

EIGHTH JUDICIAL DISTRICT COURT
CIVIL/CRIMINAL DIVIS:Mp .2-
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

VS.

KIRSTIN BLAISE LOBATO,

Defendant.

CASE NO. C177394

DEPT. NO. II

Transcripts of
Proceedings

BEFORE THE HONORABLE VALORIE J. VEGA, DISTRICT COURT JUDGE

"ROUGH DRAFT"

JURY TRIAL - DAY 16
VOLUME XVI

MONDAY, OCTOBER 2, 2006

COURT RECORDER:

LISA LIZOTTE
District Court

TRANSCRIPTION BY:

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Proceedings recorded by electronic sound recording, transcript
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1 LAS VEGAS, NEVADA MONDAY, OCTOBER 2, 2006

2 **PROCEEDINGS**

3 PROCEEDINGS BEGAN AT 10:38:26

4 (Jurors are present)

5 THE BAILIFF: All rise, please.

6 Department II is now in session, the Honorable

7 Valorie J. Vega presiding. Please be seated.

8 THE COURT: Good morning. The record shall
9 reflect that we're resuming trial in State versus Kirstin Blaise
10 Lobato under Case Number C177394, the defendant is
11 present, together with her three counsel, the two prosecuting
12 attorneys are present, the ladies and gentlemen of the jury are
13 present in the jury box having been m seated by the bailiff.

14 We're ready to proceed forward with the defendant's
15 case in chief. And defendant may call defendant's next
16 witness.

17 MR. SCHIECK: Your Honor, Robert McCrosky. I'll
18 get him.

19 THE BAILIFF: Okay.

20 THE CLERK: Please come all the way forward,
21 Remain standing and raise your right hand,

22 **ROBERT McCROSKY, DEFENDANT'S WITNESS, SWORN**

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

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DIRECT CROSS REDIRECT RECROSS

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R. McCROSKY - DIRECT

1 THE WITNESS: Robert McCrosky from Panaca
2 THE COURT: Would you spell your last name,
3 please?

4 THE WITNESS: M-C, capital C-R-O-S-K-Y,

5 THE COURT: Thank you,

6 Mr. Schleck, you may proceed.

7 MR, SCHIECK: Thank you, Your Honor.

8 **DIRECT EXAMINATION**

9 BY MR. SCHIECK:

10 Q Good morning, Mr, McCrosky.

11 A Good morning.

12 Q How are you this morning?

13 A Good,

14 Q You reside in Panaca, Nevada?

15 A That's correct.

16 Q How long have you lived in Panaca?

17 A Forty years.

18 Q Forty years?

19 A Mm-hmm.

20 COURT RECORDER: Is that a yes?

21 THE WITNESS: Yes,

22 BY MR, SCHIECK:

23 Q You need to say yes or no. And during those forty
24 years, what was your occupation there in Panaca?

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R McCROSKY DIREC1

McCROSKY - DIRECT

1 A Mechanic.
 2 Q For the entire forty years?
 3 A Yes,
 4 Q Are you still working?
 5 A Part-time.
 6 Q So you're semi-retired?
 7 A Yes,
 8 Q And what street do you reside on?
 9 A Callaway,
 10 Q In Panaca, do they have mail service for delivery to
 11 street addresses?
 12 A No.
 13 Q Do you really have a street address there in Panaca?
 14 A No
 15 Q Okay. Mail is to a P.O. box?
 16 A That's correct,
 17 Q And there on Callaway Street, are you familiar with
 18 your neighbors?
 19 A Yes.
 20 Q I want to take you to July of 2001. Do you recall
 21 who the neighbors to your immediate right were at that time?
 22 A Lobatos,
 23 Q And do you recall who resided there in the Lobato
 24 household back in July of 2001?

1 car in July of 2001?
 2 A Yes.
 3 Q And where did you see it parked at?
 4 A Well, it was parked alongside the fence.
 5 Q When you say alongside the fence, what fence are
 6 you talking about?
 7 A Well, probably more on Lobato's side, It was, I
 8 don't know, it was probably about even with our fence, the
 9 back end of it was. I don't -- I don't recall exactly but --
 10 Q What type of fence in 2001 did you have there in
 11 front of your house?
 12 A Chainlink,
 13 Q Okay. And what -- was there a fence between your
 14 house and the Lobato house?
 15 A Yes.
 16 Q And what type of fence was that?
 17 A That was chainlink.
 18 Q Now when you say a chainlink fence, is that the type
 19 of fence you can see through?
 20 A Yes,
 21 Q We have a device here where I can put the pictures
 22 here and you'll be able to see them on your screen up there in
 23 front of you. Okay?
 24 A Yes.

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XVI-8

R. McCROSKY - DIRECT

R. McCROSKY - DIRECT

1 A Yes. It's Mr. and Mrs. Lobato and the two girls.
 2 Q And do you recall the two girls' names?
 3 A The one girl, yes, Blaise. And I think the other one
 4 was Ashley.
 5 Q Okay, Would you say that you were close to the
 6 Lobato family or just neighbors?
 7 A Just neighbors,
 8 Q And you indicated you did know Blaise?
 9 A No. I knew who she was,
 10 Q Okay,, In July of 2001, do you know what kind of
 11 car she drove?
 12 A It was a little Chevy. I'm without words right now.
 13 It --
 14 Q What color was the car?
 15 A I think it was red,
 16 Q Okay, If I showed you a photograph of the car, you
 17 think you'd recognize it?
 18 A Yes,
 19 MR, SCHIECK: The Court's indulgence, please.
 20 THE COURT: Yes.
 21 (Pause in the proceedings)
 22 BY MR. SCHIECK:
 23 Q While I'm looking through these photographs, and
 24 we'll find the one to show you, do you recall seeing that red

1 Q I'm gonna show you what's been admitted as State's
 2 Exhibit 179. Do you recognize what's depicted in that
 3 photograph?
 4 A Yes. Uh-huh.
 5 Q And what is that?
 6 A It's a Fiero.
 7 Q Okay. Is that the car we were referring to?
 8 A Yes.
 9 Q In that photograph, is your house in there?
 10 A Yes. It's right directly, well, I mean, kind of catty-
 11 corner right there. But it's the house that you can see in the
 12 picture.
 13 Q You can actually touch that screen,, If you could
 14 touch the screen and show us where your front door is at
 15 Okay. And that's the chainlink fencing that we've been talking
 16 about?
 17 A Yeah. Yes,
 18 Q Okay, And that's the way it appeared in July of
 19 2001?
 20 A Uh-huh, Yes,
 21 Q Okay. I'm gonna show you what's been admitted as
 22 State's Exhibit 178. Do you recognize what's depicted in that
 23 photograph?
 24 A Yes.

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R. McCROSKY DIREC1

Q And what is that?

A That's a Fiero.

Q And whose house is that directly -- that the Fiero is parked in front of?

A That's Lobato's.

Q Do you recall when you first saw that car in July of 2001 parked in front of the Lobato house?

A Yes, I do.

Q Okay. And what do you recall that date being?

A Well, I just assumed that, I mean, she was home. But, I mean —

Q Okay. Do you recall what exact date the car first appeared there?

A No, I don't,

Q Okay. But at some point in time the car was there?

A Yes,

Q Okay. When you first saw the car parked there in July of 2001, did you ever see the car moved?

A No,

Q Did you ever see anyone driving the car?

A No,

Q Did the car remain parked there for a while?

A Yes.

Q Okay, And did you see the car when it was

XVI-10

McCROSKY - DIRECT

1 until you saw the car being towed away, had the car been moved at all?

A No.

Q Okay. And how long a period was it sitting there in front of the Lobato house on the street?

A Well, I don't know exactly but, you know, probably a couple weeks,

Q That was during July of 2001?

A Yes,

Q Okay. And what is — do you recall how early in July it was parked there?

A What do you mean early?

Q The first part of July?

A Yes, it was the first part of July. I think we were gone around the 4th but I'm not -- I don't really remember that.

Q Okay. But your best recollection is the first part of July?

A Yes,

Q And during that period of time in July of 2001, did you have a regular daily morning schedule that you kept?

A Yes. I walked —

Q And what was it?

A I walked up that street every morning_

XVI-12

R. McCROSKY - DIRECT

1 removed?

A I just looked out the door when they were, I guess, they was hooking -- there was too many cars and things out there. I didn't go out but —

Q What were they doing to the Fiero?

A They was hooking it up. I mean, they were gonna haul it off, I guess.

Q Okay, And you've worked as a mechanic for forty years. Was it a tow truck type of device that was being hooked up to the car?

A You know — you know, I didn't -- I really didn't see what it was,

Q Okay. You saw them doing something with the car?

A Yes, I just looked out the door, and they said they was taking the -- I mean, we had company. And they said that they were hauling the car off. And I looked out but I didn't pay any attention to what they was hauling it off with-

Q Did you see any law enforcement type vehicles around at that time?

A Yes. There was quite a few.

Q Okay, That would include Lincoln County Sheriff or do you recall?

A I didn't -- I really didn't pay any attention.

Q And from the time the car was first parked there

XVI-11

R. McCROSKY - DIRECT

Q So you would walk past the car?

A Yes,

Q And it was open and easy to see from the street, is that correct?

A Oh, yes, I walked right by the car.

Q While you were living there in 2001, did anyone from the police department come over and ask you any questions about the car?

A You mean from the local police?

Q Yes.

A No,

Q What about from Las Vegas police?

A Yes, There was, I think, the -- not the police. I didn't -- it was the -- I think the D.A. or the -- I think they -- I don't know when they -- they didn't come then, though.

Q Was it quite a bit of time later?

A Yes,

Q Okay. That somebody came to interview you?

A Mm-hmm,,

Q Is that yes?

A Yes.

Q And you told them basically what you're telling us here today?

A Yes.

XVI-13

R McCROSKY - CROSS

1 MR. SCHIECK: Thank you. That's all the questions I
2 have, Your Honor.

3 THE COURT: Cross,

4 **CROSS-EXAMINATION**

5 BY MR KEPHART:

6 Q How you doing, Mr, McCrosky?

7 A Okay, Nervous,

8 Q What's that? You're nervous?

9 A I said I'm nervous.

10 Q Relax. There's nothing to be nervous about. Now,
11 can you tell me, you said that you thought you were gone
12 around the 4th of July?

13 A I believe we were but, you know, I'm not positive,

14 Q Do you know where you went?

15 A No.

16 Q Was it just for the 4th or did you go for some other
17 time?

18 A Well, we usually — you know, I don't know whether
19 we went to Fallon to visit the kids or not, but that's probably
20 where we had been if we had have been gone.

21 Q Okay. And you're talking about Fallon, Nevada?

22 A Yes.

23 Q Would you go up for the day and come back or is it
24 too far to do?

XVI-14

McCROSKY - CROSS

1 closer to the fence?

2 A Well, it's kind of hard to tell right there where the
3 car was at, but I'm sure that's where it was.

4 Q Do you remember telling us that you even had some
5 concerns about it being there because you wanted it moved?
6 You remember telling us that?

7 A No, I didn't, I don't remember saying that, no,

8 Q You had some concerns as to where it was parked. -
9 It was parked right in front of your -- in front of your fence.
10 You don't remember telling us that?

11 A No.

12 Q Well, do you remember telling us that you thought it
13 was parked in front of the fence and somebody from your
14 family had talked about it there?

15 A Well, yes, I —

16 Q Okay,

17 A I didn't say anything about where it was parked.

18 Q Okay,

19 A I can --

20 Q But --

21 A I think it was my wife did.

22 Q Okay. About it being parked in front of your
23 property?

24 A Yeah, she said. But I don't believe -- I think that's

XVI-16

R. McCROSKY - CROSS

1 A No. Usually, when we went up we spent two or
2 three days,

3 Q Okay. And so, obviously, during that time that you'd
4 been gone, if you were gone, you couldn't have known
5 whether or not that car had moved or not?

6 A Well, not when we was gone, no.

7 Q Okay, And now do you recall, I guess, probably
8 about maybe a month ago Ms. DiGiacomo and myself and an
9 investigator came out and talked to you?

10 A Yes.

11 Q Okay. And we talked about what you had indicated
12 before about where the car was parked?

13 A Yes.

14 Q Okay. And you testified here today that you believe
15 the car was kind of more in front of the Lobato's but kind of in
16 front of your fence that separated the property?

17 A Well, it was — well, I -- I kind of assumed it was a
18 little bit closer to our fence, but it's been quite awhile. I don't
19 remember,

20 Q Okay, Well, when we show you Exhibit 179, your
21 fence is that one right there that separates the two properties,
22 is that right?

23 A Yeah, that's correct.

24 Q So you kind of assumed that the car was a little bit

XVI-15

R. McCROSKY - CROSS

1 where it was all the time.

2 Q Okay. But, obviously, if you're not there you
3 wouldn't know if it was there?

4 A Well, I was gone, you know, during the day so —

5 Q Okay.

6 A I mean, if it --

7 Q Okay.

8 A If it was moved, but yet --

9 Q Now the defense when they were questioning you
10 asked you about July. Is there any particular reason why you
11 remember it being July or it could have been June, it could
12 have been May?

13 A Well, I know it was July because, you know, the car
14 hadn't been there for a couple months and then the car
15 showed up.

16 Q Okay, And then you remember it being taken away
17 by the police?

18 A Yes.

19 Q Okay, Now after the police took the car away, did
20 you have an opportunity to speak with the Lobatos?

21 A I didn't, no.

22 Q Your wife did?

23 A Yes.

24 Q Okay, And you spoke to your wife, though, about

XVI-17

R. McCROSKY - CROSS

1 what she talked to the Lobatos about, didn't you?
 2 A I think she told me. She told me about it.
 3 MR. SCHIECK: Objection to what she told him, Your
 4 Honor. It's hearsay,
 5 MR. KEPHART: I am not asking him for what she
 6 said. But I'm sorry, Judge.
 7 THE COURT: The objection is premature and
 8 overruled.
 9 BY MR, KEPHART:
 10 Q You can't really tell us what your wife told you. But
 11 you did speak to your wife after she spoke to the Lobatos, is
 12 that correct?
 13 A Yes. She told me what had happened.
 14 Q Okay. Had anything changed no, strike that.
 15 Did you see the defendant at all during the time that her
 16 car was there in July that you say? Did you see her?
 17 A I believe I saw her once but, you know, and waved
 18 at her but I believe that's all. I don't remember seeing her
 19 around,
 20 Q Okay. You didn't talk to her then?
 21 A No,
 22 Q Okay, When you saw her, was there anything
 23 different about her appearance then that you see her here
 24 today? Do you see her here today?

