your Honor, may I approach?"

10 THE COURT: "Yes/'

11 BY MS. DIGIACOMO:

12 "Q Okay. I'm gonna show you page 6 of your -- of your
13 voluntary statement. If you could just read that, let me know
14 if it refreshes your memory.

15 "A Yes.

16 "Q Okay, Now, do you recall, did you tell the police tan
17 shorts, multi-colored shirt and flip-flops?

18 "A Yes,

19 "Q Does that sound about right?

20 "A Yes.

21 "Q Do you know, did he wear those flip-flops often?

22 "A He wore different kind of shoes, tennis shoes and —

23 "Q Okay, May -- I'm showing you State's Exhibit
24 Number 49. Those look familiar as the flip-flops?

XIV-43

PARKER - REDIRECT

1 revenge on Duran?

2 "A No,

3 "Q Did you ever ask anyone else to hurt Duran?

4 "A No.

5 "Q Did you ever ask the Mexicans to hurt Duran?

6 "A No,

7 "Q Did you ever ask anyone to kill Duran?

8 "A No.

9 "Q Did you ever ask the Mexicans that were watching
10 and in your neighborhood or your apartment complex to kill
11 Duran?

12 "A No,

13 Did you kill Duran?

14 "A No.

15 MS. DIGIACOMO: "Nothing further.

16 THE COURT: "Redirect

17 MS. ZALKIN: "Thank you, Judge."

18 REDIRECT EXAMINATION

19 BY MS. ZALKIN:

20 "Q Ms. Parker, the prosecutor asked you if you had
21 talked to the defense, and you stated you had spoken to us
22 about four times, Is that right?

23 "A I think so. It might have been more than that.

24 "Q And has that been over the course of the one year

XIV-45

PARKER - REDIRECT

since this happened?

2 "A Yes. I spoke to different detectives,
3 "Q Okay. And you did tell — you do recall telling the
4 police that there was a Mexican woman who heard you
5 scream?

6 "A Yes.
7 "Q When you went outside the door?

8 "A Yes.
9 "Q And do you recall also saying that there was a
10 Mexican man who told you he was sorry about what had
11 happened?

12 "A Yes. That's when the detective was there, too.

13 "Q When you were with the detective?

14 "A When I was with the detective.

15 "Q Why was he telling you he was sorry about what
16 happened?

17 MS. DIGIACOMO: "Objection, Your Honor, that's
18 speculative.

19 THE COURT: "Sustained.

20 MS. ZALKIN: "I'll withdraw,"

21 BY MS. ZALKIN:

22 "Q When Duran Bailey slapped you in your neighbor's
23 home, the Mexican man's home, do you remember telling the
24 police that he confronted him?

XIV-46

ARKER - REDIRECT

1 will be dead'?

2 "A Right.

3 "Q And you told the police that he had told you he was
4 going to kill you?

5 "A Yes.

6 "Q And the policeman asked you if you wanted him
7 prosecuted, and you said you did?

8 "A Yes.

9 "Q But you also said that you wanted protection?

10 "A Yes.,

11 "Q And do you remember talking about Texas law?

12 "A Yes.,

13 "Q Do you remember what you said to the police
14 officer?

15 "A It's an old saying, the Texas law. It says, you know,
16 if somebody's trying to break into your apartment, and all that,
17 you can shoot them and drag them in.

18 "Q Was it your understanding that the police officer was
19 telling you that you needed to do whatever you have to do to
20 protect yourself?

21 "A No, I don't. Well, he said, you know, that they
22 would take care of it, and everything.

23 "Q Would it refresh your recollection to look at your
24 taped statement?

XIV-48

PARKER - REDIRECT

1 "A Yes.

2 "Q When the prosecutor was asking you about your
3 friendship with Mr. Bailey, you mentioned that you were
4 friends, that you had shared drugs?

5 "A Yes.

6 "Q And that you joked around about his shoes?

7 "A Yeah, I had -- I had something about his shoes, I
8 said they looked like jailhouse shoes,

9 "Q Like jailhouse shoes. But at the —

10 MS. ZALKIN: "Your Honor, may the record reflect
11 she nodded her head in the affirmative?

12 THE COURT: "The record shall so reflect,

13 THE WITNESS: "Oh."

14 BY MS. ZALKIN:

15 "Q The day that you were talking to the police on July
16 5th, you did not regard Mr, Duran Bailey as a friend any longer,
17 did you?

18 "A No.

19 "Q In fact you stated you were afraid of him?

20 "A Yes.

21 "Q Do you remember telling the police that "This is
22 going to get me killed"?

23 "A Yes.

24 "Q And you stated 'Because if you all don't catch him I

PARKER - RECROSS

1 "A Yes. Okay. Yes.

2 "Q Okay. So you recall the police telling you you gotta
3 do what you gotta do to protect yourself the best you can?

4 "A Yes.

5 "Q Do you recall telling the police that you were scared
6 to walk outside your home?

7 "A Yes,

8 "Q Did you drive to the scene of the crime?

9 "A No.

10 "Q How did you get there?

11 "A Walked.

12 MS. ZALKIN: "Pass the witness,

13 THE COURT: "Recross.

14 MS. DiGIACOMO: "Thank you."

RECROSS EXAMINATION

15 BY MS. DiGIACOMO:

16 "Q Now counsel was asking you about the detective
17 saying you've got to do what you gotta do to protect yourself.

18 "A Yes. That's in case he tried to break in.

19 "Q Okay. Now that's not the entire conversation you
20 had with the officers about it, is it?

21 "A I don't remember.

22 MS. DIGIACOMO: "Okay. Your Honor, may I
23 approach?
24

XIV-49

PARKER - RECR.OSS

PARKER RE CROSS

1 THE COURT: "You may,"
 2 BY MS DiGIACOMO:
 3 "Q I'm gonna show you page 45 of your voluntary
 4 statement. Just read that to yourself, from there down.
 5 "A Yes.
 6 "Q After reading that, does that refresh your memory as
 7 to the conversation you had with the detective?
 8 "A Yes,
 9 "Q Now when he was talking about you gotta do what
 10 you gotta do to protect yourself, wasn't he saying that in
 11 regards until they find Duran, if he comes back you can protect
 12 yourself?
 13 "A Yes. He said call the police but, you know, but --
 14 "Q Right. And your concern was if Duran came back to
 15 your apartment whether or not you could protect yourself from
 16 him?
 17 "A If he tried to break in, yes.
 18 "Q And that's what this discussion was with the —
 19 "A Yes.
 20 "Q -- police? And they, in fact, the detectives told you
 21 that if he breaks into your house you are under — you are
 22 under the law allowed to protect yourself?
 23 "A Yes,
 24 "Q But the officer wasn't telling you the Texas law

1 "Q No. I'm not saying it broke,
 2 "A Oh,
 3 "Q But do you recall telling the police that it left a knot
 4 on his head?
 5 "A I don't recall.
 6 "Q We'll come back to that. With regard to the drug
 7 use that you and Duran did, what kind of drugs did you use
 8 with him?
 9 "A Cocaine and marijuana.
 10 "Q Okay. But did he use drugs when he wasn't with
 11 you as well?
 12 "A Yes.
 13 MS. ZALKIN: "Objection as to how she would know
 14 whether or not he did drugs when she was not around.
 15 THE WITNESS: "Oh,
 16 THE COURT: "Sustained."
 17 BY MS, DiGIACOMO:
 18 "Q Well, let me ask you this question. When you did
 19 drugs with Duran for the first time, he bought the drugs, didn't
 20 he?
 21 "A Yes.
 22 "Q And was there ever a point in time when you saw —
 23 when you saw him when he was high on drugs and you hadn't
 24 been doing them with him?

XIV-50

XIV-52

PARKER - RE CROSS

PARKER - FURTHER REDIRECT

1 thing, about killing outside and dragging them in. That was
 2 your statement,
 3 "A That's my statement,
 4 "Q Now when you said that, you were joking?
 5 "A Well, it's — well, it's the truth in Texas.
 6 "Q Okay. But you weren't being completely serious that
 7 was your plan?
 8 "A No, I wasn't serious.
 9 "Q Okay. And after July 4' until you went over to the
 10 crime scene July 9th, you didn't see Duran Bailey, did you?
 11 "A No
 12 "Q And, actually, during the struggle when Duran was
 13 in your apartment during the rape on July 1 --
 14 "A Yes.
 15 "Q — you hit him over the head with a beer bottle,
 16 didn't you?
 17 "A Yes.
 18 "Q And you caused a knot to his head from that hit,
 19 didn't you?
 20 "A I don't know.
 21 "Q Do you recall telling the police that you caused a
 22 knot in your voluntary statement?
 23 "A No. I told them that I hit over the head with the
 24 beer bottle. It didn't break.

1 "A Yes.
 2 "Q Okay, I'm gonna show you page 16 of your
 3 voluntary statement. If you could just read this and let me
 4 know if it refreshes your memory,
 5 "A Yes.
 6 "Q So you did tell the police that when he — you hit him
 7 over the head with a beer bottle it left a knot on his head?
 8 "A Yes, barely.
 9 MS. DiGIACOMO: "Nothing further, Your Honor.
 10 MS. ZALKIN: "May I redirect, Your Honor?
 11 THE COURT: "Redirect.
 12 MS. ZALKIN: "Thank you."
 13 FURTHER REDIRECT EXAMINATION
 14 BY MS. ZALKIN:;
 15 "Q Ms, Parker, you talked to the police. Do you
 16 remember the name of the police officer you spoke to?
 17 "A No, I don't.
 18 "Q When you talked to him about Texas law, after that
 19 do you recall what was the last thing that you talked to him
 20 about?
 21 "A That I wanted to be protected.
 22 "Q And do you remember what else you said?
 23 "A No, I don't.
 24 "Q Did he offer you any protection?

XIV-51

XIV-53

PARKER - FURTHER REDIR

1 "A He -- no.
 2 "Q And do you recall the last thing that you said to him
 3 on the taped statement was about driving around? Do you
 recall that?
 4 "A Yes.
 5 "Q And what was that?
 6 "A I told him I could show about where he lived or at —
 7 at or stayed at. I didn't know where he lived at. I said stayed
 8 around at.
 9 "Q Did he take you up on that offer?
 10 "A No.
 11 "Q Did you get the feeling that the officer thought you
 12 were being uncooperative?
 13 MS. DIGIACOMO: "Objection, Your Honor.
 14 THE COURT: "Sustained."
 15 BY MS. ZALKIN::
 16 "Q What was the officer's demeanor toward you?
 17 "A Detective, he just said, he goes, 'How do I know you
 18 were raped? It just looks like you've had a bunch -- got a
 19 bunch of bruises.'
 20 "Q So you felt he really didn't believe you?
 21 "A In a way.
 22 MS. DIGIACOMO: "Objection, Your Honor,
 23 speculative.
 24

XIV-54

R R - FURTHER REDIRECT

1 "A Telephone call. That was a phone call. I say yes,
 2 "Q Well, do you recall that conversation?
 3 "A Not on the phone.
 4 "Q Do you recall a conversation with the investigator
 5 about further investigation?
 6 "A Yes.
 7 "Q What was that discussion about?
 8 "A He asked me if he —
 9 MS. DIGIACOMO: "Your Honor, I'm going to object
 10 to what the detective was telling her since it's hearsay.
 11 THE COURT: "The Court will sustain the objection.
 12 Her answer was to the prior question not on the phone, so I'm
 13 not sure what conversation the question is referencing. But
 14 you may ask the next question."
 15 BY MS. ZALKIN::
 16 "Q Whether it was on the telephone or not, was there
 17 some other contact in the future that the investigator and you
 18 discussed?
 19 "A Yes, It wasn't the same investigator, though.
 20 "Q It was a different investigator?
 21 "A Yes.
 22 "Q And what was that conversation about?
 23 "A They were -- asked me questions.
 24 MS. DIGIACOMO: "Well, object.

XIV-56

PARKER - FURTHER REDIRECT

1 MS, ZALKIN: "It's her understanding what her belief
 2 is, her state of mind.
 3 THE COURT: "What her feelings are are different
 4 than what her state of mind is. So the Court will sustain the
 5 objection. Feelings are different from beliefs. Beliefs go to a
 6 mental state,"
 7 BY MS. ZALKIN::
 8 "Q Was it your understanding that this investigation was
 9 over or that it was going to continue?
 10 "A It was going to continue.
 11 "Q And when was it going to continue?
 12 "A I don't know.
 13 "Q Was there a telephone call that needed to be made?
 14 "A From them? I don't understand,
 15 "Q Would it refresh your recollection to take a look at
 16 the report?
 17 "A Yes,
 18 "Q I'll have you read to yourself and tell me if that
 19 refreshes your recollection,
 20 "A I didn't become uncooperative. I just —
 21 "Q Okay. Do you remember a conversation with the
 22 investigator?
 23 "A Yes,
 24 "Q About the telephone call?

XIV-55

PARKER - FURTHER REDIRECT

1 THE WITNESS: "And that's when they showed me
 2 the picture.
 3 MS. DIGIACOMO: "Withdrawn."
 4 BY MS. ZALKIN::
 5 "Q Before that, on the 5th, there was some talk about
 6 you telling the Mexican or you telling the officers where the
 7 Mexicans lived?
 8 "A Right.
 9 "Q Did you give them any information about those
 10 Mexicans?
 11 "A I told them where they lived.
 12 "Q Did you tell them the exact apartment numbers?
 13 "A I tried to.
 14 "Q Why didn't you tell them anything else about them?
 15 "A What do you mean?
 16 "Q Were you trying to protect them in some way?
 17 "A Well, I didn't want them, you know, 'cause they
 18 were immigrants so I didn't know if -- I didn't want them to
 19 get them in trouble.
 20 "Q Okay. So your understanding was that they might
 21 have been illegal?
 22 "A Right.
 23 "Q And this was from conversations you'd had with
 24 them before?

XIV-57

PARKER - FURTHER RECR,

1 "A Yes
 2 And they'd invited you over in the past to have a
 3 beer?
 4 "A Only that one time.
 5 "Q Was it your understanding that the investigation was
 6 not going to go on until the officer contacted you?
 7 MS. DiGIACOMO: "Objection, Your Honor,
 8 speculative, It's kind of roundabout hearsay.
 9 THE COURT: "Overruled. You may answer yes or
 10 no,"
 11 BY MS. ZALKIN::
 12 "Q Was it your understanding that the investigation was
 13 not going to continue until he contacted you on July 10th?
 14 No.
 15 "Q You don't recall that?
 16 "A No.
 17 MS. ZALKIN: "Pass the witness.
 18 THE COURT: "Recross.
 19 MS. DiGIACOMO: "Thank you."
 20 **FURTHER RECROSS EXAMINATION**
 21 BY MS, DiGIACOMO:
 22 "Q Ms Parker, counsel was asking you about your offer
 23 to the detective to drive around and you thought you could
 24 find Duran?

XIV-58

F ER- FURTHER RECROSS

1 you up on driving around looking for Duran at a later time
 2 after he did some more investigation?
 3 "A What he said was, he goes, 'We don't need to do
 4 that right now. We'll just' —
 5 "Q Okay. He said, 'We don't need to do it right now,'
 6 But didn't he say we're not -- he didn't say we're not gonna do
 7 that, did he?
 8 "A No,
 9 "Q And defense counsel showed you some case notes
 10 from the detective who investigated your rape when she
 11 approached, didn't she?
 12 "A Mm-hmm.
 13 "Q And these notes indicated that you weren't very
 14 cooperative in giving up where the Mexicans who might have
 15 seen something lived.
 16 "A Yes, I was. I was cooperative.
 17 "Q But not at first. At first, you didn't want to tell him
 18 where they lived because you didn't want to get them involved
 19 because you said they had immigration problems.
 20 "A Yes.
 21 "Q So that's the reason why you didn't want to point
 22 out to the detective where they lived?
 23 "A Yes,
 24 "Q You weren't trying to hide them from the detectives?

XIV-60

PARKER - FURTHER RECROSS

1 "A I was gonna show him where he kind of hung out.
 2 Yeah
 3 "Q Okay, But at that time the detective didn't take you
 4 up on that. He said we might find him in that way but we're
 5 just gonna have to wait and see. He wanted to do some other
 6 investigation first.
 7 MS. ZALKIN: "Objection, it's speculative. Very
 8 speculative,
 9 THE COURT: "Sustained."
 10 BY MS, DiGIACOMO:
 11 "Q Okay. He told you that, didn't he, that we'll wait and
 12 see if we're gonna find him that way but there's investigation
 13 that we need to be done first,
 14 MS, ZALKIN: "Still hearsay.
 15 THE COURT: "Sustained.
 16 MS, DiGIACOMO: "Your Honor, I'm just -- this was
 17 brought up by Ms. Zalkin in her redirect examination, Your
 18 Honor. I'm just following up with what was brought out
 19 because she —
 20 THE COURT: "You may ask her what her
 21 understanding was or what her belief was.
 22 MS DiGIACOMO: "Okay,"
 23 BY MS. DiGIACOMO:
 24 "Q Was your understanding the detective might take

XIV-59

PARKER - FURTHER RECROSS

1 "A No.
 2 "Q And that was on July 5th when you made the police
 3 report, which was before Duran was murdered, right?
 4 "A Yes.
 5 "Q And didn't you also tell the detective you weren't
 6 sure that you wanted to proceed with prosecution?
 7 "A No.
 8 "Q So -- so his -- it was his -- it was under -- his
 9 understanding he was just gonna do some further
 10 investigation and contact you again?
 11 "A Yes.
 12 "Q So just so we're clear, you wanted the detective to
 13 investigate this rape and find Duran?
 14 "A Yes.
 15 "Q And that's because you were scared of him?
 16 "A Yes,
 17 "Q You weren't trying to dissuade the detective from
 18 investigating so that you could kill him yourself, Duran?
 19 "A No. No,
 20 "Q And you weren't trying to dissuade the detectives
 21 from coming into contact with the Mexicans who might have
 22 seen something so that they could kill Duran and not get
 23 caught?
 24 "A No,

XIV-61

PARKER - FURTHER REDIR

1 "Q That wasn't your thinking at the time, to hide the
2 Mexicans from the investigators, from the detective?

3 "A Oh, no. No. Huh-uh.

4 "Q Okay, So you didn't have plans with them at that
5 time to kill Duran?

6 "A No.

7 MS. DiGIACOMO: "Nothing further.

8 THE COURT: "Redirect."

9 **FURTHER REDIRECT EXAMINATION**

10 BY MS. ZALKIN:

11 "Q When was officer — when was the detective or
12 investigator going to contact you next after he spoke to you on
13 the Sth?

14 "A He didn't say.

15 "Q You don't recall him telling you when he was going
16 to contact you?

17 "A No. He said they'd just be in contact with me.

18 "Q When was the next time they were in contact with
19 you?

20 "A Probably about a week later, I think,

21 "Q After Duran Bailey was dead?

22 "A Yes,

23 MS. ZALKIN: "No further questions,

24 MS. DiGIACOMO: "Nothing further.

XIV-62

LAUFER - CROSS

1 what you had with you was your third report, is that correct?

2 A Correct. Yes.

3 Q And you have that with you now?

4 A I do,

5 Q Did you bring anything else back with you?

6 A My glasses and things like that, but nothing else
7 pertinent, no,

8 Q You didn't bring the scissors with you this time or
9 anything?

10 A No, I didn't.

11 Q Okay. When we spoke last, I had asked you about
12 the difference between your first, your second and last report
13 as to what items you reviewed. Do you remember that
14 question?

15 A Yes.

16 Q Okay. And the items that you did review, are those
17 items that were provided to you by the defense?

18 A I do believe that that was the source. Although,
19 some of the items like the videos, obviously, were on the
20 Internet,,

21 Q Okay, And can you tell us, tell the jury, now what
22 your understanding is the difference between a laceration and
23 an incised wound?

24 A Well, they can be the same thing. Lacerations don't

XIV-64

LAUFER - CROSS

1 THE COURT: "You may step down and exit through
2 the rear door,"

3 MR. SCHIECK: I believe our next witness is here.

4 THE COURT: Very well.

5 THE CLERK: Please come all the way forward.

6 Remain standing and raise your right hand,

7 **MICHAEL D. LAUFER, DEFENDANT'S WITNESS, SWORN**

8 THE CLERK: Thank you. Please be seated. State
9 your name and spell it for the record, please.

10 THE WITNESS: Michael D. Laufer, L-A-U-F-E-R,
11 M.D.

12 THE COURT: Mr. Kephart may resume his cross-
13 examination at this time.

14 MR. KEPHART: Thank you, Your Honor.

15 **CROSS-EXAMINATION (Continued)**

16 BY MR, KEPHART:

17 Q Dr. Laufer, yesterday when we -- I guess it was
18 Tuesday when we concluded in the afternoon and you had to
19 come back for today, we were talking about the wounds that
20 were inflicted in Duran Bailey's abdomen area. Do you
21 remember that testimony?

22 A Yes, I do,

23 Q Okay. And I had asked you previously, before that,
24 if you had brought anything with you for your testimony, And

XIV-63

LAUFER - CROSS

1 necessarily have to be cut with an instrument. Lacerations can
2 be a tear. So the general term is "laceration," and an incision
3 or an incised wound is a subcategory of that.

4 Q Okay. The incised wound is something that is cut —

5 A Generally, yes.

6 Q -- or are you saying is not?

7 A The incised wound is something that it generally cut,

8 Q Okay, Okay. Now when you left on Tuesday, we
9 were talking about Exhibit DD, Do you see that in front of you
10 there, doctor?

11 A Yes, I do.

12 Q And do you recall testifying in direct examination
13 that you believed that these injuries were deep puncture
14 wounds?

