

COPY

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

'n7

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 15  
VOLUME XV**

**FRIDAY, SEPTEMBER 29, 2006**

**COURT RECORDER:**

**LISA LIZOTTE  
District Court**

**TRANSCRIPTION BY:**

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XV-2

1 LAS VEGAS, NEVADA FRIDAY, SEPTEMBER 29, 2006 □

2 **PROCEEDINGS**

3 (THE PROCEEDINGS BEGAN AT 1:08:03 P.M. □

4 (Jurors are present)

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

7 THE COURT: Good afternoon, everyone.

8 The record shall reflect that we're resuming trial in -  
9 State versus Kirstin Blaise Lobato under case number  
10 C177394, in the presence of the defendant, together with  
11 three counsel, that the two prosecuting attorneys and ladies  
12 and gentlemen of the jury.

13 We are proceeding forward with the State's case in  
14 chief.

15 MS, DiGIACOMO: Your Honor, at this time we are  
16 gonna rest, however, we wanted to make a record in front of  
17 the jury. Exhibit 133 are certified medical records of the  
18 defendant from July 5<sup>th</sup>, 2001, as well as July 13<sup>th</sup>, 2001. It  
19 was stipulated by defense counsel that they would not make  
20 us bring in the custodian of records and they would agree that  
21 it's certified records of her -- from her medical records. And so  
22 in front of the jury with that, we'll rest.

23 **STATE RESTS**

24 THE COURT: So 133 is stipulated admitted?

XV-4

INDEX

NAME	DIRECT	CROSS	REDIRECT	RECROSS
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STATE'S WITNESSES

Jo Wuori	6	14	20/29	26
Phil Boucher	29	42	45/48	47
Kevin Manning	49	54		
Shelley Pierce-Stauffer	57	66	79	80
Shayne Kraft	82	95	104	108
John Kraft	114	126		

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EXHIBITS

DESCRIPTION:	ADM	ED
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STATE'S EXHIBITS

133		5
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DEFENDANT'S EXHIBITS:

HH DD, QQQQ, RRRR, 5555,		94 137
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XV-3

1 MR KEPHART: Correct, Your Honor,,

2 THE COURT: Very well.

3 (State's Exhibit 133, by stipulation, admitted)

4 THE COURT: And the State has rested its case in  
5 chief.

6 The case now turns over to defendant's counsel,  
7 Ms. Greenberger?

8 MS, GREENBERGER: May we call our next witness?

9 THE COURT: Yes, you may.

10 MS. GREENBERGER: Thank you.

11 (Pause in the proceedings)

12 THE CLERK: Please come all the way forward.

13 Remain standing and raise your right hand,

**30 WUORI, DEFENDANT'S WITNESS, SWORN**

15 THE CLERK: Please be seated, State your name  
16 and spell it for the record, please,

17 THE WITNESS: My name is Jo Wuori, 3-0 W-u-o-r-I.

18 THE COURT: Would you spell your last name again,  
19 please,

20 THE WITNESS: W-u-o-r-I,

21 THE COURT: Thank you.

22 You may proceed.

23 MS. GREENBERGER: Thank you, Your Honor.

24

XV-5

WUORI - DIRECT

DIRECT EXAMINATION

2 BY MS. GREENBERGER:

3 Q Good afternoon, Where do you live?

4 A Elko, Nevada,

5 Q How long have you lived there?

6 A Five years,

7 Q Where did you live before you lived in Elko?

8 A Panaca, Nevada,

9 Q How long did you live there?

10 A Approximately five years.

11 Q Were you living in Panaca, Nevada in 2001?

12 A Yes.

13 Q Do you know —

MR, KEPHART: Excuse me, ma'am, Could we

15 approach the bench?

16 THE COURT: Yes.

17 MR, KEPHART: Sorry.

18 (Off-record Bench Conference)

19 BY MS. GREENBERGER:

20 Q Did you recently get married?

21 A Yes.

22 Q And what was your name prior to getting married?

23 A Jo Dennertr

24 COURT RECORDER: Can you spell Dennert, please,

xv-6

WUORI - DIRECT

1 Lobato residence?

2 A Blaise, Ashley, Becky and Larry,

3 Q Did you live — was your house directly next door to

4 them?

5 A Yes.

6 Who were the neighbors on the other side of them,

7 if you know?

8 A Bob and Wanda McCroskey.

9 Q Taking you back to the year of 2001, I know its

10 been some time. Do you remember seeing Kirstin Blaise

11 Lobato in the summer of 2001?

12 A Yes.

13 Q Do you remember what time period you saw her?

14 A July.

15 Q Do you remember what date specifically?

16 A July 8th.

17 Q How do you remember that date?

18 A A very good friend of mine, it was his birthday,

19 Q What is your friend's name?

20 A Dale Towery [phonetic].

21 Q His birthday is exactly July 8th?

22 A Yes.

23 Q Do you remember when you saw Blaise on July 8th?

24 A During the afternoon, early afternoon.

XV-8

WUORI - DIRECT

1 THE WITNESS: D-e-n-n-e-r-t.

2 BY MS. GREENBERGER:

3 Q Do you know Kirstin Blaise Lobato?

4 A Yes.

5 Q Do you see her here today?

6 A Yes.

7 Q Can you identify what she's wearing for the record.

8 A Well, white and black shirt, dress-

9 MS, GREENBERGER: The record should reflect she's

10 identified Ms, Lobato,

11 BY MS. GREENBERGER:

12 Q How do you know Kirstin Lobato?

13 THE COURT: The record shall so reflect.

14 THE WITNESS: Lived next door to her.

15 BY MS, GREENBERGER:

16 Q Did you live next door to her for a long time?

17 A No. About a year,

18 Q Who -- or what street did you live on?

19 A Callaway Street.

20 Q Did her family live there also?

21 A Yes.

22 Q Did you know her family?

23 A Yes,

24 Q Who lived at the residence in Panaca -- in the

XV-7

WUORI - DIRECT

1 Q Can you tell us what you were doing that day?

2 A It -- I was doing dishes, chores, catching up on

3 things.

4 Q And prior to July 8<sup>th</sup> do you recall seeing Blaise

5 around or is this what sticks out distinctly in your mind?

6 A It's what sticks out in my mind\_

7 Q Do you know if she had been around that year?

8 Had she gone down to Vegas, do you have any knowledge of

9 that?

10 A [No audible response].

11 Q You just remember the day of July 8" specifically?

12 A Yes.

13 Q So what -- tell us what time you saw her

14 approximately and what you were doing when you saw her?

15 A Between 11:00 and 1:00 and I was washing dishes

16 in my kitchen.

17 Q Do you have a window in your kitchen?

18 A Yes.

19 MS, GREENBERGER: May I approach, Your Honor,

20 THE COURT: You may\_

21 BY MS, GREENBERGER:

22 Q Does the window face outside of the house directly

23 onto the street?

24 A Yes,

XV-9

WUORI - DIRECT r

1 Q I'm gonna show you an exhibit we've marked 33,  
 2 and have you step off the stand to initial the date and time  
 3 that you last saw her -- or first saw her.  
 4 A (Witness complies).  
 5 Q You may resume your seat. You were in your  
 6 kitchen washing dishes, tell us what you recall seeing?  
 7 A I recall seeing Blaise on a 4-wheeler, she was in the  
 8 street and had done like donut in front of my house on the  
 9 street and whipped it back around.  
 10 Q Is the street a dirt — was it a dirt road at the time?  
 11 A No, it's paved.  
 12 Q Do you -- an ATV is a 4-wheeler?  
 13 A Mm-hmm, Yes  
 14 Q Was she on it alone?  
 15 A Yes.  
 16 Q Do you recall what she was wearing?  
 17 A A black tank top type shirt, a woman's shirt and  
 18 Levi shorts.  
 19 Q Did you have a clear vantage point out of your  
 20 window at her on the vehicle?  
 21 A Yes.  
 22 You know for certain it was her?  
 23 A Yes,  
 24 You saw her do a donut, you described?

XV-10

WUORI - DIRECT

1 BY MS. GREENBERGER:  
 2 Q You mentioned it was your friend Dale Towery's  
 3 birthday, do you remember doing anything because of that?  
 4 A Emailing him.  
 5 Q Do you remember having -- strike that. Is the  
 6 reason why you recall seeing Blaise that day because it was  
 7 Dale Towery's birthday?  
 8 MS. DiGIACOMO: Objection. Leading.  
 9 THE COURT: Sustained.  
 10 BY MS. GREENBERGER:  
 11 Q Why do you -- why do you recall specifically that it  
 12 was July 8th?  
 13 MS. DiGIACOMO: Objection, Asked and answered,  
 14 THE COURT: Sustained.  
 15 BY MS. GREENBERGER:  
 16 Q Who is Dale Towery?  
 17 A He was a very good friend of mine that I had a four  
 18 year relationship with  
 19 Q Is he an ex-Lincoln County Sheriff?  
 20 A Yes.  
 21 MS. DiGIACOMO: Objection, leading.  
 22 THE COURT: Sustained.  
 23 MS. DIGIACOMO: I move to strike.  
 24 THE COURT: Motion granted,

XV-12

WUORI - DIRECT

1 A Yes.  
 2 Q Did you see anybody else around?  
 3 A I believe I saw one male, tall male, but I don't  
 4 specifically know who it was.  
 5 Q Do you know if his name was Chris Carrington?  
 6 MS. DiGIACOMO: Objection, leading.  
 7 THE COURT: Sustained.  
 8 BY MS. GREENBERGER:  
 9 Q Could you describe him?  
 10 A Tall, skinny, kinda blondish hair. But it was just for  
 11 an instant.  
 12 Q Approximate age?  
 13 A Teenager.  
 14 Q Had you --  
 15 A 18, 19, maybe.  
 16 Q Had you seen him around the residence before?  
 17 A Not sure,  
 18 Q How do you recall that it was exactly that date and  
 19 time that you saw her?  
 20 MS. DiGIACOMO: Objection, compound.  
 21 BY MS GREENBERGER:  
 22 Q You mentioned it —  
 23 THE COURT: Sustained,  
 24 ///

W-11

WUORI - DIRECT

1 BY MS, GREENBERGER:  
 2 How long of a time period did you see Blaise on that  
 3 day?  
 4 A Maybe 20 minutes.  
 5 Q What was she doing during those 20 minutes?  
 6 A Riding the 4 -- she did the donut and then kinda  
 7 jumped off and laughed and got back on it  
 8 Q Did you ever see her after that date, that you recall?  
 9 A No  
 10 Q Do you recall seeing her vehicle parked in front of  
 11 her residence?  
 12 A No,  
 13 Q Did there come a time, after July 8<sup>th</sup>, that you  
 14 learned Blaise had been arrested?  
 15 A Yes.  
 16 Q Did there come a time, after Blaise had been  
 17 arrested, that you learned the date that a man was killed in  
 18 Vegas for which she was charged?  
 19 A Yes.  
 20 Q At that time did you realize --  
 21 MS. DiGIACOMO: Objection, leading.  
 22 THE COURT: Sustained.  
 23 BY MS. GREENBERGER:  
 24 Q How sure are you that you saw her on July 8th,

XV-13

WUORI - CROSS

1 2001?  
 2 A Very sure.  
 3 MS. GREENBERGER: Your Honor, I don't have  
 4 anything further,  
 5 THE COURT: Cross?  
 6 MS. DIGIACOMO: Thank you,  
 7 **CROSS-EXAMINATION**  
 8 BY MS. DiGIACOMO:  
 9 Q How long did you live next door to the Lobatos?  
 10 A I believe less than a year.  
 11 Q But you had been friends with them quite some time  
 12 before July 2001?  
 13 A Acquaintances.  
 14 Q You wouldn't say friends with 'em?  
 15 A No,  
 16 Q Would you talk to them often when you were just  
 17 outside in your yard and they were outside in yours — or in  
 18 theirs?  
 19 A Yes.  
 20 Q Mm-hmm, Did you ever work with either Blaise's  
 21 dad or mom?  
 22 A No,  
 23 Q Now you said that you saw Blaise 4-wheeling outside  
 24 your window when you were washing dishes.

XV-14

WUORI - CROSS

1 A Yes,  
 2 Q Okay. And you said that that was between 11:00  
 3 and 1:00 p.m.?  
 4 A Yes,  
 5 Q Okay, Do you recall testifying at a prior hearing in  
 6 May 2002?  
 7 A Yes.  
 8 Q And during your testimony you never mentioned that  
 9 it was between 11:00 and 1:00 before, correct?  
 10 A Yes, No, I'm sorry. No.  
 11 Q But you did not mention it before?  
 12 A No,  
 13 Q Okay. And in fact you've never mentioned that you  
 14 saw her do a donut, jump off, laugh and get back onto the 4-  
 15 wheeler, correct?  
 16 A Correct,  
 17 Q And you never testified previously that she was with  
 18 another tall skinny blonde haired teen, correct?  
 19 A Correct,  
 20 Q Do you know what kind of vehicle Blaise drives or  
 21 drove back then?  
 22 A Yes.  
 23 Q What kind was it?  
 24 A A red Fiero.

Xv-15

WUORI - CROSS

1 Q But you don't recall if you had seen it in July 2001?  
 2 A No.  
 3 Q Okay. Had you ever seen Blaise on a 4-wheeler  
 4 before?  
 5 A Not that I recall.  
 6 Q Do you recall testifying in May of 2002?  
 7 A Yes.  
 8 Q Okay. If I was to show you that your -- if I was to -  
 9 show you your testimony, would that refresh your recollection  
 10 about whether or not you've ever seen her on a -- had seen  
 11 her on a 4-wheeler before?  
 12 A Yes.  
 13 MS. DIGIACOMO: May I approach?  
 14 THE COURT: Yes.  
 15 MS. DiGIACOMO: Page 75 and 76, counsel,  
 16 THE WITNESS: I need my glasses. "Now you said  
 17 that you saw the" --  
 18 BY MS. DiGIACOMO:  
 19 Q Oh, no, no. To yourself. Thank you.  
 20 A Oh, I'm sorry.  
 21 (Pause in the proceedings)  
 22 Q Now after reviewing your prior testimony, does that  
 23 refresh your recollection about whether or not you'd ever seen  
 24 Blaise on a 4-wheeler, other than on July Bth?

Xv-16

WUORI - CROSS

1 A Yes.  
 2 Q Okay. And had you? Had you seen her on a 4-  
 3 wheeler?  
 4 A Yes.  
 5 Q Okay. How many times did you see her on a 4-  
 6 wheeler? Do you -- more than once?  
 7 A Yes.  
 8 Q More than five times?  
 9 A No.  
 10 Q Okay. If you testified previously that you had seen  
 11 her approximately about five time, would that be about  
 12 correct?  
 13 A Yes,  
 14 Q Okay. In fact it's pretty common for people to 4-  
 15 wheel in the area where you used to live in -- or Panaca,  
 16 correct?  
 17 A Yes.  
 18 Q 'Cause there's right -- a couple houses down from  
 19 you is just desert?  
 20 A Yes.  
 21 Q And you stated -- you stated you weren't really  
 22 friends with the family, just acquaintances?  
 23 A Mm-hmm. Yes,  
 24 Q Okay, You recall testifying at the prior hearing that

XV-17

WUORI - CROSS

1 you were friends of the family?  
 2 A No.  
 3 MS. DIGIACOMO: Your Honor —  
 4 BY MS. DiGIACOMO:  
 5 Q Well, if I was to show you your testimony would that  
 6 refresh your recollection?  
 7 A Yes.  
 8 MS, DiGIACOMO: May I approach?  
 9 THE COURT: You may.  
 10 MS DiGIACOMO: Page 76.  
 11 BY MS, DiGIACOMO:  
 12 Q Okay. Does that refresh your recollection?  
 13 A Yes,  
 14 Q What did you say at the previous hearing of 2002?  
 15 A Yes  
 16 Q That you were friends of the family?  
 17 A Yes,  
 18 Q You found out that Blaise was arrested the morning  
 19 or the day after she arrested, correct?  
 20 A Yes.  
 21 Q And you found out from her mom, Becky, correct?  
 22 A Yes.  
 23 Q And you would actually talk to Becky on a daily  
 24 basis, correct, back then?

XV-18

WUORI - REDIRECT

1 Q Okay. And so you knew her as well from living in  
 2 Panaca?  
 3 A Yes,  
 4 Q And you never gave a statement to the police,  
 5 correct?  
 6 A Correct No.  
 7 MS. DIGIACOMO: The Court's indulgence.  
 (Off-record colloquy of State's counsel)  
 9 MS. DiGIACOMO: Nothing further.  
 10 THE COURT: Redirect?  
 11 MS, GREENBERGER: Thank you.  
 12 **REDIRECT EXAMINATION**  
 13 BY MS. GREENBERGER:  
 14 Q It's been five years since you last testified in this  
 15 matter, is that correct?  
 16 A Yes,  
 17 Q Pretty long time from today, would you agree?  
 18 A Yes.  
 19 Q Have you ever socialized with the Lobatos outside,  
 20 from seeing them outside your residence?  
 21 A No.  
 22 Q So is it more accurate to say you're friendly with  
 23 them than social friends that get out and go together?  
 24 A Yes,

XV-20

WUORI - CROSS

1 A Yes,  
 2 Q And you knew her father as well, back then?  
 3 A Larry?  
 4 Q Yes.  
 5 A Yes,  
 6 Q And you talked to him on regular basis?  
 7 A Yes,  
 8 Q And Becky's the one that told you when she was  
 9 arrested?  
 10 A Yes.  
 11 Q And you actually discussed the July 8<sup>th</sup> date with  
 12 Becky before, correct?  
 13 A Yes,  
 14 Q You only talked to her about it one time?  
 15 A Yes,  
 16 Q The July 8<sup>th</sup> date?  
 17 A Yes,  
 18 Q And that was the day after she was arrested?  
 19 A I believe so, yes.  
 20 Q Okay. Did you also know a person by the name of  
 21 Shayne Kraft when you lived in Panaca?  
 22 A Yes,  
 23 Q And who is that?  
 24 A Blaise's aunt

XV-19

WUORI - REDIRECT

1 Q You're neighbors?  
 2 A Yes.  
 3 Q Has anyone asked you to lie on behalf of Blaise  
 4 Lobato?  
 5 A No,  
 6 Q You had a discussion on one occasion with Blaise's  
 7 stepmother, Rebecca, about the date of July 8<sup>th</sup> being the date  
 8 the man that she was alleged to have killed died, correct?  
 9 A Correct,  
 10 Q You told her, wait a minute, ---  
 11 MS. DIGIACOMO: Objection, leading.  
 12 THE COURT: Sustained,  
 13 BY MS. GREENBERGER:  
 14 Q What did you tell Becky when you talked to her that  
 15 day?  
 16 A I explained to her that I remember that day and I  
 17 remembered seeing Blaise,  
 18 Q You volunteered that information to her?  
 19 A Yes.  
 20 Q Did you also speak to defense investigators and  
 21 attorneys immediately thereafter about that information?  
 22 A No.  
 23 Q How soon after?  
 24 A James Aleman called me, but I don't recall how soon

XV-21

WUORI - REDIRECT

1 after.  
 2 Q Is he a defense investigator?  
 3 A Yes.  
 4 Q Was it within several weeks?  
 5 A I don't recall.  
 6 Q How clearly do you recall the day of July 8th?  
 7 A Very clearly.  
 8 Q Do you recall previously testifying that you saw her  
 9 in the afternoon?  
 10 A Yes,  
 11 Q You didn't specify a specific time but you said in the  
 12 afternoon?  
 13 A Yeah.  
 14 Q How is it that you recall you saw her between 11:00  
 15 and 1:00?  
 16 A That's usually when my daughter would take a nap  
 17 and that's when I would do dishes, do chores, pick up the  
 18 house, those kinds of things  
 19 Q What dishes were you doing?  
 20 A I believe them to be from the morning.  
 21 Q Your breakfast dishes?  
 22 A Yeah,  
 23 Q Did you send your friend Dale Towery an email right  
 24 after you saw Blaise 4-wheeling that day?