XVI-18

McCROSKY - DIRECT

1 M-C-C-R-O-S-K-Y.
 2 **DIRECT EXAMINATION**
 3 BY MR. SCHIECK:
 4 Q Good morning.
 5 A Good morning.
 6 Q Where do you reside?
 7 A Panaca, Nevada.
 8 Q And how long have you lived there in Panaca?
 9 A Seventy-five years.
 10 Q So you've lived there all your life?
 11 A Right.
 12 Q And do you recall where you resided in July of 2001?
 13 A Yes.
 14 Q Okay, And where was that or what street was it on?
 15 A It's on Callaway.
 16 Q And in Panaca they just have the post office boxes
 17 for mail service?
 18 A Yes.
 19 Q Do you recall who your neighbors were in July of
 20 2001?
 21 A Yes.
 22 Q Okay. And as you're looking out your front door,
 23 who would your neighbor on the right have been back in July
 24 of 2001?

XVI-20

R. McCROSKY - CROSS

1 A Yes, I see her.
 2 Q Okay,
 3 A No. No.
 4 Q Nothing different?
 5 A Other than she was a lot younger.
 6 Q Okay,
 7 THE COURT: The record shall reflect that he
 8 pointed toward the defendant,
 9 MR. ISEPHART: Thank you, Mr. McCrosky.
 10 pass the witness, Your Honor.
 11 THE COURT: Redirect.
 12 MR. SCHIECK: The Court's indulgence,
 13 THE COURT: Yes,
 14 MR. SCHIECK: Nothing further, Your Honor.
 15 THE COURT: You may step down from the stand.
 16 Defendant may call defendant's next witness.
 17 MR. SCHIECK: We would call Jeanette McCrosky.
 18 (Pause in the proceedings)
 19 THE CLERK: Please come all the way forward.
 20 Remain standing and raise your right hand.
 21 **WANDA McCROSKY, DEFENDANT'S WITNESS, SWORN**
 22 THE CLERK: Thank you. Please be seated and state
 23 your name and spell it for the record, please.
 24 THE WITNESS: Wanda McCrosky, W-A-N-D-A

XVI-19

W. McCROSKY - DIRECT

1 A Larry and Becky Lobato.
 2 Q And are you familiar with anyone else that was living
 3 there at the house at that time?
 4 A Blaise and Ashley, the girls.
 5 Q And those are the children?
 6 A Yes,
 7 Q Okay. And do you recognize Blaise here in court
 8 today?
 9 A Yes.
 10 Q And she's seated over here between the two ladies?
 11 A Yes.
 12 MR. SCHIECK: May the record reflect identification
 13 of the defendant, Your Honor?
 14 THE COURT: The record shall so reflect,
 15 BY MR. SCHIECK:
 16 Q And you're married to Robert?
 17 A Yes.
 18 Q Who was just in here?
 19 A Yes.
 20 Q Okay. I want to ask you some questions about July
 21 of 2001. Do you recall what car Blaise was driving back in
 22 2001, in July?
 23 A Yes, I know what it looks like, I'm not —
 24 Q What's it look like?

XVI-21

W, McCROSKY - MEM

1 A It's red, It was red. And I don't know if it was a
 2 Fiero or a small car.
 3 Q Real small and low to the ground?
 4 A I think so,
 5 Q Would you recognize a picture of it?
 6 A Yes.
 7 Q I'm showing you State's Exhibit 179,, You can look
 8 on the screen right there.
 9 A Yes.
 10 Q Is that the car?
 11 A Yes.
 12 Q Okay. And you recognize the house behind the car?
 13 A Yeah. It's my house.
 14 Q Now in July of 2001, for a period of time, was that
 15 car parked there on Callaway Street?
 16 A Yes.
 17 Q Okay. How long was it parked there, do you recall?
 18 A I don't twit the day that she came home but I
 19 know it was there awhile, a couple of weeks maybe,
 20 Q After it -- after it came back to Panaca, did you ever
 21 see it moved?
 22 A No.
 23 Q It was always in the same position?
 24 A Yes.

>3/1-22

W. McCROSKY - DIRECT

1 Q And in this photograph here it looks like you can —
 2 it's a straight view from the car to your front door?
 3 A Well, it's not in a straight view but you -- kind of an
 4 angle
 5 Q Okay. It's at an angle, But you can see — you can
 6 see your front door from the car?
 7 A Yes.
 8 Q Okay. To your recollection, is that where it was
 9 parked the entire time that it was there?
 10 A I think -- I'm sure it was. I thought it was parked —
 11 that the back of it was a little bit on our property, you know,
 12 but I could see it everyday, you know.
 13 Q Did you ever see it being driven?
 14 A No,
 15 Q Did you ever see anyone moving it?
 16 A No.
 17 Q Do you recall where you went or did you go
 18 anywhere for July 4th of that year? Do you remember?
 19 A I don't remember.
 20 Q And do you have any recollection of the first date
 21 that you saw the car parked there in July of 2001?
 22 A No, I don't. I don't know the date, no.
 23 Q Had the car been gone for awhile?
 24 A Yes,,

XVI-23

McCROSKY - DIRECT

1 Q Okay. And then you noticed when it came back?
 2 A Mm-hmm,
 3 Q Is that yes?
 4 A Yes,
 5 Q That sort of stands out in your mind?
 6 A Well, yeah, 'cause we — we knew she was home.
 7 Q Okay. Then once you knew she was home, the car
 8 didn't move until the police took it?
 9 A Not that I saw.
 10 Q And your husband indicated to us that every
 11 morning he would go out for a walk. Did you have a regular
 12 routine in the mornings?
 13 A No,
 14 Q Were you a stay-at-home wife?
 15 A Yes.
 16 Q Okay. So you would have been home most of the
 17 day?
 18 A Yes.
 19 Q During that period of time?
 20 A Yes,
 21 Q Okay. And would you go out in your yard on
 22 occasions during the regular day?
 23 A Yeah, I'm sure I went out every day.
 24 Q And you would have seen the car then?

XVI-24

W McCROSKY - CROSS

1 A Yes,
 2 MR. SCHIECK: Okay. Thank you. That's all the
 3 questions we have, Your Honor,
 4 THE COURT: Cross,
 5 MR. KEPHART: Thank you, Your Honor,
 6 CROSS-EXAMINATION
 7 BY MR, KEPHART:
 8 Q Hi, ma'am. How you doing?
 9 A Good.
 10 Q Okay. Mrs. McCrosky, you said that the car was
 11 there and your words were "a couple of weeks before they
 12 took it," So you remember seeing it at least a couple of weeks
 13 before it was taken?
 14 A As far as I can remember. I know it was a while.
 15 Q Okay. And were you there when the car was
 16 actually taken?
 17 A Yes,
 18 Q Okay. You saw the police vehicles there and they
 19 loaded the car up and hauled it off?
 20 A Yes,,
 21 Q And was there anyone at your house the day that it
 22 was taken besides your husband?
 23 A Yes.
 24 Q Now you said that you never saw it moved?

XVI-25

W. McCROSKY - CROSS

1 A No,
 2 Q Okay. You believe, however, based on at least the
 3 photo here that you believe that -- this is Exhibit 179. Can you
 4 see that, ma'am?
 5 A Yes,
 6 You believe that it was back further, closer to your
 7 fence?
 8 A Well, I don't know exactly where it was parked. But
 9 as I look out my window, it looks like it's, you know, the back
 10 of it was kind of, well, across the fence but I'm not sure.
 11 Okay.
 12 A It's been a long time.
 13 I know. And you never saw it drive in, though, did
 14 you?
 15 A No.
 16 Q Okay. And your husband said that sometimes
 17 during this holiday you would leave and go to Fallon to see
 18 your family?
 19 A Yes. Some -- I can't recall if we were gone that —
 20 the ⁴⁹¹ of July or not.
 21 Q Okay,
 22 A But sometimes we do go on holidays.
 23 Q Okay. Obviously, if you were gone you wouldn't
 24 have been able to see if the car had moved. Would you agree

XVI-26

McCROSKY - CROSS

1 left and was gone?
 2 A No, I wouldn't, In the night, I wouldn't know. I —
 3 Q Okay. Did you see the defendant at all during that
 4 time while her car was there?
 5 A I think I saw her maybe once or twice maybe out in
 6 the yard, or whatever, but —
 7 Q Okay. Did you talk to her?
 8 A I don't think so.
 9 Q Maybe wave or something like that?
 10 A No.
 11 Q Okay, She never came over to your house or
 12 anything like that?
 13 A No.
 14 Q Okay. You saw her today. You've identified her
 15 today. Anything different about her today than back then?
 16 A No. Maybe her hair's a little longer.
 17 Q Okay. Anything else?
 18 A No.
 19 MR. KEPHART: Pass —
 20 THE WITNESS: A little older.
 21 BY MR. KEPHART:
 22 Q A little older?
 23 A A little older.
 24 MR. KEPHART: Okay, Thank you, ma'am,

XVI-28

W. McCROSKY - CROSS

1 with me there? If you weren't there you couldn't have seen it
 2 moved?
 3 A No.
 4 Q Okay, It's just you just don't remember if you were
 5 gone or not?
 6 A No, I don't,
 7 Q Okay. Are you — when do you usually go to bed?
 8 What time?
 9 A 11:0, 12:00.
 10 Q Sleep ^stil early in the morning or —
 11 A Mm-hmm,
 12 Q -- are you a late sleeper or —
 13 A Well, no. 7:00 or 8:00.
 14 Q Okay. Your husband go to bed about the time you
 15 go to bed?
 16 A No. He goes to bed earlier.
 17 Q Okay. Sleep all through the night until --
 18 A Yes,
 19 Q -- the next day? When you're sleeping, you would
 20 agree with me that you couldn't see whether the car was
 21 gone, could you?
 22 A No, Not if I'm asleep, no.
 23 Q Okay. So there are times, you would agree, that
 24 maybe you didn't notice whether or not the car had actually

XVI-27

W. McCROSKY - REDIRECT

1 pass the witness.
 2 THE COURT: Redirect.
 3 MR. SCHIECK: Thank you, Your Honor. Just one
 4 question.
 5 REDIRECT EXAMINATION
 6 BY MR. SCHIECK:
 7 Q Mr. Kephart had asked you questions about whether
 8 you could see the car when you were asleep.
 9 A Yeah.
 10 Q Do you usually sleep between the hours of 9:50 in
 11 the morning to 3:50 in the afternoon on a Sunday?
 12 A No.
 13 MR. SCHIECK: Thank you, Nothing further.
 14 THE COURT: Anything further by the State?
 15 MR. KEPHART: No. No, Your Honor, No,
 16 THE COURT: You may step down, please, ma'am.
 17 The record shall reflect that defendant's counsel are
 18 conferring.
 19 MR. SCHIECK: Kristina Paulette, Your Honor,
 20 THE COURT: Defendant's next witness will be
 21 Kristina Paulette, who is being recalled, I believe.
 22 MS, GREENBERGER: We're calling her as our
 23 witness.
 24 MR. SCHIECK: Yes, Your Honor.

XVI-29

PAULEITE - DIRECT

1 THE COURT: She's being called as a defendant's
2 witness at this time, but it's the same Kristina Paulette who did
3 testify earlier in the trial.

4 MR. SCHIECK: Yes, Your Honor.

5 THE COURT: Very well.

6 MR. SCHIECK: Your Honor, could I check the
7 hallway for status on other witnesses real quickly?

8 THE COURT: Yes, you may.

9 THE CLERK: Please come all the way forward.

10 Remain standing and raise your right hand,

11 **KRISTINA PAULETTE, DEFENDANT'S WITNESS, SWORN**

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

14 THE WITNESS: Kristina Paulette, K-R-I-S-T-I-N-A
15 P-A-U-L-E-T-T-E,

16 **DIRECT EXAMINATION**

17 BY MS. GREENBERGER:

18 Q Good morning, Ms, Paulette,

19 A Good morning,

20 Q Thank you for coming back. You previously testified
21 that you're a criminalist, is that correct?

22 A Correct,

23 Q Is that a type of forensic scientist?

24 A Yes, it is.

XVI-30

IAULETTE - DIRECT

1 involved with crimes figure out exactly what happened and by
2 what manner.

3 Q That testing can point towards a subject,
4 individual's, guilt that you're testing against?

5 MS. DiGIACOMO: Objection, leading, calls for a
6 legal conclusion.

7 THE COURT: The Court sustains as to leading.
8 BY MS. GREENBERGER:

9 Q Why do you test for trace evidence?

10 A We taste for -- test for trace evidence the same
11 reason we test for any other sort of evidence. I mean, trace
12 evidence is evidence. So we're looking for DNA on any sort of
13 item to help us make a conclusion, I guess.

14 Q Do you test to prove associations between evidence
15 and a crime?

16 MS. DiGIACOMO: Objection, leading,

17 THE COURT: Sustained.

18 BY MS, GREENBERGER:

19 Q What is a DNA backlog?

20 A What is it?

21 Q Yes,

22 MS. DiGIACOMO: Objection, relevance.

23 THE COURT: Overruled.

24 /1/

XVI-32

PAULLEITE - DIRECT

1 Q As a forensic scientist, do you agree that objectivity
2 is important in your methods?

3 MS, DiGIACOMO: Objection, leading,

4 THE COURT: Sustained,

5 BY MS, GREENBERGER:

6 Q Is objectivity important in your methods?

7 A Yes, it is.

8 Q Is impartiality important in your methods?

9 A Yes.A

10 Q Is honesty important in your methods?

11 A Yes.

12 Q As a forensic scientist, are you here to help one side
13 over the other?

14 A No.

15 Q Is forensic science an important part of a criminal
16 investigation?

17 A Yes-

18 Q Can testing evidence resolve the issue of that
19 evidence's involvement in a crime?

20 MS. DiGIACOMO: Objection, leading.

21 THE COURT: Sustained.

22 BY MS. GREENBERGER:

23 Q Why does your lab test DNA?

24 A We test DNA to help investigators and other people

XVI-31

PAULETTE - DIRECT

1 BY MS, GREENBERGER:

2 Q You may answer.

3 A A DNA backlog is the number of DNA cases that
4 have yet to be worked that are basically on -- have been
5 requested to have been marked.