15 A I don't remember that but that's certainly true. Yes.

16 Q Okay. You believe that they were deep puncture
17 wounds?

18 A Yes

19 Q Okay. How can you tell from a photograph that
20 they're deep puncture wounds?

21 A It wasn't just from the photograph.

22 Q Okay,

23 A It included information from Dr. Simms' testimony,
24 as well as from the autopsy report.

XIV-65

LAUFER - CROSS

1 Q Okay, And it's your belief from the autopsy report
 2 that all four of these were deep puncture wounds?
 3 A I don't know that each of the four were individually
 4 described But they certainly have the confirmation and
 5 configuration of deep puncture wounds.
 6 Q Okay, The way you showed us on Tuesday how you
 7 tested the —
 8 MR. KEPHART: Let me see those scissors.
 9 BY MR. KEPHART:
 10 Q How you tested the scissors on the material, is this
 11 correct, you had your pinky in one hole and your -- and your
 12 pointer finger in the other hole of the scissors the right way or
 13 should I turn them around or do you -- or does it matter?
 14 A Actually, the scissors were a little bit different. But it
 15 doesn't matter the --
 16 Q Okay.
 17 A The points go in,
 18 Q Okay, And that you showed us in a demonstration
 19 that you took the scissors and you punched down, as if you're
 20 punching but the scissors are an extension of your hand?
 21 A Correct, Yes.
 22 Q And when they would go into the material or, let's
 23 say, if they go into -- in these, these particular wounds here,
 24 both the blades would be going in roughly the same distance if

XIV-66

LAUFER - CROSS

1 A Correct. But you do need to point out that those
 2 scissors are different from the other ones,
 3 Q Okay. And that is Exhibit MM, is the scissors that
 4 you used as your sample, is that correct?
 5 A Yes,
 6 Q Okay. And in that particular case —
 7 THE COURT: The record shall reflect it's actually a
 8 photo of the scissors used,
 9 MR, KEPHART: Yes, Judge. Thanks,
 10 BY MR. KEPHART:
 11 Q In the particular case with MM, there's a difference
 12 in the way that the scissors are actually bent, is that correct —
 13 A Correct, One of the handles —
 14 Q than in
 15 -- is actually bent in the blue ones.
 16 Q 4C,
 17 A Correct,
 18 Q CCCC, Okay, And but, once again, if both blades of
 19 MM were to hit at the -- simultaneously, in the manner in
 20 which I'm demonstrating here as punching down to exhibit
 21 while you tested them —
 22 A Right.
 23 Q if they were both hitting simultaneously they'd
 24 kind of be hitting at an angle. They wouldn't be hitting

XIV-68

LAUFER - CROSS

1 you're punching in this direction like you showed me?
 2 A Roughly the same distance,
 3 Q Okay.
 4 A Not necessarily exactly the same distance.
 5 Q And one of them, basically, the way I have it, one of
 6 them is more straighter than the other one, is that correct?
 7 A Yes.
 8 Q Okay. Unless you turn your hand, then the other
 9 one would be more straight or more straight as it enters the
 10 body or enters the material that you used as a sample?
 11 A It may be better to think of it in terms of which one
 12 touches first.
 13 Q Okay. That's fine,
 14 A Because as soon as one reaches resistance, the
 15 other one evens out and then enters the tissue —
 16 Q Okay,
 17 A -- or the material as well,
 18 Q That's assuming that one of them is touching first,
 19 correct? Is it possible that both of them could hit at the same
 20 time, kind of like what I'm doing right now?
 21 A It is.
 22 Q It is. Okay. But in that event, one of them is more
 23 on an angle than the other one, just because of the nature of
 24 the scissors, correct?

XIV-67

LAUFER - CROSS

1 straight on, is that correct?
 2 A Well, you have to tell me which part of the scissor
 3 you mean is hitting at an angle. There are two edges that are
 4 at different angles to each other. There's a point, So it's
 5 possible that both points hit at the same time and that one
 6 edge of the scissor is more perpendicular to the surface than
 7 the other one
 8 Q Okay, Now after you had left on Tuesday, Detective
 9 Thowsen came in, concluded his testimony, and he testified
 10 about Exhibit 262 as being a butterfly knife, a single-edged
 11 butterfly knife, And you actually had one of these and you
 12 used in -- for your testimony, is that correct?
 13 A Correct.
 14 Q Okay, Now on a butterfly knife, a single-edge or a
 15 double-edge, would you agree with me that the blades are
 16 different than that of what you see on a pair of scissors?
 17 A Yes.
 18 Q Meaning that there's a -- the sharpness is into the
 19 center of the blade versus the scissors where there's -- the
 20 sharp is on one edge of the blade —
 21 A Correct,
 22 Q -- than the scissors?
 23 A Yes.
 24 Q And that's why with the — with the knife and your

XIV-69

LAUFER - CROSS

1 example in your material is that's how we get that pretty
 2 symmetrical teardrop-type injury, I mean —
 3 A With which one, with the knife or the scissors?
 4 Q With the knife.
 5 A The knife is more symmetric, yes.
 6 Q Okay, Once again, with regards to the injury to the
 7 abdomen, the stab wounds to the abdomen that you were
 8 characterizing as scissors, would you expect that the scissor
 9 blades, at least as you've talked about MMM, the photograph
 10 showing those scissors, is that if the blades were to enter the
 11 body simultaneously, as you showed us in your sample, that
 12 both the blades would enter to the same depth?
 13 A It depends a little bit on what they hit inside
 14 because, obviously, the scissors, if they hit a piece of bone,
 15 that blade will stop and the other one will go in deeper,
 16 possibly even in a sort of curvilinear direction or route.
 17 Q Okay. And the way scissors are designed to cut, it is
 18 when they work against the other side, is that correct, when
 19 you're using them to cut material?
 20 A That --
 21 Q And they actually —
 22 A That's right They actually shear across both blades.
 23 Q Okay. And if in fact the blade went in and hit
 24 something and caused it to turn, you would expect to see the

XIV-70

LAUFER CROSS

1 depth of them yourself.
 2 A It's a bit like splitting hairs, if you will, because I did
 3 describe them as stab injuries which would suggest that they
 4 were punctures.
 5 Q Okay. And you also testified that, when I asked you
 6 about whether or not these could be stab wounds, you said it
 7 could be but it would require the person stabbing to do three
 8 different things, stab, pull it out, turn the knife and stab again,
 9 correct?
 10 A It was a slightly different question because you
 11 asked if they could have been stab wounds with a knife.
 12 Q Correct.
 13 A And that's what I was describing.
 14 Q Okay. So --
 15 A So they could still be stab wounds with a scissor
 16 blade but not a knife.
 17 Q So it could be with a knife, stab, turn, stab?
 18 A Well, you have to drag across as well.
 19 Q Okay.
 20 A And stab in --
 21 Q So when you —
 22 A -- essentially, two pairs at the same distance apart.
 23 Q So when you stab in and you pull it out, you're
 24 saying that it couldn't have drug across?

XW-72

LAUFER - CROSS

1 other wound to be pulled over towards it, wouldn't you?
 2 A Only if the blade of the scissor is sharp enough to
 3 actually cut the tissue in that direction. Otherwise, you'd just
 4 get more bunching on that side and you'd get more of an
 5 abrasion, potentially, even a deeper abrasion or a wider
 6 abrasion on that side.
 7 Q Okay. And you're aware that Dr. Simms' report from
 8 the autopsy is that one of those four puncture wounds, only
 9 one of those four puncture wounds, actually made it all the
 10 way to the liver?
 11 A I'm aware that there was only one wound in the
 12 liver I'm not aware that the other wasn't deep and simply
 13 missed the liver because it wasn't over the liver.
 14 Q And with your testimony as of Tuesday talking about
 15 these being deep puncture wounds, you didn't put any of that
 16 information in your report, did you, any of your reports, all
 17 three of them?
 18 A Can I refer to the report?
 19 Q Sure,
 20 A I may not have used that terminology, but let me
 21 just see how I specifically described them. I described them
 22 as lacerations, I believe.
 23 Q That's it, right? 'Cause, obviously, you couldn't see
 24 the inside and you weren't at the autopsy to determine the

XIV-71

LAUFER - CROSS

1 A It's certainly possible. There are other
 2 characteristics of these wounds that make that much less
 3 likely, in particular, the two parallel abrasions which are
 4 perpendicular to the main long abrasion, which are very
 5 characteristic of the hinge point to the scissors, as I described.
 6 Q And, once again, I think I left it off by asking you did
 7 you measure the distance between the two?
 8 A I did,
 9 Q And they're identical?
 10 A They are — well, the maximum distance is 5.8
 11 centimeters and the minimum distance is 5.7 centimeters, so
 12 they're within a millimeter difference,
 13 Q So you're saying these two injuries here that we can
 14 see right here on the screen, your testimony is there's only 1
 15 centimeter difference?
 16 A A millimeter, actually.
 17 Q I millimeter difference?
 18 A Correct.
 19 Q Based on what we can see right here with our naked
 20 eye?
 21 A Right,
 22 Q Okay. Okay. Now I'm showing you what you have
 23 testified to with regards to PP. Can you see that, doctor?
 24 A Yes.

XIV-73

LAUFER CROSS

1 Q Okay. Now this is a wound to Duran Bailey's thumb,
 2 is that correct?
 3 A Yes. That's my understanding.
 4 Q And you said you couldn't tell by looking at this
 5 picture which thumb it was, his right thumb or his left thumb?
 6 A No. I believe I testified it was the right thumb,
 7 Q Okay, You see this to the left of the photograph
 8 here?
 9 A Yes
 0 Q That is Duran Bailey's body,
 1 A Correct His --
 2 Q Do you accept that?
 3 A His neck, I believe, and part of his chin.
 4 Q What is this down here?
 5 A Presumably, part of his arm.
 6 Q Part of his arm?
 7 A Correct.
 8 So give us an example how that one would have
 9 been displayed in order to make that his right thumb.
 0 A Arm, thumb, hand.
 1 Q Okay, How in reference to his body? See the sheet
 2 between his arm and his body?
 3 A I can see it
 4 Q And have a look at the photograph again, doctor,

XIV-74

LAUFER - CROSS

1 A I do see a mark there, yes.
 2 Q Okay. You would think that a little thing like that,
 3 the coroner, the person who looks at the actual body, would
 4 know what hand he's talking about, wouldn't you?
 5 A It's hard to believe he would make that kind of
 6 mistake.
 7 Q Okay. So with that being said, would you accept
 8 that this is his right thumb?
 9 A I believe that the picture --
 0 Q I'm sorry.
 1 A -- you're showing me is his right thumb.
 2 Q Is his left thumb, his left thumb?
 3 A I don't believe that the picture you're showing me is
 4 his left thumb. No.
 5 Q Okay. So he missed this,, He took photos of it and
 6 he missed it and didn't -- enough to even report it?
 7 A Apparently so,
 8 Q Couldn't it also be a situation where his body, Duran
 9 Bailey's body, is laying here, they got his arm down laying on
 0 the side of the Gurney, and somebody's pulling his thumb up
 1 like this and holding his web down so you can take a photo of
 2 that? See how my fingers are, doctor?
 3 A I do. But it's going the wrong direction. This is the
 4 index finger.

XIV-76

LAUFER - CROSS

1 Do you see a sheet between his arm and his body?
 2 A I see this white area, which may be sheet,
 3 underneath his body,
 4 Q Okay. So the way you held your hand, though, it
 5 would be putting his hand -- the hand over top of his body and
 6 you wouldn't see that, would you?
 7 A This is simply a gap in between the arm and the
 8 body. It's certain possible to have a gap here between the
 9 arm and the body,
 0 Q Well, and you read his autopsy report Would you
 1 agree that the --
 2 MR. KEPHART: Could I?
 3 (Pause in the proceedings)
 4 BY MR. KEPHART:
 5 Q In Dr. Simms' autopsy report, he reflected his
 6 autopsy report as to the injuries on Exhibit 122, Can you see
 7 that there, doctor?
 8 A Yes,
 9 Q Do you see any place where he marked on there any
 0 injuries to the thumb of the right hand?
 1 A I don't see any injuries to the thumb of either hand,
 2 Q You don't see the red mark right there on the
 3 thumb, on the inside of the left hand right there, sir? Maybe I
 4 need to show it to you closer,

XIV-75

LAUFER - CROSS

1 Q How do you know that?
 2 A This is the middle finger.
 3 Q How do you know that?
 4 A This is the ring finger and this is the small finger,
 5 and the small finger is a small finger.
 6 Q How do you know that that's his small finger, and so
 7 forth and so on? You're just saying that from all your
 8 experience as a doctor?
 9 A Well, here's --
 0 Q Is that what you're basing that on?
 1 A Here's his chin. Here's the right side of his neck.
 2 And here is his arm on that side.
 3 Q You can tell that that's his chin based on that
 4 photograph?
 5 A Yes.
 6 Q Well, that's kind of interesting because you see a lot
 7 of things in these photographs, don't you, doctor? I mean,
 8 you actually see like the depths of injuries in the photographs,
 9 don't you?
 0 A Certainly in some. In some cases, I said that it was
 1 impossible to say in my report. And I'm sure you read that as
 2 well.
 3 Q Okay. Now you said that with regards to Exhibit
 4 Number PP that these are injuries in pairs, is that correct?

XIV-77

LAUFER - CROSS

A Correct

Q And I believe you said that there was three pairs an they were all consistent with being puncture wounds, is that correct?

A I'm not sure I said three pairs. I see two pairs there.

You testified in direct examination there was three, You even circled them, You don't remember doing that?

A I think what I said was this is one pair, this could be two, and this could be two.

Q Okay. So that's three,

A That's three pairs.

Q But in your report you actually said two.

A Well --

Q Is that why you're testifying

A I think --

Q -- that way now, though?

A No, I think that it's also very likely that that's one pair and this is a Second pair.

Q Okay. And which way would the scissors, as you say, be in order to cause those kind of injuries?

A Relatively closed,

Q Okay. Not in the knuckles like you -- we were talking earlier?

X1V-78

LAUFER - CROSS

A No. Right hand,

Q Okay. I'm sorry. In your opinion, his right hand to maybe fend off some type of object, a sharp object, coming after him?

A Correct.

Q And could that sharp object be a knife?

A Do you want likelihood or could?

Q Could it be a knife?

A It is possible that it could be a knife.

Q Now you said -- well, let's look at RR, Exhibit RR, You see that, doctor?

A Yes, I do,

Q Okay. Now you said that this was a result of blunt force trauma, is that correct?

A I said that it is more likely than not to have been blunt force trauma. Correct.

Q Okay. What -- up here at the top, this is -- this is his coccyx? Did I say that straight?

A Coccyx, yeah.

Q Coccyx.

A Tail bone.

Q Okay. Where is it at? Can you circle that? Okay. And this -- these lighter-color areas, what did you characterize those as?

XIV-80

LAUFER - CROSS

A Correct.

Q Okay.

A As I showed during the demonstration,

Q Okay, Relatively closed. And how would they be holding them?

A Well, if the hand was stable, I could tell you. AU I can tell you now is relative to the hand. It's certainly possible that the hand was what was moving and that the scissor direction was fixed.

Q Okay. And as the two that you circled there, do you see what appears to be linear cuts as well?

A I see what might be a continuation, I'm sorry, a continuation here of what I would describe as a snip, and there may be one here as well.

Q Okay. So now you're calling it a "snip," but you won't accept that there's a linear cut?

A In many ways they're the same thing.

Q So you would accept there's a linear cut?

A There potentially is. It's pretty unclear,

Q And you would agree that these certainly were defensive wounds?

A Most likely, yes.

Q Okay. So he was more than likely using, in your opinion, his left hand or his --

XIV-79

LAUFER - CROSS

A That appears to be slippage.

Q And do you recall indicating in your report that the area above the coccyx was consistent with snipping injuries?

A I said it certainly could be, yes.

Q And now you say it's slippage?

A No, Actually, I think the area above the coccyx is this area.

Q Above that?

A Superficial to.

Q What do you mean by that? I don't understand that.

A The coccyx is also deep to the tissue. So above, meaning outside of the coccyx.

Q So a person's tail bone is basically the coccyx?

A Correct.

Q And you're saying the area between the tail bone and his scrotum is above the coccyx?

A More superficial to it, yes.

MR. KEPHART: Oh, okay. Now -- the Court's indulgence, Your Honor.

(Pause in the proceedings)

BY MR. KEPHART:

Q Okay, You don't have your first report with you, correct?

XIV-81

LAUFER - CROSS

1 ▲ Correct
 2 Q Okay. In that report, do you recall saying the skin —
 3 well, let me, before I ask you this. You testified on Tuesday
 4 that this was consistent with a blunt force trauma and you
 5 went so far as to describe it as possibly being a kick to
 6 somebody that's not wearing underwear or even a saddle
 7 injury and you said similar to somebody maybe riding a bull.
 8 A Coming down hard on an object.
 9 Q Hitting it
 10 A Like --
 11 Q And that —
 12 A Correct.
 13 Q So that would tear that open like that?
 14 A Correct.
 15 Q Okay, And in your third report, you indicate that it is
 16 consistent with blunt force skin tearing, is that correct?
 17 A Is this in the same paragraph where I said that
 18 these injuries were overlying the coccyx, in that paragraph?
 19 Q It's Number 8 in your third —
 20 A Yes. "The skin injuries overlying the coccyx are
 21 consistent with blunt force skin tearing."
 22 Q Okay.
 23 A That sentence,
 24 Q And that's what we're talking about right here?

XIV-82

LAUFER - CROSS

1 A With scissors, as in snipping.
 2 Q Not with a knife?
 3 A Correct.
 4 Q You're saying that couldn't have been caused by a
 5 knife?
 6 A I'm saying it's quite unlikely. It's certainly possible.
 7 I can describe in more careful detail, if you care.
 8 Q And when you say snipping, you're talking about
 9 somebody taking and going snip, snip, or maybe even the
 10 whole area, snip, 'cause this was one cut. You remember Dr.
 11 Simms' report, One cut
 12 A Actually, I think he said it could be as many as six.
 13 Q One continuous cut? I'm asking you that.
 14 A Yes. It looks like on this side that could be from one
 15 blade, step off here, and from the other blade. And they're
 16 about the same length,
 17 Q You mean slice, slice?
 18 A No. Just "whick".
 19 Q Okay. "Whick".
 20 A Closing the scissors once.
 21 Q "Whee," Like this?
 22 A Just one time. Yes.
 23 Q And that area there in which you're talking about
 24 would be one being cut by one blade this way and the other

XIV-84

LAUFER - CROSS

1 A Correct.
 2 Q Okay, Why is it that you -- that you changed that
 3 from your first one that you said, "The skin injuries overlying
 4 the coccyx are consistent with blunt force skin tearing, as well
 5 as sharp snipping"?
 6 A Probably two reasons. One is that I wanted to make
 7 the language more clear, as you just pointed out, overlying the
 8 coccyx or above the coccyx, where it says "overlying the skin
 9 of the coccyx" was unclear, so I clarified.
 10 Q Well, yeah, But you're -- in the same paragraph,
 11 you're saying that the same injury could be either blunt force
 12 trauma or incised.
 13 A Correct.
 14 Q So you're saying it could either be cut or be by blunt
 15 force trauma?
 16 A Yes, So what I'm seeing here is what appears to be
 17 universal thickness laceration of the skin, as I described it
 18 Q Okay.
 19 A Which is consistent with either of those mechanisms.
 20 Q So
 21 A But more consistent with blunt force trauma,
 22 Q Could be cuts, though?
 23 A It could be cuts.
 24 Q Okay.

XIV-83

LAUFER - CROSS

1 blade this way?
 2 A Correct.
 3 Q What you're saying, and meeting in the middle?
 4 A Correct.
 5 Q So it wouldn't be — would it be more likely than it
 6 would be like that, than it would be getting kicked?
 7 A In the context of both the scrotal injury and this
 8 injury, either is likely,
 9 MR. KEPHART: Okay. Now, can I have this marked,
 10 Your Honor?
 11 THE COURT: Yes.
 12 (Pause in the proceedings)
 13 BY MR. KEPHART:
 14 Q And you said you haven't been shown any
 15 photographs of the rectum, is that correct?
 16 A Correct.
 17 Q I'm showing you State's Proposed Exhibit 263, Have
 18 you seen this photograph before?
 19 A No,
 20 Q That's certainly the rectum, is that correct?
 21 A It's certainly the anus.
 22 Q Okay. And you would agree that that -- that this
 23 particular photograph shows the anus damaged?
 24 A Actually, I didn't look at it that closely. I saw that it

XIV-85

LAUFER - CROSS !

1 was externalized. I didn't see an injury to it,
 2 (Pause in the proceedings)
 3 A Let me ask you, just to clarify, is that picture without
 4 any medical intervention? Is that how it was found or is that
 5 after?
 6 Q That's the coroner's photograph.
 7 A So that's after the coroner cut the area —
 8 Q No.
 9 A -- in order to externalize —
 10 Q No.
 11 A -- the rectum?
 12 Q No. No, it's not.
 13 MR. SCHIECK: I'm gonna object, Your Honor, unless
 14 he's got personal knowledge. They haven't laid a foundation
 15 for that photograph.
 16 MR. KEPHART: I'm gonna move to admit 263, Your
 17 Honor.
 18 MR. SCHIECK: No foundation, Your Honor.
 19 MR. KEOHART: That's fine, That —
 20 THE COURT: The Court sustains the objection.
 21 MR. KEPHART: That's fine.
 22 BY MR. KEPHART:
 23 Q Now your Exhibits SS and —
 24 MR. KEPHART: What was that? I can't tell what

X1V-86

LAUFER - CROSS

1 Q The scrotal injury. I'm sorry. Just -- no, not the
 2 scrotal. The penis area.
 3 A It does appear to have a sharper-shaped tip at the
 4 distal aspect or the area toward the feet and a more curved
 area toward the head. Yes.
 6 Q Okay, And you've heard of the term "cephalad,"
 7 right?
 8 A Yes.
 9 Q That means the head?
 10 A Toward the head, Yes.
 11 Q Okay. Can you read what you wrote in your report,
 12 your last report, September 24th, you have it right there, your
 13 first Number 18?
 14 A Yes.
 15 Q Can you read it out loud?
 16 A "There's a penile amputation with a teardrop-shaped
 17 laceration at the pelvis, with the point directed cephalad."
 18 Q Okay. So which side would you call the point?
 19 A I think you need to either show the other picture
 20 because this is showing it at an angle.
 21 Q Okay. Which one would you call the point?
 22 A I would agree with you that it's pointing more
 23 downward.
 24 Q Okay, So not cephalad?