XV-22

WUORI - REDIRECT

1 THE COURT: Sustained.  
 2 BY MS. GREENBERGER:  
 3 Q Was your contact with the Lobatos as neighbors in  
 4 your yard?  
 5 A No,  
 6 Q Where was it? Where would you see them?  
 7 A They would be in their yard, I would be in mine,  
 8 Sometimes I would go over there to say hi. My dog would –  
 9 run, It was just a neighborly type of — we were right next  
 10 door to each other,  
 11 Q How close were your houses?  
 12 A A fence divided 'ern. The driveways. The houses,  
 13 I'm not sure.  
 14 Q Can you give us an approximate distance from your  
 15 kitchen window to where you saw Blaise 4-wheeling?  
 16 A 30 feet, 35 feet.  
 17 Q Was it daylight?  
 18 A Yes,  
 19 Q Do you wear glasses?  
 20 A Yes.  
 21 Q Did you have your glasses on at the time?  
 22 A I didn't wear glasses back then?  
 23 Q Your vision was better than it is today?  
 24 A Yes.

XV-24

WUORI - REDIRECT

1 MS, DiGIACOMO: Objection, leading,  
 2 THE COURT: Sustained.  
 3 BY MS. GREENBERGER:  
 4 Do you remember when you sent your friend and  
 5 email?  
 6 A Yes,  
 7 Q When?  
 8 A Approximately an hour after that.  
 9 Q That would have been on July 8th?  
 10 A Yes,  
 11 Q Was the email a happy birthday email?  
 12 A Yes.  
 13 MS, DiGIACOMO: Objection, leading.  
 14 THE COURT: Sustained.  
 15 MS, DiGIACOMO: Move to strike.  
 16 BY MS. GREENBERGER:  
 17 Q What kind of --  
 18 THE COURT: Motion granted.  
 19 BY MS, GREENBERGER:  
 20 Q And what kind of email was it?  
 21 A A happy birthday email,  
 22 Q Did you ever go over to the Lobato house to speak  
 23 with the Lobatos?  
 24 MS, DiGIACOMO: Objection, vague.

XV-23

WUORI - REDIRECT

1 Q How was it that you were able to identify the person  
 2 on the 4-wheeler as Blaise?  
 3 A Knowing who she was,  
 4 Q You had seen her -- how many times had you seen  
 5 her before that date?  
 6 A I'd known her for approximately seven years before  
 7 I moved to Elko,  
 8 Q I asked you if you had spoken to the defense  
 9 investigator within weeks and you said you weren't sure, you  
 10 didn't recall. Would it refresh your recollection to look at your  
 11 prior testimony?  
 12 A Possibly.  
 13 MS, GREENBERGER: May I approach?  
 14 THE COURT: You may,  
 15 BY MS, GREENBERGER:  
 16 Q Looking at page 81, line 23.  
 17 A Maybe weeks, I'm not sure how many weeks  
 18 though.  
 19 Q Did you talk to Becky Lobato about this date on  
 20 more than one occasion?  
 21 A No.  
 22 Q Do you remember this date like it was yesterday?  
 23 A Yes,  
 24 Q Did you realize, shortly after you saw her, how

XV-25

WUORI RECRoSS'

1 important it was you had seen her on July 8th?  
 2 MS, DiGIACOMO: Objection, leading  
 3 THE COURT: Sustained.  
 4 MS. GREENBERGER: Nothing further.  
 5 THE COURT: Recross?  
 6 MS. DiGIACOMO: Thank you, Your Honor,  
 7 **RECROSS EXAMINATION**  
 8 BY MS. DiGIACOMO:  
 9 Q You had talked to Becky Lobato one time about the  
 10 July 8<sup>th</sup> date, correct?  
 11 A Correct,  
 12 Q And the time that you talked to Becky, she knew  
 13 that the crime Blaise had been arrested for happened on July  
 14 8<sup>th</sup>, correct?  
 15 A That's what she was accused of, yes,  
 16 Q Okay, And actually it was the day after Blaise was  
 17 arrested that you spoke to Becky, correct?  
 18 A I believe,,s(L  
 19 Q Okay. You're saying you believe so, do you  
 20 remember?  
 21 A Correct.  
 22 Q If I was to show you your prior testimony would that  
 23 refresh your memory?  
 24 A I remember it was correct,

XV-26

WUORI RECROSS

1 THE COURT: You may step down.  
 2 JUROR: I have a question,  
 3 THE COURT: Whoops, I need you to sit back down.  
 4 (Pause in the proceedings)  
 5 THE COURT: Counsel approach,  
 6 (Off-record Bench Conference)  
 7 THE COURT: A question has come from the jury  
 8 that I'm going to read to you. After I read the question to  
 9 you, you may answer it. And then the attorneys for each side  
 10 will have the opportunity to ask you follow up questions if they  
 11 find that appropriate.  
 12 "Can you please explain how emailing Dale for his  
 13 birthday later, to washing dishes, connects your memory  
 14 to seeing Blaise 4-wheeling?"  
 15 THE WITNESS: All I can recall washing dishes,  
 16 looking out seeing Blaise and then, I don't know if there was  
 17 something on the TV that -- I don't know what reminded me of  
 18 that date. It just sticks in my head and I remembered at that  
 19 time, oh, I better email Dale 'cause it's his birthday today.  
 20 THE COURT: Any questions by the State?  
 21 MS, DiGIACOMO: No, Your Honor.  
 22 THE COURT: Any by the defense?  
 23 MS. GREENBERGER: Yeah, just one.  
 24 ///

XV-28

WUORI RECROSS

1 Q Okay, It is the day after?  
 2 A Yes.  
 3 Q Okay, And so Becky is the one that brought up the  
 4 July 8<sup>'</sup> date to you, correct?  
 5 A Yes,  
 6 Q And then you said, wait a minute, that's my friend's  
 7 birthday, I know I saw Blaise that day 4-wheeling.  
 8 A Yes,  
 9 Q Okay. And then you didn't contact the police or  
 10 anything, a couple of weeks later a defense attorney -- or  
 11 excuse me, a defense investigator contacted you, correct?  
 12 A Not a couple weeks, I don't recall, but someone did,  
 13 Q Well --  
 14 A Yes,  
 15 Q Okay, but some period of time later you're contacted  
 16 by a defense investigator?  
 17 A Correct,  
 18 Q And so it was Becky that had given your name to the  
 19 defense?  
 20 A Yes,  
 21 Q Okay.  
 22 MS, DiGIACOMO: Pass the witness.  
 23 THE COURT: Redirect?  
 24 MS. GREENBERGER: No, Your Honor,

XV-27

WUORI - FURTHER REDIRECT

1 **FURTHER REDIRECT EXAMINATION**  
 2 BY MS. GREENBERGER:  
 3 Q Do you recall that sequence of events occurring  
 4 within a short time period?  
 5 A Dishes, the emailing, the remembering?  
 6 Q Correct.  
 7 A Just while I was washing dishes, doing my chores  
 8 before my daughter woke up.  
 9 MS, GREENBERGER: Nothing further.  
 10 THE COURT: You may step down.  
 11 This may be marked as Court's 73r  
 12 Defense may call their next witness  
 13 MR, SCHIECK: Call Phillip Boucher, Your Honor,  
 14 THE COURT: Okay.  
 15 THE CLERK: Come all the way forward. Remain  
 16 standing, raise your right hand.  
 17 **PHILLIP BOUCHER, DEFENDANT'S WITNESS, SWORN**  
 18 THE CLERK: Thank you. Please be seated, State  
 19 your name and spell it for the record, please.  
 20 THE WITNESS: My name is Phil Boucher, that's  
 21 B-o-u-c-h-e-r,  
 22 **DIRECT EXAMINATION**  
 23 BY MR. SCHIECK:  
 24 Q Good afternoon, Mr, Boucher. How are you today?

XV-29



BOUCHER - DIRECT

1 A Fine,  
 2 Q How are you employed?  
 3 A I am a supervisor for the Nevada Department of  
 Transportation and I -- the section that we maintain is  
 5 basically the northeastern half of Lincoln County,  
 6 Q And where is your -- your yard that you work out of?  
 7 A The maintenance station is located in Panaca,  
 8 Nevada.  
 9 Q So it's called a maintenance station?  
 10 A Yes, sir,  
 11 Q Okay. And that's where you keep the grading  
 12 equipment and things like that  
 13 A Yes, sir.  
 14 Q Okay. And how long have you worked for the  
 15 Nevada Transportation?  
 16 A I have worked there for 23 years, almost the 24 the  
 17 6th of October.  
 18 Q And how long have you been assigned to that  
 19 particular maintenance station?  
 20 A The same amount of time,  
 21 Q So over 20 years,  
 22 A Yes, sir,  
 23 Q Are you familiar with the Panaca, Pioche, Caliente  
 24 portion of Lincoln County?

XV-30

BOUCHER - DIRECT

1 A Milepost 37.10 to 58,59.  
 2 Q Okay. And you remember that?  
 3 A I have to.  
 4 Q Okay. The -- what type of road -- what was the  
 5 road number, 3?  
 6 A 17,  
 7 Q 317?  
 8 A Yes.,  
 9 Q Okay. And what type of surface is State Route 317?  
 10 A Mmm, it's a --  
 11 Q Let me qualify that question for you --  
 12 A Yes.  
 13 Q -- to be fair. What type of surface was that road in  
 14 July of 2001?  
 15 A It was a paved surface, approximately 24 feet wide.  
 16 Q What type of paving?  
 17 A Asphalt,  
 18 Q Can you describe the -- we'll just call it the Rainbow  
 19 Canyon Road.  
 20 A Okay.  
 21 Q Can you describe the terrain of the road?  
 22 A Yes, It's a very windy road. The speed limit is  
 23 posted at 45. Most of the curves are posted with the black on  
 24 yellow advisory speed limits for the curves coming up, There

XV-32

BOUCHER - DIRECT

1 A Yes, sir.  
 2 Q When you -- what area did you say you were  
 3 responsible for?  
 4 A I would call it the northeastern portion. Our section  
 5 divides in Lincoln County, there is an Alamo section that's  
 6 south of us, but I take the northern half and the east -- north  
 7 and eastern half of the county.  
 8 Q And in your job for the last 20 years with the  
 9 Nevada Department of Transportation are you familiar with  
 10 most of the roads in Lincoln County?  
 11 A Yes, sir,  
 12 Q Both personally and as part of your occupation?  
 13 A Yes,  
 14 Q Are you familiar with a road known as the Rainbow  
 15 Canyon Road,  
 16 A Yes, State Route 317,  
 17 Q And could you tell us where State Route 317 is  
 18 located?  
 19 A It -- a section of the DOT highway begins at what  
 20 we call milepost 37.10, it's actually Elgin, a little railroad stop  
 21 called Elgin and it goes 21 and a half miles north into Caliente.  
 22 Q So that's the entire length of that state route?  
 23 A Yes.  
 24 Q Okay. And it's 21 miles?

XV-31

BOUCHER - DIRECT

1 are five water crossings, which you do not cross water, but in  
 2 high waters there are cement aprons that dip and come back  
 3 out. One of those is posted at a 10 mile an hour and the rest  
 4 are posted at 20.  
 5 Q So you -- the posted is the speed you're suppose to  
 6 drive it or the safe speed to drive it?  
 7 A The posted is the speed limit, the advisories are  
 8 before these obstacles,  
 9 Q And you said that there's concrete at the bottom of  
 10 those?  
 11 A Yes.  
 12 Q And why is that?  
 13 A Because a lot of times we have water, a lot of water  
 14 come through that canyon and it has a tendency for the water  
 15 to go over these crossing -- instead of washing the whole road  
 16 out, the water just crosses and goes on. When water goes on  
 17 you're back to concrete because the concrete will hold up  
 18 longer than the pavement,  
 19 Q Okay. So there were five of those crossings?  
 20 A Yes.  
 21 Q One at 10 and the rest at 20 miles per hour?  
 22 A Yes,  
 23 Q What would happen if you drove your vehicle faster  
 24 than the 20 or the 10 posted on those locations?

XV-33

BOUCHER - DIRECT

1 MR. KEPHART: Your Honor, I'm gonna object as to  
2 speculation and what vehicle we're talking about. Are we  
3 talking about a heavy vehicle or a sports car or?

4 THE COURT: The Court will sustain the objection for  
5 lack of foundation

6 MR. SCHIECK: Thank you, Your Honor,  
7 BY MR. SCHIECK:

8 Q What type of vehicle do you drive in connection with  
9 your employment with Nevada Department of Transportation?

10 A I drive a Chevy half ton 4 wheel drive pickup,

11 Q And you drive that pickup over the Rainbow Canyon  
12 Road on occasion?

13 A Yes, sir.

14 Q Okay, Have you ever driven it faster than the  
15 posted speed limit over those dips?

16 MR. KEPHART: Objection, Your Honor, relevance,

17 THE COURT: Overruled.

18 THE WITNESS: Over the posted speed limit, no.

19 BY MR. SCHIECK:

20 Q What would happen if you did?

21 MR. KEPHART: Objection, Your Honor, speculation.

22 MR. SCHIECK: Your Honor, he works for the  
23 Department of Transportation and is familiar with this road for  
24 20 years.

XV-34

BOUCHER - DIRECT

knowledge?

2 A I know that it's a very small low profile, I'm not  
3 positive if it's a two seater, but I know it's a very small low  
4 profile vehicle.

5 Q Okay. In order to drive that section of road, what  
6 speed limit -- or what speed do you maintain in your truck to  
7 avoid bottoming out?

8 A I usually stay at the speed limit. I'm never in a  
9 hurry.

10 Besides the areas where there are the dips where  
11 you can bottom out, are there anything else along that road  
12 that would slow you down?

13 A The sharp corners are very sharp.

14 Q Okay, When you —

15 A They are posted signs with reduced -- not reduced  
16 speed but advisory panels on them. There are, in a few places  
17 sheer canyon walls where the rock falls numerous times. The  
18 railroad calls us to take care of these things. We're not down  
19 there 24/7 so we rely on people to let us know when these  
20 situations occur.

21 Q How many sharp curves are there on that 21 mile  
22 stretch of road?

23 A I couldn't tell you. To many,

24 Q More than 10?

XV-36

BOUCHER - DIRECT

1 THE COURT: But if he hasn't done it, I don't see  
2 how he would have knowledge so the Court sustains the  
3 objection.

4 BY MR. SCHIECK:

5 Q Have you ever seen anybody go over the road in  
6 those sections faster than the posted?

7 A No.

8 Q Have you ever seen any damage to the road?

9 A Yes.

10 Q What type of damage have you see to the roadway?

11 A One section, the 10 mile an hour crossing is basically  
12 -- it comes up on you and you can't see it, unless you know it's  
13 there. I have seen numerous skid marks that do not even  
14 start until near the bottom of the drop. And pieces of concrete  
15 have been broken out, small.

16 Q From a car bottoming out?

17 A Yes. Well, I'm assuming,

18 Q And your vehicle is a 4-wheel drive truck, is that  
19 correct?

20 A Yes.

21 Okay. Are you familiar with a vehicle known as a  
22 Fiero?

23 A Yes,

24 Q Okay. What type of vehicle is that, to your

XV-35

BOUCHER - DIRECT

1 A Yes.

2 Q And those are posted with the signs to slow down?

3 A Yes,

4 Q Okay. Have you ever driven the road past Elgin?

5 A Yes,

6 Q Is that part of your jurisdiction to maintain?

7 A No.

8 Q Okay. Is there a way that the road connects back to  
9 U.S. -- the U.S. Highway 93?

10 A Yes.

11 Q Okay. And what is that section of road?

12 A I don't think they have a name for it, we call it Kane  
13 Springs Road, it's maintained by the Lincoln County Road  
14 Department.

15 Q Maintained by Lincoln County Road Department?

16 A Yes, sir.

17 Q Which is separate from the Nevada Department of  
18 Transportation?

19 A Yes,

20 Q What type of road is that?

21 A It's gravel,

22 Q And how long is the stretch from Elgin to U.S., 93?

23 A Approximately 38 miles.

24 Q So you have 21 miles of curvy, dipping, paved road,

XV-37

BOUCHER - DIRECT

1 followed by 38 miles of dirt road on that section?  
 2 A Yes,  
 3 Q Okay. Are you familiar with how far it is if you stay  
 4 on U.S. 93 from Caliente to where the road hooks back up  
 5 from Kane Springs?  
 6 A Yes.  
 7 Q How far is that?  
 8 A You turn off going north, is it [sic] U.S. 93, milepost  
 9 7, and when you enter Caliente you are on U.S. 93 milepost  
 10 93 5  
 11 Q So what's the difference in mileage taking the paved  
 12 U.S. highway, as opposed to taking Rainbow Canyon to Kane  
 13 Springs Road?  
 14 A Roughly 26 to 27 miles,  
 15 Q So you save 27 miles by taking the -- call it a  
 16 shortcut?  
 17 A Yes.  
 18 Q And have you driven that dirt road section, the Kane  
 19 Springs Section of the road?  
 20 A Yes, I have.  
 21 Q Okay. Can you describe that, the way you recall it  
 22 from July of 2001?  
 23 A Could you rephrase that? In 2001 or when I have  
 24 driven it?

XV-38

BOUCHER - DIRECT

1 that -- that road?  
 2 A 15 to 20.  
 3 Q Over what period of time?  
 4 A 15 to 20 years.  
 5 Q You don't drive it on a regular basis?  
 6 A No, sir.  
 7 Q There in the 15 to 20 times that you have driven  
 8 that road has there been any -- and I'm talking about the dirt  
 9 portion, has there been any significant change to the quality of  
 10 the road?  
 11 A No, sir.  
 12 Q It's pretty much the same every time?  
 13 A Yes, sir.  
 14 Q Okay. And that's over the last 15 years?  
 15 A Yes,  
 16 Q And that would include the year 2001?  
 17 A Yes.  
 18 Q Okay, And what -- can you just describe the dirt  
 19 road for us?  
 20 A It -- I call it corduroyed, some people call it  
 21 washboard, but as you head north you kinda have a gradual  
 22 uphill all -- all the way, and what I mean by that is, you get  
 23 little bumps in the road and the faster you go the worse it is to  
 24 hold onto your car. You have tendency for your rear end of

XV-40

BOUCHER - DIRECT

1 Q When you have driven it.  
 2 A When I have driven it, every time within --  
 3 MR. KEPHART: Your Honor, I'm gonna object as  
 4 relevance, unless we're talking about July of 2001.  
 5 MR. SCHIECK: What -- I'll rephrase, Your Honor.  
 6 THE COURT: Go ahead,  
 7 BY MR SCHIECK:  
 8 Q When have you driven the road, do you recall?  
 9 A The last time I drove that road was January of 2005,  
 10 and the reason I know that is because that road -- the paved  
 11 part of my section has been completely destroyed since then  
 12 and we had to go around and to get into the back area we had  
 13 to go in that road and come back out, We had no other way  
 14 to get there  
 15 Q Okay, And previous to January of 2005 had you  
 16 driven that section of road?  
 17 A Yes,  
 18 Q Do you recall when?  
 19 A No, sir.  
 20 Q And how long have you lived in Panaca?  
 21 A I lived in Pioche --  
 22 Q Okay.  
 23 A -- for 36 years.  
 24 Q Okay, How many times would you say you've driven

XV-39

BOUCHER - DIRECT

1 your car to want to pass your front end and as you get farther  
 2 through these areas and to the last five miles before you run  
 3 into the pavement it's -- it is a downhill summit, a winding  
 4 downhill graveled road down to the pavement.  
 5 Q Is it a road that you could maintain a speed limit  
 6 -- a speed of 60 miles an hour?  
 7 A No, sir.  
 8 Q All the time you've been either working on the  
 9 Rainbow Canyon section of the road or the 15 to 20 years  
 10 you've been driving the entire road, do you find -- save any  
 11 time taking that road?  
 12 A No,  
 13 Q Have you ever driven it on a low profile sports car  
 14 type vehicle?  
 15 A No,  
 16 Q Would you?  
 17 A No.  
 18 Q Why not?  
 19 A I don't like changes flat tires.  
 20 Q Thank you.  
 21 MR, SCHIECK: No further questions, Your Honor.  
 22 THE COURT: Can I ask you to spell Kane? Kane --  
 23 THE WITNESS: K-a-n-e.  
 24 THE COURT: K-a-n-e?