6 Q Do you have a DNA backlog at your office?

7 A We do.

8 Q Can you afford to test every item of evidence that is
9 submitted?

10 A Not in every case.

11 Q Who makes those decisions?

12 A It's made by the analysts and the supervisors_ We
13 talk about cases that are current and level of importance that
14 we have in our backlog,

15 Q So is it fair to say you only test items that you deem
16 are of importance, your lab?

17 A Not necessarily. We test items that are requested
18 by investigators and by a D.A. Depending on the case and the
19 relevance that it has in the case and when that case is going
20 to trial or if it has been adjudicated already, it -- there's so
21 many factors in determining what gets tested when.

22 Q How does when a case is going to trial affect your
23 testing?

24 A Those cases get prioritized_ So anything that's

XVI-33

PAULETTE - DIRECT

'AULb E - DIRECT

1 coming up to trial has a quick trial date rather than further out,
 2 we put those in the front of the pile,,
 3 Q Did you or do you consider this case you're here
 4 testifying on a priority?
 5 A Yes,,
 6 Q You're employed by the Las Vegas Metropolitan
 7 Police Department Crime Lab. Is that accurate?
 8 A Yes, I am.
 9 Q Your lab is part of the police department?
 10 A Yes, it is.
 11 Q It is not independent from that, is it?
 12 A No, it's not,
 13 Q Do you recall when you previously testified being
 14 asked whether you were -- you were or had done any DNA
 15 analysis?
 16 A Yes.
 17 Q Do you recall your answer?
 18 A Yes. No, I don't recall the exact answer.
 19 Q Were you asked to do any DNA testing other than
 20 the pubic hair prior to your testimony in the last proceeding?
 21 A Yes, I was,,
 22 MS. DIGIACOMO: Objection, Your Honor, vague as
 23 to what she means by the last proceeding.
 24

1 A September 14th,
 2 Q Were you aware that was one day after opening
 3 statements?
 4 MS, DiGIACOMO: Objection, leading.
 5 THE COURT: Sustained.
 6 BY MS, GREENBERGER:
 7 Q Were you aware that was one day after the trial
 8 started?
 9 MS. DiGIACOMO: Objection, leading.
 10 THE COURT: Sustained,
 11 BY MS, GREENBERGER:
 12 Q Were these the cigarette butts that were found
 13 under the plastic that covered Duran Bailey's body?
 14 MS. DiGIACOMO: Objection, leading.
 15 THE COURT: Sustained,,
 16 BY MS. GREENBERGER:
 17 Q Do you know where those cigarette butts were
 18 seized from?
 19 A No.
 20 Q What were you asked to test for?
 21 A I was asked to test for DNA.
 22 Q Did you have the results of that DNA testing prior to
 23 testifying?
 24 A I had data but it hadn't been looked at or reviewed,

XVI-34

XVI-36

PAULETTE - DIRECT

PAULETTE - DIRECT

1 BY MS. GREENBERGER:
 2 Q Last week. At the time you testified last week, isn't
 3 it true you were involved in other DNA testing in this case that
 4 you did not mention when you testified?
 5 MS. DiGIACOMO: Objection, leading,
 6 THE COURT: Sustained,
 7 BY MS. GREENBERGER:
 8 Q At the last time you testified you only testified
 9 regarding your analysis on the DNA of the pubic hair, correct?
 10 A Correct,
 11 Q You had been asked to test additional items of
 12 evidence in this case prior --
 13 MS. DIGIACOMO: Objection, leading,
 14 MS. GREENBERGER: I can rephrase it.
 15 THE COURT: All right,
 16 BY MS. GREENBERGER:
 17 Q Were you asked to test additional items of forensic
 18 evidence in this case after this trial was underway?
 19 A Yes
 20 Q What items were those?
 21 A May I refer to my notes?
 22 Q Please.
 23 A I was asked to test cigarette butts.
 24 Q What date was that request made?

1 Q Why not?
 2 A Because there was not time,
 3 Q What date did you say you got the initial request to
 4 test the cigarette butts?
 5 A The 14th.
 6 Q Of September?
 7 A Yes.
 8 Q 2006?
 9 A Yes.
 10 Q Who submitted that request?
 11 A Ms. DiGiacomo.
 12 Q Is that the prosecutor in this case?
 13 A Yes,
 14 Q What day did you start your examination and testing
 15 of the cigarette butts?
 16 A I began the examination on September 17th.
 17 Do you know what day you received the cigarette
 18 butts?
 19 A I received them on September 15th,
 20 Q Where did the items come from?
 21 A They were from the vault, the evidence vault,
 22 Q In the custody of Las Vegas Metro?
 23 A Yes.
 24 Q What day did you cut samples from the cigarettes?

XVI-35

XVI-37

PAULETTE - DIRECT

- 1 A September 17th.
 2 Q What day did you extract DNA from the samples?
 3 A September 18th.
 4 Q What day did you quantify the DNA?
 5 A September 19th.
 6 Q Can you explain to us what quantifying the DNA is?
 7 A Quantification of the DNA is just determining how
 8 much DNA is present after we extract. We have to have a
 9 certain amount of DNA in order to be able to get some sort of
 10 analysis of that DNA, to be able to tell that there's DNA there
 11 and to characterize it,
 12 Q Was there enough to test or did you have to amplify
 13 the DNA?
 14 A DNA always has to be amplified before it can be
 15 analyzed.
 16 Q Can you explain to us what amplification is?
 17 A Amplification is targeting the DNA, the areas of
 18 interest that we're interested in, making millions and millions
 19 of copies of it so that we can separate the DNA by size and get
 20 base sizing for that.
 21 Q What day did you amp* the DNA samples you had
 22 extracted from the cigarette butts?
 23 A September 20th.
 24 Q What day did you load the amplified samples for

XVI-38

'AULETTE - DIRECT

- 1 A There was data there but the review of the data had
 2 not gone through,
 3 Q What does that mean?
 4 A It means that I knew that there was data present. I
 5 knew that there was DNA present. But I didn't know exactly —
 6 I didn't have time to sit down and analyze the DNA and see
 7 exactly what it meant.
 8 Q On Monday morning, that would be the 25th did you
 9 go to work?
 10 A Yes.
 11 Q And what time did you get there?
 12 A Approximately 7:00 a.m.
 13 Q Was that the day you were gonna testify here?
 14 A Yes, it was.
 15 Q Did you look at the results of the DNA testing prior
 16 to your testimony?
 17 A I had looked at it on Friday to see that there was
 18 DNA there but I hadn't done any sort of analysis or have time
 19 to write out my tables or anything like that.
 20 Q Did you know you would be testifying in this case on
 21 that day?
 22 A Yes, I did,
 23 Q Why didn't you continue your analysis?
 24 A I didn't have time

XVI-40

PAULL: 1E - DIRECT

- DNA testing?
 2 A September 21'.
 3 Q What did you do the day after you loaded the
 4 samples?
 5 A I checked my run. I wasn't actually working that
 6 day. I was off. I thought I was going to have to testify so I
 7 came in for just an hour and checked to make sure the run
 8 had actually worked.
 9 Q And what —
 10 A That --
 11 Q What does that mean?
 12 A It means that there was data present and that the
 13 controls, basically, that the instrument had run properly.
 14 Q Did you determine it had?
 15 A Yes.
 16 And would -- September 21, what day would that
 17 have been, what day of the week, if you know?
 18 A The 21"
 19 Q Yes.
 20 A It's a Thursday.
 21 Q So that Friday, the 22', is the day you checked the
 22 run?
 23 A Right. Correct.
 24 At that time, did you have the results?

XVI-39

PAULL i It - DIRECT

- 1 Q Why not?
 2 A I have about fifteen or sixteen other cases going at
 3 one time.
 4 Q When asked by the prosecution whether or not you
 5 performed any other DNA testing in this case, did you omit any
 6 mention of the testing you had just completed?
 7 MS. DIGIACOMO: Objection, leading and
 8 argumentative,
 9 THE COURT: Sustained,
 10 BY MS. GREENBERGER:
 11 Q Have you, since the time that you previously
 12 testified, September 25th, actually reviewed the results of the
 13 DNA test you performed on the cigarette butts?
 14 A Yes.
 15 Q What day did you reach your conclusions?
 16 A The report was issued on the 27th, which was
 17 Wednesday.
 18 Q You wrote a report in this case?
 19 A Yes,
 20 Q Did you provide that report to the defense in this
 21 case upon our request?
 22 A Yes.
 23 Q What day was that?
 24 A The 27th.

XVI-41

PAULETTE - DIRECT

1 Q Did you take notes?
 2 A Yes.
 3 Q Did you provide notes to the defense in this case?
 4 A Yes.
 5 Q On what date?
 6 A Today. They were available on Friday.
 7 Q Can you explain to us the results of the DNA testing?
 8 A Yes.
 9 Q Please do.
 10 A There were two cigarette butts containing DNA.
 11 One contained DNA from an unknown male and the other butt
 12 contained DNA from -- it was a mixture. The major profile was
 13 consistent with Duran Bailey and the minor profile was an
 14 unknown individual.
 15 Q So one of the cigarette butts collected from the body
 16 is associated with Mr. Bailey's DNA, is that correct?
 17 A Yes,
 18 Q And one is not?
 19 A Correct
 20 Q The one that is not belongs to an unknown male?
 21 A Correct.
 22 Q Were you able to do any further testing on that
 23 unknown male?
 24 A Further testing meaning?

XVI-42

)AULE1 IF-DIRECT

1 BY MS. GREENBERGER:
 2 Q Showing you what's been marked as Defense Exhibit
 3 tl II, do you recognize that report?
 4 A Yes, I do,
 5 Q Is that your report on the cigarette butts in this
 6 case?
 7 A Yes, it is.
 8 Q And what date is it dated?
 9 A The 27th of September, 2006.
 10 MS. GREENBERGER: Your Honor, we would move
 11 for admission of the report at this time.
 12 MS. DiGIACOMO: Your Honor, that's hearsay.
 13 THE COURT: Objection sustained.
 14 MS, GREENBERGER: The Court's indulgence. □
 15 (Pause in the proceedings)
 16 BY MS. GREENBERGER:
 17 Q Do you have any information regarding what year
 18 the cigarettes were impounded?
 19 A No, I do not.
 20 MS. GREENBERGER: I don't believe I have anything
 21 further.
 22 THE COURT: Cross,
 23 MS. DiGIACOMO: Thank you, Your Honor.
 24 ///

XVI-44

PAULETTE - DIRECT

1 Q DNA to identify,
 2 A No references, other references, were submitted so,
 3 no, we didn't do any comparisons,
 4 Q Were you able to exclude Kirstin Blaise Lobato as a
 5 possible contributor of DNA obtained from the cigarette that
 6 had the mixture?
 7 A Yes.
 8 Q Were you able to determine that the cigarette that
 9 had the mixture of DNA, the minor source, belonged to a
 10 male?
 11 A No. I was unable to determine that.
 12 You were only able to exclude my client, Blaise
 13 Lobato's, DNA?
 14 A Correct
 15 Q Is there any other evidence that you have tested in
 16 this case?
 17 A No.
 18 Q Is there any other evidence that you are currently
 19 testing in this case?
 20 A No.
 21 Q Did you prepare a written report?
 22 A Yes, I did.
 23 MS, GREENBERGER: May I approach, Your Honor?
 24 THE COURT: Yes.

XVI-43

PAULEITE - CROSS

CROSS-EXAMINATION

1 BY MS. DiGIACOMO:
 2 Q Ms. Paulette, just so we're clear, I was the one that
 3 requested that you test the cigarette butts, correct?
 4 A Correct
 5 And that was after the trial had begun, correct?
 6 A Yes,
 7 Now at the time that you were testing the cigarette
 8 butts, did you believe when we were calling you in that you
 9 were gonna testify regarding what you were doing with the
 10 cigarette butts?
 11 A No.
 12 Q Because you knew that it's something that could not
 13 possibly get done in time before you testified?
 14 A Correct.
 15 Q And you are not allowed to testify to something until
 16 you've actually generated a report and it's actually been
 17 reviewed by your supervisor?
 18 A Correct.
 19 Q But the minute that your report was complete it was
 20 turned over to the defense and the State, correct?
 21 A Correct.
 22 Q Now defense counsel asked you about a DNA
 23 backlog. Did you know what she meant by that?
 24

XVI-45

PAULETTE - CROSS

- 1 A Yes.
- 2 Q Okay. There's more than one kind of DNA backlog,
3 isn't there?
- 4 A Correct.
- 5 Q Okay, There's DNA backlog with regard to convicted
6 felons who have to submit their sample and they have to get
7 uploaded into CODIS, correct?
- 8 A Correct,
- 9 Q And how far back is that backlog?
- 10 A Thousands of samples,
- 11 Q Okay, In fact, doesn't your lab have grant money to
12 help get the backlog in that area up to speed?
- 13 A Yes,
- 14 Q What about with regard to actually requests for
15 cases that are coming up for trial; is there a big backlog there?
- 16 A Yes.
- 17 Q Okay. How long is that backlog?
- 18 A I can't be certain.
- 19 Q And when you say backlog, there's just a lot of
20 requests pending?
- 21 A Correct.
- 22 Q Okay. It doesn't mean that you're missing trial
23 dates getting your work done, correct?
- 24 A Absolutely not.