XIV-88

LAUFER - CROSS

1 that is. What is that?
 2 MS. GREENBERGER: QQ.
 3 MR. KEPHART: QQ?
 4 BY MR. KEPHART:
 5 Q QQ, You see a photograph of QQ? You testified
 6 about that on Tuesday on direct.
 7 A Yes.,
 8 Q This is the photograph of his -- I guess what's
 9 highlighting is the severed penis.
 10 A There's also a swab in what appears to the rectum.
 11 Q Okay. And then SS is a better photograph of that, is
 12 that -- is that correct, a closeup photo?
 13 A That seems to highlight the laceration, the scrotum.
 14 Q Okay. And you talked about in your report, and
 15 everybody's talked about the teardrop-type effect that this had
 16 on this, on the — of the -- in this injury, a teardrop-type injury,
 17 correct?
 18 A That everyone has testified to that? I can't answer
 19 that question,
 20 Q You actually testified that it has -- appears to be a
 21 teardrop injury. As a matter of fact, you even have that in
 22 your -- in your report.
 23 A I'm sorry. Which injury? The scrotal injury or the
 24 penile injury?

XTV-87

LAUFER - CROSS

A Correct.
 2 Q Now it's your testimony that SS, in SS, that that
 3 shows a laceration to the scrotum, is that correct?
 4 A It's a tear of the skin, which is consistent with a
 5 laceration.
 6 Q You're --
 7 A Yes,
 8 Q You're saying a tear of the skin. And you've said
 9 possibly from a kick or some type of blunt force blow to it?
 10 A No. I'm saying it's a tear of the skin, laceration as
 11 opposed to incision.
 12 MR. KEPHART: Can I have this marked?
 13 (Pause in the proceedings)
 14 MR. KEPHART: May I approach, Your Honor?
 15 THE COURT: Yes.
 16 BY MR. KEPHART:
 17 Q I'm showing you what's been marked as State's
 18 Proposed Exhibit 264. Does that appear to be a photograph of
 19 the same area?
 20 A It does.
 21 Q Have you seen that photograph before?
 22 A No.
 23 Q It has a better picture, actually, of opening the —
 24 what you characterize as a tear, is that correct?

XIV-89

LAUFER - CROSS

1 A They are opening, yeah. I don't know, again, if
 2 there's been intervention that has further spread that incision
 3 laceration injury,
 4 Q So when you say intervention, you mean like maybe
 5 the doctor cut it open or something further?
 6 A Correct.
 7 Q Okay. And can you see from this whether or not
 8 there's any cutting?
 9 A Maybe I can see it a little bit more closely, And, I'm
 10 sorry, whether there's more cutting by?
 11 Q Yeah. You said that you don't know whether or not
 12 there's any intervention from like the doctor. So you're
 13 probably — you're saying there's a possibility that the doctor
 14 could have cut it, went further and cut it open more?
 15 A Correct.
 16 Q Correct?
 17 A Yes,
 18 Q Do you see that in there?
 19 A I don't have any comparison of length. I don't have
 20 a ruler in either of these, so I can't provide an opinion with
 21 regard to that,
 22 Q Okay, So you couldn't say just based on the look
 23 whether or not there appears to be something cut versus torn
 24 open?

XIV-90

LAUFER - CROSS

1 A Victim's neck.
 2 Q Or right side of the victim's neck. Okay. And is this
 3 injury here that's shown in VV, is that consistent with blunt
 4 force trauma or consistent with an incised wound?
 5 A That is more consistent with an incised wound,
 6 Q Okay. How can you tell from that?
 7 A There is ecchymosis around the injury, meaning
 8 there's darkening there, and then there is separation of the
 9 skin between it which is consistent with a device which first
 10 injures the skin by striking it and then causes the tissue to
 11 spread. That could be, most likely, an incision.
 12 Q Okay. Well, back to RR. Darkening of skin around
 13 there, separation of the skin. Yes?
 14 A Both of those appear to exist, yes.
 15 Q Okay. And that's consistent with a device that
 16 strikes it and cuts it?
 17 A Well, here you have not just darkening of the skin
 18 around the incision, you have darkening of the skin much
 19 further than the width of the incision. And so it's more likely
 20 than not that the thing that caused the darkening is not the --
 21 a sharp object. It's, rather, a larger, blunter object. Hence,
 22 the term "blunt force trauma."
 23 Q You see Exhibit UU? See what that shows?
 24 A Yes.

XIV-92

LAUFER - CROSS

1 A I could say that it appears to be cut or torn open,
 2 but I don't know if it's cut further than it was in this other
 3 picture.
 4 Q And you would agree that you're not -- the doctors
 5 aren't gonna tear it open any more?
 6 A I've seen lots of things, but it's less likely. I agree.
 7 MR. KEPHART: Okay. Move to admit 264, Your
 8 Honor.
 9 MR. SCHIECK: No foundation, Your Honor,
 10 MR. KEPHART: Okay.
 11 MR. SCHIECK: Can we approach, Your Honor?
 12 THE COURT: Counsel, approach,
 13 (Off-record bench conference at 14:40:19 until 14:41:35)
 14 THE COURT: The objection is sustained as to lack of
 15 foundation,
 16 BY MR. KEPHART:
 17 Q Now you had testified previously about the -- about
 18 the individual's trousers that he was wearing. Do you recall
 19 that?
 20 A Or at least the pictures of the trousers, yes.
 21 Right. And you had indicated that -- let me get to it.
 22 Okay. Let me -- let me go someplace else, doctor, I apologize
 23 on that. And you -- talking about VV. This is the right side of
 24 the victim's head, is that correct?

XIV-91

LAUFER - CROSS

1 Q Darkening around the skin?
 2 A Yes.
 3 Q Separation of the skin?
 4 A Yes.
 5 Q Incised wound?
 6 A Blunt force trauma,, A large area of darkening, not
 7 simply symmetric around the incision.
 8 Q Okay,
 9 A With additional darkening above it in a separate
 10 injury.
 11 Q And also kind of a teardrop? See it here?
 12 A Yeah, It's a general term. It's an oblong or
 13 elongated teardrop, if you will.
 14 Q That injury in UU, nothing else can cause that but
 15 the back of scissors?
 16 A Which injury?
 17 Q The injury right here in the left side of the -- right
 18 side of the eye.
 19 A It's the injury to the lateral side of the right
 20 eyebrow, this one that I'm circling here?
 21 Q Yes.
 22 A There are lots of things that could cause that injury.
 23 Q Knife?
 24 A Unlikely. Knife handle.

XIV-93

LAUFER - CROSS

1 Q Bat?
 2 A Knife handle, perhaps.
 3 Q Bat?
 4 A Unlikely,
 5 Q Unlikely. A knife handle but not the bat?
 6 A Correct.
 7 Q What about the injury to -- right above his nose to
 8 the left portion of his right eyebrow?
 9 A What about it?
 10 Q What causes that?
 11 A Again, blunt force trauma with separation of the
 12 skin,
 13 So there's —
 14 A So --
 15 -- separation of the skin?
 16 A Mm-hmm.
 17 Darkening around the skin, similar to an incised
 18 wound You say no blunt force trauma?
 19 A Well, you have to take size into consideration here.
 20 Okay. Doctor, what is -- never mind. come back
 21 to that,. Strike that.
 22 And that -- those wounds you're saying are caused by an
 23 individual who you believe put the scissors backwards?
 24 A Correct,

XIV-94

LAUFER - CROSS

1 that this man, Duran Bailey, received a lot of injuries?
 2 A Yes.
 3 Q You'd agree that he went through a lot of, I guess
 4 you could say, punishment or melee, so to speak, to receive
 5 those injuries?
 6 A Hard to characterize that and quantify it. Certainly.
 7 someone was organized in their approach.
 8 Q Okay, And with that being said, if he's fighting you -
 9 or doing any type of thing to fight back, you'd probably even
 10 stab yourself maybe by pulling the knife back, I mean, pulling
 11 the scissors back if you have -- cut yourself maybe even here
 12 or in the arms on —
 13 A Yes.
 14 Q Okay. And more than likely, that would bleed?
 15 A More than likely.
 16 Q Okay, Now you testified with regards to XX. Do you
 17 see that, doctor?
 18 A Yes,
 19 Q Okay, And you said that this was, I believe, in your
 20 report you said this was consistent with a snipping,
 21 A Correct,
 22 Q Okay. Can you show us where the blades of the —
 23 well, show us where the injury is at. Okay.
 24 A There's a smear of blood here as well,

XIV-96

LAUFER - CROSS

1 Q And hit with that?
 2 A Correct.
 3 Q Okay. So maybe you can show us.
 4 A So it could be with them closed or open.
 5 Q Okay,
 6 A Closed. Open would be like this.
 7 Q Okay,
 8 A Sort of dangerous. Closed,
 9 Q Okay. On the end of your knuckle, the center of
 10 your knuckle, not back up against the back of your hand like
 11 brass knuckles would be like?
 12 A Correct, Yeah, You'd want to be able to keep the
 13 blade from cutting you. Obviously, if you could injured doing
 14 that.
 15 Q You could injured doing that?
 16 A Yes.
 17 Q And possibly injured pretty dramatically?
 18 A Yes, You could injure yourself. I've --
 19 Q You could break your fingers?
 20 A Yeah, Cut your wrist.
 21 Q Maybe cut your wrist with the back of the -- back of
 22 the scissors?
 23 A Absolutely.
 24 Q Maybe even through all the -- I mean, it's obvious

XIV-95

LAUFER - CROSS

Q Okay.
 2 A Which is more difficult to see whether that's just a
 3 smear or whether there's an injury there as well.
 4 Q Okay. And do you recall testifying on Tuesday that
 5 you believed that this was the injury here, here to here? You
 6 even drew a bunch of lines here and then one like that Do
 7 you recall that?
 8 A I recall trying to characterize it as I just did.
 9 Okay. You don't recall saying this was an injury
 0 here and here and then 'cause we were talking about this
 1 scrape up here and then went to -- on direct examination you
 2 said this was an injury right here?
 3 A Yeah,
 4 Q And you called it as a stair-stepping-type of injury?
 5 A Stair step. Yes.
 6 Q Okay. So this, you don't recall saying that was an
 7 injury?
 8 A You know, I remember in my report I specifically
 9 described this smear.
 10 Q Mm-hmm,
 11 A And I don't recall how I drew the lines.
 12 Q Okay, Well, show us where you believe that the
 13 scissors would have started in order to make a snipping injury,
 14 A One blade here, one blade in this vicinity.

XIV-97

LAUFER - CROSS

1 Q And did you measure that? Were you able to
 2 determine the measurement between those two?
 3 A I don't recall measuring it, no.
 4 Q Okay, And the carotid artery is pretty deep?
 5 A It's all relative, I suppose.
 6 Q What do you mean by that?
 7 A Well, deep superficial, deep to what, superficial to
 8 what?
 9 Q How far would you have to stick something in his
 10 neck there in order to cut his carotid artery?
 11 A About 2 and a half centimeters, maybe less,
 12 depending on whether his head was turned or not.
 13 Q Okay. And to get all the way into his --
 14 A Jugular vein?
 15 Q No, not jugular vein,
 16 A Oh.
 17 Q What's behind it? Went all the way into his -- into
 18 his throat area?
 19 A Oh, Into his larynx?
 20 Yeah.
 21 A Deeper.
 22 How much deeper?
 23 A Well, again, it depends on which direction you're
 24 going.

XIV-98

LAUFER - CROSS

1 Q And you actually looked at the carotid artery in this
 2 case, right?
 3 A No. I never saw a picture of the carotid artery,
 4 Q Okay. But you never looked at it in person either,
 5 did you?
 6 A No, I didn't.
 7 Can you -- can you tell me what's the difference,
 8 again, between serum deposit versus blood, or am I using the
 9 wrong terminology?
 10 A Well, serum is what's left over after the blood clots.
 11 So if your circulation stops and your blood clots in your body
 12 and you continue to ooze, what you're oozing is serum. If you
 13 are alive and you're bleeding, what you're bleeding is whole
 14 blood which still has the ability to clot.
 15 Q Is there a difference in color?
 16 A It's a slight difference. Usually, serum is straw-
 17 colored and blood is red.
 18 Q Okay. Can serum cause like a permanent staining,
 19 kind of like what ink would do?
 20 A In what material?
 21 Q On skin,
 22 A It's something that you could probably scrub off.
 23 Q Okay. So it wouldn't permanently stain like ink?
 24 A Well, I mean, you can scrub ink off, too. So it

XIV-100

LAUFER - CROSS

1 Q Okay.
 2 A From this area, the larynx is approximately here and
 3 the incision is there. So it's within, I can't really see the
 4 measurements on this ruler because it's sort of washed out,
 5 but it appears that it's within 3, 4 centimeters,
 6 Q Okay. How -- what's that in inches?
 7 A Less than 2 inches,
 8 Q Would you agree that in order to make a snipping-
 9 type of action it'd have to be a pretty wide area in order to
 10 snip all the way into the carotid artery?
 11 A Again, it -- I don't know what pretty wide means.
 12 But you would have to be wide enough in order to start where
 13 the arrow is and end where the line is,
 14 Q Well, the deeper you go, the wider the scissors
 15 would have to be in order to snip?
 16 A Well, the harder you push, the deeper you go.
 17 Q Okay.
 18 A So you could actually have the scissors closed and
 19 go in all the way the length of the scissor blade.
 20 Q Okay, But you're not gonna get a snipping then?
 21 A Then you won't get a snipping. So you could be --
 22 Q But here you've got a snipping.
 23 A So you could be slightly open and go all the way into
 24 the depth and still snip

XIV-99

LAUFER - CROSS

1 depends on what you mean by permanent and stain.
 2 Q So would it stain to the consistency of someone that
 3 took a pen and wrote on their hand or something?
 4 A Well, okay, so material is skin,
 5 Q Mm-hmm.
 6 A I mean, I've certainly had blood sprayed on me and
 7 had that remain as a stain until I washed it off.
 8 Q Okay. And in autopsies they wash the body when
 9 the -- before the doctor starts working on them, don't they,
 10 usually?
 11 A They usually do, yes,
 12 Q Okay, And in this particular case you didn't see any
 13 photos after the -- about the body being washed, did you?
 14 A My understanding is that all the photos of the body
 15 still lying in the body bag are as the body came into the
 16 morgue before it was processed.
 17 Q Well, my question of you is did you see any photos,
 18 did the defense give you any photos to look at when the body
 19 was washed?
 20 A While it was being washed, no.
 21 Q No. After the body was washed.
 22 A I don't know. They weren't labeled as to whether
 23 they were done before or after.
 24 Q Okay. Now you talked about these pants that are

XIV-101

LAUFER - CROSS

1 exhibited in AAA and then BBB, and then the back is CCC. Do
 2 you remember that, testifying about that?
 3 A Yes,
 4 Q Okay, And with regards to BBB, it's just a closeup of
 5 just the top portion of the — well, here, we'll just use AAA.
 6 Okay. Do you see that? And then we can get to the closeup if
 7 you -- if we need to
 8 A Okay.
 9 Q You testified about how the pants acted as a dam,
 10 A Yes,
 11 Q As a dam, I guess, stopping blood?
 12 A Correct
 13 Q That's what it was damming up, was blood?
 14 A Yes,
 15 Q Okay., And the area of what you see in these
 16 photos, MA and BBB, what would you — where would you
 17 characterize the dam being? Where would the dam be on his
 18 pants?
 19 A The wagpand.
 20 Q Okay. Up here on the top of the waistband?
 21 A Up here on the top of the waistband,
 22 Q Okay, And where would the blood be coming from
 23 based on your knowledge of the injuries to Duran Bailey that
 24 causes this, where this dam would catch?

XIV-102

LAUFER - CROSS

1 front or the anterior.
 2 Q So that injury there is not to the right is not to the
 3 left side of that muscle you were just talking about?
 4 A It's --
 5 Q Isn't --
 6 A Yeah, it's toward the front but I would -- I mean, the
 7 way that I think of this is on the right side because it's where
 8 those great vessels are on the right side, the right carotid, the
 9 right jugular,
 10 Q Would that injury there then be what would cause
 11 the blood that had to be dammed?
 12 A It's certainly possible that that would have been a
 13 bleeding injury,
 14 Q Even if it was postmortem?
 15 A You know, postmortem and premortem is relative.
 16 It -- I like to think about it in terms of when circulation has
 17 stopped.
 18 Q Circulation stops —
 19 A And so --
 20 Q after you're dead?
 21 A Right. Although veins still continue to bleed until the
 22 blood clots. So —
 23 Q Okay. So if you received that injury specifically in
 24 the -- in the right, center right. Will you agree with that at all?

XIV-104

LAUFER - CROSS

1 A Well, there were streaks of blood coming down from
 2 somewhere. Neck is the most likely since those were the
 3 deepest, apparently, the bloodiest wounds.
 4 Q Okay.
 5 A So that would be the most likely source. It could
 6 also be face, head,
 7 Q Okay. And you recall the testimony with regards to
 8 the injury to the center of his neck being postmortem?
 9 A I tried my hardest to find one to the center of the
 10 neck. I found one to the right. I found one to the left, And I
 11 found one that was described as going through one of the
 12 sides, But it would help to see which one you're describing as
 13 the center of the neck
 14 Q VV.
 15 A Okay, I would characterize that as the right side of
 16 the neck,
 17 Q Well, his head's turned. The center of his chest is
 18 right below the center of this marker, isn't it?
 19 A Well, this is the sternocleidomastoid muscle, as I
 20 described on Tuesday, which is this big muscle that turns your
 21 head. So given that it was there, I mean, we classify these
 22 injuries by zones, this is a Zone I injury, which is the medial
 23 side of the sternocleidomastoid muscle. So it's in the right
 24 side, where as opposed I would call where the windpipe is the

XIV-103

LAUFER - CROSS

1 A Sure,
 2 Q Okay. It would be bleeding and gravity would cause
 3 it to flow down, is that correct?
 4 A Correct.
 5 Q So in order for Duran Bailey to have his pants used
 6 as dam -- as a dam here, that would be caused by blood that
 7 was flowing downwards?
 8 A Right. Now it could have flowed down and then
 9 sideways when he was on the ground, so it's not just one
 10 direction. You can get a change of direction.
 11 Q Okay.
 12 A But that's right.
 13 Q And he would have been possibly standing up when
 14 he received this, the blood got to his pants here?
 15 A Yeah, I mean, but the left one, the other one that
 16 we talked about with the smears, the one that we described as
 17 being a fatal wound, I believe, in Dr. Simms —
 18 Q The carotid artery?
 19 A The carotid on the left,
 20 Q Okay. And you watched Dr. Simms' testimony so
 21 you know what spraying he was talking about when the
 22 carotid arteries break, you expect it to be spraying, is that
 23 correct?
 24 A They certainly do that,

XIV-105

LAUFER - CROSS

1 Q It wouldn't be oozing like that would — where he
 2 described the wound to the scrotum, would it?
 3 A Well, you know, it depends on what his blood
 4 pressure was at the time. He had a number of other injuries.
 5 So the higher your blood pressure, the more you spray. But,
 6 you know, we frequently have people who have an injury to
 7 carotid that flow blood as opposed to spraying it. And if
 8 there's skin overlying the artery that's cut, then that skin
 9 overlying it tends to stop it from spraying and cause it to flow.
 10 Q Okay. Doctor, you —
 11 A But getting back to the pants, as you were asking,
 12 there certainly is more blood on the left side of the pants
 13 consistent with that left side injury than on the right.
 14 Q Doctor, you had indicated that you didn't see, at
 15 least in these photos, we don't see any blood on the back of
 16 his pants as if he was laying in blood, is that correct?
 17 A Correct,
 18 Q And you're aware, though, that his shirt is saturated
 19 with blood?
 20 A Yes,
 21 Q So he was — either it was bleeding down or he was
 22 laying in that. Were you shown photographs of the -- of the
 23 crime scene?
 24 A Yes.

XIV-106

LAUFER - CROSS

A Well, I mean, there are a bunch of pieces there.
 2 One, is that you also wouldn't expect to see much blood on his
 3 shirt. So if, as you said, the shirt was saturated, it required
 4 him to be somewhat upright 'cause if he was just laying there,
 5 the blood would have just run off the sides of his neck and
 6 maybe on to the collar of his shirt but probably not soaked his
 7 shirt, So at some point he was more likely upright than not.
 8 And during that time, if his shirt was indeed saturated as it –
 9 appeared to be and as you described it, the blood that didn't
 10 get soaked up by the shirt continues to flow, causes the
 11 streaks on the chest and on the abdomen that we saw and
 12 flows on to the pants. If the pants are down around his
 13 knees, I wouldn't expect there to be blood on the front of the
 14 pants either.
 15 Q Based on the injuries up above?
 16 A Well, based on his position, based on the fact that
 17 the blood is now coming, essentially, from the shirt because
 18 that's where it's been, you know, stored up, if you will.
 19 Q Okay. Now that wasn't an area where he was
 20 laying. The shirt was on his upper torso and he was laying in
 21 an area where there's a big -- there's an area that looks —
 22 appear to be a big concentration of blood above where his
 23 pants were. Wouldn't that also soak into his shirt?
 24 A Again, above is -- above meaning more up toward

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LAUFER - CROSS

1 Q Okay, And with the pants, that if they were down
 2 around his knees, down below his knees, then they would
 3 have been out of the area of where he was bleeding from his
 4 carotid artery if he's laying down?
 5 A I'm confused.
 6 Q If he's laying down —
 7 A I'm sorry, What is the question? Yes, he's laying
 8 down.
 9 Q Where he's laying down.
 10 A Right.
 11 Q And the pants are down around below his knees
 12 where he's laying down, and he's bleeding and the blood —
 13 A From?
 14 Q -- basically stops.
 15 A He's bleeding from?
 16 Q He's bleeding from his wounds up on his neck. Dr.
 17 Simms says that the penis was cut off after he was dead.
 18 A Right,
 19 Q And he says that the injury to his rear end area was
 20 after he was dead. So if he was bleeding from the wounds to
 21 his head and his neck while he's laying down, and the pool of
 22 blood goes into that cardboard that it did, and his pants aren't
 23 even touching the cardboard, you wouldn't expect to see any
 24 blood on the back of his cardboard -- of the pants, would you?