XV-41

BOUCHER - CROSS'

1 THE WrtNESS: Yes,  
 2 THE COURT: Thank you.  
 3 Cross?  
 4 MR, KEPHART: Thank you, Your Honor.  
 5 **CROSS-EXAMINATION**  
 6 BY MR. KEPHART:  
 7 Q How do you pronounce your last name, sir?  
 8 A Boucher.  
 9 Q Okay. Mr. Boucher, the dirt portion of that road that  
 10 goes through from I guess it would be the Alamo side of the  
 11 jurisdiction, oftentimes they -- they maintain it -- it's a graded  
 12 road, is it not?  
 13 A Yes.  
 14 Q Okay, So they have graders out there on occasion,  
 15 but probably not that often, do they?  
 16 A I don't know what their schedule is, but, yes,  
 17 Q But they do. It's not like a 2 lane dirt path that  
 18 you'd see when you're hunting or something?  
 19 A No,  
 20 Q Right. Okay. And people do oftentimes travel that  
 21 road?  
 22 A Yes,  
 23 Q And -- I mean one of the reasons why you have to  
 24 maintain the portion that you work with is because people

XV-42

BOUCHER - CROSS

1 Caliente?  
 2 A Pioche, yes.  
 3 Q Okay. Did you drive in your one ton pickup that you  
 4 use?  
 5 A No, sir, I brought a personal vehicle.  
 6 Q Personal -- is it -- was it a car?  
 7 A No, sir.  
 8 Q Pickup?  
 9 A Yes.  
 10 Q Okay. And when you traveled that, how fast do you  
 11 recall you were driving?  
 12 A 72.  
 13 Q Okay. And I take it you pretty much follow the  
 14 speed limit?  
 15 A Yes.  
 16 Q You have no reason to be in a hurry or anything?  
 17 A No,  
 18 Q Okay, Now, are you married, sir?  
 19 A Yes.  
 20 Q Did your wife come with you?  
 21 A No,  
 22 Q If she had some real nice dinner that you wanted to  
 23 get home for, you may drive a little faster than 72?  
 24 A No.

XV-44

BOUCHER - CROSS

1 travel that portion of the road, is that right?  
 2 A Yes, mainly railroad\_  
 3 Q So people have to get in and out of there?  
 4 A Yes.  
 5 Q Okay, Short of traveling that particular road, have  
 6 you -- let me back up -- have you heard it called a shortcut? I  
 7 mean Mr. Schieck even used it as a term "shortcut",  
 8 A Yes.  
 9 Q And regardless of that, if you travel from Caliente to  
 10 Las Vegas, U.S. 93 is a well kept road, compared -- at least  
 11 compared to the other one, is that correct?  
 12 A Yes.  
 13 Q And you can travel that one easily 60 miles an hour?  
 14 A Yes.  
 15 Q Easily 80 miles an hour?  
 16 A Yes.  
 17 Q Okay, And the only difference really is that you've  
 18 got to go over that big mountain before you get into Caliente,  
 19 is that right?  
 20 A Yes.  
 21 Q Okay, Have you -- you drove down today from  
 22 Caliente?  
 23 A No, I've been here for three days,  
 24 Q Okay. When you drove down you drove down from

XV-43

BOUCHER - REDIRECT

1 Q You don't like her food?  
 2 [Laughter]  
 3 Q But you would agree though that if you were in a  
 4 hurry you could certainly drive faster than 72?  
 5 A On U.S. 93?  
 6 Q Yes.  
 7 A Yes,  
 8 Q Okay. And you really don't have any reason to be in  
 9 a hurry though, do you?  
 10 A No  
 11 Q Okay.  
 12 MR, KEPHART: pass the witness, Your Honor,  
 13 Thank you, sir.  
 14 THE COURT: Redirect?  
 15 MR. SCHIECK: Thank you, Your Honor,  
 16 **REDIRECT EXAMINATION**  
 17 BY MR. SCHIECK:  
 18 Q U.S. 93 is not 70 mile an hour speed limit all the  
 19 way, is it?  
 20 A No,,  
 21 Q You have to slow down in Alamo?  
 22 A Yes.  
 23 Q On more than one occasion?  
 24 A Yes,

XV-45

BOUCHER - REDIREC

1 Q The posted speed limit is what, do you recall?  
 2 A As you come into Alamo it reduces to 50, then when  
 3 you get to what they call Ash Springs, approximately 6 miles  
 4 farther down it reduces to 45.  
 5 Q And how long a stretch is that reduced speed?  
 6 A Each one is approximately a mile,  
 7 Q And there's law enforcement in Alamo?  
 8 A Yes.  
 9 Q Highway Patrol?  
 10 A Yes.  
 11 Q You also would have to -- if you're going to Panaca  
 12 you'd have to go through Caliente, correct?  
 13 A Yes.  
 14 Q And what is the speed limit through Caliente?  
 15 A 25.  
 16 Q And how long of 25 mile an hour speed limit do you  
 17 have going to Caliente?  
 18 A Two miles  
 19 Q And there's law enforcement in Caliente also?  
 20 A Yes,  
 21 Q Is there any other reduced speed limits along that  
 22 route?  
 23 A Yes.  
 24 Q Where is that?

XV-46

HER - FURTHER REDIRECT

1 THE COURT: Redirect?  
 2 MR, SCHIECK: I'm sorry, Your Honor, yes, just one  
 3 question.  
 4 **FURTHER REDIRECT EXAMINATION**  
 5 BY MR, SCHIECK:  
 6 How far is it from Panaca to Las Vegas, do you  
 7 know?  
 8 A 165 miles.  
 9 Thank you,  
 10 MR. SCHIECK: Nothing further, Your Honor,  
 11 THE COURT: Okay. Anything further by the State)  
 12 MR. KEPHART: No, Your Honor. Thank you,  
 13 THE COURT: You may step down from the stand,  
 14 You may call your next witness,  
 15 MR. SCHIECK: Sergeant Kevin Manning, Your  
 16 Honor.  
 17 THE CLERK: Please come all the way forward.  
 18 Remain standing and raise your right hand.  
 19 **KEVIN MANNING, DEFENDANT'S WITNESS, SWORN**  
 20 THE CLERK: Thank you. Please be seated. State  
 21 your name and spell it for the record, please,  
 22 THE WITNESS: It's Kevin L. Manning, M-a-n-n-i-n-g.  
 23 THE COURT: You may proceed, Mr. Schieck.  
 24 MR, SCHIECK: Thank you.

Xv-48

BOUCHER - RE CROSS

1 A As you — on U.S. 93 as you enter the intersection to  
 2 turn to Panaca, it is reduced to 45 about three-quarters of a  
 3 mile before the junction of SR3-19.  
 4 Q When you planned to come down to Las Vegas, how  
 5 long do you plan for it to take you?  
 6 A About three hours,  
 7 Q Thank you  
 8 MR. SCHIECK: Nothing further, Your Honor,  
 9 THE COURT: Recross?  
 10 **RE CROSS EXAMINATION**  
 11 BY MR. KEPHART:  
 12 Q Sir, you can make the trip easily in two hours  
 13 though?  
 14 A I don't.  
 15 You don't, but you can?  
 16 A I guess you could.  
 17 Q Sunday morning, a lot of police officers out around  
 18 7:00 in the morning?  
 19 A That I don't know.  
 20 Q Okay, Have you ever traveled it on Sunday  
 21 morning?  
 22 A No, sir, not much.  
 23 Q Okay. All right.  
 24 MR. KEPHART: Nothing further, Your Honor.

XV-47

MANNING - DIRECT

1 **DIRECT EXAMINATION**  
 2 BY MR, SCHIECK:  
 3 Sergeant Manning, how are you employed?  
 4 A I'm retired. So it's not Sergeant anymore.  
 5 Okay.  
 6 A With a caveat, I now do cold case part time for  
 7 Metro,  
 8 How were you employed in July of 2001?  
 9 A I was a sergeant with Metro Homicide.  
 10 Okay, So you were a supervising officer in the  
 11 homicide division?  
 12 A That's correct,  
 13 Q Okay. Do you recall -- let me rephrase. When there  
 14 was a homicide that would occur within your jurisdiction would  
 15 a sergeant go out on the call typically?  
 16 A That's correct, yes.  
 17 Q Okay. Do you recall going out on a call in July of  
 18 2001, out on West Flamingo at the Nevada State Bank parking  
 19 lot?  
 20 A Yes, I do,  
 21 Q And the assigned homicide detectives, do you recall  
 22 who they were?  
 23 A Yeah, Tommy Thowsen and James LaRochelle,  
 24 Q Okay. And at the scene what would have your

xv-49

MANNING - DIRECT

1 responsibility have been?  
 2 A If I may?  
 3 Q Sure.  
 4 A At that particular time I was substituting for their  
 5 original sergeant who was Ken Hefner. Today I can tell you if  
 6 he was on vacation or why he wasn't there. And the way it  
 7 works is I would have taken the original call from the general  
 8 assignment people and would have responded. The  
 9 investigative team would have been those two detectives. And  
 10 basically I'm there to assist in whatever manner I can. A lot of  
 11 times I would draft a search warrant if one was needed and  
 12 those types of things when we came to original crime scene.  
 13 And basically it's up to the investigators to do the investigation.  
 14 One is generally responsible for the crime scene, the other is  
 15 responsible for interviewing witnesses, And if there's a scene  
 16 where there's a number of witnesses, I might help do some of  
 17 the interviews. Those types of things,  
 18 Q Would you have, as part of your responsibilities,  
 19 contact with the coroner investigator that would be at the  
 20 scene?  
 21 A Yeah, in fact typically the supervisor's duty, and  
 22 mine that night, was to actually call the coroner's office and to  
 23 request the mortuary and an investigator. Once we were to a  
 24 point in that crime scene investigation, with the crime scene

XV-50

MANNING - DIRECT

1 Q Okay. And, but with respect to this case did you  
 2 prepare any reports or anything of that nature that would  
 3 refresh your recollection as to whether you did or didn't?  
 4 A No, in this case I don't believe I prepared any  
 5 reports,  
 6 Q That's a responsibility of the investigating officers,  
 7 the crime scene analysts and the coroner's office to prepare  
 8 their reports of what happens?  
 9 A That's correct.  
 10 Q You're just there to supervise?  
 11 A Yes, sir,  
 12 Q Okay, And do you recall whether or not specifically  
 13 you gave any directions to the coroner's office concerning  
 14 release of information concerning the condition of the pants of  
 15 the decedent?  
 16 A No, I do not,  
 17 Q And I'm gonna ask you several things and —  
 18 A That's —  
 19 Q -- and I expect you're probably gonna not recall, but  
 20 I need to detail whether or not you do recall. Do you recall  
 21 directing that information not be released that the decedent's  
 22 penis had been cut off?  
 23 A Specifically, no, though I would not be surprised if  
 24 that would not have been something I would have asked,

XV-52

MANNING - DIRECT

1 analyst to get them to the scene,  
 2 Q Would you give information to the coroner  
 3 investigator that was on the scene when he arrived?  
 4 A It's --  
 5 Q He or she arrived?  
 6 A Sometimes. Sometimes it would up to the guy, the  
 7 investigator, the detective who actually had responsibility for  
 8 the crime scene. And I believe in this case it was actually Jim  
 9 LaRochelle was the one that did that briefing with the  
 10 coroner's office investigator.  
 11 Q And you don't recall yourself having briefing with the  
 12 coroner's office?  
 13 A Not on that particular case, no,  
 14 Q Okay. And do sometimes on the homicide cases like  
 15 this, do the homicide officers direct the coroner's office not to  
 16 release certain information about the case?  
 17 A Yes, that's correct,  
 18 Q And that's so that that information doesn't get out to  
 19 the public for a variety of reasons but that the information is  
 20 still asked not to be disseminated?  
 21 A That's correct, yes,  
 22 Q Okay. And do you recall making any such requests  
 23 in this case?  
 24 A Specifically, no, though I would not be surprised.

XV-51

MANNING - DIRECT

1 Q And we've already had introduced into evidence a  
 2 media release --  
 3 A Mm-hmm,  
 4 Q — which specifically did not include that information,  
 5 according to Detective Thowsen, concerning the penis being  
 6 cut off, that would also be typical, correct?  
 7 A Yeah, and I believe I drafted that media release that  
 8 night.  
 9 Q Okay, And do you recall whether or not you  
 10 directed that it not be release that there were white paper  
 11 towels stuffed in the open wound in the area where the penis  
 12 had been cut off?  
 13 A That would have been more specific than anything  
 14 that I would have done, and I do not recall that, no.  
 15 Q And do you recall indicating that those items had  
 16 been impounded by the Metropolitan Police Department?  
 17 A No, I do not  
 18 Q And just to go on, that there were teeth that were  
 19 later found, along with the penis, at the scene, do you recall  
 20 directing that that information not be released by the coroner's  
 21 office?  
 22 A No, sir.  
 23 Q Okay, And I would -- have the coroner's follow up  
 24 report, however you did not author that, correct?

XV-53

MANNING - CROSS

A That's correct,

Q Okay, And so you have no recollection of having conversation with Coroner Investigator Shelley Pierce-Stauffer concerning the information that I just discussed with you?

A No, I do not

MR, KEPHART: Your Honor, could I ask counsel what he's referring to? He just indicated follow up report and I'm not — could I -- I mean you're asking him.

(Off-record colloquy of counsel)

BY MR. SCHIECK:

Q Follow notes, not a follow up report. Follow up notes, you've never -- you wouldn't have authored this?

A I don't know which you're referring to, no,

Q Okay. Thank you,

MR. SCHIECK: Nothing further, Your Honor.

THE COURT: Cross?

MR. KEPHART: I have one question, Your Honor,

**\_CROSS-EXAMINATION**

BY MR, KEPHART:

Q Sergeant, we've always known you as sergeant, You — you never talked to Shelley Pierce-Stauffer, did you?

A You know, I've know Shelley for a number of years and have been on a number of murder scenes with her.

Q Would I have talked to her, possibly. Specifically in this case I

XV-54

MANNING - CROSS

Q How long were you a sergeant in that area?

A Ten years in Homicide.

Q Okay, And during that 10 years did there a come occasion -- was there times when actually the communication between the detectives and what was put in some follow up notes by the coroner has been wrong?

A We've had a few occasions.

Q As a matter of fact there was an issue that caused - some change of personnel because of that, do you recall that?

A Correct.

MR. KEPHART: Pass the witness, Your Honor,

MR. SCHIECK: Nothing further, Your Honor.

THE COURT: Okay, You may step down.

THE WITNESS: Thank you,

(Pause in the proceedings)

MR. SCHIECK: We would call Shelley Pierce-Stauffer, Your Honor.

THE COURT: Very well.

THE CLERK: Please come all the way forward.

Remain standing and raise your right hand,

SHELLEY PIERCE-STAUFFER, DEFENDANT'S WITNESS, SWORN

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

XV-56

MANNING - CROSS

can't say that I had a conversation,

Q Okay, You recall prior to actually coming in here to testify, you had been to -- it had been discussed with you with regards to follow up notes, do you recall that?

A Yes,

Q Okay. And you don't recall giving her any information that would have been made in her follow up notes here, you said Jim LaRochelle would have been the one to speak to her?,

A Yeah, as I recall specifically that he was the one that did the briefing with Shelley Stauffer that morning.

Q Okay, Do you recall this case at all, from being out there?

A Yes.

Q Do you recall ever seeing any white paper towels stuffed in an open wound of the -- of this man's penis?

A The words "stuffed" stops me from answering that question It was a trash bin area, outside a dumpster and I remember all kinds of debris which you would find in a dumpster area that was covering the body, You know the reference to "stuffed" I don't recall.

Q And, Sergeant, how long were you a homicide detective?

A Ten years

XV-55

PIERCE-STAUFFER - DIRECT

THE WITNESS: It's Shelley Pierce-Stauffer, it's S-h-e-l-l-e-y P-i-e-r-c-e-hyphen-S-t-a-u-f-f-e-r,

THE COURT: You may proceed, Mr. Schieck,

MR. SCHIECK: Thank you,

**DIRECT EXAMINATION**

BY MR, SCHIECK:

Q How are you employed?

A I'm an investigator with the Clark County Coroner's Office,

Q And how long have you been so employed?

A Just a little over eight years.

Q So you would have been employed in that position in July of 2001?

A Yes.

Q Okay, Do you recall to responding to a crime scene on July 9<sup>th</sup>, 2001, on West Flamingo behind the Nevada State Bank --

A Yes.

Q — where a body was found behind a dumpster?

A Yes,

Q Okay. You recall that scene?

A Yes,

Q Okay. There with the Clark County Coroner's Office, do you have a format to prepare what's known as follow up

XV-57

PIERCE-STAUFFER - Dig

1 notes?  
 2 A Yes,  
 3 Okay. And is that prepared in the regular course of  
 4 your business or the activity of the coroner's office?  
 5 A Depending on the case. It's not done on every case.  
 6 Is it done on every homicide?  
 7 A No,  
 8 Q Is it done on every homicide where there's follow up  
 9 notes that have to be taken?  
 10 A Yes.  
 11 Q Okay, If I were to show you a document could you  
 12 identify it as whether or not it appears to be a copy of some  
 13 follow up notes on this case?  
 14 A Yes,  
 15 Q Okay, I'm gonna show you what's been marked as  
 16 DDDD for identification. If you could just look at that and tell  
 17 me if you recognize it?  
 18 A Yes.  
 19 Q Does that appear to be follow up notes on this  
 20 particular case?  
 21 A Yes,  
 22 And let me just ask you some question about the  
 23 preparation of follow up notes. Are they prepared on the —  
 24 THE COURT: Could I ask counsel to approach

XV-58

PIERCE-STAUFFER - DIRECT

1 BY MR. SCHIECK:  
 2 Q Who is WG?  
 3 A William Gaza.  
 4 Q Okay. And who is he?  
 5 A He at that time was my supervisor.  
 6 Q He would be a person -- would he be a person that  
 7 made entries such as you made?  
 8 A Yes.  
 9 Q Arid who would RD be?  
 10 A Richard Jones.  
 11 Q And what was his position in July of 2001?  
 12 A An investigator.  
 13 Q With the coroner's office?  
 14 A Yes.  
 15 Q And KPH?  
 16 A That's Karen Harriford [phonetic], she's an  
 17 investigator there,  
 18 Q And it would normal that these — would it be normal  
 19 that these individuals would make entries?  
 20 A Yes.  
 21 Q And one last, DPD?  
 22 A Daniel Daniels, he's an investigator there.  
 23 Q Okay, Now if you were going to make a notation  
 24 into follow up notes, where would you normally get the

XV-60

PIERCE-STAUFFER - DIRECT

1 please,  
 2 (Off-record Bench Conference)  
 3 THE COURT: The Court apparently is mixing up  
 4 Triple D with quadruple D, so I wanted to get a clarification.  
 5 You may proceed. Thank you, Mr, Schieck,  
 6 MR. SCHIECK: Thank you, Your Honor.  
 7 BY MR, SCHIECK:  
 8 Q When you, there in the coroner's office prepare  
 9 these follow up notes, are the prepared on a computer where  
 10 different investigators can input information in to?  
 11 A Yes,  
 12 Q And you would put your initials at the end of the  
 13 entry where you put if you were making an entry?  
 14 A Yes  
 15 Q Okay. And your initials are SPS?  
 16 A Yes,  
 17 Q Okay. And there's other people that would make  
 18 entries into these documents, correct?  
 19 A Yes.  
 20 Q And would William -- WG be William Gaza?  
 21 A Yes.  
 22 MS. DIGIACOMO: Objection, leading,  
 23 THE COURT: Sustained,  
 24 ///

XV-59

PIERCE-STAUFFER - DIRECT

1 information?  
 2 A Computers, telephone calls, individuals.  
 3 Q Would you note on there the names of the individual  
 4 that you got information from?  
 5 A Yes.  
 6 Q Would this be information that you verified yourself  
 7 or just was relayed to you?  
 8 A It could be related to me.  
 9 Q I'm gonna -- do you recall making any entries into  
 10 the follow up notes in this case on July 9<sup>th</sup>, 2001?  
 11 A Yes.  
 12 Q Specifically with information from Sergeant  
 13 Manning?  
 14 MS. DIGIACOMO: Objection, leading,  
 15 THE COURT: Sustained.  
 16 BY MR. SCHIECK:  
 17 Q Where did you get the information that you inputted  
 18 on July 9<sup>th</sup>, 2001?  
 19 A Say it once more, I didn't quite understand,  
 20 Q From where did you get the information that you  
 21 inputted on July 9<sup>th</sup>, 2001?  
 22 A Sergeant Manning.  
 23 Q Okay, And how did you receive that information  
 24 from Sergeant Manning?