XVI-46

AULETTE - CROSS

- 1 A Yes.
- 2 Q Now, are you a certified lab?
- 3 A We're accredited,
4 Q Or accredited lab?
- 5 A Yes,
- 6 Q Now that accreditation, where does it come from?
- 7 A Our accreditation is from ASCLD Lab, which stands
8 for the American Society of Crime Lab Directors Lab
9 Accreditation Board. And, basically, their accreditation states
10 that we meet standards and qualifications to ensure that the
11 data we provide is both reliable and accurate and that we're
12 standardized among other labs in the country.
- 13 Q And that has nothing to do with whether or not
14 you're connected to a police agency, correct?
- 15 A No, it does not.
- 16 Q Okay. When you testified before when the State
17 brought you in, you had actually been here a couple of days
18 and not gotten on the stand?
- 19 A Correct.
- 20 Q And when you finally did testify, the only thing that I
21 asked you about was the pubic hair pullings?
- 22 A Correct,
- 23 Q Now with regard to the testing you did with the
24 cigarette butts, were there three cigarette butts in the pack?

XVI-48

PAULETTE - CROSS

- 1 Q In fact, aren't you right now working on some DNA
2 analysis for a case, Remy [phonetic], that doesn't go to trial
3 until June -- excuse me, January, 2007?
- 4 A True,
- 5 So there's a backlog of requests but that doesn't
6 mean you can't get work done in a timely manner?
- 7 A Absolutely not
- 8 Q Now with regard to the purpose of DNA, it's to look
9 for DNA to help, make conclusions, I believe is what you said,
10 your testing?
- 11 A Yes.
- 12 Q Okay. Now the fact that you find a person's DNA on
13 an item you tested, that doesn't tell you whether or not they
14 did the crime, correct?
- 15 A Absolutely not
- 16 Q It only tells you whether or not their biological
17 matter is on the piece of evidence you tested?
- 18 A Correct
- 19 Q So the conclusions you draw are just whether or not
20 somebody touched something or drank from something, not
21 whether or not they've committed a crime?
- 22 A Absolutely.
- 23 Q And your lab is a part of the Metropolitan Police
24 Department, correct?

XVI-47

PAULI E - CROSS

- 1 A There were two cigarette butts and an additional
2 piece of filter paper which looked to have broken off from the
3 second cigarette butt. The second cigarette butt didn't appear
4 to have even been smoked. It had tobacco in it that was not
5 burned.
- 6 Q Okay. So there — even though the packet contained
7 what was called three cigarette butts, it was really only two?
- 8 A It was simply two. And just to be safe, I went
9 ahead and tested that piece of filter paper to see if there was
10 any DNA there, and there was not.
- 11 Q Okay.
- 12 A And I could see that on my quantification records.
13 There showed no DNA presence.
- 14 Q Of the two that you did test, you said one of them
15 was just a complete unknown male, correct?
- 16 A Correct.
- 17 Q And then the other cigarette butt, the major
18 component was our victim in this case and the minor is an
19 unknown?
- 20 A Correct.
- 21 Q And you can't even tell if it's male or female?
- 22 A Not for certain.
- 23 Q Okay. But you can exclude the defendant in this
24 case from both of those cigarette butts?

XVI-49

PAULE1 -CROSS

1 A Yes,
 2 Q All right, Now, were you able to take those
 3 unknowns on both of those cigarette butts and upload into
 4 CODIS?
 A We were able to do a local search. In order to
 6 upload into CODIS it takes a while. There's -- it has to be
 7 approved, and things like that. But upon a local search there
 8 were no hits on either item.
 9 Q All right. Now, can you tell from your testing
 10 whether or not the cigarette butt that had the unknown male
 11 and the cigarette butt that had the major as the victim and a
 12 minor unknown, could you tell if the unknown on the first one
 13 and the unknown on the minor were the same?
 A They were not the same.
 15 Q So we're talking about two different DNA profiles on
 16 both of the cigarette butts?
 A Yes-
 18 Q Okay. Were you able to test those two unknowns
 19 that you found from the cigarette butts against the DNA
 20 profile, the minor portion that you got on the pulled pubic
 21 hair?
 A Yes, I was.
 23 Q Okay. Did any of those match?
 24 A No.

XVI-50

AULTI itE REDIRECT

1 BY MS. GREENBERGER:
 2 Q Correct?
 3 A Yes, I did testify about phenolphthalein,
 4 Q When you previously testified, do you recall the
 5 prosecution asking you whether you tested anything within the
 6 sexual assault kit itself besides the pubic hair?
 7 A Yes, I do,
 8 Q Do you recall your answer?
 9 A Yes,
 10 Q What was it?
 11 A I only tested the pubic hair combing,
 12 Q Do you also recall testifying that you weren't asked
 13 to retest any other items?
 14 A Yes,
 15 Q If a request was submitted to your lab in 2005,
 16 would that test have been completed by September V^t, 2006?
 17 A It may or may not have been, depending on the
 18 case and when it's going to trial and other -- there are so
 19 many circumstances surrounding when a case gets worked
 20 that it's impossible to tell,
 21 Q You're not a member of the American Academy of
 22 Forensic Science. True?
 23 MS. DiGIACOMO: Objection, Your Honor, outside
 24 the scope.

xv1-52

PAULE1E REDIRECT

1 Q And so --
 2 A They were all from three different sources.
 3 Q All right. Now, what about the minor component
 4 found on the chewing gum that was tested by Dave Wahl;
 5 were you able to compare the -- all the unknowns between the
 6 pulled pubic hair and the two cigarette butts?
 7 A Yes. And they were all inconsistent with one
 8 another, which means they're from four different sources,
 9 DiGIACOMO: Okay. The Court's indulgence,
 10 (Pause in the proceedings)
 11 MS, DiGIACOMO: Pass the witness.
 12 **REDIRECT EXAMINATION**
 13 BY MS. GREENBERGER:
 14 Q You were also here testifying about phenolphthalein.,
 15 Isn't that true?
 16 A Yesr
 17 MS. DiGIACOMO: Objection, outside the scope, Your
 18 Honor.
 19 BY MS, GREENBERGER:
 20 Q The prosecution asked you whether the only thing
 21 you testified about was with regard to the pubic hair on
 22 September 25th. You also testified about phenolphthalein,
 23 correct?
 24 THE COURT: The Court overrules,

XVI-51

PAULETTE - RECROSS

1 THE COURT: Sustained.
 2 MS, DiGIACOMO: Move to strike the answer_
 3 MR. KEPHART: There was no answer,
 4 THE COURT: Motion to strike granted.
 5 MS. GREENBERGER: The Court's indulgence,
 6 (Pause in the proceedings)
 7 BY MS, GREENBERGER:
 8 Q Isn't it true you're listed as an applicant --
 9 MS. DiGIACOMO: Objection, leading,
 10 THE COURT: Sustained,
 11 BY MS. GREENBERGER:
 12 Q Are you a member of the American Academy of
 13 Forensic Science?
 14 MS, DiGIACOMO: Objection, outside the scope.
 15 MS. GREENBERGER: Your Honor, the prosecution
 16 got into accreditation issues with regard to the lab,
 17 THE COURT: That's with regard to the lab. The
 18 Court sustains the objection.
 19 MS, GREENBERGER: Nothing further.
 20 THE COURT: Recross.
 21 MS. DiGIACOMO: Thank you,
 22 **RECROSS EXAMINATION**
 23 BY MS, DiGIACOMO:
 24 Q How long have you been with Metro's lab?

XVI-53

PAULLIIE RECROS

1 ▲ Just about fifteen months.
 2 Q Okay. Are you aware of a point in time where the
 3 lab was kind of overhauled sometime?
 4 A Yes,
 5 Q All right. And a lot of the work at that time had to
 6 be farmed out?
 7 A Yes, It was sent to outside agencies —
 8 Q Okay, What —
 9 A -- for work,
 10 Q Okay. And that was because the lab itself couldn't
 11 handle the requests at that time?
 12 A Yes.
 13 Q And it --
 14 A That's correct
 15 Q Okay, The lab was in between criminalists. Is that
 16 fair to say?
 17 A Yes
 18 Q And you weren't asked to retest anything else in the
 19 sexual assault kit, correct?
 20 A Correct.
 21 Q And the reason was because everything else before
 22 you were asked to do the pulled pubic hairs had been done?
 23 A Yes, it had already been tested.
 24 MS. DiGIACOMO: Nothing further.

XVI-54

McBRIDE - DIRECT

1 A Approximately nine.
 2 Q So for that nine-month period your lab was shut
 3 down, basically?
 4 A [No audible response]
 5 MS, GREENBERGER: Nothing further,
 6 COURT RECORDER: I didn't hear an answer.
 7 THE WITNESS: Yes.
 8 COURT RECORDER: Thank you
 9 MS, DiGIACOMO: Nothing further.
 10 THE COURT: You may step down.
 11 Defendant may call defendant's next witness,
 12 MS, GREENBERGER: Heather McBride.
 13 THE CLERK: Please come all the way forward.
 14 Remain standing and raise your right hand.
 15 **HEATHER McBRIDE, DEFENDANT'S WITNESS, SWORN**
 16 THE CLERK: Thank you. Please be seated. State
 17 your name and spell it for the record, please.
 18 THE WITNESS: My name is Heather McBride,
 19 H-E-A-T-H-E-R M-C-B-R-I-D-E.
 20 DIRECT EXAMINATION
 21 BY MS, GREENBERGER:
 22 Q Good morning, Ms. McBride.
 23 A Good morning,
 24 Q How are you?

xvi-56

PAULETTE - FURTHER REDIRECT

1 THE COURT: Redirect
 2 **FURTHER REDIRECT EXAMINATION**
 3 BY MS. GREENBERGER:
 4 Q Can you tell us what this lab overhaul was all about,
 5 what time period?
 6 A Exactly what are you referring to, lab overhaul?
 7 A What you just referenced in cross-examination. You
 8 said the lab was overhauled. What does that mean?
 9 A There were -- we moved into a new facility so the
 10 lab was down at that point in time. We weren't doing any
 11 case work. And there was a transition with old analysts
 12 leaving and new analysts coming in.
 13 Q What time period was this, approximately?
 14 A Between August of 2005 and May of 2006,
 15 approximately,
 16 Q How did this affect the business at your lab?
 17 A Our case work was shut down, so any cases that
 18 were going to trial or needed to worked immediately were sent
 19 out with grant money to outside private labs to be analyzed.
 20 And aside from that, it was just a matter of getting everything
 21 moved into the new lab, getting everything set back up again
 22 to start case work and getting the new people trained.
 23 Q How many months is it between August, 2005 and
 24 May, 2006?

XVI-55

McBRIDE - DIRECT

1 A Good,
 2 Q Okay, Where do you reside?
 3 A In Caliente, Nevada.
 4 Q How far is Caliente from Panaca?
 5 A About 15 miles,
 6 Q How long have you lived there?
 7 A I have lived in Caliente for about six years now,
 8 seven.
 9 Were you living in Caliente in the year of 2001?
 10 A Yeah.
 11 Q Do you know someone named Kirstin Blaise Lobato?
 12 A Yes,
 13 Q Do you see her here today?
 14 A Yes, I do, She's right there,
 15 Q Can you identify what she's wearing?
 16 A A flowered shirt.
 17 Q When did you first —
 18 THE COURT: The record shall reflect identification
 19 of the defendant,
 20 MS. GREENBERGER: Thank you.
 21 BY MS, GREENBERGER:
 22 Q When did you first meet?
 23 A Oh, me and --
 24 Q You and Blaise.

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McBRIDE - DIRECT

1 A Oh. When I was in high school, when I was about
2 sixteen.

3 Were you living in Cal iente in July, 2001?

4 A Yes.

5 MS. GREENBERGER: May I approach, Your Honor?

6 THE COURT: Yes,

7 BY MS. GREENBERGER:

8 Q Do you remember seeing Blaise in July of 2001?

9 A Yes, I do.

10 MS. GREENBERGER: May I approach with a pen?

11 THE COURT: You may.

12 BY MS. GREENBERGER:

13 Q Do you recall when you first saw her in July, 2001?

14 A I'm not exactly sure on the exact day but I know it
15 was before the 4th of July.

16 Q Do you know it was after the end of June?

17 A Yes.

18 Q So sometime before July 1st and 3rd?

19 A Yeah. It was one of those three days.

20 Q Can you get off the witness stand and put your
21 initials on those dates?

22 (Pause in the proceedings)

23 Q How do you know that you saw her before July 4th?

24 A I know that because her father, Larry, had invited us

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McBRIDE - DIRECT

1 to a barbecue on the 4th, our family, and I had seen Blaise
2 before that.

3 Q A 4th of July barbecue?

4 A Yeah.

5 Q Where was that being held?

6 A It was being held at her parents' house in Panaca,

7 Q And what date was the party being held on?

8 A I couldn't say for sure, He'd called my boyfriend at
9 that time and invited him.

10 Q What date was the party, though? What date was
11 the barbecue?

12 A The 4th.

13 Q The 4th of July?

14 A Yeah.

15 Q Prior to seeing Blaise in July of 2001, had you seen
16 her in June, 2001?

17 A Oh, no.

18 Q Did you see her anytime after July 4th, 2001?

19 A No,

20 Q Is today the first time you've seen her since July
21 2nd or 3rd of 2001?

22 A Other than at the court last time, yeah.

23 Q Did you -- well, strike that.

24 Where did you see Blaise in early July?

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McBRIDE - DIRECT

1 A At -- she came to my house in Caliente,
2 Q Did she come alone?

3 A Yeah,

4 Q How long did she stay?

5 A She was there probably about an hour, maybe two,
6 visiting,

7 Q Do you remember what time it was that she came
8 over, approximately?

9 A I know it was nighttime, at night. I don't recall the
10 exact time

11 Was that the first time you had seen her in a while?

12 A Yes, it was.

13 Do you know if she had just returned from Las
14 Vegas?

15 MS. DiGIACOMO: Objection, hearsay,
16 THE COURT: Sustained,

17 BY MS. GREENBERGER:

18 Q Did you have a conversation with Blaise?

19 A Yes, I did,

20 Q How long did the conversation last?

21 A Ten, fifteen minutes.

22 Q Did she --

23 THE COURT: Counsel, approach.
24 (Off-record bench conference at 11:48:33 until 11:55:14)

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McBRIDE - DIRECT

1 BY MS. GREENBERGER:

2 Q Sometime on July 1st, 2nd or 3rd Blaise came to your
3 house, correct?

4 A Yes.

5 Q And how long, just to clarify, did you speak to her
6 for?

7 A The whole night or the -- I mean, it was probably
8 about an hour, maybe two. I don't --

9 Q She was at your house for --

10 A Yeah.

11 Q an hour or two?

12 A Yeah,

13 Q During that time period you two had a conversation?

14 A Yes. Yes.

15 Q Can you describe how Blaise appeared?

16 A Down and out, just kind of --

17 Q What do you mean by down and out?

18 A Could have been depressed. I mean, she just -- just
19 kind of down and out, not cheerful or just kind of --

20 Q Did she seem depressed to you?

21 A Well, I don't know. Just not the normal, you know,
22 happy Blaise. I don't know. Just she could have been tired. I
23 don't know. She was just kind of down and out.