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LAUFER - CROSS

1 his chest or —
 2 Q Yes.
 3 A So --
 4 Q To his back area, right where his shirt was, on the
 5 back of his back,
 6 A Well, it depends on whether that blood was dry at
 7 the point where he was lying in it.
 8 Q Now, on the other hand, the injury to his scrotum
 9 that we talked about and you showed that as the -- that you
 10 call it a blunt force injury. Dr. Simms calls it a stab wound.
 11 And Dr, Simms also says it happened before he was dead, that
 12 he would bleed from that. Would you agree that if it
 13 happened before he's dead he would bleed from that?
 14 A Yes,
 15 Q Okay. And your testimony is, though, that he
 16 probably got that by getting kicked or some type of straddle
 17 injury?
 18 A That it's more likely, yes.
 19 Q Okay. And you would expect to see blood in the
 20 crotch of his pants from that type of injury, wouldn't you?
 21 A I would probably expect to see a cut in the crotch of
 22 his pants as well if it was from a cut,
 23 Q Okay,
 24 A But you —

LAUFER CROSS

1 Q Unless, of course, doctor, his pants were down when
 2 that was delivered,
 3 A Well, more likely off. I think even if they were
 4 down, the blood's still gonna flow down into the pants,
 5 Q Okay. So if he has them down and he is standing
 6 with them down, and his — you would agree that his scrotum
 7 is in -- it's not directly under him, it's out in front of him in
 8 some regard. And if it's oozing down, it's gonna fall down
 9 much like your testimony about the blood that comes from his
 10 head would go down from gravity, is that correct?
 11 A Well, keep in mind that the pants are not flat. Right.
 12 The pants encircle his legs. So -
 13 Q So in that regard, his legs would then work as a dam
 14 to keep blood from going to the back of his pants. No?
 15 A Ooh, that's a stretch,
 16 Q Kind of like the scissors stop?
 17 A No. I think --
 18 MR. SCHIECK: Objection, argumentative, Your
 19 Honor,
 20 THE COURT: Sustained,
 21 BY MR. KEPHART:
 22 Q And --
 23 A I think that if the pants are acting as a dam
 24 somehow, they're acting as a dam with the top of the pants,

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LAUFER - CROSS

1 (Pause in the proceedings)
 2 BY MR. KEPHART:
 3 Q Doctor, you don't have your first report, is that
 4 correct?
 5 A Not with me, no.
 6 Q Okay. And all of your opinions that you've rendered
 7 here, at least in your first report, had to do mainly with the
 8 photographs, is that correct, and what you saw in the
 9 photographs?
 10 A Photographs, written information and, essentially,
 11 everything that I could get my hands on at the time.
 12 Q Okay. And that didn't include, obviously, the
 13 autopsy report 'cause you weren't provided that, is that
 14 correct? 'Cause you didn't put your autopsy -- the autopsy
 15 report until the last report.
 16 A Well, I didn't specifically list it but I did, certainly, list
 17 other written materials which were included in that. I just
 18 didn't want you to have the opportunity to ask a question why
 19 didn't you list the autopsy report specifically, so I specifically
 20 listed it for you,
 21 Q Okay, And you put that in the third report?
 22 A Well, I specifically listed it. It was —
 23 Q Okay, You were —
 24 A It was there before,

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LAUFER - CROSS

1 not with the inside of the pants.
 2 Q Okay, But wouldn't you expect there to be blood in
 3 the crotch area of the inside of his pants if he received those
 4 injuries that you described as blunt force injuries? Wouldn't
 5 you expect to see blood in there?
 6 A As I described in my report, I've never seen a
 7 picture of the inside of the pants or the crotch area.
 8 Q Okay. And if you were to look to the inside of his
 9 pants, that would help you?
 10 A I think that there were probably lots of things that
 11 would have helped me in this case. That would have probably
 12 been one of them,
 13 Q If you were to see the inside of the pants?
 14 A Yeah,
 15 Q If you were to see the inside of the pants, it would
 16 have helped you?
 17 A At the time,
 18 Q Okay,
 19 A It --
 20 Q And also —
 21 A It would have been one more piece of evidence, yes,
 22 or a picture of the inside of the pants, frankly.
 23 MR KEPHART: The Court's indulgence, Your Honor,
 24 THE COURT: Yes,

XN-111

LAUFER - CROSS

1 Q You were anticipating being cross-examined in that
 2 area, weren't you?
 3 A Well, yes, I was.
 4 Q Okay, 'Cause you recall me asking Dr. Simms if it'd
 5 be prudent that somebody who's looking at this would at least
 6 look at the photographs, along with the autopsy report?
 7 A Absolutely,,
 8 Q Okay, Now in your first report, do you recall writing,
 9 "There is what appears to be an incision just anterior to the
 10 left front pant pocket seam of the pants worn by the decedent
 11 at the time of the images and apparently at the time of the
 12 injuries." Do you remember writing that?
 13 A Yes.
 14 Q And then you took that out of your other reports?
 15 A I did.
 16 Q Okay. So at least your first view of the pants, you
 17 came to some kind of conclusion that you actually documented
 18 in a report that says that in your opinion there appears to be
 19 an incision in those pants?
 20 A Correct,
 21 Q And you found that out to be not true.
 22 A I
 23 Q There is no incision in the pants.
 24 A Yeah. The reason that I have amended opinions is

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LAUFER CROSS

1 that when I hear information that changes my mind, I change
 2 it in my opinion and make it consistent, just like I did when Dr.
 3 Simms said that the pants, which he apparently saw and at
 4 least looked at, had no incisions, Then that became
 5 inconsistent and became an apparent artifact of the
 6 photograph,

7 Q Well, you have in your report that you actually
 8 reviewed testimony, transcripts of a previous proceeding
 9 involving the defendant being charged with these?

10 A Correct_

11 Q And that includes Dr. Simms' testimony and that
 12 includes CSA's testimony and that includes testifying about the
 13 pants. Did you come to the conclusion that there was no
 14 injury to those pants after you read those?

15 A I came to that conclusion as I just stated, after I
 16 heard Dr. Simms testify to it.

17 Q And he testified in May of 2002, doctor. And you
 18 said you didn't get started on this case until about six weeks
 19 ago.

20 A Correct.

21 Q Doctor, you recall testifying with regards to FFF? Do
 22 you see that there or is that -- can you see that, doctor, or is
 23 that too light? It's too light? Can you see it?

24 A I can see it, yes.

X1V-114

LAUFER - CROSS

1 consistent with a pressure mark, which is what Dr. Simms
 2 testified to. And I don't know. You may know the number
 3 just to save some time here.

4 Q Well, in your second report, you don't have it with
 5 you, where you're talking about pattern of staining. And then
 6 in the third report it's Number 16 in your summary of findings.
 7 My question to you is that you did not say it's a pattern, a
 8 pattern of staining, did you?

9 A Well, that's —

10 Q Did you say that, doctor?

11 A That's the specific paragraph I'm looking for so I can
 12 answer your question. He called it "an imprint." And I said
 13 that Dr. Simms implied that this was a pressure wound.

14 Q You're looking at —

15 A I said this would —

16 Q Well, let's —

17 A -- still be consistent with my opinion.

18 Q stop you. Let me stop you.

19 A Yeah,

20 Q Tell me where you're looking when you said you call
 21 it an imprint.

22 A This is Number 11 in the interpretation of findings.

23 Q Okay, You say, "The imprint of the murder
 24 weapon," Okay. So you never called it —

XIV-116

LAUFER - CROSS

1 Q Okay. And you had indicated in your testimony that
 2 these were pattern marks?

3 A There appears to be a pattern, yes.

4 Q Okay. And you also --

5 A Let me -- let me be specific since there are lots of
 6 marks here.

7 Okay_

8 A It's really this area that —

9 Yeah.

10 A -- is a pattern.

11 Pattern marks?

12 A Yes.

13 Q And you recall in your report, your second report,
 14 that you said, "There is a pattern of staining on the abdomen
 15 that is consistent with and demonstrative of the imputed
 16 murder weapon and the hand holding that weapon." Do you
 17 recall writing that

18 A Yes,

19 Q But in your -- in your third report, after Dr. Simms
 20 testified, now you say, "There is a patterned injury on the
 21 abdomen." You didn't say staining, is that correct? You took
 22 that out. And that's after Dr. Simms testified that that was not
 23 staining.

24 A Actually, I think what I said was that it was

X1V-115

LAUFER - CROSS

1 A And on the abdomen of a — right. "The imprint of
 2 the murder weapon and hand on the abdomen of at least 5.8
 3 centimeters inside width is further corroboration of the
 4 imputed mechanism of the injuries seen on the body in the
 5 images provided, Dr. Simms implied that this was a pressure
 6 wound. This would still be consistent with my opinion.
 7 Cleaning the area and/or histological examination would have
 8 provided further information as to the presence of absence of
 9 hemosiderin, staining, or serum deposition."

10 Q Okay.

11 A "This was not done,"

12 Q Okay. Dr. Simms testified that this was not staining;
 13 that this was a pressure mark. So could you — you wouldn't
 14 accept his testimony in regards to the fact that it would have
 15 been cleaned?

16 A When I look at this, there's still a shirt on the body.
 17 I don't think that that's clean.

18 Q Okay. Well, you're looking at this. That's why I
 19 asked you if you saw the photographs, did the defense provide
 20 you the photographs in regards to -- in regards to the body
 21 after it had been cleaned,

22 A I have not seen pictures of the abdomen where this
 23 was no longer there.

24 Q I never said they washed that away.

XN-117

LAUFER - CROSS

1 A Okay,
 2 Q But you would expect staining to be washed away,
 3 wouldn't you?
 4 A It depends on what causes staining, Again, I think
 5 we're splitting hairs.
 6 Q Are we, though, doctor, when we're talking about a
 7 stain versus a pressure mark? A stain, obviously, you would
 8 agree could be left there in a short period of time. But a
 9 pressure mark, as Dr, Simms testified, would have to take
 10 some considerable amount of time to leave it there and that's
 11 what his opinion is. So are we splitting hairs, doctor?
 12 A Well, a considerable period of time, I think, is the
 13 place where we have to focus then. How long would it take to
 14 get this pressure mark on a dead body,
 15 Q Didn't you watch Dr. Simms' testimony?
 16 A I did,
 17 Q At least two hours.
 18 A I disagree with that.
 19 Q Okay, 'Cause you say it could be a matter of just
 20 somebody with the scissors in their hand pushing down and
 21 standing up and stepping away from the body,,
 22 A Slightly mischaracterizing it.
 23 Q Is it?
 24 A But, certainly, with pressure on the abdomen as they

X1V-118

LAUFER - CROSS

1 A There is not necessarily an impression there. That's
 2 why it gets a little tricky. When you have, for instance, a blow
 3 with a baseball bat or a billy club, what ends up happening is
 4 that you get central clearing in that area and you get abrasion
 5 and bruise on the outside of it, So if the force, most of which
 6 is on the fingers, is pushing all of that stuff in the skin away,
 7 you would get clearing. And then most of the force is not on
 8 the scissors. Most of the force is on the person's knuckles as -
 9 they're standing up,
 10 Q Okay,,
 11 A So it's a relative force distribution,
 12 Q So what you're saying is that if you take the
 13 knuckles and push down like this to stand up. And in this —
 14 and the way I have it, the scissors aren't even touching. But,
 15 granted, someone's body is a little bit more pliable than this
 16 hard table,
 17 A Right.
 18 So it would give a little bit more, is that correct?
 19 A And in fact, as you saw how I was holding the
 20 scissors earlier, they were closer to the knuckles,
 21 Q Like that or like that?
 22 A It may be easier if I showed you,
 23 Q Okay.
 24 A Just like that.

XIV-120

LAUFER - CROSS

1 were standing up could leave a mark. Yes.
 2 Q Your testimony and your very words, and I quote it,
 3 was "just left by pushing up on the body when standing up,"
 4 A Right. I think that's what I just said, too,
 5 Q Just standing up, pushing down and standing up?
 6 A Applying pressure with however much weight the
 7 person weighs as they were standing up, Correct.
 8 Q Okay, Now Exhibit FFF-1, can you see that? Is that
 9 too light? You have actually drawn in an actual hand. And I
 10 would -- I would say that's probably like the right hand,
 11 A Correct.
 12 'Cause you've got the thumb up above, up by the
 13 ruler,
 14 A Yes,
 15 Okay, And can you explain what -- can you explain
 16 to us if these red lines are the fingers, they're somewhat open
 17 in areas, is that correct?
 18 A Yes.
 19 Q Can you explain then if it's open why you would be
 20 leaving an impression there? You straddled it with your
 21 fingers? You got finger 1, 2, 3, 4, and then the thumb. Why
 22 would there be an impression there if nothing's touching it? If
 23 you stood up with your fingers open like you have on this
 24 picture, why would there be an impression there?

X1V-119

LAUFER - CROSS

1 Q Okay. So you're leaning the scissors into the body?
 2 A Like that.
 3 Q But the handle itself, as you show it, don't even
 4 touch,
 5 A Well, again, as you indicated, the body's more
 6 pliable,
 7 Q Would you expect then, based on the way that you
 8 just demonstrated, that you'd have the further extension of
 9 these blades all the way out here to the end? You only have
 10 one of them in your picture. What happened to the other one?
 11 A See that one is above the other.
 12 Q Okay.
 13 A So the one that touches is the one that leaves the
 14 deeper mark and the other one may not even be touching.
 15 Q And you kind of — you would expect, based on what
 16 you just did, this is a twisting in the hand, kind of like what
 17 you just did?
 18 A I guess twisting of the hand in some way is fair.
 19 Q Okay. And the blades that you have, can I see
 20 those back? And you show me, doctor, make sure that I don't
 21 mischaracterize how you were holding these scissors. Am I
 22 holding them right? Am I — do I have them right? Well, show
 23 me. I don't want to --
 24 A Let me try again here.

XIV-121

LAUFER - CROSS

1 Q Okay. Okay,
 2 A So I have them in the —
 3 Q Right in the knuckle?
 4 A Yeah, the --
 5 Q Okay,
 6 A The PIP joint, the proximal inter-phalangeal joint.
 7 Q Okay. So --
 8 A So it's right in here.
 9 Q Okay. All right,
 10 A You push them down.
 11 Q Okay. Let me -- let me see it again,
 12 A Be careful with those things. They're dangerous,
 13 Q Okay. And that's kind of where I have them there.
 14 Okay. Is that right now? Right —
 15 A That's pretty close,
 16 Q Right in the joint
 17 A Yeah,
 18 Q And I'm pushing down like that.
 19 A Yeah.
 20 Q Okay, And these are the scissors that you believe,
 21 not these ones, but Exhibit MM, Okay,, And that's kind of the
 22 way you have it in the photograph, is with the small hole
 23 upwards and the big one on the bottom. But does it really
 24 matter how you -- how you would hold it?

X1V-122

LAUFER - CROSS

1 Q And the scissors that are in the photograph, you say
 2 that those are consistent with MMM?
 3 A I'm sorry,, The scissors that are in which
 4 photograph?
 5 A The scissors that you have drawn in the photograph
 6 on Exhibit FFF-1 are consistent with MMM. These are the —
 7 this is the photo that you took,
 8 A Oh,
 9 Q And those are the ones you used for your test.
 10 A Actually, when I drew this on the abdomen, I hadn't
 11 found those scissors yet. So I simply drew an outline.
 12 Q Okay, But --
 13 A What's different is those have straight handles and
 14 what I've drawn here has at least one curved handle.
 15 Q Okay. And is there anything else different between
 16 the scissors that you have drawn in there and the scissors that
 17 you have on here?
 18 A Yes.
 19 Q What is it?
 20 A The size of the rings.
 21 Q The size of the rings,
 22 A The finger rings.
 23 Q Where you put your fingers?
 24 A Correct,,

XIV-124

LAUFER - CROSS

1 A Well, it matters more for the injury that happened
 2 on the forehead for this —
 3 Q Okay. Turned —
 4 A -- abdominal,
 5 Q Turned around, right?
 6 A Yeah.
 7 Q Okay,
 8 A So for this abdominal injury.
 9 Q Okay. And these are the same scissors that you
 10 believe would be consistent with that injury?
 11 A Similar scissors, that these could cause that injury,
 12 yes
 13 Q Okay. And you're talking about how the scissors
 14 have different -- the different blades. They're actually
 15 connected with like a rivet?
 16 A Correct,
 17 Q And there's nothing in —
 18 A Or a screw.
 19 Q in the photograph that you saw that shows any
 20 type of rivet or anything like that in the center where they join,
 21 do they -- does it?
 22 A Well, there's a cleared area there.
 23 Q Okay.
 24 A But I don't know what that means.

X1V-123

LAUFER - CROSS

1 Q Anything else?
 2 A I actually never measured the length of either pairs
 3 of scissors, but it could be that that's different as well.
 4 Q Okay, Now you testified that because of the way
 5 the scissors are designed, they have one blade on top of the
 6 other blade, Okay.
 7 A Correct,
 8 Q And, actually, in this drawing you have one blade
 9 going over the top of the other blade?
 10 A Right,
 11 Q And is this photograph taken backwards?
 12 A Taken backwards?
 13 Q Yeah, is it — you know how sometimes you can take
 14 a photograph and it — you put it in the wrong way and it's
 15 backwards?
 16 A My understanding is that these are digital so they're
 17 not film,
 18 Q Well, you didn't —
 19 A But --
 20 Q You didn't change anything with this —
 21 A No.
 22 Q — with this at all? Okay,
 23 A No.
 24 Q Then why is it that you're using left-handed scissors?

XIV-125

LAUFER CROSS

1 A Yeah. I certainly saw that but, you know, here's a
 2 picture, there are the scissors. So —
 3 Q And we all know that you can buy these type of
 4 scissors pretty easily but that left-handed scissors are -- you
 5 can buy them but they're just not that common, are they?
 6 A **No**
 7 Q And why doesn't the imprint or stain mark, or
 8 whatever you call it, why doesn't it go all the way to the end of
 9 the -- end of the blades? 'Cause it's going across his
 10 abdomen, It's not going around the edge of him, is it?
 11 A Well, actually, it is The bellybutton is in the middle
 12 so this is actually going toward the rim of his pelvis, And you
 13 can see that the silver stain seems to have been sort of
 14 pushed away, as well.
 15 Q Okay. Now you're familiar, though, with pressure
 16 marks, Pressure marks are caused by objects that are placed
 17 on the body and could -- and they're placed there or left there
 18 for a considerable amount of time. You're — would you agree
 19 with that, at least, thought?
 20 A I don't know what a considerable amount of time
 21 means
 22 Two hours in this case, at least two hours,
 23 A No, I don't agree.
 24 You don't agree with that. So you think a pressure

XIV-126

LAUFER - CROSS

1 facial fractures if someone were hit on the face with a bat,
 2 Q Okay. But it doesn't mean that you would get them?
 3 A No. If you happen to hit the person when his mouth
 4 is open and his lips are out of the way and you only hit the
 5 teeth, the teeth would fracture,
 6 MR. KEPHART: Okay. And so may I approach, Your
 7 Honor? Can I have this marked?
 8 THE COURT: Yes.
 9 (Pause in the proceedings)
 10 THE COURT: How has it been marked?
 11 MR. KEPHART: 263, Your Honor.
 12 MS, GREENBERGER: The same objection, Your
 13 Honor.
 14 THE CLERK: 265.
 15 THE COURT: And it's been shown to the defense.
 16 There's no motion pending.
 17 MR, KEPHART: May I approach?
 18 THE COURT: The objection is premature.
 19 Yes, you may.
 20 BY MR. KEPHART:
 21 Q I'm showing you what's been marked as State's 265.
 22 Have you seen that?
 23 THE COURT: I thought you said 263.
 24 MR. KEPHART: Oh, sorry, Judge.

XIV-128

LAUFER - CROSS

1 mark can be made instantaneously with just putting your
 2 fingers down and standing up?
 3 A You can certainly make a mark, yes,
 4 Q Pressure mark?
 5 A A mark like this,
 6 Q Pressure mark, doc.
 7 A You're saying this is a pressure mark. I'm saying it's
 8 a mark,
 9 Q No, I am not,
 10 A Well, Dr, Simms said it was a pressure mark,
 11 Q Yes. A pressure mark. Can you leave a pressure
 12 mark by a simple matter of putting your hand on the person
 13 and standing up?
 14 A On a dead body?
 15 Q Yes,
 16 A Yes, Done it lots of times.
 17 Q Okay. Now you had testified that you believe that
 18 it's certainly possible that you can bust somebody's teeth out
 19 by using a metal bat, is that correct?
 20 A Yes,
 21 Q Okay. And but you said in this case you believes it'd
 22 be more so the way that the scissors were held as brass
 23 knuckles and popping him in the mouth?
 24 A I think what I said was that one would expect more

XIV-127

LAUFER - CROSS

1 BY MR. KEPHART:
 2 Q Oh, hold on, doc.
 3 A Oh.
 4 MR. KEPHART: 265. Yeah.
 5 THE COURT: 265.
 6 BY MR. KEPHART:
 7 Q Have you seen that photo before?
 8 A I have not, no.
 9 Q Okay. You indicated that it is your belief that the
 10 skull fracture that Duran Bailey received could not have come
 11 from a baseball bat I think your words in your report was "a
 12 weak swing of a baseball bat."
 13 A That it was very unlikely that that would be the
 14 mechanism. Yes.
 15 Q And that you would agree, however, that if someone
 16 gets smacked in the mouth with a baseball bat to the point
 17 where it busts his teeth out, even in your scenario with the
 18 mouth open and it hits his teeth, that would cause a
 19 considerable amount of force to his head?
 20 A If you're --
 21 Q I'm not going to say enough to break his skull. I'm
 22 just saying his teeth,
 23 A Well, if you're counting his teeth as part of his head,
 24 yes.