XV-61



PIERCE-STAUFFER - DIP

1 A He spoke to me and gave me the information.  
 2 Q He spoke to you personally?  
 3 A Yes,  
 4 Q At the scene or?  
 5 A Yes. At the scene-  
 6 Q And had you known Sergeant Manning before then?  
 7 A Yes.  
 8 Q Okay. Is it the same individual that just left the  
 9 courtroom?  
 10 A Yes,  
 11 Q Okay. So he was the individual that gave you this  
 12 information?  
 13 A Yes,  
 14 Q And that information -- how was it -- was that  
 15 information part of your regular duties to receive?  
 16 A Yes.  
 17 Q And do you recall what that information was in this  
 18 case?  
 19 A Well, I specifically recall him not wanting released to  
 20 the public -- do you want me to say exactly what he didn't  
 21 want released?  
 22 Q Yes.  
 23 A That the homicide victim, his penis was no longer  
 24 there. It was cut off.

XV-62

RCE-STAUFFER - DIRECT

1 Q Okay. You just don't recall it specifically now?  
 2 A Well, I recall specifically what I just said about why  
 3 he -- or what he didn't want released to the public as far as  
 4 the penis. In our case notes, even today we put things  
 5 sometimes there that we don't want families, you know, back  
 6 then the public would just come in and buy reports off the  
 7 street, we would put things, and we still do to this day, in  
 8 different parts so it doesn't show up in our real reports, I  
 9 mean I could give examples if what you wanted of what we  
 10 wouldn't put in there, And this -- the rest of those things I  
 11 have there, definitely fall under something that I wouldn't put  
 12 in something today that I didn't want the family to see,  
 13 Q Wouldn't fall under that heading, is that -- is that  
 14 what you said?  
 15 A I -- the rest of those things in there, in that -- in my  
 16 case notes were put there, not specifically because Sergeant  
 17 Manning didn't want released to the public, you know, as far  
 18 as a couple open wounds I have mentioned in there. There's  
 19 just certain things that we put in our follow notes, depending  
 20 on the case, that we don't want anybody to know about just  
 21 because of it's embarrassing -- I don't know, too brutal. We  
 22 don't want people to see that,  
 23 Q Well, you wouldn't just make up things that you  
 24 didn't want people to see and put in your notes?

XV-64

PIERCE-STAUFFER - DIRECT

1 Q Do you recall any other information he requested  
 2 not to be released?  
 3 A No.  
 4 Q Would it refresh your recollection to look at the  
 5 follow up note entry that you made on July 9th?  
 6 A No, because I've already looked at it and it doesn't  
 7 make me recall that night of him saying all of those things-  
 8 Okay.  
 9 A I don't know if this is something I should say,  
 10 but --  
 11 MS. DiGIACOMO: Objection, Your Honor.  
 12 THE WITNESS: Okay,  
 13 THE COURT: Sustained.  
 14 BY MR SCHIECK:  
 15 Q I don't know if it is either,  
 16 [Laughter]  
 17 Q So we'll just go on and ask the question. Would you  
 18 put information down on your official follow up notes if it  
 19 wasn't correct?  
 20 A No, If I believed it to be correct, no.  
 21 Q If you indicated in your notes that he had told you  
 22 this information, would that have been correct at the time you  
 23 entered it?  
 24 A Yes.

XV-63

PIERCE-STAUFFER - DIRECT

1 A Oh, no. No.  
 2 Q So there must have been a source of putting those  
 3 things into your follow up notes?  
 4 A Well, the thing after the Sergeant Manning, what he  
 5 didn't want released, those are things I saw.  
 6 Q Okay. So you saw the white paper towels stuffed in  
 7 the open --  
 8 MS. DIGIACOMO: Objection, leading?  
 9 THE COURT: Sustained,  
 10 BY MR. SCHIECK:  
 11 Q Did you see white paper --  
 12 MS. DiGIACOMO: Objection, leading\_  
 13 MR. SCHIECK: The question is did you.  
 14 MS, DiGIACOMO: She can -- he can ask what'd she  
 15 see,  
 16 THE COURT: Sustained.  
 17 BY MR, SCHIECK:  
 18 Q What did you see?  
 19 A On any particular thing or the whole thing from the  
 20 time I got there?  
 21 Q With respect to white paper towels,  
 22 A I saw, as the garbage was slowly being removed  
 23 from his body, there were white paper towels kinda wadded,  
 24 like squooze [sic] and still not all of them were, but the tops of

XV-65

PIERCE-STAUFFER -

1 them were still like paper towels. Like from a machine here,  
 2 you know, not like kitchen paper towels. They were -- just --  
 3 not stuffed all the way in, but there was an opening there  
 4 where his penis was, and the towels were partially stuffed in  
 5 there so that you could -- it was obvious to me, once those  
 6 towels were moved, his penis was not there, just the way the  
 7 ends of those paper towels were stuffed in there,

8 Q Okay, And you saw that yourself?

9 A Yes,

10 MR. SCHIECK: Okay. Nothing further, Your Honor.

11 THE COURT: Cross?

12 MS. DiGIACOMO: May I -- may I approach the  
 13 clerk, Your Honor?

14 THE COURT: Yes.

15 (Pause in the proceedings)

16 MS, DiGIACOMO: The Court's indulgence.

17 MR. KEPHART: May I approach, Your Honor?

18 THE COURT: Yes.

19 (Off-record colloquy of state's counsel)

20 (Pause in the proceedings)

21 **CROSS-EXAMINATION**

22 BY MS. DiGIACOMO:

23 Q The follow up notes that defense counsel was asking  
 24 about, those are things that are internal documents only, not

XV-66

PIERCE-STAUFFER - CROSS

1 penis had been cut off, is that correct?

2 A Yeah,

3 Q That wouldn't -- that's something that wasn't to be  
 4 released to the public?

5 A Yes.

6 Q Okay. And you talked about that you recall these  
 7 white paper towels wadded up and partially stuffed into the  
 8 wound,

9 A [No audible response].

10 Q Were you -- is that a yes for the record?

11 A Yes,

12 Q Were you taking part in the removal of the garbage?

13 A Yes,

14 Q Okay. And who else was doing it with you?

15 A Crime Scene Analysts.

16 Q Okay, Was there more than one?

17 A I believe so, but I don't remember.

18 Q Okay, It is possibly there were three other Crime  
 19 Scene Analysts?

20 A Oh, yes.

21 Q All right, Now I'm gonna show you State's Exhibit  
 22 Number 16.

23 MS., DiGIACOMO: Your Honor, can I approach to  
 24 move the easel?

XV-68

PIERCE-STAUFFER - CROSS

1 released to the public, correct?

2 A Normally.

3 Q I know in this case they were, but I mean normally  
 4 they're just internal documents?

5 A Yes, yes,

6 Q Okay, And in fact they're not even released to  
 7 Metro, correct?

8 A No,

9 Q But you do do something else and I don't know if  
 10 you can see this?

11 A Mm-hmm.

12 Q I'm showing a three page document where it's your  
 13 coroner's investigative report?

14 A Yes,

15 Q Okay, This is something that you did author that is  
 16 released to the public?

17 A Yes,

18 Q Okay. And so the things that are in the follow up  
 19 notes are things you wouldn't put in this report so that the  
 20 family and the public wouldn't know about it?

21 A Yes.

22 Q Generally?

23 A Generally, yeah.

24 Q Okay, And in this case specifically, the fact that the

XV-67

PIERCE-STAUFFER - CROSS

1 THE COURT: Yes,,

2 BY MS, DiGIACOMO:

3 Q Okay. Okay, there you go. Can you see that photo?

4 A Yes.

5 Q Do you see in this photo any of the white paper  
 6 towels that you were kinda talking about were wadded?  
 7 Would it help you if I brought you the photo itself?

8 A Probably, yes,

9 MS. DIGIACOMO: May I approach, Your Honor?

10 THE COURT: Yes,

11 BY MS. DiGIACOMO:

12 Q Okay, I'm gonna show you State's Number 16,

13 A They just look like those.

14 Q Okay.

15 A But I don't see the -- what I'm talking about in this  
 16 picture.

17 Q Okay, and so -- well, I'm gonna show you State's 15  
 18 and then Ill put 'em back on the DORR so we can --

19 A Okay,

20 Q He's looking for the one, but to make sure I did all  
 21 of these. Okay. Now going back to -- let me show you  
 22 actually a different one, State's Exhibit Number 14, this might  
 23 show up better,, Okay, can you see what's depicted there?

24 A Mm-hmm. Yes.

XV-69

PIERCE-STAUFFER - CR

1 Q Okay. Well, actually I guess I should turn it right  
 2 side. Where's the body? You can actually draw on the screen  
 3 in front of you  
 4 A Here's his head -- oops,  
 5 Q Oh, I'm sorry, It was my fault, a little too high,  
 6 A Hit exit. There's his head, there's an arm.  
 7 Q Wait, are you drawing on it?  
 8 A No.  
 9 Q Oh, draw on it,  
 10 A There's his head,  
 11 Q Okay,  
 12 A There's his arm,  
 13 Q Okay,  
 14 A There's a leg. There's a leg. His other arm's up  
 15 there, but there's something covering it,  
 16 Q Now do you see some white paper towels -- wadded  
 17 white paper towels in this photograph?  
 18 A I don't see the wadded ones I'm talking about.  
 19 Q I'm not asking you that.  
 20 A Oh.  
 21 I'm asking do you see any wadded paper towels in  
 22 this photograph? Okay, specifically right here on the belly  
 23 area --  
 24 A Yes.

XV-70

RCE-STAUFFER - CROSS

1 Q Okay. And there's a lot of white paper towels just to  
 2 east of the body. Do you see those on the --  
 3 A Yes,  
 4 Q on the ground? Okay, now the groin area is  
 5 exposed here, correct?  
 6 A Yes.  
 7 Q And do you see that there's some plastic pulled back  
 8 here?  
 9 A Yes.  
 10 Q Okay. In fact that plastic was directly over where  
 11 the severed penis was, correct?  
 12 A I don't know.  
 13 Q Okay. You don't recall that?  
 14 A No, I don't recall,  
 15 Q Okay, But you do recall a lot of these white paper  
 16 towels being there?  
 17 A Yes.  
 18 Q And I'm showing you State's Exhibit Number 13.  
 19 A Yes.  
 20 Q And do you recognize this?  
 21 A Yes.  
 22 Q And what's here?  
 23 A The severed penis,  
 24 Q All right. And so this open wound right here, is that

XV-72

PIERCE-STAUFFER - CROSS

1 Q -- or actually the groin area?  
 2 A Yes.  
 3 Q Over here on the side?  
 4 A Yes.  
 5 Q Down here between the legs?  
 6 A Yes.  
 7 Q Okay. Showing you State's Exhibit Number 9, could  
 8 you see any the -- this is the body from a different angle, do  
 9 you see white paper towels here?  
 10 A Yes.  
 11 Q Okay. And specifically right here on the side?  
 12 A Yes,  
 13 Q Same thing between the legs?  
 14 A Yes.  
 15 Q And there are some here on the other side, correct?  
 16 A That's what it looks like to me,  
 17 Q Now I'm gonna show you State's Exhibit Number 15,  
 18 do you recognize what's depicted here?  
 19 A Yes.  
 20 Q And what's depicted here?  
 21 A The deceased.  
 22 Q Okay, And what -- at point of the process are we  
 23 looking at?  
 24 A After -- during the removal of the garbage.

XV-71

PIERCE-STAUFFER - CROSS

1 where you saw paper towels actually stuffed into it?  
 2 A Yes,  
 3 Q Okay,, And see this plastic down here?  
 4 A Yes.  
 5 Q Where was that?  
 6 A I don't recall.  
 7 Q Okay. So you don't recall the body having plastic  
 8 over the groin area, kinda wrapped around the body?  
 9 A No,  
 10 Q Now you said you specifically recall seeing that and  
 11 that's why it's in your follow up notes, correct?  
 12 A Yes.  
 13 Q All right. Also in your follow up notes you put that  
 14 these were impounded by the 1..1(MI)D, the white paper towels,  
 15 correct?  
 16 A Yes.  
 17 Q Did you actually see the CSAs collect those and  
 18 impound them?  
 19 A I saw them put them in bags, what they did with  
 20 them I don't -- I didn't actually watch them go impound 'em at  
 21 the --  
 22 Q Okay. So in this part of your follow up notes you're  
 23 just assuming that they impounded those towels?  
 24 A Oh, yes, Yes,

XV-73

PIERCE-STAUFFER - CR

1 Q But you don't know if they just processed them and  
 2 then maybe discarded them?  
 3 A Right. I don't know that.  
 4 Q Okay, And you also put in your follow up report that  
 5 there was an open circular wound to the left buttock, do you  
 6 recall that?  
 7 A I don't recall -- I don't remember what the wound  
 8 looked like  
 9 Q But you do recall writing that in your follow up  
 10 notes?  
 11 A No, but if I put it there it's there,  
 12 MS, DiGIACOMO: Your Honor, may I approach?  
 13 THE COURT: Yes,  
 14 MS. DiGIACOMO: Oh, where's the defense exhibit?  
 15 DDDD? It's just proposed.  
 16 (Off-record colloquy of counsel)  
 17 MS DiGIACOMO: I'm gonna -- may I approach,  
 18 Your Honor?  
 19 THE COURT: You may,  
 20 BY MS. DiGIACOMO:  
 21 Q I'm gonna show you what's been marked for  
 22 identification purposes only as Defendant's Exhibit DDDD,  
 23 A Okay.  
 24 Q Do you recognize that?

XV-74

PIERCE-STAUFFER - CROSS

1 you're not -- well, strike that. Regarding the white paper  
 2 towels that you saw stuffed in the opening, you're 100 percent  
 3 positive you saw that, correct?  
 4 A Yes.  
 5 Q Okay. There's no way you're mistaken?  
 6 A Yes,  
 7 Q Okay. Even if no one else at the scene had seen  
 8 that, you know you saw that?  
 9 A Yes,  
 10 Q Now is it fair to say that your reports aren't always  
 11 100 percent accurate, even though you try to be accurate  
 12 yourself?  
 13 A Yes.  
 14 Q Okay. Because I mean things you see might turn  
 15 out later not to be accurate?  
 16 A Yes.  
 17 Q Okay,  
 18 A And people may tell me inaccurate things that I put  
 19 in reports,  
 20 Q Okay. So it's -- so part of what you put in your  
 21 reports is what other people tell you, not just what you see?  
 22 A Oh, sure.  
 23 Q Okay. And in fact in this case, do you recall putting  
 24 in your report that there were possible ligature marks around

XV-76

PIERCE-STAUFFER - CROSS

1 A Yes.  
 2 Q Okay, And I'm gonna show you --  
 3 THE COURT: So it was proposed DDDD?  
 4 MS, DiGIACOMO: That's correct, Your Honor,  
 5 BY MS. DiGIACOMO:  
 6 Q Right here, do you recall that?  
 7 A No.  
 8 Q Okay, when you -- okay, I'm showing you there was  
 9 an open circular wound noted to the left buttock, there was a  
 10 small piece of unknown material, hard object, possibly a piece  
 11 of tooth sticking out of the wound, and you're saying you don't  
 12 remember that?  
 13 A Uh-uh, I don't remember it.  
 14 Q Okay. You don't remember writing it or you don't  
 15 remember seeing it now?  
 16 A Both.  
 17 Q Okay, So that doesn't stick out in your mind?  
 18 A No.  
 19 Q All right, It's possible that you were incorrect  
 20 though that there was a piece of a tooth possibly sticking out  
 21 of this wound? I mean you're going by what you saw, you  
 22 don't know what they later found?  
 23 A Right  
 24 Q Okay, And with regard to the white paper towels,

XV-75

PIERCE-STAUFFER - CROSS

1 the decedent's neck?  
 2 MR. SCHIECK: Which page are we on?  
 3 MS. DiGIACOMO: Oh, I'm sorry, page 2 of her  
 4 summary of investigation.  
 5 MR. SCHIECK: Okay, We're looking at a different  
 6 document?  
 7 MS. DiGIACOMO: Right, I'm looking at her report of  
 8 investigation.  
 9 BY MS. DiGIACOMO:  
 10 Q This is the -- the report that was released to the  
 11 public?  
 12 A Mm-hmm.  
 13 Q Correct?  
 14 A Ask me -- I don't -- say that again?  
 15 Q Okay. Your 3, 4 page report --  
 16 A Yes.  
 17 Q of investigation document.  
 18 A Mm-hmm.  
 19 Q Okay. Do you recall writing in there that you saw  
 20 possible ligature marks around the decedent's neck?  
 21 A I don't recall writing it,  
 22 Q Okay, If I was to show you your report would that  
 23 refresh your recollection?  
 24 A No.

XV-77

PIERCE-STAUFFER - CR

1 Q Okay, so you don't have any recollection whatsoever  
 2 of seeing the ligature marks or writing it in your report?  
 3 A No,  
 4 Q But you would agree that it's in your report  
 5 regarding this case?  
 6 A Oh, yes. And I believe that I saw it that night or I  
 7 wouldn't have put it in my report.  
 8 Q Okay.  
 9 MS. DIGIACOMO: The Court's indulgence,  
 10 (Off-record colloquy of state's counsel)  
 11 BY MS. DIGIACOMO:  
 12 Q Now would it -- okay, you wrote in here that you  
 13 believed you wrote what you saw that night, correct?  
 14 A Yes.  
 15 Q You thought you saw possible ligature marks,  
 16 correct?  
 17 A Yes.  
 18 Would it surprise you to learn that were no ligature  
 19 marks on his neck when the autopsy was performed?  
 20 A No,  
 21 Q Okay. So it is possible that things you see are not  
 22 always correct?  
 23 A Right. And that's why I put possible. I didn't --  
 24 don't know what they were for sure,.

XV-78

PIERCE-STAUFFER RECROSS

1 BY MR. SCHIECK:  
 2 Q Like a brown --  
 3 A Yes.  
 4 Q -- paper bag?  
 5 A Yes.  
 6 Q You saw them put the paper towels in the bag like  
 7 this, a brown paper bag. And for the record I'm holding  
 8 State's Exhibit 130 and contents. The bag looked like this and  
 9 they impounded the items?  
 10 A It was a brown paper bag, yes.  
 11 MR. SCHIECK: Nothing further, Your Honor. □  
**RECROSS EXAMINATION**  
 12 BY MS. DIGIACOMO:  
 13 Q These paper towels, how many were there?  
 14 A Like a handful, Just -- (cupping hand),,  
 15 Q Okay. But I mean you saw the picture, there were  
 16 paper towels --  
 17 A Mm-hmm.  
 18 Q all over,  
 19 A Mm-hmm,,  
 20 Q And so did they collect all of 'em?  
 21 A I don't believe so.  
 22 Q Okay. So they collected just a handful that were  
 23 stuffed into the opening of the wound?  
 24

XV-80

PIERCE-STAUFFER - REDIRECT

1 Q And based on the facts that your reports are not just  
 2 based on what you see but what other people tell you and  
 3 what other people told them, it's possible they're not always  
 4 accurate?  
 5 A Sure, Yes.  
 6 MS DIGIACOMO: Nothing further.  
 7 THE COURT: Redirect?  
 8 MR. SCHIECK: Thank you, Your Honor.  
**REDIRECT EXAMINATION**  
 9 BY MR. SCHIECK:  
 10 Q But you recall that you did see the paper towels that  
 11 you've described?  
 12 A Yes.  
 13 Q Nobody told you that, you saw that?  
 14 A Yes,  
 15 Q And you saw the Crime Scene Analysts put them into  
 16 bags, correct?  
 17 A Yes,  
 18 Q Okay When you say bags, do you mean like these  
 19 -- the Court's --  
 20 MR. SCHIECK: May I approach over here, Your  
 21 Honor --  
 22 THE COURT: Yesr  
 23 MR. SCHIECK: -- just grab and evidence bag,  
 24

XV-79

PIERCE-STAUFFER - RECROSS

1 A What I saw was just the ones stuffed in the wound  
 2 were taken separately -- not -- and what they took after, I  
 3 don't know, They could've taken everything after -- they're  
 4 there several hours after I leave. They're there hours before  
 5 I'm there. They take a lot of things that I don't even know  
 6 that they took.  
 7 (Off-record colloquy of state's counsel)  
 8 BY MS. DIGIACOMO:  
 9 Q Okay, What was on the body when it was  
 10 transported?  
 11 A What was on the body?  
 12 Q Right. When the body was placed on the white  
 13 sheet and put in your coroner's body bag, what was on the  
 14 body?  
 15 A Clothes,  
 16 Q What clothes?  
 17 A I don't specifically recall what he was wearing.  
 18 Q Okay, Anything else, other than his clothes?  
 19 A If he had any jewelry on or anything like that, that  
 20 all would have stayed,  
 21 Q And do you specifically remember if any of the trash  
 22 went?  
 23 A No, I don't specifically remember,  
 24 MS. DIGIACOMO: Nothing else. Nothing further.