24 Q How did she normally appear?

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McBRIDE - DIRECT

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1 A Happy, fun to be around, you know, just bounce —
 2 don't know, full of life, just --
 3 Q Did she appear to be anxious?
 4 MS. DiGIACOMO: Objection, leading,
 5 THE COURT: Sustained.,
 6 BY MS. GREENBERGER:
 7 Q Without telling us what was said during your
 8 conversation, can you tell us what the subject of the
 9 conversation was?
 10 MS. DiGIACOMO: Objection, hearsay,
 11 THE COURT: Sustained.
 12 BY MS. GREENBERGER:
 13 Q Did Blaise confide in you?
 14 A Yeah,
 15 Q Do you recall that conversation as you sit here
 16 today?
 17 A Yes, I do.
 18 Q Are you certain this conversation occurred before
 19 July 8th, 2001?
 20 A I'm positive.
 21 Q Did you contact the police after she confided in you?
 22 MS. DiGIACOMO: Objection, leading.
 23 THE COURT: Sustained.
 24

1 been committed?
 2 A Yes.
 3 Q When did you learn the crime had been committed?
 4 MS. DiGIACOMO: Objection, leading,
 5 THE COURT: Sustained.
 6 BY MS. GREENBERGER:
 7 Q Do you know when the crime had been committed?
 8 MS. DiGIACOMO: Objection, it's gonna call for a
 9 hearsay basis. And also vague as to what crime.
 10 MS. GREENBERGER: I can rephrase it,
 11 THE COURT: All right.,
 12 BY MS. GREENBERGER:
 13 Q What did the police come talk to you about?
 14 MS. DiGIACOMO: Objection, hearsay,
 15 THE COURT: Sustained,
 16 BY MS. GREENBERGER:
 17 Q Did you make a statement to the police?
 18 A They recorded. There was a recorded statement
 19 made.
 20 Q Did you tell them everything you knew about this
 21 conversation you had with Blaise?
 22 A Yes, I did.
 23 Q Did you previously —
 24 MS. DiGIACOMO: Objection, leading,

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1 BY MS. GREENBERGER:
 2 Q Did you contact anyone after she confided in you?
 3 A No.
 4 Q Why not?
 5 A Just because I didn't know if it was the truth —
 6 MS. DiGIACOMO: Objection, Your Honor.
 7 THE WITNESS: -- or not.
 8 MS. DiGIACOMO: She's trying to get into hearsay
 9 again with this answer.
 10 MS. GREENBERGER: I'm not asking about the
 11 nature of the conversation. I'm asking why she didn't contact
 12 anyone,
 13 MS. DiGIACOMO: Your --
 14 THE COURT: She answered the question and then
 15 started to go on to give additional information. So the answer
 16 as given will stand, and you may move on to your next
 17 question,
 18 MS. GREENBERGER: Thank you.
 19 BY MS. GREENBERGER:
 20 Q Did the police come talk to you in this case?
 21 A Yes,
 22 Q Was that on July 26th, 2001?
 23 A Yeah.
 24 Q Did they come talk to you about a crime that had

1 THE COURT: Sustained,
 2 BY MS. GREENBERGER:
 3 Q Did you testify in a proceeding in this matter?
 4 MS. DiGIACOMO: Objection, leading and relevance.
 5 THE COURT: Sustained.
 6 BY MS. GREENBERGER:
 7 Q As you sit here today, are you certain this
 8 conversation occurred sometime between the 1st of July and
 9 the 3rd of July?
 10 MS. DiGIACOMO: Objection, asked and answered,
 11 THE COURT: Sustained.
 12 MS. GREENBERGER: Nothing further.
 13 THE COURT: Cross.
 14 MS. DiGIACOMO: Thank you, Your Honor.
 15 CROSS-EXAMINATION
 16 BY MS. DiGIACOMO:
 17 Q Good morning. The conversation that you're
 18 referencing with the defense counsel, you talked about how
 19 Blaise confided in you during this conversation. Do you recall
 20 that?
 21 A Yes.
 22 Q Okay. And you wouldn't exactly say that she
 23 confided in you, would you?
 24 A Well, you could call it that. I — you know —

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McBRIDE - CROSS

1 But that's not what you would call it, is it?
 2 A I could call it that.
 3 Q All right. Do you recall testifying at a prior
 4 proceeding in May, 2002?
 5 A Yes.
 6 Q Okay. Do you recall being asked how you would
 7 describe her demeanor when she told —
 8 A Yes,
 9 Q — you or you had this conversation?
 10 A Yes.
 11 Q Do you recall what your answer was?
 12 A I asked what demeanor meant. I wasn't quite sure,
 13 Q Okay. And when it was explained to you, do you
 14 recall what you said?
 15 A Down. She didn't seem herself.
 16 Q Okay, If I was to show you your prior testimony,
 17 would that refresh your recollection as to what you said?
 18 A Yeah, 'cause that was five years ago,
 19 MS, DIGIACOMO: Okay. May I approach, Your
 20 Honor?
 21 THE COURT: You may.
 22 MR. SCHIECK: Page number, please.
 23 MS, DiGIACOMO: Bottom of page 135 into the top
 24 of page 136.

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McBRIDE - CROSS

1 bragging. I don't think she was confiding. I don't know the
 2 word for it, though," Do you remember that?
 3 A Right.
 4 Q Okay, So is it fair to say then this conversation you
 5 had, Blaise wasn't confiding in you?
 6 A Yeah,
 7 Q You marked off July 1, July r^d and July 3, 2001
 8 on the calendar which is —
 9 MS. DIGIACOMO: May I approach, Your Honor?
 10 THE COURT: Yes,
 11 BY MS, DiGIACOMO:
 12 Q Defense Exhibit JJ. Okay. You didn't actually see
 13 Blaise each one of those days, correct?
 14 A It was before the 4th. It was one of those three
 15 days. No,
 16 Q One of those three days?
 17 A I seen her on one day,
 18 Q Okay. One of those three days before the 4th?
 19 A Mm-hmm.
 20 Q Okay. And --
 21 THE COURT: Does that mean yes?
 22 THE WITNESS: Yes,
 23 BY MS, DiGIACOMO:
 24 Q Okay. And you are absolutely, 100 percent positive

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McBRIDE - CROSS

1 THE WITNESS: You were asking me --
 2 BY MS. DiGIACOMO:
 3 Q Well, but don't --
 4 A -- about her demeanor, though,
 5 Q Right. Read it to yourself,
 6 A So -- oh.
 7 Q Read it to yourself. Okay. And then I was
 8 explaining it. And what was your response? Just read that to
 9 yourself,
 10 A Is that about the demeanor
 11 Q Yes.
 12 A Where? Oh, right here, the demeanor.
 13 Q Right, And then keep going and then read this right
 14 herer
 15 A "She seemed upset," Okay.
 16 Q Read it to yourself.
 17 A Right.
 18 Q Does that refresh your memory?
 19 A Right. Right.
 20 Q So after reading your prior testimony, you wouldn't -
 21 - the right word isn't that she was "confiding" in you regarding
 22 this conversation, correct?
 23 A After reading that, I don't know how —
 24 Q I mean, you testified before, "I don't think she was

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McBRIDE - CROSS

1 you know you saw her before the 4th, correct?
 2 A Yes, I am,
 3 Q Okay. Now the police statement that you gave or
 4 when they tape-recorded you. Do you recall that?
 5 A Yes, I do.
 6 Q Okay, Do you recall telling them that it was July 5'
 7 or 6th?
 8 A I think --
 9 Q It was after the 4th?
 10 A I told them I thought. I wasn't sure on the dates.
 11 But, yeah, I remember telling them that 'cause I wasn't sure
 12 on the dates,
 13 Q Okay, So at the time you talked to the police —
 14 A Right.
 15 Q -- on July, 2001 —
 16 A Right.
 17 Q — you actually thought it was after the 4" of July,
 18 not before?
 19 A But then I remembered how her dad had invited us
 20 to the 4' of July barbecue and I'd seen her before that, and
 21 that's when she had told me.
 22 Q Okay, At the time that you saw Blaise during this
 23 conversation either July 1, 2nd or 3, you believed that she
 24 was on drugs, didn't you?

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McBRIDE - CROSS

1 A No, I couldn't say.
 2 Q Okay. You thought that she was --
 3 A I'm not one to say that,
 4 Q -- had been previously doing drugs, correct?
 5 A Well, previously, she could have been.
 6 Q Okay.
 7 A I'm not --
 8 Q But in fact the reason why you didn't see her again
 9 after that date was because you didn't want to be around her
 10 and you didn't want drugs around your family, correct?
 11 A Just the lifestyles or whatever was going on. I'd just
 12 had a son and I didn't want to be around her,
 13 Q Okay, So after you had this conversation --
 14 A Right.
 15 Q July 1, 2nd or 1st, you wanted nothing to do with
 16 her again?
 17 A Well, I wouldn't say again.
 18 Q Well, I, I, I mean --
 19 A But not at the time, no.
 20 Q You did not want to see her again?
 21 A Not at that time, no.
 22 Q And you did not see her again?
 23 A No.
 24 Q Did you ever speak to anyone in her family after she

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McBRIDE - REDIRECT

1 Q And you would agree that the 5th or 6th of July is
 2 before July 8th?
 3 A I agree. Yes, it is,
 4 Q You have never told anyone anything other than
 5 that, have you?
 6 A No. No, that's --
 7 Q You didn't have a calendar when the police came
 8 and talked to you?
 9 A No, I didn't. It was --
 10 MS. DiGIACOMO: Objection, leading.
 11 THE WITNESS: -- on the spur of the moment.
 12 THE COURT: Sustained.
 13 BY MS. GREENBERGER:
 14 Q Did you have a calendar when the police came to
 15 talk to you?
 16 A No.
 17 Q Did you have time to think about the actual last date
 18 you saw her when they --
 19 A No.
 20 Q -- came and talked to you on July 26th?
 21 A No,
 22 Q Prior to your testimony at the last proceeding, you
 23 did have time to look?
 24 A Yeah, In fact it was that like same day I realized

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McBRIDE - REDIRECT

1 was arrested?
 2 A I've seen them on the streets. Ill say hi or
 3 whatever. We live in a small town and --
 4 Q But you never talked --
 5 A No,
 6 Q -- to them about --
 7 A No,
 8 Q Blaise getting arrested?
 9 A No.A
 10 Q Okay. So you did not learn through the Lobato
 11 family that Blaise had been arrested?
 12 A I don't remember exactly where I learned from.
 13 That was five years ago.
 14 MS, DiGIACOMO: The Court's indulgence.
 15 (Pause in the proceedings)
 16 MS. DiGIACOMO: Nothing further.
 17 MR. SCHIECK: Your Honor, could we approach?
 18 THE COURT: Yes,
 19 (Off-record bench conference at 12:06:43 until 12:07:41)
 20 REDIRECT EXAMINATION
 21 BY MS GREENBERGER:
 22 Q When you were interviewed by the police, you told
 23 them you thought it was the 5th or 6th, true?
 24 A Yeah,

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McBRIDE - REDIRECT

1 how he'd called us for the barbecue, and I know that I'd seen
 2 her before that, the 4th of July barbecue. So --
 3 Q So the same day the police were there, you realized
 4 that that same day?
 5 A Yeah, like just hours later or something it hit me,
 6 you know, 'cause that's what had happened.
 7 Q The 4th of July sticks out in your mind?
 8 A Yeah.
 9 Q Why?
 10 A Because we were invited to that barbecue and we
 11 didn't go, but yeah,
 12 Q In your own words, if you can characterize what
 13 Blaise was doing in that conversation if it's not confiding.. In
 14 your own words, what was she doing?
 15 A Tell --
 16 MS. DiGIACOMO: Objection, Your Honor.
 17 THE WITNESS: Telling me about her life in Vegas,
 18 MS. DiGIACOMO: Hearsay.
 19 THE COURT: Sustained.
 20 MS. DiGIACOMO: And move to strike.
 21 THE COURT: Granted.
 22 BY MS. GREENBERGER:
 23 Q Do you, as you sit here today, believe she was
 24 confiding in you?

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1 A I don't know.
 2 COURT RECORDER: I didn't hear that.
 3 THE WITNESS: I said I don't know.
 4 THE COURT: I don't know.
 5 BY MS. GREENBERGER:
 6 Q Was she talking to you about something personal?
 7 MS, DiGIACOMO: Objection, hearsay.
 8 THE COURT: Sustained.
 9 MS. DiGIACOMO: And leading.
 10 THE COURT: Also sustained.
 11 MS. GREENBERGER: Nothing further.
 12 THE COURT: Redirect -- or recross,
 13 MS, DiGIACOMO: The Court's indulgence,
 14 (Pause in the proceedings)
 15 MS. DIGIACOMO: Nothing further,
 16 THE COURT: You may step down.
 17 Well be taking our lunch recess at this time. Ladies
 18 and gentlemen, at 1:15 please be out in the hallway. The
 19 bailiff will meet you there to return you to your seats in the
 20 courtroom.
 21 During the recess you are admonished not to talk or
 22 converse amongst yourselves, nor with anyone else, on any
 23 subject connected with this trial, and you're not to read, watch
 24 or listen to any report of or commentary on the trial or any

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1 statement given by a witness, the opposing party is able to
 2 bring out any other portion of the statement they wish to bring
 3 out, And by inquiring concerning the date and whether or not
 4 she told the police that the conversation that they objected to
 5 coming in was heard on May 5th or the 6th, according to what
 6 she told to Detective Thowsen, that allowed us to come back
 7 and ask her what that conversation was about, which was in
 8 fact about a stabbing that happened in Las Vegas before July -
 9 8th, which corroborates the information that she had given to
 0 Detective Thowsen which is a central aspect of the defense in
 1 this case, that the reference to a stabbing by Ms. Lobato when
 2 she talked to Detective Thowsen on July 20th was in fact
 3 referring to an incident previous to July 8th, which this witness
 4 would have testified she was told that statement to Detective
 5 Thowsen she said July 5th or 6th, but and now she recalls it
 6 before July 4th, But, in either event, it was prior to July 1st or
 7 July 9th of 2001.