XIV-129

LAUFER - CROSS

1 Q Okay. And would you expect that that force hitting
 2 him in the mouth would cause not only would his teeth
 3 possibly get busted out but it may cause him to go backwards?
 4 A It's possible. Sure,
 5 Q Okay, And you said in your report that the skull
 6 fracture could likely have happened by striking his head on a
 7 flat wall?
 8 A Yes.
 9 Q And being forced into it with some type of force?
 10 A Correct
 11 Q And you even testified about the skull fracture
 12 requiring a certain amount of pounds of pressure, or whatever,
 13 to crack --
 14 A Correct,
 15 Q to crack his skull. You're aware that in this
 16 particular case there's evidence of an area involving a curb in
 17 the back of the dumpster area where they found Mr. Bailey's
 18 body?
 19 A Yes.
 20 Q Okay, And would you agree then that if he was hit
 21 in the face with sufficient enough force to bust his teeth and
 22 he fell backwards and hit his head on the curb that it could
 23 cause a skull fracture?
 24 A It's possible. It's not consistent with the other

XIV-130

LAUFER - CROSS

1 Q That's your assumption, correct?
 2 A Well, if we assume that the subdural hematoma
 3 happened at the same time as the skull fracture, then it's
 4 unlikely, according to Dr. Simms' testimony of a two-hour
 5 duration period between the two injuries, that it would have
 6 been the blunt force trauma to the face that then resulted in
 7 the subdural hematoma.
 8 Q Also, you would agree that if you had enough of a
 9 blow to cause a skull fracture, it more than likely would cause
 10 you to become unconscious, maybe knock you out?
 11 A One in this case -- are we talking hypothetically or in
 12 this case?
 13 Q I'm talking about a blow to someone's head, enough
 14 force to cause a skull fracture would be enough to cause
 15 somebody to be knocked out.
 16 A So the hypothetical of a bow sufficient to cause a
 17 skull fracture. And are we specifying where, back of the head,
 18 side of the head, front of the head?
 19 Q Well, let's use this case, skull fracture in this case
 20 A Okay, So the skull fracture over the temporal region
 21 of the head sufficient -- or a blow sufficient to cause a skull
 22 fracture and the subdural hematoma that we saw in this case
 23 or without that?
 24 Q Let's just use the skull fracture,

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LAUFER - CROSS

1 evidence, however,
 2 Q Other evidence?
 3 A There was evidence which Dr. Simms testified to
 4 that there was a subdural hematoma underlying the —
 5 Q Okay.
 6 A -- skull fracture,
 7 Q Okay.
 8 A And that that had to precede these other injuries.
 9 Q And that'd be -- that may even have been caused by
 10 somebody striking him in the head with a beer bottle?
 11 A There weren't any lacerations that were described,
 12 Q But it could be consistent with being struck in the
 13 head with some type of blunt force instrument like a beer
 14 bottle?
 15 A Well, a beer bottle is rounded like a bat, It —
 16 Q Okay.
 17 A It sort of fits into the same analysis as the bat,,
 18 Q Okay. So you're saying, no, that it wouldn't have
 19 caused it?
 20 A Well --
 21 Q Even if it happened sometime earlier?
 22 A Well, the assumptions are that the subdural
 23 hematoma, the bleeding on the brain, happened at the same
 24 time that the skull fracture happened.

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LAUFER - CROSS

1 A Okay. Just the skull fracture. It certainly could
 2 cause someone to be unconscious, but I've seen patients with
 3 skull fractures who had no documented loss of consciousness.
 4 Q But that it's — you could be knocked out. I mean,
 5 my God, a boxer gets punched in the mouth and he gets
 6 knocked out.
 7 A You don't need to have a skull fracture to be
 8 knocked out,
 9 Q Right, But a blow sufficient enough to cause a skull
 10 fracture would be a considerable blow, wouldn't it?
 11 A Certainly, again, considerable is difficult to define.
 12 But it's a significant-enough injury that it causes a fracture in
 13 the head,
 14 Q Okay. So a blow to the face with a boxing glove
 15 would be — would you consider that to be as significant as a
 16 blow that causes somebody's skull to fracture?
 17 A It's a different mechanism. There you have a
 18 contrecoup injury where you're actually pushing the brain
 19 around inside the skull and you don't break the skull. So you
 20 can injure the brain without breaking the skull. You can break
 21 the skull without injuring the brain sufficient to cause
 22 unconsciousness.
 23 Q And, doctor, before you left on Tuesday, I had asked
 24 you some questions in regards to being contacted by the

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LAUFER - CROSS

1 defense in order to give your testimony in this case. Do you —
 2 do you remember some line of questioning on that?
 3 A Yes,
 4 Q Okay, And you were kind of telling us with respect
 5 of the time frames, it was about six weeks ago and you were -
 6 - and you were asked to give an opinion as to the mechanism
 7 of injury in this case?
 8 A I don't think I characterized it exactly as that.
 9 Q Okay.
 10 A But, certainly, the time frame is correct,
 11 Q Okay, You're from the Stanford. You work with
 12 Stanford Medical?
 13 A Right,
 14 Q So that's up in the San Francisco area?
 15 A Yes,
 16 Q Okay. And your contact would have been with the
 17 defense here, maybe the two young ladies here?
 18 A That's it
 19 Q Okay, And you're familiar with the law firm that
 20 they work with?
 21 A Yes,
 22 Q And you've testified for them on other occasions?
 23 A One other occasion, yes,
 24 Q Okay. And what type of fee do you have an

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LAUFER - CROSS

1 Q Tissue bridging is when you have the separation of
 2 the skin and there's certain areas that the tissue bridges across
 3 the cut or the laceration, correct?
 4 A So you're talking about a dermal tear with an
 5 epidermal incomplete tear. Is that what you're describing?
 6 Q I just want to know if you've ever heard of the term
 7 "tissue bridging."
 8 A I've heard of the term in a number of different
 9 contexts, most of them improperly used.
 10 Q Okay. So you wouldn't expect in a blunt force injury
 11 to have connections between the skin. It would be a clean cut
 12 between the two?
 13 A No Actually, in the injury around the perirectal
 14 area, there are connections.
 15 Q And just kind of like with the head and everything,
 16 too?
 17 A Well, the head is different because there you have
 18 separate injuries with normal tissue in between.
 19 Q Doctor, you had indicated in curriculum vitae that
 20 you have over a hundred patents either existing or pending on
 21 inventions that you have, is that correct?
 22 A Yes,
 23 Q Okay. And would you agree with me that in order to
 24 be an inventor, to be an inventor -- would you characterize

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LAUFER - CROSS

1 understanding, what is your fee, your standard fee?
 2 A I don't have a standard fee,
 3 Q Do you oftentimes negotiate your fee after you're
 4 done testifying?
 5 A No,
 6 Q So you just come down here on your own, paid for
 7 your own airline tickets?
 8 A No.
 9 Q Okay. Traveled down here, took your time off of
 10 work, and you're telling us that you do not get paid for
 11 testifying?
 12 A The first words that I was told with regard to this
 13 case is we don't have any money.
 14 Q Okay, And that's what was told to you So you're
 15 saying you're down here testifying and you don't get paid?
 16 A That's correct,
 17 Q Can you tell me what tissue bridging is?
 18 A Perhaps you can give me a context,
 19 Q You've never heard the term "tissue bridging"?
 20 A I've heard it in a number of different contexts, yes,
 21 Q Okay. Tissue bridging is in the context of a blunt
 22 force injury, a tear in the skin, correct? That's where you see
 23 it?
 24 A I'm unfamiliar with that specific terminology.

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1 yourself as an inventor?
 2 A Yes.
 3 Q You'd have to have a pretty good imagination,
 4 wouldn't you, doc? Wouldn't you, doc?
 5 A I don't know what imagination means.
 6 MR. KEPHART: Pass the witness, Your Honor.
 7 THE COURT: We're gonna take our afternoon
 8 stretch break at this time.
 9 Ladies and gentlemen, in ten minutes, please be in
 10 the hallway, The bailiff will meet you there to return you to
 11 your seats in the courtroom.
 12 During this recess you're admonished not to talk or
 13 converse among yourselves, nor with anyone else, on any
 14 subject connected with this trial, and you're not to read, watch
 15 or listen to any report of or commentary on the trial or any
 16 person connected with the trial, by any medium of information,
 17 including, without limitation, newspaper, television, radio and
 18 Internet, and you're not to form or express any opinion on any
 19 subject connected with the trial until the case is finally
 20 submitted to you.
 21 The jury may exit. Well see you in ten minutes.
 22 (Jurors recessed at 15:38:00)
 23 MR. KEPHART: Oh. Judge, can we leave? I'm
 24 sorry. I didn't know if you were letting --

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1 THE COURT: Yes.
 2 MR. KEPHART: Okay. Thank you.
 3 THE COURT: You can step down. I'm sorry. I just
 4 wanted to make some notes before I closed this up.
 5 (Court recessed at 15:39:02 until 16:08:18)
 6 (Jurors are not present)
 7 THE BAILIFF: All rise.
 8 Department II is back in session. You may be
 9 seated,
 10 THE COURT: The record shall reflect that we're
 11 convened outside the presence of the jury in State versus
 12 Lobato, under Case Number C177394, in the presence of the
 13 defendant, together with her three counsel, the two
 14 prosecuting attorneys, and Dr. Laufer remains on the witness
 15 stand and under oath.
 16 As we took this break, we received a note from one
 17 of the jurors which is advising the Court that there is an
 18 individual in the audience who has distracting facial
 19 expressions and mannerisms which is uncomfortable. I'm
 20 gonna -- I've reviewed this note with counsel in chambers, and
 21 it will be marked as the Court's next in number.
 22 THE CLERK: 64.
 23 THE COURT: So the Court's going to advise the
 24 ladies and gentlemen in the audience that the jurors should

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1 not be distracted from focusing on the evidence and the
 2 witnesses' testimony during the presentation of this trial. So
 3 please refrain from any expressions or mannerisms that would
 4 be drawing their attention to you because they do, of course,
 5 need to focus on the evidence. If this continues to be a
 6 persisting problem, then the Court will have to ask the
 7 individual to leave. If you should find that you're unable to
 8 control your emotions, then please step to the hallway.
 9 Thank you.
 10 The bailiff will return the jurors.
 11 THE BAILIFF: The jury is now present.
 12 (Jurors reconvened at 16:10:43)
 13 THE COURT: What was the Court's next in number?
 14 THE CLERK: 65.
 15 THE COURT: 64?
 16 THE CLERK: 65.
 17 THE COURT: The last one was 64?
 18 THE CLERK: Yes.
 19 THE COURT: The one that we just marked?
 20 THE CLERK: Yes,
 21 THE COURT: Okay. The record shall reflect that the
 22 ladies and gentlemen have returned to their seats in the jury
 23 box area at this time and we will be proceeding forward with
 24 the defendant's witness.

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LAUFER - REDIRECT

1 As I told you, ladies and gentlemen, I would check
 2 in chambers with regard to the calendars for next week., We
 3 would be Monday at 10:30, Tuesday at 1:00, Wednesday at
 4 10:30, and if need be for Thursday, it would be 1:00.
 5 I believe that Mr. Kephart had passed the witness.
 6 Ms. Greenberger may redirect
 7 MS. GREENBERGER: Thank you.
 8 REDIRECT EXAMINATION
 9 BY MS. GREENBERGER:
 10 Q Dr. Laufer, showing you what's been marked as
 11 Defense DOD. And Ill just -- Ill show it to you from afar so
 12 you can familiarize yourself. Then Ill zoom in on it.
 13 A Mm-hmm.
 14 Q Can you tell us what we're looking at in this picture?
 15 A These are the paired stab wounds that we've been
 16 discussing on the abdomen.
 17 Q I'm gonna zoom in a little bit more. Can you tell us
 18 what the significance is of the injury, the center part of the
 19 injury?
 20 A Yes. So this is an outline of one of the blades of the
 21 instrument. And we have one edge here and one edge here.
 22 Those are perpendicular to each other. Then we have a
 23 longer edge here, and then we have a bevel there. And,
 24 unfortunately, my drawing on the screen is not very good, but

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LAUFER - REDIRECT

1 that exactly matches what you would expect from scissor
 2 blades. They are, as Mr. Kephart described, sharpened only
 3 on one side with a bevel, and that is the bevel,
 4 Q And is your testimony it's completely consistent with
 5 scissors? Is that what you said?
 6 A It is completely consistent and in fact not consistent
 7 with any other kind of instrument that I can think of.
 8 Q In your career, have you testified more for the
 9 prosecution or the defense?
 10 A It's pretty equal, but I think the prosecution has a
 11 slight edge on the number of cases.
 12 Q How much do you get paid in those case where you
 13 testify for the prosecution?
 14 A Yeah, they never have any money. I don't think I've
 15 been paid in any of those cases.
 16 MS. GREENBERGER: Nothing further.
 17 THE COURT: Recross.
 18 MR. KEPHART: I don't have anything further, Judge.
 19 (Pause in the proceedings)
 20 THE COURT: Would counsel approach?
 21 (Off-record bench conference at 16:19:17 until 16:25:50)
 22 THE COURT: Dr. Laufer, there are a number of
 23 questions for you that have come from the ladies and
 24 gentlemen of the jury which I am going to read to you, After I

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1 read to you a question and you may answer the question, after
2 all the questions have been read and answered, the attorneys
3 for each side will have the opportunity to pose any foilowup
4 questions to you which they deem appropriate,

5 THE WITNESS: Thank you.

6 THE COURT: If the wound on one abdomen has the
7 shape of the scissor, why don't the other wounds also look like
8 that?

9 THE WITNESS: Can we put the picture up?

10 MR. SCHIECK: May we, Your Honor, so he can
11 explain his answer?

12 THE COURT: Why don't we go ahead and do that.

13 MR. SCHIECK: DDD, counsel, is that —

14 MR KEPHART: Mm-hmm.

15 MR. SCHIECK: Okay.

16 MR, KEPHART: Yeah, that's our understanding.

17 MR. SCHIECK: I'll show the Court.

18 THE COURT: Okay, Is that the one he's asking for?

19 MR, SdHIECK: Is this the one you're --

20 THE WITNESS: Yes, that's it,

21 THE COURT: Okay, The record shall reflect DDD is
22 being published at this time,

23 MR. SCHIECK: I'm gonna zoom it out. Is that
24 sufficient, doctor?

X1V-142

1 penis cleanly?

2 THE WITNESS: It's really -- I mean, certainly, if you
3 have something dull it takes more force. You can still shear it.
4 I don't know if you've ever gone to like Costco and seen them
5 do the sampling of the little apple sausages, and stuff, and
6 they take scissors and they just sort of slice it through. It
7 actually, with a pair of scissors, doesn't take a lot of force. So
8 it's actually probably easier to do it with scissors because all of
9 your force from your hand is in opposition, the thumb to the
10 little finger, so you can apply a lot of force, where with a knife
11 you really have to sort of go back and forth in sort of a sawing
12 motion, as someone asked Dr, Simms.

13 THE COURT: That question will be marked as
14 Court's 67,

15 There is a note that will be marked as Court's 68,
16 Does the condition and age of a person make a
17 difference on how easily the skin bruises or tears?

18 THE WITNESS: There are a number of things that
19 change the ability to bruise or tear. Most of the tears that we
20 saw here, obviously, was — were from when the tissue was
21 starting to break down. Those were what we were calling
22 slippage. But in regular tissue, and we've all probably seen
23 elderly people who slip and they hit their shin on an edge of
24 something and it peels all the way up their shin because that

XIV-144

1 THE WITNESS: Yes. Thank you,
2 So what I presume you're asking is why can you see
3 this sort of dark area in one of the wounds and not in the
4 others. This one is -- it appears to be is filled with blood or a
5 blood clot, These are at an angle so you're looking into the fat
6 that's in the abdomen wall. If you had the angle right, you
7 could probably also see the similar hole, Sometimes the holes
8 close up partially. So if they're in an area where the thickness
9 of the fat is a little bit more, then it might sort of come dosed.
10 But if you pull the edge apart, then you'll be able to see the
11 same sort of black area. So it's really more of a function of
12 how the picture was taken than of how the wound was made.

13 THE COURT: This question will be marked as
14 Court's Number 65.

15 In previous testimony we were told that the fatal
16 neck wound was very deep. Could a person cut that deep
17 through the muscles of the neck with a pair of scissors?

18 THE WITNESS: Absolutely, yes, And, you know, in
19 depth, I think I testified it's only about an inch to an inch and
20 a half. So if you know where you're cutting, you don't have to
21 go in very far to get it

22 THE COURT: This will be marked as Court's Number
23 66,

24 Wouldn't it take a very sharp object to cut off a

X1V-143

1 tissue is very easily torn. It's what we call friable or, you
2 know, it's just very easy to pull apart. So the thinner the skin
3 is, the easier it is to tear. Sometimes that's elderly, sometimes
4 it's patient condition. People are malnourished. They don't
5 have a lot of fat underneath their skin, Then the bone and the
6 skin are very close together and so all the force that's
7 transmitted into the skin between the bone and the thing
8 that's actually causing the shearing. So, yes, it can make a
9 difference,

10 THE COURT: This will be marked as Court's 69.

11 Why did you use a garbage can during your
12 experiment with the foam and ultrasuede rather than placing it
13 on a hard, flat surface?

14 THE WITNESS: The hardest, flattest surface I had
15 was my desk and I didn't want to leave marks in it, so I put if:
16 on top of the garbage can so that the blades could actually go
17 through. The abdominal wall is sort of like that, too, because
18 you've got this sort of muscular layer with a fairly open surface
19 underneath that's filled with intestines and organs. So it's
20 actually more similar, as well, to have the blades have an
21 ability to go through the surface rather than abruptly stopping,
22 And I wanted to see what the bunching in the middle would do
23 and demonstrate that indeed you could get that bunching
24 rather than getting a cut from the scissor blades all the way

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1 through and just something that looked like a linear laceration.
 2 So it was the only way that I could demonstrate or even test
 3 whether when you went all the way through as far as you
 4 could go in with the scissors whether you would get two
 5 separate holes or whether you would get one straight hole,
 6 and that's why I did it that way.

7 THE COURT: This will be marked as Court's Number
 8 70

9 Why did you choose material, like ultrasuede,
 10 instead of leather?

11 THE WITNESS: Yeah. So we started discussing this
 12 several weeks ago and I suggested that we get a cadaver and
 13 just do it on a cadaver. And it was decided that that was too
 14 expensive. So then I suggested, well, you know, we could
 15 probably go to an animal lab somewhere and do it on an
 16 animal that someone else has already used for something else
 17 but decided that there were enough animal rights issues that
 18 we probably didn't want to do that, and so the next best thing
 19 was the material ifiit I could get by going to the Wal-Mart or
 20 the local fabric store. So what I did is I just looked through
 21 the bin for remnants and what I found was ultrasuede, which
 22 they didn't have any leather or I probably would have used
 23 leather. But ultrasuede was what they had and so that's what
 24 I used.

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LAUFER - RE CROSS

1 Q Okay. You said —

2 MS. GREENBERGER: Going beyond the scope,
 3 objection,

4 MR. KEPHART: Well, Judge, I'm just laying -- I'm
 5 getting to that point with regards to they're talking about this
 6 test that he conducted on ultrasuede,

7 THE COURT: Overruled,
 8 BY MR. KEPHART:

9 Q You had indicated that you, in your report, that you
 10 intended to do further testing to add to or change your
 11 opinion. And you testified on Tuesday that you did the tests
 12 with stabbing into the cushions while you were in your office at
 13 the -- in California, I guess, not during -- it was on the
 14 weekend, correct?

15 A Correct,

16 Q Okay, And you conducted these particular tests
 17 before you -- I mean, after you actually typed up this report, is
 18 that correct?

19 A Yes.

20 Q And but your report actually talks about the — your
 21 opinion of the actual stab wounds by a pair of scissors before
 22 you even did the tests, is that correct?

23 A Yes.

24 Q So what you're saying is that you confirmed your

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LAUFER - RE CROSS

1 THE COURT: That will be marked as Court's 71,
 2 You testified that the attacker was organized in their
 3 approach. What did you mean by organized?

4 THE WITNESS: Well, sometimes you see what I
 5 would describe as sort of frenzied activity, just random blows,
 6 just hitting wherever you can hit, you know, just trying to beat
 7 somebody up., This was a little bit, well, actually, it was a lot
 8 different from that, where it was pretty clear that when
 9 someone was cutting at the neck they were cutting in order to
 10 get to those blood vessels. They did it not just on one side but
 11 on the other side as well. And so it at least appears that the
 12 person was thoughtful enough and, in my term, organized
 13 enough to actually purposefully go for those areas where they
 14 knew big blood vessels were in order to cut them. So that's
 15 why I used that term,

16 THE COURT: That will be marked as Court's 72.

17 Followup by the State?

18 MR. KEPHART: Can I have these marked? Can I
 19 have these marked?

RE CROSS EXAMINATION

20 BY MR, KEPHART:

21 Q Now you indicated that if Monday was the 25',
 22 Sunday would be the 24". Would you accept that?

23 A Yes.
 24

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LAUFER - RE CROSS

1 opinion with the test?

2 A Correct.

3 Q And you did -- showing 268 -- no, 266, 267 and 268
 4 to the defense, On Exhibit DDD, in response to some
 5 questions by the jury, they asked you why doesn't both
 6 abdomen injuries appear to be the same with regards to what
 7 you testified here. Do you remember that question?

8 A Yes.

9 Q Okay.

10 A Thanks for granting that there's both, i.e., two as
 11 opposed to four,

12 Q Yours in regards to both?

13 A Yes.

14 Q Yeah. And can you tell me, you said because they're
 15 full of blood, and but if you were to see them you would tell
 16 that they were a -- they were all consistent with that, correct?

17 A I actually think I characterized it as the direction in
 18 which the picture was taken.

19 Q But you said that -- you said that if you were able to
 20 see these you would be able — you would say that they were
 21 from the same instrument and that you can't see them.