XV-81

SHAYNE KRAFT - DIRE

1 MR, SCHIECK: No further questions, Your Honor.

2 THE COURT: You may step down.

3 You may call your next witness.

4 MS, GREENBERGER: Thank you.

5 (Pause in the proceedings)

6 THE CLERK: Please come all the way forward.

7 Remain standing and raise your right hand.

8 **SHAYNE KRAFT, DEFENDANT'S WITNESS, SWORN**

9 THE CLERK: Please be seated. State your name

10 and spell it for the record, please.

11 THE WITNESS: Shayne Rochelle Kraft, K-r-a-f-t.

12 THE CLERK: Spell the rest of your name please.

13 THE WITNESS: Oh, Shayne, S-h-a-y-n-e

14 R-o-c-h-e-l-l-e,

15 THE COURT: You may proceed.

16 MS. GREENBERGER: Thank you, Judge.

17 **DIRECT EXAMINATION**

18 BY MS, GREENBERGER:

19 Q Good afternoon,

20 A Hi,

21 Q Do you see Kirstin Braise Lobato in the courtroom?

22 A I do,

23 Q Can you please identify her?

24 A She's right there behind the screen,

XV-82

IAYNE KRAFT - DIRECT

1 Q Did you live near the Lobato residence?

2 A I lived approximately a mile away.

3 Q Do you recall seeing Blaise in the year of 2001?

4 A I do.

5 Q Was there a time that you knew her to graduate  
6 from school?

7 A Yes, I do.

8 Q What --

9 A I was at her graduation,

10 Q When was that, if you recall?

11 A I don't recall exactly when that was,,

12 Q Would it be spring of 2001?

13 A It -- yeah, it should have been.

14 Q You were at her graduation?

15 A Yes, I was.

16 Q Do you know if she went down to Las Vegas after  
17 graduation?

18 A Yes, she did,

19 Q Do you remember when she came back from Las  
20 Vegas?

21 A It was approximately the 2 of July, thereabouts.

22 MS, GREENBERGER: May I approach, Your Honor?

23 THE COURT: You may,

24 /1/

XV-84

SHAYNE KRAFT - DIRECT

1 Q What is she wearing?

2 A Something kinda striped.

3 MS, GREENBERGER: Please let the record reflect  
4 she's been identified.

5 THE COURT: The record shall so reflect.

6 BY MS, GREENBERGER:

7 Q How do you know Blaise?

8 A She is my step-cousin.

9 Q Are you related to her by blood?

10 A No,,

11 Q What is the -- how is the relationship of step-cousin?  
12 Through what relative?

13 A She is my aunt's stepdaughter.

14 Q And what is your aunt's name?

15 A Rebecca Lobato.

16 Q Where do you reside?

17 A I reside in Littlefield, Arizona,

18 Q And how long have you lived there?

19 A Almost two and half years now.

20 Q Where did you live prior?

21 A Before that I lived in Las Vegas for some time, and  
22 before that I lived in Panaca.

23 Q What time period did you live in Panaca?

24 A From 2000 to about January 2002, I believe.

XV-83

SHAYNE KRAFT" - DIRECT

1 BY MS, GREENBERGER:

2 Q How do you remember that date?

3 A She had come back a couple of days before we had  
4 our July 4<sup>th</sup> barbeque.

5 Q Can you step down from the stand, and there's a  
6 pen right here, and put your initials when you recall Blaise  
7 coming back to Panaca in July.

8 A (Witness Complies)

9 Q You may sit down. You mentioned it was a couple  
10 of days before a July 4<sup>th</sup> barbeque that you first saw her?

11 A Mm-hmm,,

12 COURT RECORDER: Is that a yes?

13 THE WITNESS: Yes,, I'm sorry,

14 MS. DIGIACOMO: Objection, it's actually calling for  
15 facts not in evidence. She asked when she came home, not if  
16 she saw her.

17 THE COURT: Sustained.

18 BY MS. GREENBERGER:

19 Q When did you first see her in the month of July?

20 A On the 4th,

21 Q Where did you see her?

22 A At the barbeque. At her house,

23 Q Can you step down from the stand again and put  
24 your initials on that date as well.

XV-85

SHAYNE KRAFT - DIRE

1 A (Witness complies).  
 2 You went to a barbeque, you mentioned?  
 3 A Yes, we did.  
 4 And where was that?  
 5 A At her house.  
 6 Who was there?  
 7 A It was Becky, Larry, her, my dad, me, my husband,  
 8 her friend Marilyn, cousin Ashley and I think that was it.  
 9 Q What time did the barbeque start?  
 10 A I'm not 100 percent sure. It was before dark.  
 11 Q How many hours were you there?  
 12 A I was there probably 'til about 9:00, 9:30 that night,  
 13 Q Was Blaise there the full time?  
 14 A Mm-hmm, Yes,  
 15 Q Were there fireworks?  
 16 A There was in Caliente, we didn't have any in Panacar  
 17 Q Do you remember what the weather was like?  
 18 A It was beginning to storm.  
 19 Do you recall seeing her vehicle or do you know  
 20 what time of vehicle she drove —  
 21 A Yes,  
 22 Q -- during that time period?  
 23 A Yes,  
 24 Q And what was that?

XV-86

SHAYNE KRAFT - DIRECT

1 A No,  
 2 Q How long did you see her on that occasion?  
 3 A I saw -- I left at approximately sunset, so I'm  
 4 guessing about 8 o'clock or so is when I left.  
 5 Q Okay. Why don't you put the time period you saw  
 6 her and initial it please,  
 7 A (Witness complies).  
 8 Q How do you recall specifically that you saw her on  
 9 that date of July 8th?  
 10 A What do you mean?  
 11 Q How do you recall that particular date as opposed to  
 12 say, July 9th?  
 13 A Oh. Oh, okay. I had went over, because my  
 14 husband had cranked his neck and I was going over to get  
 15 some Tiger balm to rub out his neck.  
 16 Q What is your husband's name?  
 17 A John Kraft.  
 18 Q All right.  
 19 A And I went over -- I was also making chicken fried  
 20 steak that night so I decided to get an electric skillet from my  
 21 aunt to make my steak.  
 22 Q And your aunt is --  
 23 A Becky Lobato,  
 24 Q Blaise's mother?

XV-88

SHAYNE KRAFT - DIRECT

1 A It was a Fiero.  
 2 Do you remember seeing her vehicle on that date?  
 3 A Yes.  
 4 Where was it?  
 5 A It was parked in the front by the chainlink fence.  
 6 The front of?  
 7 A Of her house.  
 8 Would that be on the street?  
 9 Yes  
 10 WI-14n did you see her after the July 4<sup>th</sup> barbeque?  
 11 A The next time that I saw her was on the 8th.  
 12 Of July?  
 13 A Yes.  
 14 Do you remember when? What time?  
 15 A I went over there approximately 6:00, 6:30, that  
 16 evening.  
 17 Can you kindly get off the stand one last time and  
 18 put your initials and the time that you saw her on July 8th,  
 19 A The time?  
 20 Q Please.  
 21 A (Witness complies), From the beginning to the end  
 22 or just at 6:30?  
 23 Q Well, stand -- if you don't mind standing for a  
 24 second.

XV-87

SHAYNE KRAFT - DIRECT

1 A Yes, And I went over there, like I said between  
 2 6:00 and 6:30 and I stayed there until about 8:00.  
 3 Q Who was there on that occasion?  
 4 A It was myself, Blaise, Becky, Ashley and I think Chris  
 5 Carrington was there, but I'm not 100 percent sure,  
 6 Q How do you know Chris Carrington?  
 7 A I don't, but that was the first day that I had ever  
 8 seen him,  
 9 Q You mentioned Ashley, who is Ashley?  
 10 A My cousin. Blaise's stepsister,  
 11 Q Is that Becky's daughter?  
 12 A Yes.  
 13 Q When you arrived, where did you see Blaise? □  
 14 A I'm not sure. I know we all adjourned to the □  
 15 garage, but I'm not sure if she was in the house or the garage,  
 16 Q What did you do during the two hour period that  
 17 you were there?  
 18 A We all sat in the garage and talked and laughed and  
 19 we called my mother in Colorado. That was pretty much  
 20 about it.  
 21 Q Why did you call your mother in Colorado?  
 22 A We were having a discussion and my mother would  
 23 know the answer so we just called and -- to get the answer,  
 24 Q Did you use your phone?

XV-89

SHAME KRAFT - DIRE

1AYNE KRAFT - DIRECT

1 A No, I believe Becky used her cellphone.  
 2 Q Did you talk to your mother?  
 3 A Briefly.  
 4 Q Do you know why Becky used her cellphone,  
 A I think she said that it would --  
 6 MS. DiGIACOMO: Objection, speculation or hearsay.  
 7 THE COURT: Sustained, as to hearsay,  
 8 BY MS GREENBERGER:  
 9 Q Why was the cellphone used, if you know?  
 10 A I believe it was because it was on speed dial.  
 11 Q Was there anything unusual about your appearance  
 12 at that time?  
 13 A I was pregnant.  
 14 Q How many months?  
 15 MS. DiGIACOMO: Objection, relevance,  
 16 THE COURT: Overruled. You may answer.  
 17 THE WITNESS: Approximately five or six months.  
 18 BY MS. GREENBERGER:  
 19 Q Did you invite anyone from the house over for  
 20 dinner?  
 21 A I had Ashley come over for dinner.  
 22 Q Did you invite anyone besides Ashley?  
 23 A No  
 24 Q How did you get to the residence?

XV-90

1 on the 8th?  
 2 A Yes, he did.  
 3 Q What time?  
 4 A He came over approximately 8 o'clock. That's why I  
 5 left,  
 6 Q How do you know it was July 8<sup>th</sup> and not July 7<sup>th</sup> that  
 7 you saw Blaise in the garage?  
 8 A Because the next day I took my husband over to th  
 9 hospital for his neck,  
 10 MS. GREENBERGER: May I approach the clerk?  
 11 THE COURT: Yes.  
 12 (Pause in the proceedings)  
 13 BY MS. GREENBERGER:  
 14 Q Did you go with your husband to the hospital?  
 15 A Yes, I did.  
 16 Q What hospital was that?  
 17 A Glover C. Deals,  
 18 Q Where is that located?  
 19 A In Caliente.  
 20 Q Do you remember what time you went to the  
 21 hospital?  
 22 A It was first thing in the morning, about 9 o'clock or  
 23 so,  
 24 Q Did you drive him?

XV-92

SHAYNE KRAFT - DIRECT

SHAYNE KRAFT - DIRECT

1 A In my car,  
 2 Q Did there come a time when someone else came to  
 3 the residence while you were there?  
 4 A Not that I recall.  
 5 MS. DIGIACOMO: Your Honor, I couldn't hear the  
 6 answer.  
 7 THE COURT: Not that I recall,  
 8 MS. DiGIACOMO: Oh, not that I --  
 9 BY MS. GREENBERGER:  
 10 Q Ho' did you determine when it was time to leave?  
 11 A It was getting pretty late and I was tired.  
 12 Q Where was your husband at that time?  
 13 A He spent most of the time in the front yard with  
 14 Marilyn and I believe Blaise for a time. They were laying on  
 15 the grass watching lighting,  
 16 Q Was this on July 4<sup>th</sup> or July 8<sup>th</sup>?  
 17 A Oh, that -- I'm sorry, That was on the 4<sup>th</sup>. The 8<sup>th</sup>  
 18 he was at home,  
 19 Q Did there come a time that he came over to the  
 20 Lobato residence?  
 21 MS. DiGIACOMO: Objection, leading.  
 22 THE COURT: Sustained.  
 23 BY MS, GREENBERGER:  
 24 Q Did your husband ever come to the Lobato residence

XV-91

1 A I did.  
 2 Q Was he seen by a doctor?  
 3 A Yes, he was.  
 4 Q Did you get billed for that visit?  
 5 A We did.  
 6 Q Did you get billed in the form of a statement?  
 7 A Yes, we did,  
 8 MS. GREENBERGER: May I approach the witness?  
 9 THE COURT: Yes,  
 10 BY MS, GREENBERGER:  
 11 Q Showing you what's been marked as Defense  
 12 Proposed HH, do you recognize this document?  
 13 A Yes, I do.  
 14 Q Can you tell us what it is?  
 15 A This is the statement from the hospital.  
 16 Q The same hospital, Grover Deals?  
 17 A Yes, Grover C. Deals.  
 18 Q Can you tell the ladies and gentlemen of the jury  
 19 what day that's dated?  
 20 A 7/9/01.  
 21 Q Is that the statement that you received in response  
 22 to the visit to the hospital with your husband?  
 23 A Yes, it was.  
 24 MS. GREENBERGER: We would move for the

XV-93



SHAYNE KRAFT - DIRE

1 admission of Defense Exhibit HH at this time.  
 2 MS. DiGIACOMO: No objection.  
 3 THE COURT: Granted.  
 4 (Defendant's Exhibit HH, admitted)  
 5 BY MS\_ GREENBERGER:  
 6 Q Is this the same document I just showed you?  
 7 A Yes, it is.  
 8 Q Can you identify on the document where the name  
 9 of your husband is reflected, can you pinpoint on the actual  
 10 screen itself,  
 11 A It's under patient.  
 12 Can you point to the screen and —  
 13 A Right there.  
 14 And where is the admit date, if you can identify that  
 15 as well?  
 16 A It's right there.  
 17 And that reflects July 9, 2001 at approximately  
 18 15:35 hours?  
 19 A [No audible response].  
 20 COURT RECORDER: Is that a yes?  
 21 THE WITNESS: Yes.  
 22 BY MS. GREENBERGER:  
 23 Q And can you kindly show us the discharge date?  
 24 Was he released that same day?

XV-94

-1AYNE KRAFT - CROSS

1 A No.  
 2 Q Okay. You didn't see her until they had the  
 3 barbeque on the 4<sup>th</sup> of July, correct?  
 4 A Correct.  
 5 Q What day of the week was July 4<sup>th</sup> that year?  
 6 A I don't remember.  
 7 Q When you went over for the barbeque, that was the  
 8 first time you had seen Blaise since she'd graduated from high  
 9 school?  
 10 A I believe so.  
 11 Q How'd she look?  
 12 A She looked sick, but she looked okay.  
 13 Q Now how did she look sick?  
 14 A She was very thin, very pale.  
 15 Q Did you know at the time that she was on drugs?  
 16 A Yes, I did,  
 17 Q Okay. So did you just chalk that up to she's on  
 18 drugs, the way she looked?  
 19 A For the most part, yeah,  
 20 Q Okay. How was her demeanor? How was she  
 21 acting?  
 22 A She was quiet,  
 23 Q Not really outgoing that day?  
 24 A No, she said she wasn't feeling well,

XV-96

SHAYNE KRAFT - CROSS

1 A Yes, he was,  
 2 Q And what is the discharge date reflect?  
 3 A 7/9/01  
 4 MS. GREENBERGER: I don't believe I have anything  
 5 further\_  
 6 THE COURT: You may,  
 7 MS DiGIACOMO: Thank you,  
 8 CROSS-EXAMINATION  
 9 BY MS DiGIACOMO:  
 10 Q Good afternoon,  
 11 A Good afternoon,  
 12 Q So if I have this correctly Rebecca or Becky Lobato,  
 13 as we've been calling her, is your aunt by blood?  
 14 A Yes,  
 15 Q Okay, So she's your mother's sister or your  
 16 brother's -- or your father's sister?  
 17 A My mother's sister.,  
 18 Q Now you talked about how Blaise had come back to  
 19 Panaca about the 2<sup>nd</sup> of July, is that correct?  
 20 A Yes,  
 21 Q And you learned that information from your Aunt  
 22 Becky?  
 23 A Yes  
 24 But you didn't see her on that day?

XV-95

SHAYNE KRAFT - CROSS

1 Q Now were her and Becky getting along that day?  
 2 A I -- I'm not sure,  
 3 Q You don't recall if they were fighting?  
 4 A No,  
 5 Q Okay, But they had -- they had fought often in the  
 6 past?  
 7 A Not when I was around,  
 8 Q Okay. But had you heard about it from Becky?  
 9 A Yes,,  
 10 Q Okay. And you said that on July 4<sup>th</sup> that there no  
 11 fireworks in Panaca?  
 12 A Not -- Caliente had the firework display and that's  
 13 where most people would go,  
 14 Q Okay, And so is that where you guys went after the  
 15 barbeque to watch the fireworks?  
 16 A No, we just stayed at the house,  
 17 Q So Blaise and you guys were all there the whole  
 18 night? Nobody left?  
 19 A Nobody left,  
 20 Q The fireworks display in Caliente, do you know what  
 21 time of day that started?  
 22 A It normally started at sunset, about, you know, 8:30,  
 23 9 o'clock is when it would normally start.  
 24 Q But there was kinda like a little street festival before

XV-97

SHAYNE KRAFT - CRO:

1 the fireworks, correct?  
 2 A I'm not sure. I only went to the fireworks once the  
 3 whole time I lived there.  
 4 Q Okay, And she drove a Fiero. Do you know how  
 5 she got that Fiero?  
 6 A I -- I'm not sure,  
 7 Q Did her parents buy it for her?  
 8 A I believe so, but I'm not a 100 percent.  
 9 Q Do you know how long she'd had it when —  
 10 A Not very long.  
 11 Q Okay.  
 12 A Maybe six months.  
 13 Q She got it in the spring?  
 14 A Something like that.  
 15 Q Okay, So six months, maybe January 2001?  
 16 A Maybe, yeah,  
 17 Q Do you know what her license plate was?  
 18 A Yes.  
 19 Q What Was it?  
 20 A Fornicator,  
 21 Q Kinda distinctive plate?  
 22 A Yes,  
 23 Q Okay, Your intention, when stopping by, was to get  
 24 Tiger balm for your husband's neck?

XV-98

SHAYNE KRAFT - CROSS

1 you had left was because you got tired and so you left, do you  
 2 recall that?  
 3 A No.  
 4 Q Okay. You just a few minutes ago had — when  
 5 asked by defense counsel why you left —  
 6 A I had confused that day with the 4th,  
 7 Q Oh, so it was on the 4<sup>th</sup> of July you got tired and  
 8 left?  
 9 A Yes.  
 10 Okay. So that evening, July 8<sup>th</sup>, you took Ashley  
 11 back to your house and you made dinner?  
 12 A Yes.  
 13 Q What time did you eat dinner, approximately?  
 14 A It was about quarter of 9:00, thereabouts.  
 15 Q And at that time was Ashley able to drive a car?  
 16 A No.  
 17 Q So how did she get back home?  
 18 A I drove her home.  
 19 Q All right. And so you -- did you put the Tiger balm  
 20 on your husband's neck?  
 21 A I did.  
 22 Q And then the next morning was his neck any better?  
 23 A No, it was not,  
 24 Q So what happened?

XV-100

SHAYNE KRAFT - CROSS

1 A Yes  
 2 Q When did he injure it?  
 3 A He injured it that afternoon, he had fell asleep on  
 4 the couch.  
 5 He injured his neck while sleeping on the couch?  
 6 A Yeah.  
 7 Q And how did he just -- just creaked or something  
 8 from the way —  
 9 A Yeah, it was crinked from the couch.  
 10 Q All right. And -- so what day of the week was that  
 11 that he injured his neck?  
 12 A I believe it was Sunday,  
 13 Q And your other intention of stopping by was to get  
 14 an electric skillet to make your dinner?  
 15 A Yes.  
 16 Q So your intention was just to stop by quickly, grab  
 17 your stuff and go back home?  
 18 A Yes.  
 19 Q Okay, And you ended up staying there a little long  
 20 than I think your husband wanted you to?  
 21 A Yes.  
 22 Q Okay, And that's why he came and got you?  
 23 A Yes,  
 24 Q Okay, But you also testified though that the reason

XV-99

SHAYNE KRAFT - CROSS

1 A I took him to the hospital that morning,  
 2 Q Okay. You went in the morning?  
 3 A I believe so,  
 4 Q But you weren't admitted until -- I think it was 335  
 5 in the afternoon, according to your bill receipt.  
 6 A I'm not 100 percent sure. It was a long time ago,  
 7 Q Okay. Do you recall what Blaise was wearing on the  
 8 8<sup>th</sup> when you saw her?  
 9 A She was wearing a pair of jeans and a shirt.  
 10 Q Do you know what color shirt?  
 11 A I do not.  
 12 Q Is that the way she normally would dress?  
 13 A Mostly yes.  
 14 Q Okay. Do you recall, did she have any injuries on  
 15 her, her stomach, some scratches?  
 16 A I didn't see any,  
 17 Okay. But she was wearing a top that showed her  
 18 midriff?  
 19 A Not that I recall,  
 20 Q Did you see any other bruising on her or scrapes or  
 21 anything ?  
 22 A I did not.  
 23 Q She wasn't complaining of hurting at all?  
 24 A No, she was not.