18 THE COURT: Do we have a copy of the voluntary
 19 statement —
 20 MS. GREENBERGER: Many,
 21 THE COURT: -- of Heather McBride?
 22 MS, GREENBERGER: Yes.
 23 THE COURT: That we can have marked as the —
 24 MS, GREENBERGER: Right here,

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1 person connected with the trial, by any medium of information,
 2 including, without limitation, newspaper, television, radio and
 3 Internet, and you're not to form or express any opinion on any
 4 subject connected with the trial until the case is finally
 5 submitted to you.

6 The jury may exit. Well see you at 1:15,
 7 (Jurors recessed at 12:11:10)

8 THE COURT: The record shall reflect that the jury
 9 has exited.

10 Mr. Schieck wished to place on the record some of
 11 the sidebar discussions —

12 MR, SCHIECK: Your Honor, could we do this after
 13 the break?

14 THE COURT: -- from the testimony of Ms, McBride,
 15 MR. SCHIECK: I want —

16 THE COURT: No, because I'm not gonna have
 17 the jury come back at 1:15 and then stand there for half an
 18 hour —

19 MR. SCHIECK: I just want to —

20 THE COURT: -- out in the hallway waiting,

21 MR, SCHIECK: I just wanted to pull the citation,
 22 Your Honor. That's all.

23 What we're talking about is the doctrine of
 24 completeness. And once a party goes into the contents of a

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1 THE COURT: -- Court's exhibit. Court's next in
 2 number?

3 THE CLERK: 75,

4 THE COURT: Counsel approached the bench at two
 5 different times during Heather McBride's testimony, The
 6 second time was to — was with regard to the completeness of
 7 the statement, which Mr. Schieck just argued the first time was
 8 as to NRS 51,035,

9 MR. SCHIECK: And 51.105, Your Honor, And if the
 10 Court desires, I can make a quick record on that.

11 THE COURT: Yes, please, Might as well have you
 12 place your full argument on the record,

13 MR. SCHIECK: Thank you, Your Honor,

14 We first proffered that the contents of the statement
 15 from Heather McBride, which I have just described in
 16 argument with respect to her statement which has to do with
 17 the prior stabbing incident in Las Vegas, during the testimony
 18 of Detective Thowsen he related testimony concerning the
 19 Budget Suites and the fact that he did not believe that there
 20 had been a previous incident at Budget Suites, as related by
 21 Ms. Lobato in her statement to him on July 20th, It's our
 22 position that that fits within, although not the exact definition
 23 of prior consistent statement under statute, within the — within
 24 the meaning of the statute, and that is if they're going to

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1 accuse someone of fabricating a situation when there are prior
 2 consistent statements that show that it was not a recent
 3 fabrication, as Detective Thowsen asserted, happened on July
 4 20th, then the individual should be able to admit those prior
 5 consistent statements. And in this case, the prior consistent
 6 statement to Heather McBride.
 7 The statute does talk about that the declarant is
 8 required to testify at trial, which under a technical reading of
 9 the statute would preclude it as admissible hearsay. However,
 10 we would assert that the conditions and circumstances under
 11 which this consistent statement was given makes it inherently
 12 reliable and, therefore, also admissible.
 13 We further offered under NRS 51,105 that the
 14 statement of Ms, Lobato to Heather McBride was in fact a
 15 statement of then existing mental, emotional or physical
 16 condition which is described in the actual language of the
 17 statute as "a statement of the declarant's then existing state of
 18 mind, emotion, sensation, physical condition, such as intent,
 19 plan, motive, design, mental feeling, pain and bodily health."
 20 It is our position that Ms. Lobato was making a statement to
 21 Ms. McBride that goes to her mental feeling, to the fact that
 22 she had been attacked previously and was not doing well as a
 23 result of that situation. And whether we want to call it
 24 confiding, or what other word that Ms. McBride could not put

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1 her finger on to describe what it was, she said it wasn't
 2 confiding and it wasn't bragging but she couldn't come up with
 3 her own word for it, was in fact a statement of the mental
 4 feeling of Ms. Lobato and should have been admitted as such.
 5 We wouldn't necessarily have needed to argue that
 6 it was offered for the proof of the matter -- for the truth of the
 7 matter asserted as opposed to simply show that the -- that
 8 that's how Ms. Lobato was feeling at the time at the first part
 9 of July when she talked to Ms, McBride,
 10 MS. GREENBERGER: I would also note for the
 11 record, Your Honor, just that the prosecution brought up at
 12 the bench, well, it's not as if she's testifying to Blaise being
 13 suicidal. And in her prior testimony, page 141, it was the third
 14 volume, during examination she testified she has known she's
 15 been suicidal at times,
 16 THE COURT: The suicide argument was not made
 17 at sidebar. That's new information.
 18 MS. GREENBERGER: Maybe you didn't hear it. The
 19 prosecutor did reference it's not as if she's saying that she was
 20
 21 MS. DiGIACOMO: Well, I was giving —
 22 THE COURT: You didn't —
 23 MS. DiGIACOMO: -- an example of.
 24 THE COURT: You didn't respond to it in the way

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1 that you just have now, Mr. Schieck had been making the
 2 argument at sidebar with regard to her mental and emotional
 3 status.
 4 MS, DiGIACOMO: And might -- that I was giving an
 5 example at the bench, The fact that she says she might have
 6 cut somebody in the abdomen months before does not give
 7 you an idea of -- into her then state of mind. If she had said I
 8 think I'm gonna commit suicide right now, then that would be
 9 different and that probably would come in under the exception
 10 they're trying to use. The fact that she may have said in a
 11 previous time she's been suicidal in the pack, I don't -- past, I
 12 don't think that comes in as a state of mind either. That was
 13 what -- I was making an example, but that's not what we had
 14 here, They were trying to get in the defendant's prior
 15 statements for the truth of the matter asserted to show it was
 16 some other guy back a couple of months before that she had
 17 cut. That's the sole purpose why they were trying to get it in,
 18 be it through prior consistent statements, which is improper, or
 19 this existing state of mind which they might try and get it in
 20 through that way but it doesn't show her state of mind, the
 21 fact that she attacked somebody.
 22 MS, GREENBERGER: Well, just so the record is
 23 thorough and complete, I just want to memorialize the fact
 24 that the prosecution did illicit this very testimony on direct

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1 examination at the prior trial in this case. And it is, you know,
 2 our contention we just want the truth to get out there. The
 3 prosecution subpoenaed her. She was gonna come testify for
 4 the prosecution. They chose not to use her. And we feel
 5 that's precluding us from presenting a full and complete
 6 scenario to the jury of what happened. All we're seeking for is
 7 to get the truth out there through every and any witness that
 8 can provide any information.
 9 MS, DiGIACOMO: Well, Your Honor, if it's -- they
 10 do --
 11 THE COURT: A new trial is a new trial.
 12 MS. DiGIACOMO: Right.
 13 THE COURT: I mean, there has been a lot of
 14 changes in this trial as compared with the first trial,
 15 MS. DiGIACOMO: Right. And they have the
 16 opportunity to get her statements out through their client if
 17 she wishes to testify again. But also, too, at the last trial
 18 setting, just so the record is clear, Heather McBride's testimony
 19 was tied to her boyfriend at the time, Chris Collier, who would
 20 have put that conversation later, after July 8th, and he didn't
 21 show up. We had spoken to him and he didn't show up so we
 22 had to go forward without him. Obviously, Ms, McBride's
 23 testimony, and it's our option if we want to bring in a
 24 defendant's statement, it's our option to use it or not use it.

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1 But without Chris Collier to say, no, that conversation
 2 happened after the 8th, we have that right not to call him.
 3 MS, GREENBERGER: Well, it's unfortunate that the
 4 rules of evidence in this case prevent the truth from coming
 5 out.
 6 MS, DiGIACOMO: No, they don't. Her client can
 7 take the stand. There's no rules preventing it.
 8 THE COURT: That's not accurate.
 9 And the Court found that under NRS 51,035 the
 10 statement did not fall under any of the subsections that would
 11 take it out of being a hearsay statement. It was not non-
 12 hearsay. It is, therefore, hearsay. And that what was seeking
 13 to be brought in was covered under the demeanor testimony
 14 and date, time, location were foundational, that the extent of
 15 the statement that the defense wanted to bring in does not fall
 16 under the exception to the hearsay rule under 51.085, and the
 17 testimony put forth did not open the door for the entire
 18 voluntary statement made to the police officers to be then -- to
 19 become the admissible at this trial.
 20 We will be in recess 'til 1:15.
 21 (Court recessed at 12:22:34 until 13:21:00)
 22 (Jurors are not present)
 23 THE BAILIFF: Department II is back in session. You
 24 may be seated.

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1 THE COURT: The record shall reflect that we're
 2 resuming trial in State versus Lobato under C177394, in the
 3 presence of the defendant, her three counsel, and the two
 4 prosecuting attorneys. The record shall reflect that we're
 5 outside the presence of the jury at the Court's request.
 6 I wanted the record to be clear that the Court had
 7 sustained the objections at sidebar on the basis of hearsay
 8 objections, And I wanted counsel to understand fully that this
 9 trial is a search for the truth. It is, however, a search for the
 10 truth in a courtroom, before a jury, a jury of one's peers who
 11 have been selected through a lengthy voir dire process. It is
 12 not a trial on the front steps of the courthouse to the public at
 13 large, It is a trial that is a search for the truth within the
 14 provisions of the law and within the provisions of the rules of
 15 evidence, as are all trials,
 16 The hearsay rule and the exceptions to the hearsay
 17 rule have longstanding precedent in this jurisdiction and in fact
 18 throughout the United States, in both Federal and State
 19 Courts. And counsel is fully aware of that.
 20 We proceed forward with the calling of the
 21 defendant's next witness as the jury is going to be seated at
 22 this time,
 23 MS. ZALKIN: And, Your Honor, the defense will be
 24 calling Brent Turvey.

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1 THE COURT: Okay. Thank you, Ms. Zalkin,
 2 MS, DiGIACOMO: And, Your Honor, just for the
 3 record, we've never received an updated version of the
 4 PowerPoint so at this point we're assuming there is not gonna
 5 be one.
 6 MS, ZALKIN: Well, there is one and it comports with
 7 anything that the Court — do you have an extra copy of this?
 8 MS, GREENBERGER: No,
 9 MS,, DiGIACOMO: Well, we're gonna object until we
 10 get a chance to review it,
 11 THE COURT: Do you have a copy of it for the State
 12 to review?
 13 MS, ZALKIN: She can look at my copy. It — we
 14 changed everything from the front page to opinions instead of
 15 findings, and we took out the language from the Gaza report,
 16 the report attributed to Gaza at least, and we changed where
 17 it said luminol and there were -- it was referring to those
 18 presumptive blood tests. We just changed it to presumptive
 19 blood test results because the photo showed luminol in both
 20 testing were utilized in the car,
 21 MS. DiGIACOMO: All right_
 22 (Pause in the proceedings)
 23 THE BAILIFF: The jury is now present.
 24 (Jurors reconvened at 13:24:50)

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1 THE COURT: The record shall reflect that the bailiff
 2 is returning the jury to the courtroom.
 3 Ladies and gentlemen, as you arrive in your seats
 4 you may be seated.
 5 MS. DIGIACOMO: We need to approach.
 6 THE COURT: Ladies and gentlemen of the jury have
 7 now been seated.
 8 Counsel wishes to approach?
 9 MS. DiGIACOMO: Yes, Your Honor,
 10 THE COURT: You may.
 11 (Off-record bench conference at 13:25:43 until 13:27:34)
 12 (Pause in the proceedings)
 13 MR. SCHIECK: Could I approach, Your Honor?
 14 THE COURT: Counsel may approach_
 15 (Off-record bench conference at 13:28:23 until 13:29:31)
 16 (Pause in the proceedings)
 17 THE COURT: We have a little clerical issue to take
 18 care of and we'll be with you momentarily.
 19 (Pause in the proceedings)
 20 MS. GREENBERGER: I'm still waiting for the copies
 21 MR. KEPHART: Oh, okay, Thank you,
 22 (Pause in the proceedings)
 23 THE COURT: Would counsel approach?
 24 (Off-record bench conference at 13:33:37 until 13:33:50)

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TURVEY - DIRECT

1 THE COURT: Ladies and gentlemen, we're
 2 proceeding forward in the defendant's case in chief. And
 3 defendant will call defendant's next witness at this time.

4 MS. ZALKIN: Thank you, Your Honor. That would
 5 be Brent Turvey.

6 THE COURT: The bailiff will call the hall.

7 THE CLERK: Just come all the way forward.
 8 Remain standing and raise your right hand.

9 BRENT TURVEY, **DEFENDANT'S WITNESS, SWORN**

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

12 THE WITNESS: My name is Brent Turvey,
 13 T-U-R-V-E-Y.

14 THE COURT: You may proceed, Ms. Zalkin.

15 MS. ZALKIN: Thank you, Your Honor.

16 **DIRECT EXAMINATION**

17 BY MS. ZALKIN:

18 Good afternoon, Mr. Turvey.

19 A Good afternoon,

20 Where do you currently reside?

21 A I live in a small island called Sitka, Alaska.

22 And what is your occupation?

23 A I am a forensic scientist.

24 Please describe for us your formal education.

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TURVEY - DIRECT

1 Q And those would be contained in your curriculum
 2 vitae?

3 A They should, yes.

4 Q And have you at this point in your career published
 5 anything in your field?

6 A Yes, I have.

7 Q What have you published to date?

8 A I've published quite a bit in the area of textbooks, -
 9 textbook chapters and research articles in various publications,

10 Q I see you have some what appear to be textbooks
 11 before you. Are those examples of some of your publications?

12 A Correct. They are,

13 Q And which ones do you have here with you today?

14 A I brought the second edition of my first textbook,
 15 "Criminal Profiling And Introduction To Behavioral Evidence
 16 Analysis." This one is a little old and tattered but I bought hit
 17 at the Bond University Book Shop so it holds a special place in
 18 my heart. I'm not gonna let go of this copy. And then that
 19 was authored by myself. I wrote twenty out of the twenty-five
 20 chapters, approximately, with five other contributors. And
 21 then also I brought a copy of "The Rape Investigation
 22 Handbook," of which I am a co-editor contributing, I think,
 23 more than 60 percent of the chapters on issues related to
 24 crime scene, evidence collection, crime scene processing, rape

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TURVEY - DIRECT

1 A I hold a bachelor's of science in psychology, a
 2 bachelor's of science in history, and I hold a master's of
 3 science in forensic science, with about sixty undergraduate
 4 credits in things like biology, chemistry, and other hard
 5 sciences, mathematics, those areas.