22 A No. I think what I said was that if you looked at
 23 them in the same direction that they would look similar,
 24 potentially, unless there was fat or other tissue underneath

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LAUFER - RECROSS'

1 that was obscuring the outline of the blade.
 2 MR. KEPHART: May I approach, Your Honor?
 3 THE COURT: You may.
 4 BY MR. KEPHART:
 5 Q I'm showing you State's Proposed Exhibits 266 and
 6 267 and ask you if you've seen these before,
 7 A I have never seen these like this. I don't know if
 8 they're blowups of these other wounds,
 9 Q Okay.
 10 A But they appear like they could have been,
 11 Q Okay. And you're saying that in —
 12 MR. KEPHART: The Court's indulgence, Your Honor,
 13 THE COURT: Yes,
 14 MR. KEPHART: I need to find this.
 15 BY MR. KEPHART:
 16 Q In order to cut off this man's penis that you're
 17 saying, your testimony is, that it's actually easier with scissors,
 18 A Than with a knife, yes.
 19 Q That's your testimony?
 20 A Correct
 21 Q Okay, And then you actually started to say or you
 22 testified that, well, if you've ever been to the store and you
 23 had apple sausages and they cut them with scissors. Are you
 24 saying then that the tissue that is involved or is in the penis,

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LAUFER - RECROSS

1 also that was the motion that the doctor actually made, and I
 2 was just repeating it, asking him if that was what he did
 3 earlier, and he said yes.
 4 THE COURT: The record shall reflect that it was
 5 demonstrative of the prior motion made by the witness.
 6 THE WITNESS: And just for clarification, I said I
 7 could have. I actually don't remember specifically doing it.
 8 BY MR. KEPHART:
 9 Q With regards to State's Proposed Exhibit 266 and
 10 267, these injuries here that you said that you haven't seen
 11 these photos of before, can you see in there what you
 12 described as the flat edge on one side and sharp edge and
 13 then what you were describing earlier that you said that was
 14 consistent with the way I described scissors? Do you see any
 15 of that in those photos?
 16 A Yes.
 17 Q You do?
 18 A I do.
 19 Q Which one?
 20 A This one.
 21 Q In which photo?
 22 A In this one.
 23 Q Okay. Let me see which.
 24 A 267,

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LAUFER - RECROSS

1 that that type of tissue is similar to apple-like sausages?
 2 A It's pretty close.
 3 Q And —
 4 Q We --
 5 A And this particular penis is about the same size
 6 around as an apple-like sausage. Is that your testimony as
 7 well?
 8 A That's not what I testified to. But I —
 9 Well, you're comparing it, sorry, sir, but you're
 10 comparing it with apple-like sausages.
 11 A In consistency, yes.
 12 Q The same size around as well?
 13 A Don't know.
 14 Q And do you recall using the words "shearing"?
 15 A Yes.
 16 Q And you actually went like this?
 17 A I probably did, yes. That was on Tuesday?
 18 Q It's today,
 19 MR. KEPHART: The Court's indulgence, Your Honor.
 20 THE COURT: Yes.
 21 The record shall reflect that Mr. Kephart made a
 22 motion with his hands out in front of him kind of in a fist,
 23 bringing them together, out, and back together again.
 24 MR. KEPHART: Judge, I'd like the record to reflect

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LAUFER - RECROSS

1 Q 267. Okay. In both of them?
 2 A I'm sorry. Both of the photos?
 3 Q Both the -- both the injuries.
 4 A Oh, I can't see it to this one because it's partially cut
 5 off,
 6 Q Okay. You don't see it in the other one, though, do
 7 you?
 8 A I see that there's a track sort of like what you were
 9 showing earlier when the blades didn't go in perpendicularly.
 10 They actually form a track. And there is a track here but, no, I
 11 don't see that clear outline.
 12 Q And it's a pretty -- it's a pretty good teardrop injury
 13 there, correct?
 14 A On the outside surface, yes.
 15 Q And inside as well? You won't accept that?
 16 A Well, on the inside there's actually a track going into
 17 the plane at an angle, as if the blades were going in at an
 18 angle not perpendicular to the surface of the skin.
 19 Q Or as if one was being pulled out and drug across to
 20 the other side to do the second stabbing?
 21 A No. I'm actually referring to the inside of the
 22 wound, not to the abrasion,
 23 Q Well, I'm not talking about that. I'm talking about
 24 the hole, You're saying the track, as if the -- as if the blade

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LAUFER - RECROSS

1 was on an angle, as if maybe the blade was being pulled out
 2 on an angle to go towards the other wound.
 3 MR. SCHIECK: I'm gonna object.
 4 THE WITNESS: No, Actually, this is —
 5 MR. SCHIECK: Argumentative, Your Honor.
 6 THE COURT: Overruled,
 7 THE WITNESS: This track was made with the blade
 8 going in, not coming out,
 9 BY MR. KEPHART:
 10 Q Teardrop, though?
 11 A Teardropping configuration, yes,
 12 Q And you haven't seen these photos as well?
 13 A That's correct, as I stated earlier.
 14 MR. KEPHART: Well, Judge, just for the record, I
 15 was discussing, I think I did say it but Sandy said I didn't, so
 16 266 and 267, 266 was the one he was talking about that he
 17 says went in on an angle,
 18 BY MR. KEPHART:
 19 Is that correct, doctor?
 20 A I think that's right. Yes.
 21 Q 266. Okay.,
 22 THE COURT: That's correct.,
 23 MR. KEPHART: Okay.
 24 (Pause in the proceedings)

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LAUFER - RECROSS

1 the right side of the neck and --
 2 A Correct.,
 3 Q Is that correct?
 4 A Yes.
 5 Q Okay,
 6 A Versus the front of the neck, I believe.
 7 Q Okay. Versus the front of the neck. I want to show
 8 you what's been marked as State's —
 9 MR. KEPHART: The Court's indulgence,
 10 BY MR. KEPHART:
 11 Q 268, I'm showing you 268. Have you seen that
 12 before?
 13 A No.
 14 Q That'd be right in the middle of the neck?
 15 A Actually, can I see it again?
 16 Q And while you're looking at it, what is the term
 17 "anterior"?
 18 A Front,
 19 Q Anterior, what does that mean?
 20 A Front. Sort: of on the side of the face.
 21 Q Okay. Anterior means front?
 22 A Yes.
 23 Q Okay, And this would be in the front?
 24 A It looks like it's in the front. Yes,

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LAUFER - RECROSS

1 BY MR. KEPHART:
 2 Q Now you had indicated to the -- to the jury that you
 3 believed that this was an organized type of attack. And part of
 4 your, correct me if I'm wrong, part of your testimony was
 5 because of the movement from the right side of the neck,
 6 carotid artery, that side, over to the other side, that it would
 7 seem to be an attempt to get to the carotid artery, is that
 8 correct?
 9 A Well, parts of it are correct, I didn't say that the
 10 reason why it was organized was because he went from one
 11 side to the other side. I said that the ability to aim toward the
 12 vessels in this way and to do it not once but twice —
 13 Q Okay,
 14 A -- represents organization and thought.
 15 Q And that would be the carotid artery on the right or
 16 the carotid artery on the left?
 17 A I don't know which one he did first or the --
 18 Q Well, I know that.
 19 A The perpetrator,
 20 Q But I'm just talking about the two. There -- is there
 21 a carotid artery on both sides?
 22 A Yes.
 23 Q Okay, So if you're aiming at one side, and we — you
 24 and I had some exchange with regards to that injury being on

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LAUFER - FURTHER REDIRECT

1 Q And you had actually read the autopsy report. And
 2 when Dr. Simm says "located on the anterior neck," that would
 3 mean in the front?
 4 A Correct.
 5 Q Okay, A stab wound incised and goes on to talk
 6 about it. Doesn't talk about any wound to the right side of the
 7 neck, does it?
 8 A I don't recall.
 9 Q And you would agree, though, that Exhibit 268
 10 shows a stab wound to the anterior neck, right in the middle?
 11 A The way that picture is taken, yes.
 12 MR. KEPHART: Nothing further, Your Honor, Pass
 13 the witness.
 14 THE COURT: Followup questions by the defense?
 15 MS. GREENBERGER: Just one,
 16 FURTHER REDIRECT EXAMINATION
 17 BY MS. GREENBERGER:
 18 Q Do any of the photos that you've been shown today
 19 change your opinion in any way?
 20 A Can you be more specific since I have about nine
 21 pages of opinion here? Any aspects of that in particular? Or, I
 22 mean, I would not say that my opinion has changed today on
 23 the basis of additional pictures that I asked to see previously
 24 but did not see previously.

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LAUFER - FURTHER REM

1 Q So the photos that you've shown have not changed
 2 your opinion with regard to the mechanism of injury in this
 3 case?
 4 A No I mean, I might recharacterize the description
 5 of where that wound is or do some further investigation
 6 because, certainly, that last picture makes it look like it's over
 7 the trachea, like the assailant was trying to actually cut the
 8 windpipe, but that's still consistent with an organized attack.
 9 So in that sense, no.
 10 MS. GREENBERGER: Nothing further.
 11 MR. KEPHART: Nothing further, Your Honor.
 12 THE COURT: You may step down from the witness
 13 stand.
 14 THE WITNESS: Thank you,
 15 THE COURT: Does counsel wish to approach?
 16 (Off-record bench conference at 16:48:43 until 16:49:16)
 17 THE COURT: Ladies and gentlemen, we will now be
 18 returning to the State's case in chief and the State is calling
 19 their next witness. Ms. DiGiacomo has stepped to the hall to
 20 bring that witness into the courtroom at this time.
 21 THE CLERK: Come all the way forward.
 22 MS. DIGIACOMO: And, Your Honor, for the record,
 23 the State's calling Zachary Robinson.
 24 THE COURT: Very well.

XIV-158

ROBINSON - DIRECT

1 Sam's Town?
 2 A Closer.
 3 Q What was your job there?
 4 A I was the assistant general manager,
 5 Q Okay. And what were some of your duties?
 6 A Revenue collection, sales marketing.
 7 MS. DIGIACOMO: The Court's indulgence. May I
 8 approach?
 9 THE COURT: Yes,
 10 MS. DIGIACOMO: May I approach the witness?
 11 THE COURT: Yes,
 12 BY MS. DIGIACOMO:
 13 Q I'm gonna show you what's been marked for
 14 purposes of identification as State's Proposed Exhibit 269 and
 15 270. Can you look at those and let me know if you recognize
 16 what's depicted in those photographs? Actually, I gave them
 17 to you upside down,
 18 A Yes,
 19 Q Is this an aerial view?
 20 A Yes, it is.
 21 Q Okay. And what are depicted in both of these?
 22 A It looks like it is the property, Budget Suites.
 23 Q Okay. The one on Boulder Highway, Nellis and
 24 Flamingo?

XIV-160

ROBINSON - DIRECT

1 THE CLERK: Remain standing, raise your right
 2 hand.
 3 ZACHORY ROBINSON, STATE'S WITNESS, SWORN
 4 THE CLERK: Thank you. Please be seated. State
 5 your name and spell it for the record, please.
 6 THE WITNESS: Zachory Robinson, Z-A-C-H-O-R-Y
 7 R-O-B-I-N-S-O-N,
 8 THE COURT: The State may proceed,
 9 MS. DIGIACOMO: Thank you, Your Honor.,
 10 DIRECT EXAMINATION
 11 BY MS. DIGIACOMO:
 12 Q Mr, Robinson, I want to direct your attention back to
 13 May, 2002, Do you recall where you were working at that
 14 time?
 15 A It would have been Budget Suites,
 16 Q Which Budget Suites?
 17 A Flamingo and Ne
 18 Q Okay. Now, are you familiar with Boulder Highway
 19 as well in that area?
 20 A Yes.
 21 Q Are there two Budget Suites on Boulder Highway?
 22 A There is.
 23 Q Would the Boulder -- excuse me, the Budget Suites
 24 you worked at be closer to Sam's Town or further away from

XIV-159

ROBINSON - DIRECT

1 A This is Boulder Highway/Neilis, And this one, I can't
 2 tell if it's Boulder Highway and Nellis or if that's the other
 3 property.
 4 Q Okay. So the one that you said was Boulder
 5 Highway/Nellis is 270?
 6 A Let's see. That's correct,
 7 Q Okay. And 269, does it look the same, just zoomed
 8 in on a certain area?
 9 A Actually, that is the property 'cause the pool, I
 10 recognize it. Yes, it is.
 11 Q Okay, And this is just a closer-up view of the
 12 property, and I'm referring to 269, than is depicted in 270?
 13 A That's correct, Yes.
 14 MS. DIGIACOMO: Your Honor, at this time the State
 15 would move for admission of State's Proposed Exhibits 269
 16 and 270.
 17 MR. SCHIECK: No objection, Your Honor.
 18 THE COURT: Granted.
 19 (State's Exhibit Nos. 269 and 270 admitted)
 20 BY MS. DIGIACOMO:
 21 Q Okay. I'm gonna show you first 270, Okay. Can
 22 you describe for the jury what we're looking at here? And just
 23 so you know, the screen in front of you, if you touch it with
 24 your finger it'll kind of draw on it like on a football on Sundays,

XIV-161

ROBINSON - DIRECT

1 A Oh, okay.
 2 Q Okay, So if you can go ahead and describe what's
 3 depicted in State's Exhibit 270.
 4 A It's an aerial overview of the property.
 5 Q Okay. Where is the property, if you could circle it?
 6 A Yeah, Well, the property itself sits right along there.
 7 Q Okay, So that entire area?
 8 A Yep.
 9 Q And where is the office located?
 10 A It would be right here.
 11 Q I'm sorry, Did you touch the screen? I can't see,
 12 A Yes, I did.
 13 Q Okay, Could you do it again?
 14 A Sure,
 15 Q Circle where the office is.
 16 A It's right — the office is right there.
 17 Q Okay. Now I'm gonna show you State's Exhibit 269.
 18 Can you see this?
 19 A Yes.
 20 Q And this is the more closeup version than in 270?
 21 A Correct,
 22 Q Where's the office here?
 23 A It would be right here.
 24 Q All right, Now, is there — we can see the pool in

XIV-162

ROBINSON - DIRECT

1 A On the sides?
 2 Q Yeah.
 3 A The walls are rock also, yes,
 4 Q All right. And this waterfall on the outside, is it rock
 5 as well?
 6 A Yes,
 7 Q So it kind of looks like a cave?
 8 A That's correct.
 9 Q And where exactly would this waterfall or the tunnel
 10 that we've been talking about be on State's Exhibit 269? Can
 11 you clear that? Here, wait. Actually, let me try this. I don't
 12 know if it'll work. Let me try zooming in a little, Okay. Can
 13 you see the area of the office?
 14 A Yes. It --
 15 Q All right, And do you see where we're talking about
 16 the waterfall or the cave, the rock formation?
 17 A Actually, if you could zoom out a little bit.
 18 Q Is it blurry?
 19 A Yeah.
 20 Q Okay, sorry,
 21 A Okay, The waterfall is going to be right in this area
 22 right here.
 23 Q So it's pretty close to where the office is?
 24 A Yes, it is.

XIV-164

ROBINSON - DIRECT

1 here, but is there a waterfall or a fountain located somewhere
 2 on this property?
 3 A Yes, there is.
 4 Q And where is that? If you want to clear the screen,
 5 you touch the bottom right,
 6 A Just touch the bottom right? Oh. It would be right
 7 in this area there.
 8 Q And can you describe exactly what we're talking
 9 about when we say the waterfall or the fountain?
 10 A It's actually a pond that has a water fountain and
 11 there's a tunnel that goes through that waterfall,
 12 Q All right. And the tunnel, can you describe what that
 13 looks like?
 14 A It's fake rock. It's probably maybe 3 to 5 feet in
 15 width, depending on which part of the tunnel you're in
 16 because it curves. And it's probably 6, 7 feet long, if I
 17 remember correctly.
 18 Q And do you recall how tall it is?
 19 A Probably, I would say, no more than 6 feet.
 20 Q Okay, And you said that there -- it's made of rock.
 21 When you walk through the inside of this tunnel, is it rock
 22 inside?
 23 A I believe it was concrete on the bottom.
 24 Q Not on the bottom. I mean the walls.

XIV-163

ROBINSON - DIRECT

1 Q Where's the front entrance to the office?
 2 A Right here.
 3 Q And approximately how far away is this water
 4 feature from the front office?
 5 A 30, 40 feet maybe,
 6 Q What kind of complex or -- is Budget Suites? Is it a
 7 hotel, apartment complex?
 8 A I don't know what it is now. At the time it was a
 9 weekly, monthly and daily rental.
 10 Q And you're referring to back in May of 2002?
 11 A 2002. Correct.
 12 Q Now, what about throughout the year of 2001?
 13 A I don't think I was there in 2001,
 14 Q Right. But do you know if at that time, before you
 15 got there, it was a daily, weekly, monthly rental place?
 16 MR. SCHIECK: Objection unless we have foundation
 17 of his knowledge, Your Honor.
 18 THE COURT; Sustained.
 19 BY MS, DiGIACOMO:
 20 Q Okay. Do you have any knowledge of what it was?
 21 A Actually, it would have been a daily, weekly, monthly
 22 rental based on my preview of prior accounting books,
 23 Q The office area, was it open certain business hours?
 24 A Twenty-four hours.

XIV-165

ROBINSON - DIRECT

1 Q It's twenty-four hours?
 2 A Correct.
 3 Q Was the area that we have on the screen here —
 4 well, and actually let me stop there. You have the office door
 5 circled and the water feature circled. What's this area right
 6 here below both of them in the picture?
 7 A That's a parking lot.
 8 Q Okay, So those are parking structures?
 9 A That's correct,
 10 Q Okay, And if I zoom out and we look more on the
 11 outside of the pictures, there's kind of white along the edges
 12 here. What's that?
 13 A That's the covered parking.
 14 Q Okay. So there is covered parking?
 15 A Correct
 16 Q In location to where the office is and these front
 17 parking spots, where is the nearest area where there might be
 18 a dumpster located?
 19 A I'm trying to remember. There would have been
 20 one --
 21 Q If you could clear the screen,
 22 A -- if I remember correctly, right about in this area
 23 here and there would have been one in this area here,
 24 Q Okay. So now the other area that you circled, I'm

XIV-166

ROBINSON - DIRECT

1 twenty-four hours, What was the purpose of having it open
 2 twenty-four hours?
 3 A I -- the needs of the tenants warranted that,
 4 actually.
 5 Q Okay. So was the office busy all twenty-four hours
 6 of the day?
 7 A I would say about twenty of them it was.
 8 Q Okay. Well, was there any down time in the officer
 9 A Early morning,
 10 Q Okay. And what would you qualify as early
 11 morning?
 12 A Maybe 1:30, 2:00 o'clock 'til probably right around
 13 4:00, that time frame,
 14 Q All right. And when you say it wasn't busy during
 15 those hours, what do you mean by that? What lessened
 16 during those hours?
 17 A Well, it was 839 units. And a lot of the employees
 18 may have worked in casinos so they had odd shifts, But
 19 usually by 2:00 o'clock everyone was pretty much home and in
 20 their units, I guess.
 21 Q Okay. So did you get a lot of foot traffic in and out
 22 of the office during twenty of the hours of the day?
 23 A Yes, we did.
 24 Q Okay. And what about the area that we were

XIV-168

ROBINSON - DIRECT

1 gonna show you 270 'cause it kind of went off screen there,
 2 A Yeah.
 3 Q If you can clear the screen. I'm sorry. The
 4 dumpster that would be closest to the office area here, where
 5 was that one that you were circling?
 6 A It would be here. I went too far down. But right
 7 over in that area there,
 8 Q All right. Those are the two that would be closest to
 9 the office?
 10 A Correct. If --
 11 Q Okay. And this —
 12 A That's my memory,
 13 Q This right here looks like an entrance into the
 14 parking lot.
 15 A That's correct,
 16 And then this right here in front of the office, what is
 17 that?
 18 A That's just a grass area with a sidewalk.
 19 All right, And so the office is approximately how far
 20 from the sidewalk of Boulder Highway?
 21 A I would say probably 100, 125 feet.
 22 Q Okay. It's within walking distance?
 23 A Yes
 24 Q Okay. And you said this was -- the office was open

XIV-167

ROBINSON - DIRECT

1 looking at here with these parking spots in front of the office?
 2 I mean, was there a lot of activity in this area as well?
 3 A Yeah,
 4 Q People coming and going from the office?
 5 A Yes.
 6 Q Now, were there any security cameras around the
 7 office building that would point out to the parking area?
 8 A We had security cameras inside only. We didn't
 9 have them outside,
 10 Q Was there any security that patrolled the area, the
 11 property?
 12 A Yes, We had courtesy patrol.
 13 Q All right. And when you say -- when you say
 14 courtesy patrol, what do you mean by that?
 15 A We didn't offer them as security guards, They were
 16 more of just courtesy patrol to see if anything's happening
 17 and, if so, call the police.
 18 Q Did they work for Budget Suites?
 19 A Yes, they did,
 20 Q Do you recall what -- how many of these courtesy
 21 control security that you had working on a day?
 22 A Average was two, There was a period of --
 23 MR. SCHIECK: Objection, Your Honor. Are we
 24 talking about at what time period?

XIV-169

ROBINSON - DIREC1

1 THE COURT: Sustained,
 2 BY MS. DiGIACOMO:
 3 Q Okay, Back in 2002 when you worked there.
 4 A Mm-hmm.
 5 Q Do you know approximately how many worked
 6 there?
 7 MR, SCHIECK: Objection, relevance, Your Honor.
 8 We're talking about 2001, before he worked there.
 9 MS_ DiGIACOMO: Well, I'm trying to lay foundation
 10 to get back to 2001,
 11 THE COURT: The Court will sustain the objection.
 12 BY MS. DiGIACOMO:
 13 Q Okay. Do you have any knowledge about the time
 14 frame of May, June, July of 2001, whether or not there was
 15 security at that time?
 16 A There was security at that time, yes.
 17 Q Okay, The courtesy control, as you call it?
 18 A Courtesy patrol,
 19 Q Oh, patrol.
 20 A Mm-hmm.
 21 Q Excuse me. There was at that time?
 22 A Yes, there was.
 23 Q What were the specific duties of the courtesy patrol;
 24 just to call the police if anything was needed?

XIV-170

ROBINSON - DIRECT

1 Q Okay, How do you know that?
 2 A They are kept on file. We have logbooks of them,
 3 Q Okay. So when you took over this job, it was up to
 4 the security guards to leave you their reports at the end of
 5 their shift?
 6 A That's correct.
 7 Q And what did you do with those?
 8 A I reviewed them for any possible tenant issues and -
 9 then I filed them or followed up, depending what Was on
 10 there,
 11 Q Okay. So were you — was it your job to keep these
 12 in the ordinary course of business?
 13 A Yes.
 14 Q And did you also keep all the past security records —
 15 A Yes.
 16 Q as well?
 17 A Yes, I did.
 18 Q That was part of your duties?
 19 A Yes,
 20 Q Back in 2002 when you were working there, were
 21 you asked to go and review the records that you kept for May,
 22 June and July of 2001?
 23 A Yes, I was.
 24 Q You -- and did you review all of those security

XIV-172

ROBINSON - DIRECT

1 A That's correct.
 2 Q Did they make reports?
 3 A Yes, they did.
 4 Q Okay_ How did the reports work?
 5 A It was basically an hour-by-hour account of their
 6 travels. They had to walk the property on an hourly basis and
 7 then report anything they saw on there.
 8 Q All right, And so these reports were made as they
 9 were doing -- working their shifts?
 10 A That's correct.
 11 Q At the end of the shift -- and you said there was an
 12 average of two people. Was that the same back in 2001?
 13 A Actually, yes, it is.
 14 Q All right- They made these reports during their shift.
 15 What happened at the end of their shifts with these reports?
 16 A They were put on my desk,,
 17 Q Okay. And you were the assistant general manager?
 18 A That's correct.
 19 Q Okay. And the person who was the assistant
 20 general manager before you, was that the same protocol?
 21 A I do not know that,
 22 Q Okay. So do you know if the -- back in 2001, May,
 23 June and July, were security reports turned in on a daily basis?
 24 A Yes, they were.