XV-101

SHAYNE KRAFT - CRO:

1 Q And when you saw her that day in comparison until  
 2 the 4<sup>th</sup>, did she still kinda look skinny and pale and not feeling  
 3 well?  
 4 A She was still skinny, but she wasn't as pale and not  
 5 feeling as well as she was on the 4th.  
 6 Q But -- okay. Let me —  
 7 A She was feeling better,  
 8 Q She was feeling better but still not -- not herself?  
 9 A Yes,  
 10 Q Okay. So she was still kinda being quiet that day?  
 11 A No, she was little bit more normal on that day.  
 12 Q Okay. You're saying a little more normal, but she  
 13 still wasn't feeling well?  
 14 A No, she wasn't feeling well.  
 15 So not completely herself that day?  
 16 A No,  
 17 How often would you say that you would talk to  
 18 Becky a week?  
 19 A A week?  
 20 Q Back then?  
 21 A Four times a week,  
 22 Q So you're fairly close with your aunt?  
 23 A Yes.  
 24 Q Was your — were your parents also living in Panaca

XV-102

IYNE KRAFT - REDIRECT

1 Q Okay. And you had talked with Becky on several  
 2 occasions about Blaise and what she was arrested for, correct?  
 3 A Yes,  
 4 Q At that time?  
 5 A Yes,  
 6 Q Back in 2001?  
 7 MS. DiGIACOMO: The Court's indulgence. Pass the  
 8 witness,  
 9 THE COURT: Redirect?  
 10 MS. GREENBERGER: Thanks,  
 11 **REDIRECT EXAMINATION**  
 12 BY MS. GREENBERGER:  
 13 Q Did Becky ever suggest any dates to you?  
 14 MS. DiGIACOMO: Objection, vague.  
 15 THE COURT: Sustained.  
 16 BY MS. GREENBERGER:  
 17 Q Do you remember the date seeing Blaise on July 4th,  
 18 is that the produce of your own memory?  
 19 A I remembered seeing her the day before I took my  
 20 husband to the hospital,  
 21 Q That would be on July tr?  
 22 A Yes.  
 23 Q And that's the product of your own memory?  
 24 A Yes,

XV-104

SHAYNE KRAFT - CROSS

or Caliente or Pioche?  
 2 A Not at that time,  
 3 Q But your dad was there for the barbeque?  
 4 A My dad was up from Vegas, yes.  
 5 Q Oft So your parents had lived in Vegas at the time?  
 6 A My parents were divorced, my mom lived in  
 7 Colorado, my dad in Vegas.  
 8 Q Okay, So just your dad was at the barbeque?  
 9 A Yes.  
 10 Q And the day after Blaise arrested, you talked to  
 11 Becky, correct?  
 12 A Yes.  
 13 Q All right, And she told you that she had been  
 14 arrested for this murder on July 8<sup>th</sup>?  
 15 A Yes  
 16 Q And was it at that time that you remembered you  
 17 saw her on July 8th or was it sometime thereafter?  
 18 A I don't recall,  
 19 Q Okay, You never called — you never talked to the  
 20 police, correct?  
 21 A No, they never spoke to me,  
 22 Q Okay, And you did speak to a defense investigator  
 23 though, sometime later?  
 24 A Yes,

XV-103

SHAYNE KRAFT - REDIRECT

1 Q Not someone suggesting that date to you?  
 2 A No,  
 3 Q What about July 4<sup>th</sup>, is that something that you  
 4 remember yourself as well?  
 5 A Yes,  
 6 Q Not the product of suggestion by someone?  
 7 A No.  
 8 Q And just -- the District Attorney had asked you what  
 9 date July 4 1 falls on, looking at the calendar can you tell us  
 10 what — what day of the week that is?  
 11 A A Wednesday.  
 12 Q And what day of the week is July 8th?  
 13 A Sunday,  
 14 Q When you saw Blaise on July 4<sup>th</sup> do you know if she  
 15 was using drugs on that date?  
 16 A I do not know for sure,  
 17 Q Do you have an opinion?  
 18 A I do have an opinion.  
 19 MS. DiGIACOMO: Objection.  
 20 THE COURT: Sustained.  
 21 Counsel may approach,  
 22 (Off-record Bench Conference)  
 23 BY MS. GREENBERGER:  
 24 Q Did you ever see Blaise use any drugs on July 4th?

XV-105

SHAYNE KRAFT - REDIR

1 A I did not,  
 2 Q Did you ever use any drugs on July 8th?  
 3 A I did not.  
 4 Q The District Attorney asked you on cross-  
 5 examination about her appearance on July 4<sup>th</sup> and you  
 6 described she was very thin and pale and you chalked it up to  
 7 being on drugs. Can you describe what you meant by that  
 8 instance?  
 9 A Well, I knew that she was in Vegas and she had  
 10 been on drugs there,  
 11 Q How did you know that?  
 12 A Becky told me  
 13 Q When you describe that you saw her and you  
 14 chalked it up to being on drugs, were you referring to the time  
 15 period when she was in Vegas?  
 16 A Yes, I was  
 17 Q Did she look different when you saw her on July tith  
 18 than she had when she was up in Panaca? Physically, her  
 19 appearance.  
 20 A I'm not understanding? On July 4<sup>th</sup> in Panaca?  
 21 Q Of 2001, did she look different — was her  
 22 appearance different than when she had previously lived in  
 23 Panaca?  
 A Yes

XV-106

AYNE KRAFT - RE CROSS

1 July 4th?  
 2 A Yes, it did.  
 3 Q When you drove her sister Ashley home after dinner,  
 4 was the Fiero still at the house?  
 5 A Yes, it was.  
 6 Q Did it appear to be in the same place you had seen  
 7 it earlier that day?  
 8 A Yes, it did.  
 9 MS, GREENBERGER: I don't believe I have anything  
 0 further,  
 1 THE COURT: Recross?  
 2 MS. DiGIACOMO: Thank you  
 3 RE CROSS EXAMINATION  
 4 BY MS. DiGIACOMO:  
 5 Q I'm sorry, defense counsel just asked you that when  
 6 you drove Ashley home, if Blaise's car was in the same place  
 7 that you'd seen it earlier in that day. Do you recall that  
 8 question?  
 9 A Yes.  
 10 Q Okay. You mean that when you got home from  
 11 taking Ashley home, you took her back to her house, it was  
 12 still there from when you left at 8 o'clock p.m.?  
 13 A Yes,  
 14 Q All right. It hadn't moved in just that hour, hour and

XV-108

SHAYNE KRAFT - REDIRECT

1 Q How?  
 2 A She was thinner. She had bleached her hair. Just  
 3 little things.  
 4 Q What was she doing, if you recall, the night of the  
 5 July 4<sup>th</sup> barbeque?  
 6 A I'm not 100 percent sure. I spent a lot of time in  
 7 the garage with Becky and Larry.  
 8 Q You mentioned earlier that she was lying on  
 9 something outside the house or inside the house, can you  
 10 clarify that?  
 11 A Her, my husband and her friend Marilyn were laying  
 12 on the grass in the yard.  
 13 Q Was that at some time during the party?  
 14 A Yes.  
 15 Q When you went to her home on July 8<sup>th</sup>, do you  
 16 remember seeing her Fiero parked there?  
 17 A Yes,  
 18 Q Within the same place you had seen on July 4th?  
 19 MS, DiGIACOMO: Objection, leading,  
 20 THE COURT: Sustained.  
 21 BY MS. GREENBERGER:  
 22 Q Where was it parked?  
 23 A In front of the house by the chainlink fence.  
 24 Q Did it look like it was parked in the same place as

XV-107

SHAYNE KRAFT - RE CROSS

1 a half or so?  
 2 A Not that I'm aware of,  
 3 Q Okay. Now, just so we're clear. You saw Blaise the  
 4 evening of July 4th?  
 5 A Yes.  
 6 Q And the evening of July 8th?  
 7 A Yes,,  
 8 Q Approximately 6:00 to 6:30 to 8 o'clock?  
 9 A Yes.  
 10 Q And that's p.m?  
 11 A [No audible response].  
 12 Q Okay. Now when you talked to Becky about Blaise  
 13 being arrested the day before, Blaise -- or excuse me, Becky  
 14 told you the date July 8<sup>th</sup> was when the crime she was arrested  
 15 for was committed?  
 16 A Yes.  
 17 Correct? And she just didn't bring out July 8<sup>th</sup> out of  
 18 the blue to you?  
 19 A No.  
 20 Q And she didn't try and suggest anything to you, she  
 21 just mentioned the date?  
 22 A Yes.  
 23 Q Okay. At some point thereafter did you tell her, hey,  
 24 wait a minute, I know I was at your house the evening of the

SHAYNE KRAFT RECRi

1 sth?

2 A Yes,

3 Q Okay,, And so then she gave your name to Blaise's

4 defense counsel and they contacted you?

5 A Yes.

6 Q Okay, So you just didn't realize the significance of

7 July 8<sup>th</sup> until Becky told you the date of the crime?

8 A Correct.

9 Q And you said that you knew when Blaise was in Las

10 Vegas after she graduated, that she had been on drugs?

11 A Yes,

12 Q And this was, is it fair to say, approximately

13 May/June 2001?

14 A Yes.

15 Q And you had talked to Becky about that a couple of

16 time, the fact that she'd been on -- she was on drugs, correct?

17 A Yes.

18 In fact Becky didn't approve of it, correct?

19 A No,

20 Q In fact she was upset about it.

21 A Yes.

22 Q And in fact she wanted to do something to help her

23 daughter,,

24 A We all did.

XV-110

1 Q Okay. And so that's why you'd talked about it?

2 A Mm-hmm.

3 Q Is that yes?

4 A Yes.

5 Q And in fact when Blaise came home, that week of

6 July 4<sup>th</sup>, Becky tried to help her get off the drugs, didn't she?

7 A Yes.

8 MS. DiGIACOMO: Nothing further,

9 MS. GREENBERGER: Nothing further.

10 THE COURT: You may step down from the stand.

11 We're gonna take a quick stretch break.

12 Ladies and gentlemen in 15 minutes, please be in

13 the hallway, the bailiff will meet you there to return you to

14 your seats in the courtroom. During this 15 minute stretch

15 break, you're admonished not to talk or converse among

16 yourselves, nor with anyone else on any subject connected

17 with the trial. You're not to read, watch or listen to any report

18 or commentary on the trial or any person connected with the

19 trial, by any medium of information, including, without

20 limitation, newspaper, television, radio and internet, And

21 you're not to form or express any opinion on any subject

22 connected with the trial until the case is finally submitted to

23 you. The Court's in recess for 15 minutes,

24 (Court recessed at 3:12:45 p.m. until 3:42:43 p.m.)

XV-111

1 (Jurors are not present)

2 THE BAILIFF: Department II is back in session.

3 Please be seated.

4 THE COURT: The record shall reflect that we're

5 resuming outside the presence of the jury, at the request of

6 counsel in State versus Lobato, under C177394. Defendant is

7 present with her three counsel and the two prosecuting

8 attorneys are present as well.

9 Ms. Zalkin is on her feet,

10 MS. ZALKIN: Thank you, Your Honor. In light of

11 the State's comment a few days ago that they were seeking to

12 exclude the testimony of Defense Expert Brent Turvey, we

13 need to address that now because we're planning on calling

14 one more lay witness, who should be brief and then hope to

15 bring Mr. Turvey in, I want to note a couple of things —

16 THE COURT: Would the Bailiff please tell the jury it

17 will be another five minutes.

18 THE BAILIFF: Yes, I will,

19 MS. DiGIACOMO: Your Honor, it's gonna be longer

20 than that,

21 THE COURT: Well, Mr. Bailiff, Mr\_ Bailiff,

22 MS\_ DiGIACOMO: I just thought we'd be truthful

23 with the Court since we've been wrong on the time frame this

24 whole trial.

XV-112

1 THE COURT: I don't -- how long is it gonna be?

2 MS. DiGIACOMO: This is gonna be a big argument

3 and it's gonna entail going through every slide of PowerPoint.

4 THE COURT: Then we're not gonna do it right now.

5 MS. DiGIACOMO: And I don't -- if they have one

6 more lay witness, I -- and it's almost 4 o'clock I'm not sure

7 how -- if we would get to him anyway. But it's gonna be an

8 extensive argument, Your Honor.

9 THE COURT: Would you go ahead and return and

10 reseal the jury.

11 THE BAILIFF: Yes, I will,

12 THE COURT: Thank you.

13 (Pause in the proceedings)

14 THE BAILIFF: The Jury is now present.

15 (Jurors reconvened at 3:45:15 p.m.)

16 THE COURT: The record shall reflect that the jurors

17 have been returned to their seats in the jury box area and

18 seated there by the bailiff. Proceeding forward with the

19 defendant's case.

20 You may call you next witness,

21 MS, GREENBERGER: Thank you,

22 THE CLERK: Please remain standing, raise your

23 right hand,

24 /1/

XV-113

JOHN KRAFT - DIREC

**JOHN KRAFT, DEFENDANT'S WITNESS, SWORN**

THE CLERK: Thank you, please be seated. State your name --

THE WITNESS: My name is --

THE CLERK: -- and spell it for the record please.

THE WITNESS: -- John A. Kraft, K-r-a-f-t, like cheese without the royalties.

THE COURT: You may proceed,

**DIRECT EXAMINATION**

BY MS. GREENBERGER:

Good afternoon, How are you related to Shayne Kraft?

A She's my wife.

Q And how long have you guys been married?

A Ten years,

Q Where do you live right now?

A We live in Littlefield, Arizona.

Q Did you previously live in Panaca, Nevada?

A Yes, ma'am,

Q For how long?

A We lived there from -- oh, I'd say three years,

Q Do you know Blaise Lobato?

A Yes, ma'am,

Q Can you identify her for the record?

XV-114

OHN KRAFT - DIRECT

laying there watching spider lighting in the clouds,

Q Where -- where was that at?

A That was at her house.

Q Can you get off the witness stand and use the pen

on the table in front of you to put your initials on the date that you first saw her that summer,

A (Witness complies)

Q And you can return to your seat -- oh, sorry,

A I'm sorry, about that.

Q I was gonna say that you can resume your seat. Did you initial that you -- your initials? Okay.

A I'm fourth.

Q Okay. And approximately what time period were you at the Lobato residence?

A It was in evening about dusk, we were watching the lighting come in and we were home just after dark,

Q How many hours were you there?

A Honestly, I think it was about an hour, myself.

Q Who was there when you arrived?

A There was a whole bunch of people in the garage and I'm not really one to mingle that much so I just kinda hung out on the lawn.

Q Can you recall who was there?

A I believe Becky and Larry were there, her parents,

XV-116

JOHN KRAFT - DIRECT

A Yes, ma'am, she's right there,

MS. GREENBERGER: The record should reflect he's pointing to --

THE WITNESS: Right behind the monitor,

MS. GREENBERGER: -- Blaise Lobato.

THE COURT: The record shall so reflect,

BY MS. GREENBERGER:

Q How long have you known her?

A I've known her for approximately 10 years.

Q How is it that you know her?

A She is my wife's cousin,

Q When did you first meet?

A I first met her while I was on leave in the military. I was just passing through and we stopped off at their family.

Q When you were living in Panaca, did you live there in the 2001 time period?

A Yes, ma'am,

Where did you live in proximity to the Lobatos?

A About a mile south of her. Well, probably a half

Taking you back to July of 2001, do you remember seeing Blaise during that time period?

A Yes, I saw her three times that summer. The first time would be on the 4<sup>th</sup> of July, we were on the front lawn,

XV-115

JOHN KRAFT - DIRECT

Marilyn, I don't know her last name, was also kinda hanging out on the lawn with me. Blaise came out for a period, looked at the -- looked at the lighting with us and then went back inside.

Q What did Blaise's appearance look like to you? How did it look?

A She looked like she'd had a rough little spell. She wasn't -- she was -- she'd gone down to Las Vegas and kinda got in some stuff and come back and we were kinda worried about her, but, you know, I think she was starting to recover and I was -- we were --

Q When you say "rough little spell", can you describe her physical appearance?

A She'd lost a lot of weight.

Q Was she pale?

A Yeah, she was pale, she was skinny, you know,

Q After July 4<sup>th</sup> -- well, strike that When you arrived at the residence, did you see or know if she had a vehicle?

A You know what, honestly I didn't,

Q When was the next time you saw her after July 4th?

A The next time I saw her after July 4<sup>th</sup> was on July 8<sup>th</sup> at about 7:00 in the morning, I'd gone over to talk to her father, because I was getting ready to leave for Minnesota for a three month project of WorldCom involving fiberoptic

XV-117

JOHN KRAFT' - DIREC

1 relocation, I wanted to talk to her father about checking in on  
2 my family while I was gone. I went to the front door,  
3 knocked, she opened the door. I asked for her father, she  
4 went back to get her father and I move through their three  
5 dogs into the garage and waited for him-

6 Q Can I ask you to get off the witness stand and  
7 identify the time you saw her first on July 8<sup>th</sup> with your initials  
8 next to it\_

9 A Mm-hmm, Right in here somewhere?

10 Q Yeah, you could draw an arrow from the 8<sup>th</sup>, maybe,  
11 or just do it real small. Well, don't write it on the right  
12 because that —

13 A I'm sorry.

14 Q [unintelligible], Maybe draw --

15 A Right here?

16 Q Yeah, write it up right there, And please put your  
17 initials next to it. Okay, you can have a seat.

18 So how do you remember that it was that exact day  
19 that you saw her that morning?

20 A Later that afternoon, after I left and got done with  
21 my conversation with Larry and I went home and I fell asleep  
22 on the couch, it was a pretty bad couch we had, it was shorter  
23 than my -- than my length. And my head got stuck to one  
24 side, it kinked and I couldn't lift my head off my shoulder. Get

XV-118□

JOHN KRAFT DIRECT

1 more than one inch and it was excruciatingly painful,□

2 Q Had that ever happened to you before?

3 A Never before, never since\_

4 Q Did you go get treatment? Did you go to the  
5 emergency room?

6 A The following day, but later that day I sent my wife  
7 over to Lobatos to get Tiger balm, try and help me rub it out.  
8 I kept expecting it to just pop out and it never did,

9 Q Before we go any further can you tell us, what was  
10 the purpose of you going to the Lobato residence that morning  
11 at 7:00 a.m.

12 A The purpose was to go over and talk to Larry about,  
13 you know, looking in after my family while I was gone for  
14 three months, checking in- I went over there basically at 7:00  
15 in morning because I can't get an edge in, word-wise, with  
16 that family. I'm kinda -- I'm not one to talk over another  
17 person and they — they're back and forth a lot with the talking.  
18 So I basically went over in the morning to get -- get his full  
19 attention.

20 Q Why did you ask Larry to look after your family?  
21 Why Larry?

22 A Larry is the only other male member of the family  
23 around and I, you know, I felt it was a man to man issue that  
24 I wanted to talk to him just to make sure that he checked in

XV-119

OHN KRAFT - DIRECT

1 on my family,

2 Q Was your wife pregnant at the time?

3 A My wife was pregnant at the time.

4 Q Did you, in fact, leave to Minnesota subsequent to  
5 that date?

6 A Yes, ma'am. We left about three days later and I  
7 was gone -- the three month project turned into a one year  
8 project,

9 Q You were gone from your family for a year?

10 A Yes, ma'am.

11 Q Did Larry watch over the family during that time?

12 A Yes, ma'am.

13 Q Going back to July 8, how long were you there the  
14 morning of July 8<sup>th</sup>, talking with Larry?

15 A It was a short conversation, it was probably five,  
16 maybe 10 minutes at most,

17 Q Do you remember what Blaise was doing when you  
18 arrived?

19 A She let me in through the door and she went back  
20 towards the back of the house to get him. We had that  
21 conversation in the garage and I left back out through the  
22 garage door, So I didn't see her again from that point on.