6 Q And where did you obtain your master's of science?

7 A I obtained my master's of science in forensic science
 8 at the University of New Haven,

9 Q And what year was that?

10 A In 1996.

11 Q Are you presently affiliated with any universities?

12 A Yes, I am,

13 Q And what are those?

14 A I'm affiliated with Bond University in the Gold Coast
 15 of Australia, their graduate criminology department. I teach as
 16 an adjunct lecturer there and am invited over to give forensic
 17 science conferences and symposium issues relating to forensic
 18 science, crime reconstruction and criminal profiling. I'm also
 19 affiliated with Oklahoma City University as an adjunct professor
 20 where I teach courses each term on subjects related to
 21 forensic science, crime reconstruction, criminal profiling, serial
 22 homicide investigation, criminal motivation and other areas. I
 23 think there are a couple more but I can't recall them off the
 24 top of my head.

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TURVEY - DIRECT

1 investigation, motivation, And my co-author is Detective John
 2 Savino [phonetic] with the NYPD's Special Victims Squad, their
 3 Sex Crime Squad.

4 Q And, Mr. Turvey, do you have an additional textbook
 5 that's forthcoming?

6 A I do. Myself and Jerry Chisholm [phonetic] co-edit
 7 and contribute more than 70 percent of the chapters to a
 8 textbook called "Crime Reconstruction." Jerry Chisholm is a
 9 retired criminalist with the Department -- the California
 10 Department of Justice, He served there for, in that system, as
 11 lab director and criminalist and providing crime reconstruction
 12 education and training to various law enforcement agencies for
 13 approximately thirty-eight years. He retired in 1999, and I've
 14 been mentoring under him ever since. And this textbook that
 15 we've published, "Crime Reconstruction," which will be
 16 available, I think, next week, is sort of the culmination of that
 17 mentorship process. I've learned so much from him over the
 18 years and he's really been a guiding influence over my -- the
 19 way I think and the way I practice.

20 Q And is it accurate to say that you've published over
 21 fifteen articles in addition to the textbooks?

22 A Many more than that. Again, these are -- these
 23 textbooks are peer reviewed, as well as the textbook
 24 contributions, and the vast majority of the articles listed are

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TURVEY - DIRECT

1 also peer reviewed and peer — published in peer reviewed
 2 presentations, and at least more than — more than twenty or
 3 so, I think,,

4 Q And what is the significance of peer review in the
 5 scientific community?

6 A The significance of peer review is that you're putting
 7 your ideas out there to be examined by the professional
 8 community, to be criticized and critiqued, to be pulled apart
 9 And if you're lucky enough to be referenced in other future
 10 work, what you're trying to do is lay a foundation that others
 11 will build upon and you want other people to review it and
 12 beat you up and make you better.

13 Q I'm gonna read not all of your articles but a couple
 14 of them, and please indicate after I read each title if that's one
 15 of the peer reviewed, "Academy of Behavioral Profiling,
 16 Criminal Profiling Guidelines" from "The Journal of Behavioral
 17 Profiling," Was that peer reviewed?

18 A It is It's -- yes.

19 Q Okay, And just for the sake of brevity, I'd like to
 20 hear about each one, I don't think we'll be able to do so.

21 A Right.

22 Q But what about "Evidence Dynamics, Locard's
 23 Exchange Principle and Prime Reconstruction" from the same
 24 periodical?

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TURVEY - DIRECT

1 the physical and behavioral evidence and determine the
 2 methods and motives of a particular type of criminal in order
 3 to suggest something about their personality or who they
 4 might be, to help narrow down a suspect pool. That's the first
 5 capacity. And the second capacity would be as that of a
 6 forensic scientist, to come in and assist with reconstruction
 7 issues and to assist with deciding what evidence — what's been
 8 tested, what hasn't been tested and what can still be tested,
 9 and what that might tell us about the nature of the crime. So
 10 it depends,, It depends on what law enforcement needs. And
 11 there is a rare occasion, rare occasion that's happened twice
 12 now, where I've been called by law enforcement to run an
 13 investigation. And so that would be another role,

14 Q And when and where did that occur?

15 A The first time that happened was in Sitka, Alaska. It
 16 was before I moved there. I was asked to work on a rape
 17 homicide and prepare a profile. And in the profile at the end, I
 18 had a very long list of things that I suggested needed to be
 19 done from a forensic and investigative standpoint. And they
 20 didn't feel that they had anyone on-site who could do any of
 21 these things because they didn't -- they lacked the skill and the
 22 knowledge and the ability. So they asked if I would come up
 23 and do it. And so I agreed with the caveat that I would be
 24 bringing somebody with the Manhattan Special Victims Squad,

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TURVEY - DIRECT

1 A Yes, Co-authored by myself and Jerry Chisholm.

2 Q And going to a different publication, "The
 3 Encyclopedia of Forensic Science, London Academic Press,
 4 Autoerotic Death," Is that peer reviewed?

5 A It is.

6 Q And in the same publication, "Encyclopedia of
 7 Forensic Science, Criminal Profiling." The same question.

8 A Yes, it's peer reviewed.

9 Q The same publication, the same question, with the
 10 title of "Modus Operandi,"

11 A Yes, it is.

12 Q And, again, with the same publication, "Offender
 13 Signature."

14 A Yes, it is peer reviewed.

15 Q And that's just a sampling of some of these peer
 16 reviewed publications?

17 A That's just a very small sampling.

18 Q Mr Turvey, have you ever consulted with law
 19 enforcement in your career?

20 A Many times,

21 Q In what capacity?

22 A In two capacities, typically. One would be in the
 23 investigator capacity where you are asked to come in and work
 24 as a criminal profiler. In my situation, I'm asked to examine

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TURVEY - DIRECT

1 a retired detective from there, to assist. And they gave us
 2 sworn police commissions and we ran the investigation for
 3 about a year.

4 Another instance was in Barbados, The Royal Barbados
 5 Police Force asked me to assist them with running a task force
 6 involving, basically, I was involved in a task force where they
 7 had a series of rapes that were occurring to women who were
 8 visiting the island. And they had, I think it was, seventeen,
 9 eighteen plus victims, and they wanted me to come down,
 10 And while I was down there, I was given the instruction that
 11 all my -- all my advice was to be followed and everything I
 12 need should be provided for, so all the detectives in the rape --
 13 Serial Rape Task Force wound up underneath my authority for
 14 the time period that I was there until we apprehended the
 15 suspect,

16 Q Were you consulted by Las Vegas law enforcement
 17 in this case?

18 A I was not consulted by Las Vegas law enforcement
 19 in this case.

20 Q Did you review materials in this matter just
 21 generically, for the purpose of qualification as an expert
 22 witness, did you review materials in this matter?

23 A I did. I reviewed case material related to this, this
 24 crime,

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TURVEY - DIRECT

1 Q Did you visit the crime scene?
 2 A I did.
 3 Q And did you document the crime scene
 4 independently of the materials reviewed?
 5 A Yes, I did,
 6 Q And what did that include?
 7 A It includes two levels. One would be photographs
 8 that I took on my own, and two would be the scale that I
 9 introduced into there. They had some measurements in the
 10 crime scene photos, but I wanted -- I took pictures of myself
 11 and defense counsel in the -- in the enclosure so I'd know how
 12 far my head was from the top. Of course, my head was only a
 13 few inches from the top. Shorter people were a little bit
 14 beneath me. I wanted to document the spacial relationships
 15 better than I felt had been done,
 16 Q Thank you. I'm going to seek to qualify you in the
 17 following areas, and in order to do that I'm gonna ask you to
 18 please give a brief definition of each one of the three areas:
 19 The first one is going to be as an expert in the field of
 20 forensic science. Can you please tell us what forensic science
 21 is?
 22 A Forensic science is the application of science and
 23 scientific principles to the law and to the resolution of legal
 24 questions.

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TURVEY - DIRECT

1 Q Have you qualified previously as an expert in
 2 forensic science in a court of law?
 3 A I have,
 4 Q And how many times? You can approximate if you'd
 5 like.
 6 A It'd be approximately more than -- probably around
 7 at least ten, probably more than that,
 8 Q In how many different jurisdictions, approximately?
 9 A Oh, I'd have to count. More than five.
 10 Q Okay. And as for crime reconstruction, same
 11 questions, have you previously so qualified?
 12 A Yes, I have.
 13 Q On more than one occasion?
 14 A Yes.
 15 Q And for crime scene analysis, same question?
 16 A Yes, I have previously qualified and on more than
 17 one occasion.
 18 Q And in all of these areas, would those be in differing
 19 jurisdictions?
 20 A Yes,
 21 Q Okay, And it appears that you've prepared a
 22 PowerPoint,
 23 MS. ZALKIN: Oh, before we get into that, my
 24 apologies. Your Honor, at this time I would offer Mr, Turvey

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TURVEY - DIRECT

1 Q What is crime reconstruction?
 2 A Crime reconstruction is the determination of the
 3 actions and events surrounding the commission the -- of a
 4 crime. I am a forensic generalist. I am not a -- I'm someone
 5 who has a broad knowledge of forensic sciences and how they
 6 -- and how those -- the results of the forensic sciences may be
 7 interpreted and applied to different types of evidence. I'm not
 8 an expert in all areas but I have a broad enough knowledge to
 9 be a big-picture person and put them together in the form of a
 10 crime reconstruction.
 11 Q And how is that different from the third category of
 12 crime scene analysis?
 13 A Crime scene analysis is a more inclusive process
 14 where you examine not just the physical evidence but the
 15 behavioral evidence, what occurred at the crime and
 16 surrounding the crime and things like the victimology, who the
 17 victim was, what danger they were in in their regular life, how
 18 they -- how danger approached them, what regular contact
 19 they may have had with things like crime, with things like
 20 violence, what was their overall level of risk. So these are the
 21 kinds of questions a crime analyst would ask. They are more
 22 interested in a larger picture of the crime so that it may be
 23 determined what exactly happened and not just what
 24 happened but why.

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TURVEY - DIRECT

1 as an expert in the following fields:
 2 Forensic science, crime reconstruction and crime
 3 scene analysis.
 4 MS. DiGIACOMO: Your Honor, may I take him on
 5 voir dire?
 6 THE COURT: Yes,
 7 VOIR DIRE EXAMINATION
 8 BY MS. DiGIACOMO:
 9 Q Mr. Turvey, you said that you got your master's of
 10 science in 1996?
 11 A Master's of science in forensic science in 1996,
 12 approximately.
 13 Q When did you get your bachelor's of science in
 14 psychology and history?
 15 A Let's see. I believe one of them was received in
 16 1993 and one of them was received in 1994, from Portland
 17 State University.
 18 Q Once you graduated in 1996 with your master's of
 19 science and forensic science, you had started your own
 20 business, correct?
 21 A I started my own business before I graduated. Yes.
 22 Q Okay. You started your own business. And what
 23 was the purpose of your business?
 24 A To continue my consulting work. While I was

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TURVEY - DIRECT

1 studying as a -- as a graduate student, I did an internship on a
2 serial rape task force in Upstate New York. And because of my
3 work on that case, my phone just wouldn't stop ringing so I
4 decided to go private rather than work for the state.

5 Q Okay, And so, actually, you started your own
6 business and you deemed yourself at that time, in January of
7 1996, as a criminal profile --

8 A Deem --

9 Q profiler?

10 A I'm not sure I understand the question,

11 Q Well, when you started your business, you gave
12 yourself the title criminal profiler?

13 A I gave myself the title. I began preparing criminal
14 profiles before --

15 Q But you didn't --

16 A -- I started my business. So it would important to
17 refer to myself in that fashion, yes.

18 Q Okay, Sp you did, that's the way you referred to
19 yourself, is a criminal profiler?

20 A Yes,

21 Q All right,

22 A Because I was preparing criminal profiles, so it
23 would be irresponsible not to refer to myself any other way,

24 Q Right. And within this business, what was the name

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TURVEY - DIRECT

1 that business because Owen was doing so many other things
2 related to digital evidence and computer crime. He wasn't
3 doing the high-end murder case that I was doing.

4 Q So since you've gotten your master's of science, is it
5 fair to say you've basically been a consultant, an adjunct
6 professor and an author?

7 A I've been those things and more, yes,

8 Q Okay. Now you don't have any employment history
9 of being a criminalist with a department or --

10 A Gosh, no.

11 Q -- working in a lab?

12 A No, I'm not a criminalist,, A criminalist is a very
13 specific type of forensic scientist who works in a lab, examining
14 pieces of evidence, sometimes out of context, doesn't often go
15 to the crime scene. It's not a -- it's not the life that I wanted,

16 Q You never worked as a crime scene analyst, the
17 person who goes to the crime scene, documents it, collects
18 evidence?

19 A No. Typically, those aren't forensic scientists. Those
20 are people who work under the direction of the police. And
21 that's not something I wanted either,

22 Q All right And so, basically, your job is, other than
23 the two cases you talked about with -- when you were
24 consulted by police agencies, is after the fact to go back

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TURVEY DIRECT'

1 of it?