XIV-171

ROBINSON - DIRECT

1 reports?
 2 A Yes, I did.
 3 Q When you reviewed those, did you notice that you
 4 were missing a day or two here and there?
 5 A No.
 6 Q So you reviewed all of those days?
 7 A Yes, I did,
 8 Q So it would have been thirty or thirty-one days for
 9 each month?
 0 A That's correct.
 1 Q For the reports that you reviewed from May, June
 12 and July, 2001, was there any reports made regarding a man
 13 with an injured penis either cut or slashed?
 14 A In 2001?
 15 Q In 2001.
 16 A No, there was not.
 17 Q Were there any reports you reviewed regarding
 18 blood found on the ground around the area close to the office,
 19 the fountain area?
 20 A No, there was not,
 21 Q Was there any reports by the security generated
 22 regarding any injured person, possibly a penis slashed, cut,
 23 anything regarding one of the dumpsters?
 24 A No, there was not-

XIV-173

ROBINSON - DIRECT

1 Q In the parking lot?
 2 A No,
 3 MS, DiGIACOMO: The Court's indulgence.
 4 (Pause in the proceedings)
 5 BY MS, DIGIACOMO:
 6 Q Was there any reports regarding somebody with a
 7 cut-off penis?
 8 A No
 9 Q Actually cut off?
 10 A No, there was not
 11 Q Were there any reports of somebody finding a knife
 12 laying around or a butterfly knife?
 13 A Not that I can remember, no,
 14 Q Okay, If somebody had found a weapon on the
 15 property, would that have been turned in to the office?
 16 A Yes, it would.
 17 MR. SCHIECK: Objection, speculation, Your Honor,
 18 How would he know?
 19 THE COURT: Overruled,
 20 BY MS, DiGIACOMO:
 21 Q That was part of the policies and procedures for
 22 your security?
 23 A That is correct,
 24 MR, SCHIECK: She said if anyone found a knife on

XW-174

ROBINSON - CROSS

1 that kind of thing, was found and the police contacted?
 2 A That's correct,
 3 MS. DIGIACOMO: Nothing further.
 4 THE COURT: Cross.
 5 MR. SCHIECK: May I proceed, Your Honor?
 6 THE COURT: Yes.
 7 **CROSS-EXAMINATION**
 8 BY MR. SCHIECK:
 9 Q Mr. Robinson, just so I'm clear, when did you start
 10 working at Budget Suites?
 11 A In 2002,
 12 Q When in 2002?
 13 A I don't remember the specific month,
 14 Q Can you give us a ballpark?
 15 A It would have been probably mid, maybe a little bit
 16 earlier,
 17 Q So mid-2002 or —
 18 A Or a little bit earlier, yes.
 19 Q Okay, And you indicated that you had reviewed
 20 some accounting reports?
 21 A Correct.
 22 Q Regarding whether or not -- or what type of rentals
 23 were on the property, correct?
 24 A More specifically, the revenue that's collected off of

XIV-176

ROBINSON - DIRECT

1 the property, not if the security found it on the property.
 2 MS, DiGIACOMO: I'll clarify.
 3 BY MS, DiGIACOMO:
 4 Q If the security had found a knife or a butterfly knife,
 5 even more specifically, on the property, would it have been
 6 turned in?
 7 A Yes.
 8 Q You --
 9 A It's a requirement. Yes.
 10 Q Or the other assistant manager?
 11 A That's correct.
 12 MS, DiGIACOMO: The Court's indulgence,
 13 (Pause in the proceedings)
 14 BY MS, DiGIACOMO:
 15 Q If you had -- well, if a security officer had found
 16 blood, bloody clothes, evidence of somebody having a cut
 17 wound, those are things that would be called -- the police
 18 would be called on?
 19 A Yes,
 20 Q Would it indicate in those reports whether or not the
 21 police was contacted?
 22 A Yes, it does.
 23 Q But you didn't have any of those situations either
 24 where blood or evidence of blood or bloody clothes and items,

XIV-175

ROBINSON - CROSS

1 the units.
 2 Q But you do the books for the Budget Suites?
 3 A One of the individuals that does, yes,
 4 Q Okay. So you're an accountant or --
 5 A No, I'm not.
 6 Q -- a bookkeeper?
 7 A I have bookkeeping skills, not a bookkeeper,
 8 Q But did you keep the books for this Budget Suites?
 9 A I was one of the persons that did,
 10 Q Okay, Was that your primary responsibility?
 11 A It was a portion of it but not primary.
 12 Q Okay. Were you, when you started in mid-2002,
 13 were you in charge of the security patrol?
 14 A No, I was not,
 15 Q Did you have supervisory capabilities over them?
 16 A Yes, I did.
 17 Q Did they report directly to you?
 18 A In the absence of the general manager, yes,
 19 Q Okay. Well, when did the general manager work?
 20 A He worked from usually 6:00 in the morning 'til
 21 about 4:00 in the afternoon,
 22 Q And that's after you started there?
 23 A I'm sorry?
 24 Q After you started there in mid-2002?

XIV-177

ROBINSON - CROSS

1 A That's correct.
 2 Q Okay, Who was the general manager in May of
 3 2001?
 4 A I do not know.
 5 Q And you have no idea who it was?
 6 A That's correct.
 7 MS. DiGIACOMO: Objection, asked and answered,
 8 THE WITNESS: I don't remember. I don't know.
 9 THE COURT: Overruled.
 10 BY MR. SCHIECK:
 11 Q So you never had any conversations with him about
 12 what happened in May of 2001?
 13 A With whom?
 14 MS. DiGIACOMO: Objection, hearsay,
 15 THE COURT: Well --
 16 MR. SCHIECK: I didn't ask what the conversations
 17 were. I said did you have any.
 18 THE COURT: I'm gonna sustain the objection. You
 19 may rephrase the question.
 20 BY MR. SCHIECK:
 21 Q Well, did you ever meet the manager that was
 22 working there, the general manager that worked there in May,
 23 2001?
 24 A Not that I can recall.

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ROBINSON - CROSS

1 those was back in 2002 or '03, I believe, This is 2006. So I
 2 can't remember that far back.
 3 Q Okay. You don't remember any of the names of
 4 who the security officers were?
 5 A No.
 6 Q Security patrol?
 7 A No, sir.
 8 Q Was it — when you started there in mid of 2 — mid-
 9 2002, did the security patrol officers at that time live on-site?
 0 A When I was there, yes, they did,
 1 Q So they had their own residence there on-site?
 2 A Yes, sir.
 3 Q Okay. And you said they walked around the
 4 property?
 5 A Yes, they did,
 6 Q Okay. They didn't have motorized vehicles that they
 7 drove and patrolled the property, correct?
 8 A No, They had bicycles for a short period of time.
 9 Q Well, when did they have bicycles?
 0 A It would have been right around the holidays of
 1 December in 2002.
 2 Q 2002?
 3 A That's correct.
 4 Q Okay. You don't know if they had bikes or -- in

XIV-180

ROBINSON - CROSS

1 Q Okay. So if you never met him, you probably didn't
 2 have any conversations with him?
 3 A That's correct.
 4 Q Okay. And in May of 2001, would the security patrol
 5 officers have been under his supervision then?
 6 A If the policy was the same, yes.
 7 Do you even know if the policy was the same?
 8 A As far as supervisory?
 9 Over the security patrol.
 10 A No, I do not.
 11 Okay. So you don't know what the policy was in
 12 May of 2001?
 13 A I was not there. I can't speak to that,
 14 Q And you don't know who the manager was?
 15 A That's correct.
 16 Q Who were the security patrol officers at that time?
 17 A In 2001?
 18 Q Yes.
 19 A I can't speak to that staff,
 20 Q Well, now you indicated that you had reviewed all of
 21 these reports back in May, June and July of 2001.
 22 A That's correct,
 23 Q Their names must have appeared on them.
 24 A Yes, but that was -- well, the last time I reviewed

XIV-179

ROBINSON - CROSS

1 2001?
 2 A I do not know,
 3 So how many security patrol officers were there in
 4 May of 2001?
 5 A In 2001? I do not know,
 6 Q Did they patrol -- well, there could have been one,
 7 there could have been more than one, correct?
 8 A That's correct.
 9 Q Okay. You don't know that information?
 10 A That's correct.
 11 Q Okay. And you don't know what hours the security
 12 patrol officer or officers worked during that period of time, do
 13 you?
 14 A That's correct.
 15 Q Okay,, You don't know if they worked, let's say, the
 16 graveyard shift from 12:00 to 8:00 in the morning. You don't
 17 know if there was a security patrol officer on duty during that
 18 period of time or not in May of 2001?
 19 A That's correct.
 20 Q There may have been only one shift that was
 21 worked during that period of time?
 22 A That's possible.
 23 Q When were you asked to look at these reports and
 24 go back and —

XIV-181

ROBINSON - CROSS

1 A I don't know the date when I was asked,,
 2 Q Okay. Sometime after mid-2002?
 3 A Correct.
 4 Q Or roughly mid-2002?
 5 A Correct.
 6 And you've come to court and testified in a previous
 7 proceeding, correct?
 8 A That is correct,
 9 Q Okay. And if that proceeding was in May of 2002,
 10 that would have been after you started working at Budget
 11 Suites?
 12 A That's correct,
 13 But you had only just recently started. Would that
 14 be fair?
 15 A I think, actually, I was there for just a couple
 16 months before I had to come to court.
 17 Q You're comfortable with that time frame, a couple
 18 months before May of 2002?
 19 A That's correct,
 20 Q And it was during that time period before, in that
 21 few months before May of 2002, you were asked to go back
 22 and look at some reports?
 23 A That's correct,
 24 Q Who asked you to go back and look at those

XIV-182

ROBINSON - CROSS

1 taken?
 2 A No, I do not,
 3 Q You don't know if it was taken in 2001, 2002?
 4 A No, sir,
 5 Q You've seen this aerial photograph before, though, is
 6 that correct, or have you?
 7 A I can't remember.
 8 Q And you indicated, and correct me if I'm wrong,
 9 there was, and I don't -- I can't mark on the screen so I have
 10 to use my pen there. So you're probably gonna have to -- oh,
 11 you can see it,
 12 A I can see fine,
 13 Q Is that -- is that a dumpster area that you were
 14 talking about right there?
 15 A The one that I pointed out, no.
 16 Q Okay, Which one did you point out?
 17 A I believe, if I remember correctly, it is over in this
 18 area here. Right along in here.
 19 Okay. So that, to your recollection, was a dumpster
 20 area?
 21 A That's correct,
 22 Okay. What about this area over here; would that
 23 have been a dumpster area also?
 24 A It does appear to be one.

XIV-184

ROBINSON - CROSS

1 reports?
 2 A I can't remember, actually.
 3 Q Was it the Las Vegas Metropolitan Police
 4 Department?
 5 A I don't remember.
 6 Q Do you recall the police ever being there and asking
 7 you any questions about May of 2001?
 8 A I don't believe there were any.
 9 Q You don't believe any police officers came and
 10 inquired about that time period?
 11 A Not that I can remember, no,
 12 Q Now you were asked some questions concerning
 13 these fountains, where there's a fountain at the front of the
 14 property,
 15 A Yes, sir.
 16 Q Is that correct?
 17 A That's correct,
 18 Q I'm gonna show you what's been marked as State's
 19 269, which is the aerial view of the property, is that correct?
 20 A Yes, sir,
 21 Q Okay. And you indicated that there were some
 22 dumpster areas there on the property?
 23 A Yes, sir.
 24 Q Do you know when this aerial photograph was

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ROBINSON - CROSS

1 Q There's more than one dumpster area there at
 2 Budget Suites?
 3 A Yes, sir,
 4 Q Okay. And from this photograph, this looks like a
 5 number of cars parked in this area near where that dumpster
 6 would be at. Is that fair to say?
 7 A Yes.
 8 Q Okay. And those would be parking for tenants that
 9 were staying there or visitors?
 10 A That's correct.
 11 Q Is there a special area for visitors and special areas
 12 for residents or is it just open parking?
 13 A It is open parking.
 14 Q Okay. So if you pulled in there and were staying
 15 there, you just sort of found a spot where you could find it?
 16 A That's correct,
 17 Q And, likewise, if you were visiting, the same thing?
 18 A That's correct, Other than the parking in the very
 19 front of the office. That was marked for check-in,
 20 Q Okay. And where is -- where is the check-in parking
 21 that would have been reserved?
 22 A That would have been right in this area here.
 23 Q So that's --
 24 A Along there.

XIV-185

ROBINSON - CROSS

1 Q -- got the typical signs that say check-in only or
 2 something like that on them?
 3 A I believe it said "Budget Suites Registration Parking."
 4 Q Okay. And then everything else, like these white
 5 cars over here, that would be open parking?
 6 A That's correct,
 7 Q Okay. And these here, this would be open parking?
 8 A Yes, sir.
 9 Q Okay, And you had some covered parking for the --
 10 for the people that stayed there or visited there, is that
 11 correct?
 12 A That's correct. But it was not assigned.
 13 Q It was not assigned?
 14 A No, sir,
 15 Q Okay. And was there quite a bit of covered parking?
 16 A I would say for that community, yes.
 17 Q Okay. Can you sort of show me where you recall
 18 covered parking being at?
 19 A On this, on this screen, everything you see with the
 20 white covered right there, that's all covered parking.
 21 Q And that's —
 22 A The same thing down for in here.
 23 Q Okay.
 24 A And there,

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ROBINSON - CROSS

A Yes, One is a sidewalk right along this building, and
 2 the other one is a sidewalk that comes right along and loops
 3 back,
 4 Q Okay. So you can get to that fountain-type area
 5 where the — where the cave walkway is at from the -- from
 6 the upper portion of the screen also, is that correct?
 7 A From this side over here, right in that area?
 8 Q Up by where the dumpsters are at. Yeah.
 9 A Yes, you can.
 10 Q There's a walkway that goes through there?
 11 A You would cut across the parking lot and there was
 12 a sidewalk that comes right along in the back of the property
 13 and then into the —
 14 Q So if you -- if you had parked your car over there
 15 where you started your squiggly line, you'd actually be in view
 16 of a dumpster and covered parking and not too far of a walk
 17 to where the fountain's at, correct?
 18 A That's correct.
 19 Q Do you know a Mike Tisdale
 20 A Yes-
 21 Q Who is Mr, Tisdale?
 22 A He was my supervisor.
 23 Q Okay. What — when you started there?
 24 A That's correct.

XN-188

ROBINSON - CROSS

1 Q And that's typical covered parking for the southwest
 2 with sort of the ceilings so you can pull your car underneath
 3 and keep out of the sun?
 4 A That's correct,
 5 Q And those covered parking areas adjoin to where the
 6 dumpsters you've pointed out were at?
 7 A That's correct.
 8 Q Okay. And even though the security patrol might
 9 have changed between 2001 and 2002, is it fair that the
 10 physical layout of the property didn't change during that period
 11 of time, at least to your knowledge?
 12 A Yes.
 13 Q And you talked about this cave area, Okay. Where
 14 is —
 15 A Yes.
 16 Q If you can clear the screen. We've got it all marked
 17 up_ Where is -- where in the cave area?
 18 A It would be right in this area here,
 19 Q Okay. And are there various walkways to get to that
 20 cave area?
 21 A There is, actually, coming from this side of the
 22 property, there are two walkways to get to that cave.
 23 Q Okay, And how -- can you show me the walkways
 24 on there?

XW-187

ROBINSON - CROSS

1 Q Do you know if he was there prior to you?
 2 A He was there prior to me, but I do not know from
 3 beginning.
 4 Q Was he the general manager?
 5 A Yes, he was.
 6 Q When you started?
 7 A Yes.
 8 Q But you don't know how far back he was general
 9 manager?
 10 A That's correct.
 11 He may have been the general manager in May of
 12 2001?
 13 A He could have been, yes.
 14 And you were talking about the office when you
 15 started there was open twenty-four hours a day,
 16 A Yes.
 17 Q And is it your belief that it was open twenty-four
 18 hours a day back in May of 2001 also?
 19 A Yes.
 20 Q Probably just like a desk person, let's say, for the
 21 graveyard shift there'd be a desk person there to answer the
 22 phone and deal with any tenants that came in?
 23 A Would be two night auditors.
 24 Q Night auditors? Is that what —

XIV-189

ROBINSON - CROSS

1 A Yesr
 2 Q they're called?
 3 A Yes.
 4 Q Instead of desk clerk?
 5 A Yeah,
 6 Q Okay. And their job is to stay there at the desk and
 7 take care of the phones and the people that come in and —
 8 A That's correct.
 9 Q Their job is not to go out in the parking lot and do
 10 the security patrol?
 11 A That is correct.
 12 Q They're expected to stay in the office?
 13 A That's correct.
 14 Q And the street that runs just to the side, sort of the
 15 bottom, the little corner of that picture, that's Boulder
 16 Highway?
 17 A Yes,
 18 Q Okay. AO there was foot traffic up and down
 19 Boulder Highway, is that correct?
 20 A On an average basis or —
 21 Q On a regular day,
 22 A Oh, yes,
 23 Q Now I'll put 270 up there. So that shows a longer
 24 portion of the Boulder Highway, correct?

XIV-190

ROBINSON - CROSS

1 A That's correct.
 2 Q And that's another reason why you'd keep the office
 3 open twenty-four hours?
 4 A That's correct.
 5 Q Was to deal with your residents that have different
 6 schedules than just typical 8:00 to 5:00?
 7 A That's correct.
 8 Q Did you have problems with people loitering on the -
 9 property or hanging around in the front there, back and forth
 10 to Sam's — excuse me, to the casino?
 11 A I had a few occurrences while I was there.
 12 Q It wasn't unusual?
 13 A No, I don't think it was.
 14 Q Did you ever have to call the police or --
 15 A Yes.
 16 Q So there were occasions when the police were called
 17 out to the property while you were working there?
 18 A Yes.
 19 Q Okay. Would they have made it into the logbooks of
 20 the security patrol because you called or would they not be in
 21 the logbooks?
 22 A If security was on duty, it would in their logbooks.
 23 If not, I would have put it into my calendar.
 24 Q And if a residence called -- a resident called, that

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ROBINSON - CROSS

1 A Yes,
 2 Q And the Boulder Highway is a divided highway at
 3 that point?
 4 A Yes.
 5 Q Okay. But there are sidewalks that walk right along
 6 the Boulder Highway?
 7 A Yes,
 8 Q And where is Sam's Town in connection with this
 9 photograph? We were -- if we were going to Sam's Town,
 10 where would we go from the office?
 11 A You would take Boulder Highway that direction.
 12 Q Okay. And about how far?
 13 A I believe it was just on the other side of Flamingo
 14 Boulevard, which ran down in this way.
 15 Q Okay, So not too far?
 16 A No.
 17 Q And the individuals that you had that stayed there
 18 for the monthly or weekly rentals, would it be fair to say that
 19 some of them were casino employees that worked different
 20 shifts?
 21 A Yes.
 22 Okay, So you would have people living there that
 23 some worked graveyard, some worked swing, some worked
 24 day, that would be coming and going at all hours of the day?

XIV-191

ROBINSON - CROSS

1 wouldn't be in your logbook, correct?
 2 A No, it would not.
 3 Q It wouldn't be in the security patrol unless they
 4 responded also?
 5 A That's correct.
 6 Q And it's easy to walk from the parking areas on to
 7 Boulder Highway and leave the area. I mean, there's not a
 8 fence to jump over or anything like that, is that correct?
 9 A That is correct,
 10 MR. SCHIECK: I'm just about done, Your Honor, I
 11 know we're running just a little long.
 12 THE COURT: Yes, we are,
 13 (Pause in the proceedings)
 14 BY MR, SCHIECK:
 15 Q While they're looking at those photographs, did you
 16 when you were going through your search find that there were
 17 days where logs were not entered for the security patrol back
 18 in May of 2001?
 19 A Did I find days missing? No, I did not.
 20 Q Okay. No days missing?
 21 A No.
 22 Q Were there days when there were no reports at all?
 23 A Not for that period of time, no.
 24 MR. SCHIECK: May I approach the witness, Your

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ROBINSON - CROSS

Honor?
 2 THE COURT: Yes.
 3 BY MR, SCHIECK:
 4 Q I'm gonna show you some exhibits that have been
 5 marked for identification and just ask if you can recognize --
 6 ask you first if you recognize them and then what they depict.
 7 Do you recognize Defendant's Exhibit Y?
 8 A Yes.
 9 Q And what is that?
 10 A That is the Budget Suites on Nellis and Flamingo.
 11 Q Okay. And is the Sam's Town sign also —
 12 A Yes, it is.
 13 Q Okay. So that would demonstrate the distance
 14 between the Budget Suites and Sam's Town?
 15 A Yes.
 16 THE COURT: Is it Proposed Y?
 17 MR, SCHIECK: Yes, Your Honor. I'm sorry,
 18 THE COVRT: Thank you.
 19 MR. SCHIECK: Proposed Y. And I'd move to admit
 20 Y, Your Honor.
 21 MS. DiGIACOMO: No objection.
 22 THE COURT: Granted.
 23 MS, DiGIACOMO: And just for the record to speed
 24 this up, no objection to any of the photographs he showed us.