23 Q Do you recall what she was wearing?

24 A No, ma'am, I don't,

XV-120

JOHN KRAFT - DIRECT

1 Q Did she appear to have been sleeping?

2 A Yes, ma'am\_

3 Q Did you notice any types of injuries on her?

4 A No, ma'am,

5 Q Would you have?

6 A I think I would've. With 11 years of combat arms  
7 units, something that would generally stand out to me.

8 Q Were her hands and arms visible when you saw her  
9 that morning?

10 A Yes, ma'am, Along with her face.

11 Q When did you come back to the Lobato residence  
12 that day?

13 A I'd sent my wife over to get the Tiger balm,  
14 approximately 6:00, about two hours after that I drove with  
15 my arm -- or my head stuck to my shoulder back over there  
16 and was a little bit upset. Went over, kinda made a bit of  
17 scene,

18 Q Why were you upset?

19 A I was upset because it took her two hours to go get  
20 Tiger balm —

21 Q Were you in --

22 A and she was --

23 Q — were you in pain?

24 A I was her in pain and I was expecting her to, yeah,

XV-121

JOHN KRAFT - DIREC

1 prioritize me a little higher than the conversation she was  
 2 having.  
 3 Had she driven over there in a separate car?  
 4 A Yes, she did, she drove over in her Grand Am, I  
 5 followed over in my pickup truck,  
 6 Q When you arrived on July 8<sup>th</sup>, what time would you  
 7 say you arrived.  
 8 A The evening\_  
 9 Q Can you give us an approximate time period,  
 10 A I would say it was dusk, so I'm imagining it was  
 11 about 8 o'clock  
 12 Q Did you see Blaise at that time?  
 13 A Yes, I did.  
 14 Q Who else was present?  
 15 A Becky and Larry were there, my wife was there,  
 16 Blaise was there and another gentlemen I didn't know,  
 17 Q Can you describe him?  
 18 A Oh, it was just another gentlemen, I couldn't — after  
 19 five years, remember what he looked like.  
 20 Q Do you recall his age?  
 21 A About her age.  
 22 Q How long did you stay?  
 23 A I was there --  
 24 THE COURT: I'm gonna ask for a clarification.

V-122

OHN KRAFT - DIRECT

1 Q Did you get some relief for your neck?  
 2 A Yes, I was -- the doctor injected me with two horse  
 3 sized shots of muscle relaxer and a pain killer and it instantly  
 4 relieved the neck. It just popped right back out. It felt great.  
 5 Q Can you initial on the chart what time you saw her  
 6 on the 8<sup>th</sup> in the evening?  
 7 A Yes, ma'am.  
 8 Q Thank you. After July 8<sup>91</sup>, did you see Blaise again?  
 9 A No, it's the last time I saw her until probably six,  
 10 seven months ago. Later I came home for Christmastime,  
 11 right -- and the son of my birth the birth of my son, I —  
 12 Q That was -- that was next time?  
 13 A That was the next time.  
 14 Q And when was your son born?  
 15 A My son was born in -- oh, you're gonna get me in  
 16 trouble here -- December.  
 17 Q Of 2001?  
 18 A Yes,  
 19 Q Did you ever see Blaise using drugs on July 4th?  
 20 A No, I didn't,  
 21 Q Did you ever see her using drugs ever?  
 22 A No, I haven't, I've heard rumors, but I, myself, I've  
 23 never seen,  
 24 Q Did you see her using drugs on July 8th?

kV-124

JOHN KRAFT - DIRECT

1 When you say about her age, who is her?  
 2 THE WITNESS: Her would be the defendant,  
 3 THE COURT: Thank you,  
 4 BY MS. GREENBERGER:  
 5 Q How old was Blaise at the time, if you know?  
 6 A About 18.  
 7 Q How long did you stay?  
 8 A I was there, not very long, again, five minutes.  
 9 Q Did you take your own car home?  
 10 A Yes, I did.  
 11 Q Did you go to the emergency room the next day?  
 12 A Yes, I did.  
 13 Q Did your wife take you?  
 14 A Yes, ma'am,  
 15 MS. DiGIACOMO: Objection, leading.  
 16 THE COURT: Sustained.  
 17 MS. DiGIACOMO: Move to strike.  
 18 THE COURT: Granted.  
 19 BY MS GREENBERGER:  
 20 Q How did you get there?  
 21 A My wife drove me.  
 22 Q What hospital did you go to?  
 23 A We went to the Caliente Clinic, I think it's Grover C.  
 24 Mills [sic] and we called it the clinic.

XV-123

JOHN KRAFT - DIRECT

1 A No, I didn't,  
 2 Q When she — did you say she answered the door on  
 3 July 8<sup>th</sup> at 7:00 in the morning?  
 4 A That would be — yes, the 8<sup>th</sup> on -- at 7:00 in the  
 5 morning.  
 6 What day of the week was that?  
 7 A That would have been a Sunday.  
 8 Did she appear to be under the influence at that  
 9 time?  
 10 A No, she appeared sleepy. Like she'd woken up.  
 11 Q Do you have any doubt in your mind that July 8<sup>th</sup>, on  
 12 the date -- that date and time at 7:00 a.m. that you saw her?  
 13 A No doubt.  
 14 Q What about in the evening?  
 15 A No doubt.  
 16 Q Were you an early riser?  
 17 A Yes, ma'am.  
 18 Q Was Larry Lobato, since I woke him up. Eleven  
 19 years of military kinda gets you up early.  
 20 A Did you know if Braise had come back to Panaca to  
 21 get off drugs?  
 22 MS, DiGIACOMO: Objection, leading.  
 23 THE COURT: Sustained,  
 24 MS, DiGIACOMO: And hearsay.

XV-125



JOHN KRAFT - CROSS:

1 BY MS. GREENBERGER:

2 Q Do you know why Blaise had returned to Panaca in  
3 the July time period?

4 A I had heard that she'd come back —

5 MS. DiGIACOMO: Objection, non-responsive.

6 THE COURT: Sustained.

7 MS. GREENBERGER: I don't believe I have anything  
8 further.

9 THE COURT: Cross?

10 MS, DiGIACOMO: Thank you, Your Honor,

11 **CROSS-EXAMINATION**

12 BY MS. DIGIACOMO:

13 Q Good afternoon.

14 A Good afternoon, ma'am,

15 Q You and your wife Shayne have been together for  
16 ten years?

17 A Yes.

18 Q So you've known Becky and Larry Lobato  
19 approximately 10 years?

20 A Approximately.

21 Q And your wife is pretty close with — well, let's strike  
22 that. Back in 2001 your wife was pretty close with Becky  
23 Lobato when you were living there?

24 A Yes, ma'am.

XV-126

10HN KRAFT - CROSS

1 Q Now you said that —

2 A It was a little hard -- I'm sorry.

3 Q I'm sorry?

4 A It was a little hard to eat as well, it didn't -- it wasn't  
5 great and it was hard to eat, so.

6 Q Did it hurt to chew as well from your neck?

7 A It wasn't comfortable,

8 Q Okay. Did the Tiger Balm help?

9 A No, ma'am.

10 Q And that's why you went to the doctor the next day?

11 A Actually it just burned my skin is all it did.

12 Q Okay, What time did you go to the doctor the next  
13 day?

14 A It was about at 9 o'clock, if I remember right.

15 Q All right, So you -- the minute — well, no, no, you  
16 said you've said you were an early riser?

17 A I am an early riser.

18 Q So you got up and it still hurt for awhile before you  
19 decided to go?

20 A Yes, ma'am.

21 Q How long were you there?

22 A I believe I was there for about an hour, ma'am.

23 Q One hour?

24 A Yes, ma'am.

XV-128

JOHN KRAFT - CROSS

1 Q And she actually talked to her frequently?

2 A Yes, ma'am,

3 Q And you said that on the evening of July 8<sup>th</sup>, you'd  
4 sent your wife over there for some Tiger Balm?

5 A Yes, ma'am.

6 Was there any other reason why she was going over  
7 there?

8 A She was going over there to get a skillet for dinner.

9 Q Okay, Did you actually get your dinner?

10 A Yes, ma'am,

11 Q Who ate the dinner?

12 A She ate most of it, I wasn't real fond of it, to be  
13 honest with you, ma'am.

14 Q Okay. You didn't like her skillet chicken?

15 A No, ma'am.

16 Q Did you make return the skillet to Becky?

17 A I'm sure she did. I didn't make her actually return  
18 it. I don't -- that I can recall.

19 Q All right, so -- so after you went over there upset,  
20 retrieved your wife, went home, she did make you and her  
21 dinner?

22 A Yes, ma'am.

23 Q All right. And it was just the two of you?

24 A Yes, ma'am,

XV-127

JOHN KRAFT - CROSS

1 Q Okay.

2 A My wife generally has to force me to go to a doctor.

3 Q And was it -- was it her idea that morning?

4 A Yes, ma'am.

5 Q Now, you learned after Blaise was arrested that she  
6 was arrested?

7 A I learned while I was in Minnesota,

8 Q Okay. Your wife called you the day after she was  
9 arrested, correct?

10 A Yes, ma'am,

11 Q And she told you that Blaise had been arrested for a  
12 murder that occurred on July 8th?

13 A Yes, ma'am.

14 Q Okay. And did you and your wife discuss what you'd  
15 done on the July -- on July 8<sup>th</sup> at that time?

16 A I believe so, and I made it clear to her that I'd be  
17 willing to come back from Minnesota to testify, although no  
18 one ever did -- no one ever interviewed me or no one ever  
19 subpoenaed me,

20 Q Okay. So, but you did tell your wife that?

21 A Yes, ma'am.

22 Q So she had that knowledge to pass on to Becky or to  
23 the defense?

24 A Yes, ma'am.

XV-129

JOHN KRAFT - CROS.

1 Okay. No one contacted you?  
 2 A Yes, ma'am.  
 3 When was it that you were first contacted by the  
 4 defense?  
 5 A Approximately four weeks ago.  
 6 Q But up until that time you'd never -- they'd never  
 7 talked to you before?  
 8 A No, ma'am  
 9 Q And you never initiated a conversation with anyone  
 10 since you had this knowledge back in 2001?  
 11 A As far as either --  
 12 Q I mean defense, police?  
 13 A No.  
 14 Q Okay. And you were aware that your wife did testify  
 15 previously in May 2002?  
 16 A Yes, ma'am.  
 17 Q Now, you said that you saw Blaise three times  
 18 during the summer of 2001, and the calendar is next to you,  
 19 so between June, July, August 2001, you only saw her on July  
 20 4th and July 8th?  
 21 A Yes, ma'am,  
 22 Q Okay. How many times did you see her in the  
 23 spring, May, April, June -- or excuse me, May -- March, April,  
 24 May of 2001?

XV-130

JOHN KRAFT - CROSS

1 A No, ma'am.  
 2 Okay. Do you remember how it was that you saw  
 3 her?  
 4 A I was invited over to dinner, had dinner and left.  
 5 Okay. And then after July 8<sup>th</sup>, the next time you saw  
 6 her was the day that your son was born?  
 7 A No, it was after my son was born,  
 8 Q Oh, after your son was born. Okay, what date was  
 9 your son born?  
 10 A My son was born on the 17<sup>th</sup>, if I — you're getting  
 11 me in trouble here, but I think the 17<sup>th</sup>, And we'd come back  
 12 on a flight and —  
 13 Q Mmrr.  
 14 A — it would have been sometime after that cause  
 15 I—  
 16 Q Did you -- oh, go aheadr  
 17 A -- 'cause I went back and worked for awhile then  
 18 came back,  
 19 Q Okay. Do you recall how old your son was when  
 20 you saw her?  
 21 A He would have been under six months.  
 22 Q Okay. So somewhere between the day he was born  
 23 until he was six months old, she came and saw the baby?  
 24 A She was on bail, yes,

XV-132

JOHN KRAFT - CROSS

1 A Sorry, I really don't go over there that often, so that  
 2 was probably the three times I saw her that year.  
 3 Q Okay. So you weren't at her graduation from high  
 4 school?  
 5 A No, ma'am.  
 6 Q And you said you never would —  
 7 A I was truck driving up until that point, so I was  
 8 going over the road most of the time.  
 9 Q Oay, So you didn't — well, before July 4<sup>th</sup>, when  
 10 was the last time you had been at the Lobatos?  
 11 A Let me rack my brain here. I was driving truck for  
 12 about six months, then I went back and I was driving -- or  
 13 working for WorldCom again doing some fberoptic work. It  
 14 was seasonal, And I believe I was invited to dinner over there  
 15 a couple of times, I missed one and made one.  
 16 Q Okay, So before July 4<sup>th</sup> 2001, what was the last  
 17 date that you -- or what was the last time you'd seen Blaise  
 18 before that?  
 19 A I couldn't be -- I couldn't honestly answer that.  
 20 Q Not even the month?  
 21 A No, ma'am.  
 22 Q Not even, you know, the season?  
 23 A The season would have been fall, the previous year.  
 24 Q Okay. But you can't remember the date?

XV-131

JOHN KRAFT - CROSS

1 Q Okay, The exact dates -- the only reason I  
 2 remember the Ei<sup>th</sup> is because my neck was stuck to my head —  
 3 or my head stuck to my shoulder as you —  
 4 A Okay, And then the first time that you got to tell  
 5 anyone about this was four weeks ago?  
 6 Q Yes, ma'am.  
 7 A So it's fair to say you didn't testify at a previous  
 8 hearing in May 2002?  
 9 Q It's fair to say that.  
 10 MS. DiGIACOMO: Nothing further.  
 11 THE COURT: Redirect?  
 12 MS. GREENBERGER: Nothing further.  
 13 THE COURT: You may step down.  
 14 THE WrTNESS: Thank you.  
 15 THE COURT: Would counsel please approach,  
 16 (Off-record Bench Conference)  
 17 (Pause in the proceedings)  
 18 MS. ZALKIN: Your Honor, we'd like to put on the  
 19 record, before the ladies and gentlemen of the jury, a  
 20 stipulation between the parties regarding Exhibit DD, a  
 21 footwear examination report is admitted into evidence. It's is  
 22 done by a forensic consultant who is a specialist in the area of  
 23 shoe impressions and footwear, who has been previously  
 24 accepted as an expert in prior proceedings and will so be

XV-133

1 accepted here at this time. And to read the report into  
 2 evidence that's displayed right now on the easel. William J.  
 3 Bodziak, Forensic Consultant Services, 1281 Cunningham  
 4 Creek Drive, Jacksonville, Florida, 32259.  
 5 THE COURT: Would you please spell Bodziak for the  
 6 record?  
 7 MS ZALKIN: Certainly. B-as you boy-o-d-z-i-a-k.  
 8 The fax number of 904-287-8861, footwear  
 9 examination report, March 27<sup>th</sup>, 2002,  
 10 "Mr. James Aleman, Office of the Special Public  
 11 Defender, 309 South Third Street, P.O. Box 552316, Las  
 12 Vegas, Nevada 89155-206, Regarding State versus  
 13 Kirstin Lobato, Case Number C177394,  
 14 "Dr, Mr, Aleman: Pursuant to your request, a  
 15 detailed examination has been made of the exhibits made  
 16 available to me. A description of these items and the  
 17 results of the examination follow:  
 18 "Questioned Q1, a photograph of shoe impressions  
 19 in blood,  
 20 "Q2, a photograph of shoe impression in blood,"  
 21 MR. SCHIECK: For the record, Your Honor, those  
 22 are now marked as QQQQ, RRRR.  
 23 THE COURT: Is QQQQ, Q1?  
 24 MR. SCHIECK: Yes,

XV-134

1 trainer and walking athletic footwear in that it has a  
 2 separation between a well defined heel area and the well  
 3 defined sole area of the shoe. Although the full heel does  
 4 not reproduce in the Q1, Q2 impressions, the anterior  
 5 reference of the heel, as well as the size of the forward  
 6 sole can be compared with comparable types of footwear.  
 7 Based on the corresponding dimension of comparable of  
 8 other brands of footwear having this generic design it  
 9 was determined that Q1, Q2 impressions most closely  
 10 correspond to a U.S, men's size 9 athletic shoe of this  
 11 type. The American women's size equivalent would be  
 12 approximately size 10.  
 13 "The two inked impressions and tracings of the right  
 14 foot of Kirstin Lobato were measured using a standard  
 15 brannock device, the length of the Lobato right foot  
 16 equates to U.S, men's sizes -- excuse me -- between 6 to  
 17 6 1/2, the American women's size equivalent would be  
 18 approximately 7 1/2. The right foot size of Kirstin Lobato  
 19 would therefore be at least 2 and 1/2 sizes smaller than  
 20 the estimated crime scene shoe size, Further  
 21 superimposition of the foot impression of Lobato over the  
 22 Q1, Q2 crime scene right shoe impressions revealed  
 23 Lobato's foot size to be significantly smaller than the  
 24 impressions,,

XV-136

1 THE COURT: Thank you  
 2 MS. ZALKIN: Your Honor, for the record I'd ask to  
 3 hold these up so they can be in front of the jury?  
 4 THE COURT: You may.  
 5 MS, ZALKIN: Or Ms. Greenberger may assist me  
 6 with that I can continue,  
 7 THE COURT: That will be fine,  
 8 MS, ZALKIN: Thank your  
 9 And for the record the first, the photograph Ms.  
 10 Greenberger is holding of you at this time is RRR in her left —  
 11 I'm sorry, RRRR in her left hand is QQQQ.  
 12 "Known 1(1, 2 inked impressions and tracings of the  
 13 outline of Kirstin Lobato's right foot"  
 14 And for the record, Your Honor, I am publishing that  
 15 to the ladies and gentlemen of the jury. It was marked as  
 16 Proposed Exhibit SSSS,  
 17 "Services requested. It is requested that the size of  
 18 the Q1, Q2, crime scene shoe impressions be determined,  
 19 if possible, and whether those shoes would fit the feet of  
 20 Kirstin Lobato Evaluation of crime scene impressions.  
 21 Attempts were unsuccessful in locating the brand name or  
 22 manufacturer of foot wear with the design of the Q1, Q2  
 23 impressions. The general design of the Q1, Q2  
 24 impressions is very similar to many designs of cross

XV-135

1 Opinion: Based on these observations and  
 2 significant size differences it was determined that the Q1,  
 3 Q2 crime scene impressions are from considerably larger  
 4 shoes than the size that would accommodate Lobato's  
 5 feet or that Lobato would normally wear,  
 6 "A disposition of evidence. The evidence described  
 7 above is returned herewith  
 8 "William 3. Bodziak, Forensic Consultant Services."  
 9 THE COURT: So it's stipulated that DD be admitted?  
 10 MS, ZALKIN: Yes, Your Honor.  
 11 THE COURT: As well as the three photographs,  
 12 QQQQ, R and 5?  
 13 MS. ZALKIN: That's correct, Your Honor.  
 14 MR, KEPHART: That's correct, Your Honor.  
 15 THE COURT: Very well, Those four items are  
 16 received.  
 17 (Defendant's Exhibits DD, QQQQ, RRRR & SSSS, admitted)  
 18 MS,, ZALKIN: Thank you.  
 19 And, Your Honor, because they're difficult to project  
 20 on the overhead, could those be circulated to the members of  
 21 the jury at this time?  
 22 THE COURT: They may be the good old fashioned  
 23 way to the ladies and gentlemen of the jury rather than the —  
 24 MS. ZALKIN: Thank you very much.