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ROBINSON - CROSS

1 MR. SCHIECK: Thank you, counsel,
 2 So I'd move in that case, Your Honor, for the
 3 admission of not only Y, but X, W, V and U. I should probably
 4 go the other way, U, V, W and X,
 5 THE COURT: U, V, W, X and Y are all admitted.
 6 (Defendant's Exhibits U, V, W, X and Y admitted)
 7 MR, SCHIECK: Thank you, Your Honor.
 8 BY MR. SCHIECK:
 9 Q Canyou clear the -- thank you. So that's the Budget
 10 Suites on the Boulder Highway we've been talking about?
 11 A Yes, sir.
 12 Q And we can barely see in the background the Sam's
 13 Town sign?
 14 A Yes, That's correct.
 15 Q And do you recognize U?
 16 A Yes. That is the back of the office and the fountain,
 17 tunnel area,
 18 Q And when you say the back of the office and the
 19 fountain, can you — where would that be?
 20 A It'd be back in this area here,
 21 Q So you've circled -- and so that's what's depicted in
 22 the smaller photograph?
 23 A That's correct.
 24 Q And I was showing you 269. So you can see the

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1013INSON - CROSS

1 fountain area in Defendant's Exhibit U?
 2 A Yes.
 3 Defendant's Exhibit V, what is that?
 4 A That is the fountain with the tunnel going through it.
 5 Say I'm sorry, I didn't hear you,
 6 A That's the fountain.
 7 Okay.
 8 A And it has the tunnel through it.
 9 And that's at the Budget Suites we've been talking
 10 about?
 11 A Yes, sir,
 12 Exhibit W?
 13 A Yes, I do.
 14 Do you recognize that?
 15 A Yes, I do,
 16 And what is that?
 17 A It's one of the trash enclosures on the property.
 18 And with a couple of dumpsters in there?
 19 A I see two.
 20 And there's no covering over that enclosure?
 21 A That's correct.
 22 And Exhibit X, do you recognize that?
 23 A Yes,
 24 And what is that?

XIV-196

ROBINSON - REDIRECT

1 A That is a view into the property just left of the office
 2 building.
 3 Q And going back here?
 4 A Actually --
 5 Q Where is that view at?
 6 A It'd be back over looking that way.
 7 MR., SCHIECK: Okay, Thank you, That's all the
 8 questions I have, Your Honor,
 9 THE COURT: Redirect,
 10 MS. DiGIACOMO: Yes, Your Honor,
 11 (Pause in the proceedings)
 12 REDIRECT EXAMINATION
 13 BY MS. DiGIACOMO:
 14 Q All right, Defense counsel asked you when you
 15 started and you said mid-2002. Now you did testify at a
 16 previous hearing in May, 2002. Do you recall that?
 17 A Yes.
 18 Q And do you recall testifying approximately when you
 19 started in relation to when you testified in May, 2002?
 20 A I believe they asked me, yes.
 21 Q Okay. If I was to show you a copy of your
 22 transcript, would that -- would that refresh your recollection as
 23 to approximately how long you had worked there?
 24 A Yes.

XIV-197

ROBINSON - REDIREG

1 MS, DiGIACOMO: All right. May I approach, Your
 2 Honor?
 3 THE COURT: You may,
 4 MS, DiGIACOMO: It's page 54, counsel.
 5 BY MS, DiGIACOMO:
 6 Q I am going to show you page 54, third question
 7 down. If you can read that to yourself and let me know when
 8 you're done.
 9 A Okay.
 10 Q Okay, After reading this, does that refresh your
 11 recollection as to how long you had worked there when you
 12 testified in May, 2002?
 13 A Yes.
 14 Q And how long was that?
 15 A Three months,
 16 Q All right, So you probably started approximately
 17 February, 2002?
 18 A That is, correct.
 19 Q Not mid-2002?
 20 A That's correct,
 21 Q And you, therefore, reviewed the documents and the
 22 reports you were asked to review from 2001 before you
 23 testified in May, 2002?
 24 A That's correct.

xiV-198

MINSON - REDIRECT

1 MS. DiGIACOMO: All right. May I approach, Your
 2 Honor?
 3 THE COURT: You may.
 4 MS. DiGIACOMO: This is page 51, counsel.
 5 BY MS. DiGIACOMO:
 6 Q If you could look at your first answer on page 51
 7 and let me know when you're done.
 8 A Yes,,
 9 Q Does that refresh your recollection?
 10 A Yes,
 11 Q Okay. What were the security hours or shifts that
 12 were assigned?
 13 A There was -- there was two shifts. And on Fridays
 14 and Saturdays they had three shifts,
 15 Q All right, So what were the two shifts during the
 16 work -- the work week, not Friday, Saturday?
 17 A They had a 5:00 to 11:00, I believe, was one of
 18 them, And I'd have to see that again.
 19 MS. DiGIACOMO: May I approach, Your Honor?
 20 THE COURT: Yes,
 21 THE WITNESS: That is correct,
 22 BY MS. DiGIACOMO:
 23 Q Okay, Does that refresh your memory?
 24 A Yes.

XIV-200

ROBINSON - REDIRECT

1 Q Now you stated you didn't work there in May, June
 2 or July, 2001 and you're not sure what their policy was, But
 3 when you came in and you worked for them in 2002, it was
 4 the policy that you were basically the keeper of all the security
 5 reports?
 6 A That's correct.
 7 Q When you moved into your office, were they already
 8 there for you?
 9 A Yes.
 10 Q Okay, So can you presume that the person who had
 11 your job before you also did that?
 12 A Yes,
 13 Q And you stated that there was security twenty-four
 14 hours on the property?
 15 A No, The office was open twenty-four hours,
 16 Q Okay, And were there security shifts spread out
 17 over the twenty-four-hour period?
 18 A If I remember correctly, they came in early evening
 19 and then went through, I believe it was, either 6:00 or 7:00
 20 the following morning.
 21 Q Do you recall testifying to the hours in May, 2002?
 22 A I was asked questions about it.
 23 Q Okay, Would that refresh your recollection to look?
 24 A Yes.

XIV-199

ROBINSON - REDIRECT

1 Q Okay. What were the two shifts?
 2 A It was 5:00 to 11:00 and then 11:00 to 7:00,
 3 Q Okay. 5:00 to 11:00?
 4 A Mm-hmm.
 5 MS. DiGIACOMO: May I approach again?
 6 THE COURT: Yes.
 7 MS, DIGIACOMO: Thank you.
 8 BY MS, DIGIACOMO:
 9 Q I'm gonna show you that one last time. You said
 10 5:00 to 11:00 in the —
 11 A I'm sorry. 5:00 to 1:00.
 12 Q 5:00 --
 13 A It was 5:00 to 1:00. Yes,
 14 Q Okay, So 5:00 a.m.. to -- or, excuse me, 5:00 p.m..
 15 to 1:00 a.m. and 11:00 p.m, to 7:00 a.m.
 16 A Yes, because they had to have a couple hours
 17 overlap time. That's right,
 18 Q All right, And so then you also said you had
 19 additional shifts on Friday and Saturday nights?
 20 A I believe it was Friday and Saturday.
 21 Q So do you recall when that shift was? It overlapped
 22 the other two?
 23 A It did, yes,
 24 Q Okay. When you reviewed the reports back from

XIV-201

ROBINSON - REDIREE

1 May, 2001, June and July, 2001, the report logs that you
 2 looked at for the security officers, did those hours that they
 3 logged correspond to the hours that the security worked while
 4 you were there?
 5 A For the most part, yes.
 6 Q Now you talked about -- and I'm gonna show you
 7 State's 269, Look at this. You talked about that in front of the
 8 office there was some parking that was reserved for
 registration?
 10 A Yes, ma'am.
 11 Q Okay. Which parking spots would those have been?
 12 A It would be all the front ones right in front of the
 13 office.
 14 Q Okay, And there's also some parking over here.
 15 And I believe that's depicted in Defense Exhibit U. Is that
 16 correct?
 17 A Is that correct?
 18 Q Are these,— what's depicted in Defense Exhibit U,
 19 are those these spots here —
 20 A That's correct.
 21 Q -- right here in front of the cave?
 22 A That's correct,
 23 Q Okay. And Defense Exhibit U, these spots don't
 24 have a restricted sign in front of them, does it?

XIV-202

OBINSON - REDIRECT

1 A Yes. That's correct. And the fountain would have
 2 been right there,
 3 Q Okay. So it's closer to the parking lot of the
 4 Walgreens?
 5 A Yes, ma'am,,
 6 Q Okay, And there's no covered parking around there
 7 like we see up at the top of the screen?
 8 A That's correct,
 9 Q All right. And is there a dumpster around there?
 10 A I don't see what appears to be a dumpster in that
 11 area,
 12 Q Okay. Now defense counsel showed you Defense
 13 Exhibit W. And this is a trash bin or —
 14 A Yes, ma'am,
 15 Q a trash dumpster enclosed area?
 16 A Yes.
 17 Q And this, it looks like it's just cement walls on one
 18 side and then the back wall is actually the fenced line of the
 19 property, is that correct?
 20 A That is the fence line to the property next to us, yes.
 21 Q Okay. And is it chainlink fences that enclose it, well,
 22 if you shut those gates?
 23 A Yes.
 24 Q This dumpster in W, where would it be on State's

XN-204

ROBINSON - REDIRECT

1 A That's correct,
 2 Q Okay, So it was just the ones right in front of the
 3 office that were reserved for registration?
 4 A Yes, ma'am.
 5 Q Did tenants sometimes park in those spots even
 6 though they were reserved?
 7 A It happened a couple times, yes.
 8 Q I'm showing you State's Exhibit 270. And you -- this
 9 is showing thq entire property. Was there only one office for
 10 this property?
 11 A Yes, ma'am.
 12 Q And how many fountains were there?
 13 A There are actually two but one was not working,
 14 Q Okay.
 15 A We didn't have one of them on.
 16 Q All right, So there's one next to the office?
 17 A Yes, ma'am,
 18 Q Okay, Where would the other one have been on the
 19 property even though it wasn't working?
 20 A I would actually need you to move the picture up a
 21 little bit,
 22 Q Up.
 23 A There we go. I believe this is a drugstore right here.
 24 Q The Wa!greens?

XIV-203

ROBINSON - REDIRECT

1 269?
 2 A Can you zoom out?
 3 Oh, zoom out. Sorry.
 4 A A little. Oh, let's see. It would -- I can't tell you
 5 which specific —
 6 Q Okay,
 7 A -- dumpster location, but it would have to be along
 8 this wall.
 9 Q Okay, But and you can recognize that from the
 10 neighboring — what you see over the wall in State's —
 11 A Correct. That's Boulder --
 12 Q Or, excuse me, Defense W?
 13 A Correct. That's Boulder Manor next door.
 14 Okay. And that's what was located directly north?
 15 That would be north, Correct.
 16 Okay. Now when you are -- let me zoom in just a
 17 little bit. Defense counsel was asking you all the different
 18 ways that you can get to this fountain area right here,
 19 A Yes, ma'am.
 20 Q Okay. And there's a parking lot over here and
 21 there's a dumpster there?
 22 A Yes, ma'am,
 23 Q Okay, If you are over here kind of by this parking
 24 area, and I see a lot of trees here, can you see from when

XIV-205

ROBINSON - REDIREO

1 you're standing here and you can see the fountain, can you
 2 also see that dumpster or is it obstructed?
 3 A I believe you could see it.
 4 Q Okay, And how far would this dumpster area be
 5 from where the fountain is?
 6 A Maybe somewhere between 55, 65 feet.
 7 Q Okay.
 8 A 70 feet.
 9 Q Now you said from the office here to Boulder
 10 Highway it was about 100 to 125 feet?
 11 A Mm-hmm,
 12 Q Are you saying this here is a shorter distance?
 13 A It doesn't look that way on the picture. But my
 recollection is it was a shorter distance.
 15 MS DiGIACOMO: Okay. The Court's indulgence.
 16 (Pause in the proceedings)
 17 BY MS. DiGIACOMO:
 18 Q I'm gonna, show you State's Exhibit -- or, excuse me,
 19 Defense Exhibit V. And that is what?
 20 A That is the fountain feature on the front and the
 21 tunnel and walkway that goes through it,
 22 Q Okay, And where, specifically, is the fountain
 23 feature?
 24 A It would be on the opposite side of it.

XIV-206

OBINSON - RE CROSS

1 THE COURT: Recross,
 2 MR, SCHIECK: Just a couple, Your Honor.
 3 THE COURT: Okay,
 4 **RE CROSS EXAMINATION**
 5 BY MR. SCHIECK:
 6 Q You talked about the front, the reserved parking
 7 area?
 8 A Yes, sir.
 9 Q Can you get to the tunnel area directly from the
 0 front reserved parking?
 A You would have to go down a sidewalk but, yes, you
 12 could,
 13 Q It's a straight shot?
 14 A To actually get in the tunnel, no, you would have to
 15 kind of head a little towards the office and then down the
 16 sidewalk.
 17 Q And you're aware of whether or not Mr. Tisdale ever
 18 reviewed the report's for May of 2001?
 19 A I seem to remember he -- I believe he did.
 20 Q You're aware that he found —
 21 MS. DiGIACOMO: Objection, Your Honor, hearsay.
 22 BY MR, SCHIECK:
 23 Q Would you be surprised to learn that there were --
 24 THE COURT: Withdrawn.

XN-208

ROBINSON - REDIRECT

1 Q Okay. So this water here that's on —
 2 A Yeah,
 3 Q -- the fountain picture?
 4 A Well, no. It comes from there and then also on the
 5 other side of that rock right there. It'll fall down a little bit.
 6 Q And you can see this walk. There's the path that
 7 leads through here, Is that kind of like the cave you were
 talking about before?
 9 A Yes,,ma'am,
 10 Q When you're standing inside this, I don't know if you
 11 can see it, I'm gonna lighten it, okay, when you're standing in
 12 this area here when you're kind of inside the cave area, is it
 13 completely enclosed over your head?
 14 A Yes, it is.
 15 Q Okay. So you couldn't see up into the sky or
 16 anything else?
 17 A That's correct,
 18 Q And when you're standing in here, could you see
 19 that dumpster area or that parking lot that we were talking
 20 about that's -- I'm showing you now, 270, that over in this
 21 area? Oops Excuse me, This area.
 22 A I don't believe if you're inside that tunnel you can
 23 see back that directionr
 24 MS. DiGIACOMO: Nothing further.

XIV-207

ROBINSON - RE CROSS

1 BY MR. SCHIECK:
 2 Q reports missing?
 3 A From him?
 4 MS. DiGIACOMO: Objection, Your Honor, it's vague
 5 and ambiguous.
 6 BY MR, SCHIECK:
 7 Q Would you be surprised --
 8 THE COURT: Overruled.
 9 MR. SCHIECK: I'm sorry, Your Honor, Go ahead.
 10 I'll rephrase.
 11 BY MR. SCHIECK:
 12 Q So you were aware that he had reviewed reports?
 13 A If I remember correctly, yes.
 14 Q Okay, And do you know whether or not he found
 15 any reports missing?
 16 A I don't recall,
 17 Q Do you recall whether or not you testified to that at
 18 your previous proceeding?
 19 A I believe I was asked questions about Mr. Tisdale.
 20 Q Do you recall what your answer was?
 21 A No, I do not.
 22 MR, SCHIECK: May I approach, Your Honor?
 23 MS. DiGIACOMO: Your Honor, I'm gonna object
 24 because the questions posed before were based on hearsay.

XIV-209

ROBINSON - RECROSS!

1 THE COURT: Counsel, approach.
 2 (Off-record bench conference at 17:42:17 until 17:43:46)
 3 THE COURT: Counsel is gonna lay further
 4 foundation.
 5 BY MR. SCHIECK:
 6 Q Were you present when Mr. Tisdale reviewed the
 7 reports from May of 2001?
 8 A Present with him while he did it?
 9 Q Yes,
 10 A I don't believe so, no.
 11 Q Okay. You were work — were you working there
 12 when he reviewed the reports?
 13 A I believe I would have been, yes,
 14 Q And you weren't present because he was doing it in
 15 a different room or do you recall?
 16 A I can't recall, no.
 17 Q But you were aware that he had reviewed the
 18 reports?
 19 A I believe at some time I was. I don't remember if it
 20 was the same day that he did it. I don't know.
 21 Q And how did you become aware that he had
 22 reviewed the reports?
 23 A I don't really remember,
 24 Q Could you -- could you have seen him reviewing the

XIV-210

ROBINSON - RECROSS

1 reports?
 2 A I don't -- I don't believe so.
 3 Q Do you recall anybody coming in to the office? I
 4 mean, these are kept in the office, correct?
 5 A That's correct. Yes,
 6 Q Do you recall anyone coming in the office and asking
 7 him to review the reports?
 8 A I really can't remember.
 9 Q Wa5 this previous to when you reviewed the
 10 reports?
 11 A It would have been previous, yes.
 12 Q So he'd reviewed the reports before you reviewed
 13 the reports?
 14 A If I remember correctly, yes.
 15 Q And were you aware of any missing reports?
 16 A Not that I can remember, no
 17 Q Were you aware of whether or not he found any
 18 missing reports?
 19 MS, DiGIACOMO: Objection, Your Honor,
 20 foundation.
 21 THE COURT: Sustained.
 22 MR. SCHIECK: Nothing further, Your Honor.
 23 THE COURT: Redirect.
 24 MS. DIGIACOMO: No. Nothing.

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1 THE COURT: You may step down.
 2 THE WITNESS: Thank you.,
 3 THE COURT: Thank you for remaining a little bit
 4 over the time we thought we would recess today.
 5 Ladies and gentlemen, we'll be taking our evening
 6 recess and resuming at 1:00 o'clock tomorrow.
 7 During this recess you're admonished not to talk or
 8 converse among yourselves, nor with anyone else, on any
 9 subject connected with this trial, and you're not to read, watch
 0 or listen to any report of or commentary on the trial or any
 1 person connected with the trial, by any medium of information,
 2 including, without limitation, newspaper, television, radio and
 3 Internet, and you're not to form or express any opinion on any
 4 subject connected with the trial until the case is finally
 5 submitted to you.
 6 You all have a good evening. We'll see you at 1:00
 7 o'clock tomorrow.
 8 (Jurors recessed at 17:46:07)
 9 THE COURT: The record shall reflect that the jury
 0 has exited.
 1 Well, that ten-minute examination was three
 2 minutes short of an hour.
 3 MR. SCHIECK: Is the State intending to rest so we
 4 need to have all of our witnesses here beginning tomorrow or

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1 do we need not to have everybody here?
 2 THE COURT: The State had previously advised that
 3 Detective Thowsen would be the last witness and then at some
 4 point --
 5 MS. DiGIACOMO: During cross-examination,
 6 THE COURT: -- advised that they were gonna have
 7 one additional witness to follow him, which the State has now
 8 called.
 9 MS. DiGIACOMO: We —
 10 THE COURT: Are you -- you're conferring so it
 11 appears that you're considering calling another witness.
 12 MS, DIGIACOMO: We believe we're gonna rest.
 13 MR. KEPHART: But we're conferring.
 14 MS, DIGIACOMO: We're conferring., But, yes, we do
 15 believe that we're gonna — we are gonna rest.
 16 MR, KEPHART: Judge, I would advise the defense
 17 that they need to have their witnesses present for tomorrow.
 18 We do -- I do want to check and make sure that all the
 19 evidence is
 20 -- that we have marked, that we intend to admit during our
 21 case in chief. There are some other ones and I will be putting
 22 on some rebuttal that 191 have to do later, But the -- at this
 23 point in time, I anticipate that we would be resting and I don't
 24 believe that we'll be presenting any other evidence. But we

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1 want to — we want to talk about that tonight when we leave.,
 2 MS. DiGIACOMO: And, Your Honor —
 3 THE COURT: Can you come in about 11:30
 4 tomorrow and meet with the clerk to go through the evidence?
 5 MR. KEPHART: Sure.
 6 MS. DiGIACOMO: And I just have one question
 7 'cause we didn't remember. The defense had agreed that we
 8 wouldn't have to call the custodian of records from Caliente for
 9 the medical records, and they're admitted, but I can't
 10 remember, I don't think that we did it in front of the jury, So
 11 we might need to make a record on that unless somebody
 12 remembers. I don't recall doing it in front of the jury.
 13 MR. KEPHART: We didn't.
 14 MS. DIGIACOMO: So that would be one thing. We'd
 15 just need to make a record of it when they come back in.
 16 MR, SCHIECK: We'd probably want, the first thing
 17 in our case, to read Mr. Bodziak's report to the jury as
 18 stipulated,
 19 MS, DiGIACOMO: That's fine,
 20 MR. KEPHART: That's fine, Judge.
 21 MS. DiGIACOMO: As long as the two questioned
 22 documents, Q-1 and Q-2, is admitted by -- and that's fine. So
 23 the jury's clear on what he examined,
 24 MR, SCHIECK: Well, Your Honor, we had entered

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1 issue with that.
 2 THE COURT: I understood Mr. Schieck to say he
 3 doesn't have any problem with having them admitted. So I
 4 don't see -- I don't see that there is an issue that needs to be
 5 argued here.
 6 Well see everybody at 1:00 o'clock.
 7 Court Adjourned at 17:50:33 until the following day,
 8 September 29, 2006
 9 *****

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1 into a stipulation before this case ever started that we would
 2 read the report in. They're now putting conditions on that
 3 stipulation. I've showed them the photographs. We can mark
 4 the photographs and put them into evidence if they want to.
 5 But we had stipulated way before we started trial that there
 6 wouldn't be a problem with Bodziak's report, And if it's gonna
 7 be a problem, then we'll get him on a plane and fly him out
 8 here.
 9 MS.ADiGIACOMO: No, its not a problem, Your
 10 Honor. We're just -- in his report, he references what he
 11 looked at was Q-1 and Q-2. We'd just like it clear for the
 12 record he has the exhibits. That's fine, Just admit them as
 13 what was viewed.
 14 MR. SCHIECK: Well, that wasn't what was done
 15 before that you agreed we would do in this case, that we
 16 would do the same thing that was done before. There was
 17 never any discussion of the photographs until in the middle of
 18 the trial. Suddenly, now you want to know what Q-1 and Q-2
 19 are.
 20 MS. DIGIACOMO: Well, I'm sorry,
 21 MR. SCHIECK: And we showed them to you.
 22 MS. DiGIACOMO: Your Honor, there's nothing more
 23 that we're asking for with this stipulation. I mean, if he
 24 doesn't want to admit it and confuse the jury, then we have an

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AFFIRMATION
 Pursuant to NRS 2396,030

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,

Lin Dunbar
 Transcriber

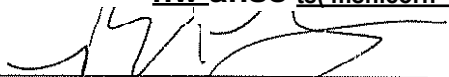
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CERTIFICATION

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

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