XV-137

1 THE COURT: -- the new technological way. □  
 2 (Pause in the proceedings)  
 3 THE COURT: The bailiff will retrieve the exhibits  
 4 which have been circulated through the jury and reviewed by  
 5 all of them, so it's published by Ms, Zalkin. The bailiff will  
 6 return them to the clerk.  
 7 Ladies and gentlemen, we kept you over a little bit  
 8 yesterday, today you're gonna get an early start on your  
 9 weekend. We'll be taking our evening recess at this time and  
 10 resuming Monday at 10:30. Please be in the hallway Monday  
 11 morning at 10:30, the bailiff will meet you there to return you  
 12 to your seats in the courtroom.  
 13 During this weekend recess you're admonished not  
 14 to talk or converse among yourselves, nor with anyone else on  
 15 any subject connected with the trial and you're not to read,  
 16 watch or listen to any report of or commentary on the trial or  
 17 any person connected with the trial, by any medium of  
 18 information, including, without limitation, newspaper,  
 19 television, radio and Internet. And you're not to form or  
 20 express any opinion on any subject connected with the trial  
 21 until the case is finally submitted to you.  
 22 The Court will ask that Mr. Arieno remain, the rest of  
 23 you are excused and we'll see you Monday morning  
 24 (Jurors recessed at 4:27:39)

XV-138

1 you have a good weekend —  
 2 JUROR ARIENO: Thank you,  
 3 THE COURT: — we'll see you Monday morning  
 4 (Juror Arieno recessed at 4:28:59)  
 5 (Pause in the proceedings)  
 6 THE COURT: When Detective Thowsen returned to  
 7 the stand for his second day of testimony, when we returned  
 8 from the lunch recess, Ms. DiGiacomo raised an issue about  
 9 having seen a PowerPoint presentation, I believe of, a  
 10 defendant's expert Brent Turvey and she brought a motion —  
 11 she indicated she was going to seek to exclude that testimony,  
 12 MS. DIGIACOMO: That is correct, Your Honor.  
 13 THE COURT: Would you refresh the Court on just  
 14 what your motion -- just what your motion is in case I have  
 15 not covered it or understood it fully?  
 16 MS. DIGIACOMO: Yes, Your Honor, Basically, after  
 17 reading his report and then seeing the most updated  
 18 PowerPoint of what he does intend to testify to, it's nothing  
 19 that requires and expert opinion. What he's doing is taking all  
 20 the testimony that's been presented and telling the jury  
 21 basically how they should interpret or what it means, So  
 22 basically all his testimony is doing is invading the province of  
 23 the jury. You know, his findings for example, summary:  
 24 No physical evidence associating Kirstin Blaise

XV-140

1 (Except for Juror Arieno)  
 2 THE COURT: The record shall reflect that Mr. Arlen°  
 3 has remained and the other jurors have exited, I just wanted  
 4 to touch bases with you 'cause you asked for the court to give  
 5 you the schedule for next week.  
 6 JUROR ARIENO: Yes, I got that,  
 7 THE COURT: And you — you're all good to go?  
 8 JUROR ARIENO: Hopefully, is it gonna -- I mean we  
 9 don't know but, as of right now it's tentatively 'fill Wednesday?  
 10 THE COURT: We're hoping it will concluded by  
 11 Wednesday, but I gave you Thursday just in case,  
 12 JUROR ARIENO: Okay, Yeah, the only thing is,  
 13 my wife is leaving to go out of town on Thursday night to go  
 14 back to New York, my daughter starts track break Friday, so  
 15 I mean --  
 16 THE COURT: So you need to pick up your daughter  
 17 Friday?  
 18 JUROR ARIENO: Yes, I mean I have to get that  
 19 done, so,  
 20 THE COURT: Okay.  
 21 JUROR ARIENO: But everything else is taken care  
 22 of  
 23 THE COURT: Okay, very good. Thank you for your  
 24 cooperation. You're under the admonishment of the Court and

XV-139

1 Lobato to the crime scene. That's something for the jury to  
 2 decide.  
 3 No physical evidence associating Lobato's vehicle to  
 4 the crime scene. Again up to the jury.  
 5 Potentially exculpatory physical evidence not  
 6 examine. DNA evidence from sexual assault kit inconsistent  
 7 with kirstin Blaise Lobato. These are things that have been  
 8 presented in evidence and it's within the province of the jury to  
 9 decide what they mean. And his entire PowerPoint is like this,  
 10 very conclusory, very this is what the evidence is and this is  
 11 how you should interpret what you've heard, There's nothing  
 12 in here regarding an expert opinion. And in fact, I mean he  
 13 talks about luminol results and I'm not sure where he has his  
 14 foundation on knowledge on luminol and that's fine, but like  
 15 one of his slides is very misleading. It's say, lumina results,  
 16 Then is says according to crime scene -- Criminalist Wahl, it  
 17 talks about the interior left door panel and vehicle seat cover  
 18 yielded weak positive presumptive test for the presence of  
 19 blood in one area, he tied 'em [sic]. And basically goes on to  
 20 explain to them that that means, you know, there's no physical  
 21 evidence linking Lobato to the crime. Well, first of all he's  
 22 confusing the fact that this report that he's quoted is talking  
 23 about phenolphthalein, not luminol. But he's basically just  
 24 taking all the evidence and telling the jury what he thinks of it,

XV-141

1 That's not expert opinion,  
 2 MS. ZALKIN: Anything further?  
 3 MS, DiGIACOMO: Okay. Go ahead.  
 4 MS. ZALKIN: Your Honor, first of all it should be --  
 5 THE COURT: The court wishes to thank Ms. Zalkin  
 6 for her patience, she's been -- she's been about trying to jump  
 7 out of her seat to respond for --  
 8 MS, ZALKINI: Thank you, Your Honor.  
 9 THE COURT: -- a while now.  
 10 MS, ZALKIN: Thank you very much, Your Honor,  
 11 So, first of all, this is not a new PowerPoint. What  
 12 was provided was -- there's one additional screen that simply  
 13 lays out what the scientific method is and he had been notices  
 14 timely as a forensic scientist, so that's in no way prejudicing  
 15 the state, He also added, in his most recent PowerPoint, some  
 16 evidence that had come out about Ms. Lobato's car keys being  
 17 tested, with the results being negative. But moreover, more  
 18 than the PowerPoint what's most troubling to the defense is  
 19 that the state has had Mr. Turvey's report for approximately 11  
 20 months, The defense duly noticed Mr. Turvey well before the  
 21 statutorily required period before this trial commenced. The  
 22 defense also provided, as a courtesy, well in advance of calling  
 23 Mr. Turvey or attempting to call Mr. Turvey, his PowerPoint, as  
 24 a courtesy so that these items could be reviewed. It will be

XV-142

1 elicited from Detective Thowsen was that it's possible that  
 2 there was physical evidence linking Ms. Lobato to the crime  
 3 scene that just wasn't collected, it was missed. It's small  
 4 evidence, so they could've missed a spot, in other words. And,  
 5 moreover, that it's possible that an assailant would not leave a  
 6 trace of physical evidence at a crime scene. Well, that violates  
 7 the entire principle of forensic science, as Mr. Turvey is  
 8 prepared to testify to, which is Locard's principle of transfer.  
 9 The state has presented numerous crime scene analysts.  
 10 We've seen numerous photos asking what is this in the coroner  
 11 of this photograph. Oh, a bag of garbage. What's in the bag  
 12 of garbage? Oh, some coffee cups. Thank you, They have  
 13 repeatedly had the same photographs introduced. The same  
 14 photographs testified to by numerous different experts. We  
 15 are absolutely entitled to present our own forensic scientist to  
 16 testify regarding his interpretation of the results,  
 17 And I think the Court understands the defense's  
 18 position and if the court has any -- oh, oh, furthermore, I'm  
 19 sorry, Your Honor, I beg your indulgence, We received a  
 20 reported dated September 27, 2006, from Kristina Paulette,  
 21 Kristina Paulette had testified before September 27. Kristina  
 22 Paulette had received a request from Ms. DiGiacomo to test  
 23 the cigarette butts in this case, the same cigarette butts the  
 24 defense had requested be tested in a motion to dismiss for

XV-144

1 made abundantly clear that the substance of the PowerPoint is  
 2 all inexcusably [sic] with Mr. Turvey's opinion. And it can be  
 3 presented very strongly to the jury that this is his expert  
 4 opinion. They, of course, are the finders of fact.  
 5 Most troubling, beyond what the defense would  
 6 adopt the State's term of sandbagging, they've alleged that the  
 7 defense of sandbagging a few days ago with respect to Dr,  
 8 Laufer. And I would point out that we wouldn't be taking up  
 9 the Court's time in sending the jury home this early, the proper  
 10 way to exclude evidence by opposing party, in our opinion,  
 11 would be to file a motion to exclude it. We filed approximately  
 12 11 motions in limine, if I recall, seeking to exclude certain  
 13 testimony that we believed was not relevant, so on and so  
 14 forth, that's common before proceeding at trial. And then,  
 15 before the defense starts their case, moving to exclude on the  
 16 ground that a witness isn't helpful to determination of the  
 17 facts. The state has especially more than opened the door,  
 18 but presented an absolute necessity to rebut state's testimony.  
 19 For example, that blood evidence can be cleaned from a car  
 20 such that no blood can be confirmed in the car. According to  
 21 Mr. Turvey the evidence that we're prepared to present will  
 22 show that there's no evidence that this car was cleaned.  
 23 Contrary to the State's characterization. Another very  
 24 troubling inference or more than an inference that the state

XV-143

1 failure to gather, collect and preserve potentially exculpatory  
 2 evidence, so well after trial was underway, now the State's  
 3 submitting these cigarette butts to the laboratory. Ms.  
 4 Paulette had some initial results back at the time she took the  
 5 stand that exonerate my client, that were not delved into at  
 6 all. In fact she doesn't even document in her report when she  
 7 received the evidence that we seek to test in this case. This  
 8 was never provided by the District Attorney. And Mr. Turvey is  
 9 expected to testify the principle of negative documentation  
 10 which is related to many items that when they come back not  
 11 associating Ms. Lobato, they weren't documented. All the  
 12 evidence items that we've heard testimony from Metro, yes,  
 13 we gathered -- we gathered items, we didn't necessarily log it  
 14 or catalog the items, we just determined they weren't  
 15 important and we threw them away. I guarantee the Court  
 16 that if the cigarette butt testing had come back linking Ms,  
 17 Lobato to this crime, that would have been the hottest part of  
 18 their case. That's not the case though, they're trying to sweep  
 19 it under, you know, a pile a garbage with the other -- that's  
 20 the way that they've presented their case. So I believe that  
 21 it's absolutely manifestly necessary that Mr. Turvey be called.  
 22 They've never brought this up before. It's an attempt to  
 23 sandbag. It's an attempt to frustrate the defense. It's an  
 24 attempt at further foot dragging. We had to send the jury

XV-145

1 home early so that we could deal with this, instead of being  
 2 dealt with when they had his report for almost a year and I  
 3 think that the Court gets the issue at this point.  
 4 THE COURT: I'm looking at the amended notice of  
 5 defendant's expert witnesses filed August 18<sup>th</sup>, 2006.  
 6 MR. SCHIECK: The original report that listed Mr.  
 7 Tutvey was October of 2005, Your Honor,  
 8 THE COURT: It lists him as number 2.  
 9 MS. DIGIACOMO: Yeah, I can tell you his report is  
 10 dated October 17<sup>th</sup>, 2005, Your Honor,  
 11 THE COURT: Mr. Laufer's CV was attached to that  
 12 one, but the prior one was filed, when, in 2005?  
 13 MS. DIGIACOMO: Your Honor, I have it right here,  
 14 MS, ZALKIN: October,  
 15 MR. SCHIECK: October 14<sup>th</sup>, 2005.  
 16 (Pause in the proceedings)  
 17 THE COURT: Okay. I found that, he's still number  
 18 2, it's on page 2.,  
 19 (Pause in the proceedings)  
 20 THE COURT: And his CV is attached to that October  
 21 14<sup>th</sup>, 2005, notice.  
 22 (Pause in the proceedings)  
 23 THE COURT: It appears from reviewing the  
 24 curriculum vitae that Mr, Turvy has a Bachelors of Science in

XV-146

1 an expert, what I'm saying is -- and you look at his  
 2 PowerPoint. Pretty much everything in this PowerPoint is just  
 3 drawing his own conclusions, not saying how the evidence  
 4 should have been collected or how this should have been  
 5 done, or it should have been done this way. He's saying, look,  
 6 I'm telling you there's no physical evidence to link her to the  
 7 car. He is drawing conclusions that is up to the jury to decide.  
 8 That's what this trial is about. It's not for him to pick and  
 9 choose what evidence from other witnesses he now wants to  
 10 argue to the jury. That's the state's problem: It's not that he's  
 11 not properly noticed as an expert. It's just they haven't shown  
 12 anything that he's gonna come in here and give an expert  
 13 opinion about.  
 14 And we admit, we did get his report a year ago, but  
 15 that -- it was until we saw his PowerPoint that it concluded.  
 16 I'm not saying I wouldn't have objected if he had done  
 17 something that I felt wasn't an expert opinion, but when I saw  
 18 the PowerPoint, we tried to bring this up ahead of time. I'm  
 19 not trying to sandbag him. I had not clue. They knew that we  
 20 were bringing this up and I thought it would come up before  
 21 they even brought him back. I did not wait to do this right  
 22 before and waste the jurors time. I brought this up two days  
 23 ago,  
 24 MS. ZALKIN: Your Honor, briefly. We're not in

XV-148

1 history, a second Bachelors of Science of Psychology and a  
 2 Masters of Science in Forensic Science. That he's attended  
 3 many seminars and written many things having to do with  
 4 criminal cases in the criminal arena.  
 5 MS. DIGIACOMO: Your Honor, if I can just clarify?  
 6 THE COURT: Mm-hmm.  
 7 MS. DIGIACOMO: The Rat is not seeking to  
 8 preclude him from testifying, which is what I think the defense  
 9 is misinterpreting. We're not saying he can't come in her, we  
 10 haven't been properly noticed. What we're saying is, what  
 11 he's gonna come in here and say from the stand is not expert  
 12 testimony. What he's gonna do is he's gonna tell the jury how  
 13 they should interpret the evidence. He's basically gonna do  
 14 their job for him. And, you know what, there is precedence for  
 15 this In his own CV he lists all kinds of cases he's been  
 16 involved with, one of which is State of Kansas versus Cobb,  
 17 and that 43 P.3d 855, and if you want to talk about the State  
 18 sandbagging, this would probably be considered by the  
 19 defense as sandbagging because what the State did in this  
 20 case was, they let him get up there and testify and then when  
 21 they got to his opinion or his conclusions the State objected  
 22 while he was on the stand and the Court ruled that was he  
 23 was gonna say was in the province of the jury and excluded it.  
 24 We are not saying that this person wasn't properly noticed as

XV-147

1 Kansas and it misstates evidence that we brought him back —  
 2 Mr. Turvey's from Alaska, the State's aware of that. Instead of  
 3 flying him back and forth, based on their representation, which  
 4 of course is always malleable in trial, we expected to have him  
 5 testify probably Tuesday of this week. So instead, at the  
 6 State's expense, he's been put up that the -- at a nearby  
 7 lodging establishment and, again, you know, it's presumptuous  
 8 of the State to talk about what he's gonna be testifying to.  
 9 The State has, through their witnesses and through their  
 10 questioning of experts has been misrepresenting scientific  
 11 knowledge with respect to, for example, luminol, the cleaning  
 12 up of blood. The ability to clean up blood. And interpretation  
 13 of DNA testing. And also proper crime scene preservation,  
 14 evidence collection, so on and so forth.,  
 15 So for them to say that the jury doesn't need to hear  
 16 from Mr. Turvey, they're suppose to rely on Detective Thowsen  
 17 saying, oh, it's possible someone could commit a bloody  
 18 heinous crime and not leave a trace, that is precisely why we  
 19 need Mr, Turvey.  
 20 Also — well, I don't know if I should put this on the  
 21 record, but one of the State's witnesses has, you know,  
 22 claimed to be a member of a professional organization, of  
 23 which is not, Their name —  
 24 MS, DiGIACOMO: Your Honor, I'm gonna object,

XV-149

1 this is going outside the scope of what this argument is. Now  
 2 they're just trying to throw mud,

3 MS. ZALKIN: It's reasons -- it's further reasons why  
 Mr. Turvey is a necessary defense witness, especially when  
 5 they've called numerous forensic witnesses in their case.

6 MS. DiGIACOMO: And, Your Honor —

7 THE COURT: I have a concern about Ms.  
 8 DiGiacomo's representation that -- that one of the slides is  
 9 referring to Mr. Wahl's report —

10 MS. DiGIACOMO: I would ask -- I have a —

11 THE COURT: — which is mixing up whether it was a  
 12 lumina' test with a phenolphthalein test.

13 MS ZALKIN: Is that's correct, I have a concern with  
 14 that as well and I can certainly address that with Mr. Turvey  
 15 over the weekend and that can be corrected. I'm sure it was  
 16 oversight, if anything.

17 MS. DiGIACOMO: And, Your Honor, I would just ask  
 18 that a copy of this be made of record or you have —

19 THE COURT: I would like to see it, I was going  
 20 to --

21 MS, DiGIACOMO: May I approach, Your Honor?

22 THE COURT: -- I was going to ask if I could have a  
 23 copy, Is this your only copy, Ms, —

24 MS, DiGIACOMO: No, I made a copy for you.

XV-150

1 THE COURT: Okay,

2 (Pause in the proceedings)

3 THE COURT: I'm gonna have the PowerPoint  
 4 presentation marked as the Court's next in order.

5 THE CLERK: 74,

6 THE COURT: First I think -- I think that Ms. Zalkin  
 7 will address the Wahl luminol versus phenolphthalein issue, I  
 8 don't want incorrect information to be put up on the screen in  
 9 front of the jury. I don't want to confuse them as between Mr.  
 10 Wahl's prior testimony was and what the testing that was done  
 11 is correctly identified.

12 Number of the slides, the way they are done, there's  
 13 like a key on the side and then there's a couple that say  
 14 "findings: summary", it is the providence of the jury to make  
 15 the findings on the facts, not the providence of the expert  
 16 witness. Those should say "opinions: summary", and a  
 17 number of the slides seem to be presented as if this is a fact,  
 18 rather than that from my assessment of the evidence this is  
 19 my opinion, and so I think that they need to be modified so  
 20 that it's clear that this is his opinion. And that these are  
 21 inference which he believes can be reasonably drawn from the  
 22 evidence, but it is the providence of the jury to ultimately  
 23 make that determination, But I do believe that he has the  
 24 qualifications to bring forth information and share his

XV-151

1 knowledge and background with the jury, which will be of  
 2 assistance to the trier of facts, so he should be permitted to  
 3 testify. I just think that some of the slides need to be modified  
 4 in the manner that they're currently in would be overreaching  
 5 and invade the providence of the jury, So I'm gonna grant the  
 6 motion in part to have the slide show redone and deny the  
 7 motion in part, he will not be excluded and will be permitted to  
 8 testify.

9 MS, ZALKIN: Thank you, Your Honor.

10 MS. DiGIACOMO: And, again, it wasn't the state's  
 11 motion to exclude him, it was just the concerns of what he's  
 12 testifying to, And, Your Honor, I also have one other issue, on  
 13 page 4 of the PowerPoint --

14 THE COURT: Well, basically he said he had nothing  
 15 to put forth to the jury that wasn't conclusionary, so I took  
 16 that as you did want --

17 MS. DiGIACOMO: No, in his Power —

18 THE COURT: — you did want him excluded.

19 MS. DiGIACOMO: -- in his PowerPoint. Well, no -  
 20 well, no, like he can talk -- I said he could talk about luminol  
 21 and its effects but for him to say, you know, the facts show X,  
 22 when it could be, well, it could be X or it could Y, and to say  
 23 that comes within the providence of the jury. And I would just  
 24 also note that on page 4 of the PowerPoint the number 4 slide,

XV-152

1 where it talks about the white paper towels recovered from the  
 2 victim's genitals, he's quoting to something that's not evidence  
 3 and he's quoting to it improperly because William Gaza didn't  
 4 state that,

5 MS. ZALKIN: And, Your Honor, that -- that's fine,  
 6 although I would note that experts can rely on hearsay in  
 7 forming their opinion, based on testimony that we heard  
 8 today —

9 MS. DiGIACOMO: Correct, but he can form that  
 10 differently, that this witness testified, not quote to report —  
 11 and he's quoting it improperly because it wasn't William Gaza  
 12 that said it, it was Shelley Pierce-Stauffer,

13 MS. ZALKIN: Well, it's follow up notes from the  
 14 office by William Gaza --

15 MS. DiGIACOMO: No.

16 MS, ZALKIN: -- but that exhibit was marked today,  
 17 this follow up notes was marked and admitted today by —

18 MS, DiGIACOMO: It wasn't marked and admitted,  
 19 it's been marked as a proposed exhibit, it has not been  
 20 admitted.

21 And actually she's incorrect. There are different  
 22 notes by all kinds of different people on there for the follow  
 23 up notes and that was pointed out by Mr. Schieck on his  
 24 direct of her, that there's notes from somebody, Roland Jones,

XV-153