2 A Knowledge Solutions.

3 Knowledge --

4 A LLC.

5 Q Okay. And you were a full partner, instructor,
6 course developer and case -- did case consultations as well?

7 A That's correct,

8 Q And the purpose of your business was develop -- to
9 develop online courses?

10 A One of the purposes. We do teach online courses,
11 yes.

12 And what was the other purpose then?

13 A Again, research and case work,,

14 All right. So that falls under being your -- a criminal
15 profiler, the second part, not to -- instructor on one side, a
16 consultant/criminal profiler on the other side of your business?

17 A I wouldn't call them sides. I'd call them
18 components.

19 Q And the business that you have, you actually started
20 it with your wife, as well as another individual?

21 A Yes. Owen Casey. And we dissolved that
22 partnership, I think, in 2001, 2002,

23 Q With just Mr. Casey or with your wife as well?

24 A We all -- we all went our separate ways in terms of

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TURVEY - DIRECT

1 through, review all the evidence and to see, basically, what
2 was missed?

3 A I would liken it to -- that's a oversimplification of
4 what it is that I do, I think that's true in some cases. It's not
5 true in every case.

6 Q Is it fair to say that you usually get involved after
7 the cases has already been investigated?

8 A I would say in the majority of the cases that's true.

9 Q Okay. Well, you mentioned two where you actually
10 got involved when the investigation was ongoing. Are there
11 any other than those two?

12 A There are many, and there are too many to list and
13 remember.

14 Q Are they, the ones that you were involved in, were
15 they for private?

16 A No,

17 Q They were law enforcement as well?

18 A Law enforcement or, for example, I recall
19 responding with a public defender to a crime scene the day
20 after the police had released it, to reprocess it for evidence.

21 Q But that would be not working for the state. That
22 would be working for the defense.

23 A I'm afraid that working for the defense is working for
24 the state when you're working for the public defender,

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TURVEY - DIRECT

1 Q Okay, Again, my question is that would be working
2 for the defense. You're not being hired by the state in a case
3 like that.

4 A I am being hired by the state when I work for the
5 defense. They get -- the paychecks come from the same
6 county_

7 Q So you would consider the prosecutor and the
8 defense the same when we call, when —

9 A They're — you guys consider yourself different, but
10 in terms of where the paychecks come from and who's hiring
11 you it's still the state.

12 Q Okay. Well, I'm not asking you who's paying the
13 check. I'm asking you whether or not it was law enforcement,
14 what we call in the court system, which you're aware of, the
15 State that hired you in those cases?

16 A You're using the words differently than I would and
17 you're trying — you're serving a different purpose than I am, I
18 guess.

19 Okay. Well, if it was the public defender and the
20 defense who hired you, is it fair to say you weren't
21 investigating for law enforcement?

22 A In those cases I was not, and I think I've made that
23 clear, I was not investigating for law enforcement,

24 Q Okay. Now, what is the Academy of Behavioral

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TURVEY - DIRECT

1 A That's correct.

2 Q And then your other three all relate to this Academy
3 of Behavioral Profiling.. Is that fair to say?

4 A Let me just take a look,

5 Q You're secretary, you're a board member and you're
6 the editor of the Journal of Behavioral Profiling.

7 A Let's see. I've got that here. On -- in that
8 particular, you're picking that particular section., So, yes, in
9 that particular section of --

10 Q Right. I'm —

11 A In that particular section, yes.

12 Q Right, And I'm going under, "Mr, Turvey is currently
13 involved with the" --

14 A Yes,

15 Q — "following professional activities." Correct?

16 A Yes.

17 Q And the majority of your background is actually in
18 criminal profiling?

19 A No, I think you're making the distinction where
20 there isn't one. Criminal profiling is a specialized area, a form
21 of crime reconstruction that is specialized. The way we
22 practice, the way I was trained to practice criminal profiling, is
23 heavily evidence-based and crime reconstruction -based. It is
24 not statistical and it does not involve the guesswork of what

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TURVEY - DIRECT

1 Profiling?

2 A That is an organization that myself and four other
3 experts, I suppose I should -- I'm sorry, forensic scientists and
4 investigators, police investigators and law enforcement,
5 forensic scientists started back in 1998, dedicated to
6 behavioral evidence analysis, which is essentially crime
7 reconstruction as it relates to criminal profiling.

8 Q And within that, the general behavior profiling, that's
9 the publications that's put out by the Academy of Behavioral
10 Profiling?

11 A That's correct.

12 Q And you've been the editor of that, that Journal of
13 Behavioral Profiling since its inception?

14 A I've been the senior editor, which means I sit on top
15 and delegate out the peer review process. I don't actually
16 review very many articles myself. A lot of those duties are
17 shared by the other co-editors.

18 Q But it is fair to say that you've had an article in each
19 one of the publications since its inception?

20 A Yes, I have, I've done more than one.

21 Q And so on your resume you state that you're
22 currently involved with professional activities, that you're a
23 member of Criminology Advisory Board for Bond University in
24 Australia?

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TURVEY - DIRECT

1 might be in the mind of the monster or what you might see on
2 television. The criminal profiling aspect is very heavily oriented
3 towards the physical evidence and the reconstruction of the —
4 of the crime, as dictated by the forensic evidence. So, no,
5 there is no -- there is not a distinction there that you're
6 making.

7 Q There isn't. So the fact that you are a criminal
8 profiler, that entails everything that you're being qualified as
9 an expert here today?

10 A No, because criminal profiling is a very specific result
11 based on a very specific process. Forensic science, for
12 example, answers questions about what occurred at the crime
13 or what kind of evidence exists for the -- at the crime scene or
14 related to the crime. Crime reconstruction is based on forensic
15 science. Then crime scene analysis is based on the
16 reconstruction, the forensic science, the victimology, the
17 motivation, and then the final component, criminal profiling, is
18 a result of analyzing all of that,

19 Q Okay,

20 A So, no, they're not -- it's separate segments along
21 the chain.

22 Q So is it kind of building blocks?

23 A I would say that's accurate.

24 Q Okay, And your real hands-on experience, you

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TURVEY - DIRECT

1 testified, comes from studying under Chisholm, is it, your —
2 the criminalist, the former criminalist?

3 A My real --

4 Q You said that just finished your mentorship with
5 him?

6 A I didn't say I'd finished it. I would say, I mean, I
7 still speak to him this day and get advice and have long
8 conversations and look up to him as a mentor,, I think
9 mentorship is not a process that ends, one would hope. But
10 he is not the limit of my applied knowledge or applied
11 experience, no,

12 Q Is he the majority of your basis?

13 A Since I graduated, yes. However, while we studied
14 under -- at the University of New Haven, I would consider my
15 mentor to be Henry Lee, studying under him for two years,
16 taking the majority of my classes from him, learning his
17 philosophies and the way that he reconstructs crime and
18 applies criminal profiling methodology from crime
19 reconstruction. That was a great education and it was all a
20 very hands-on program,

21 Q When you say hands-on, are you actually going out
22 to crime scenes and analyzing them or are you doing, in class,
23 here's the crime scene, how do we go through this?

24 A There is no actual involvement in real case work.

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TURVEY - DIRECT

1 What you do is you are involved in lab work, the same as a
2 criminalist would be involved in, you are involved in creating
3 mock crime scenes and you are involved in lessons, and then
4 you do an internship. And my internship was involved in
5 examining actual cases, The -- I think it was, I think there
6 were nine cases in the pattern that we investigated in Upstate
7 New York, and one of them was a rape homicide, actually, so
8 eight rapes and one homicide or seven rapes and one
9 homicide. I can't recall the exact number off the top of my
10 head.

11 Q Were you going out to the crime scenes or were you
12 looking at it after the fact?

13 A I don't know of any investigator that doesn't look at
14 a crime scene after the fact, until after the fact. So when I
15 was working with law enforcement on the -- on that task force,
16 we were going to the crime scenes after the crimes had been
17 committed. We couldn't very well go before they'd been
18 committed.

19 Q Well, I guess what I mean, are you there when the
20 police are there trying to impound evidence, trying to take
21 photographs, trying to process the crime scene, or do you
22 come in after?

23 A Oh, goodness. No, absolutely not. That would be
24 so improper as to be destructive to the evidence that would be

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1 there. That wouldn't be my role,, My role would -- that would
2 be for the people who had a job in the scene to do, to do the
3 processing. In fact the majority of crime scenes have too
4 many people in them as it is, not -- just wandering around, not
5 doing anything,

6 Q So if you had an opportunity to go to a crime scene
7 you'd say, whoa, no, not my job, I'll catch it after?

8 A Oh, absolutely. You would have no role whatsoever
9 inside that crime scene. You don't need to be inside the tape.
10 Just to walk around and look around? No. That would be
11 inappropriate. And anybody who's doing that should be
12 roundly criticized,

13 MS, DIGIACOMO: Nothing further,

14 MS, ZALKIN: Your Honor, if I may very briefly follow
15 up with a few additional qualifying questions.

16 THE COURT: You may.

17 DIRECT EXAMINATION (Continued)

18 BY MS. ZALKIN:

19 Q Mr. Turvey, you have -- is it -- have you done any
20 presentations, other than Australia, outside of the United
21 States?

22 A I have indeed.

23 Q And who were those presentations to?

24 A I have given a lecture, I've been invited twice by the

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1 government of China to teach the People's Police University in
2 Beijing, to teach at the Police Bureaus in Wuhan, Beijing,
3 Shanghai, Honshu [phonetic], And in my 1995 trip we did not
4 only Beijing but also Shehaun [phonetic], so the police bureaus
5 there. And the police bureaus there are -- it's difficult to
6 describe. They're much larger than they are here in the United
7 States, We're talking cities of 10, 15, 20 million people, so
8 they're very large groups of detectives and investigators,
9 teaching forensic science and crime reconstruction and criminal
10 profiling. Also they, in 2004, adopted my textbook, the second
11 edition that I showed earlier, and they translated this into
12 Chinese and published it in 2005. So that relationship has
13 been fairly strong and fairly -- a vital part of my career.

14 And when was the last time that you traveled to
15 China?

16 A It was in 2005, last year.

17 MS. ZALKIN: Your Honor, I would Mr. -- I would
18 offer Mr. Turvey as an expert as previously noted, forensic
19 science, crime reconstruction and crime scene analysis,

20 MS, DiGIACOMO: Submitted, Your Honor.

21 THE COURT: Motion granted.

22 MS, ZALKIN: Thank you, Your Honor,

23 BY MS. ZALKIN:

24 Q Mr, Turvey, you have a remote control up there that

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1 gives you the ability, hopefully, to present the PowerPoint that
2 you have compiled, when you believe it's appropriate to move
3 on,

4 A I do.

5 And the first screen, please. And that's gonna be
6 directed to the laptop at defense counsel's table.

7 A Over there?

8 Q Yes.

9 A All right, As you can see, this is my presentation. I
10 prepared this and submitted it last week to the Court and to
11 my clients, the defense attorneys.

12 Okay. That was interesting. What happened? When you
13 closed it, you -- okay.

14 Your Honor, may I stand?

15 THE COURT: Yes.

16 THE WITNESS: Thank you.

17 I created this presentation to accurately summarize
18 the opinions that I reached after examining the evidence that I
19 reviewed in this case,

20 THE COURT: There's only one problem with where
21 you're standing, which is that you're off — you're off camera.
22 So if you could maybe come in front of where the chair is and
23 slide the chair back a little bit.

24 THE WITNESS: Out.

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1 or a phenomenon.

2 Q And, generally speaking, what is the reason for
3 collecting and testing physical evidence?

4 A The reason for collecting and testing physical
5 evidence is to service the scientific method. What you're
6 trying to do with each item of evidence that you collect,
7 examine and test is to either prove or disconfirm a theory,
8 prove or refute some connection between the evidence and
9 the scene, the evidence and the crime, the evidence and a --
10 in this case let's, well, let's use the example of a vehicle.
11 You're try — you have a theory, a hypothesis, about the case,
12 about the way the crime was committed, and you use the
13 evidence to either prove or refute that theory. It is the most
14 objective and reliable form of information about the crime, Sc
15 that's why it's useful. And the scientific method itself is all
16 about creating tests that will allow you to disconfirm your
17 hypotheses. Anyone could come up with theories that you can
18 prove to yourself and say, ah, I agree with that and just go
19 through all the evidence and pick out the things that agree
20 with your theory and ignore all the stuff that refutes it.
21 Anybody can do that. The scientific method is exactly the
22 opposite of that. You take a look at your theory and you look
23 for ways to beat it up. And any theory that survives that
24 process, that's the one you stay with and that's the purpose of

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1 THE COURT: You are on camera. However, you are
2 cut off about the Adam's Apple,

3 THE WITNESS: Okay.

4 THE COURT: So that's the problem with standing.

5 THE WITNESS: I'm not —

6 THE COURT: But the camera is fixed.

7 THE WITNESS: Okay. I'm not that vain. I'll try to
8 do as best I can from being seated, but please bear with me.
9 I'm used to being able to stand, so I apologize,

10 The scientific method —

11 MS. DiGIACOMO: Objection, Your Honor.

12 THE WITNESS: Oh,

13 MS. DiGIACOMO: There's no question pending,

14 THE WITNESS: Oh, I'm sorry.

15 BY MS. ZALKIN:

16 Q And, Mr, Turvey, it appears that there's only the first
17 line of this slide.

18 A That's correct.

19 Q Okay, What is the scientific method?

20 A The scientific method is a way of building or gaining
21 knowledge about a problem or a situation, and it is the method
22 that is the most widely accepted by -- in the scientific
23 community for doing that. And there is no better way of trying
24 to, again, build knowledge or gain knowledge about a problem

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1 the scientific method as it's applied in not just forensic science
2 but all sciences,

3 Q And is this all that you wanted us to see on this
4 screen?

5 A No, it is not,

6 Q Whenever you're ready. The scientific -- does the
7 scientific method have -- how many components does a
8 scientific method have?

9 A Some say three, others say four. I think it's
10 important to this to go with three, which is observation of the
11 phenomenon, observation of the evidence that you're looking
12 at, for example, in forensic science, and then you create a
13 hypothesis about that piece of evidence, either it's connected
14 to the crime or it's not, and then you design a test to prove it.
15 In this case, a very common test we're using are things like
16 lumina!, phenolphthalein or DNA tests to confirm or refute the
17 involvement of the evidence in the crime or, for example, a
18 footwear impression, to compare it to known standards of
19 footwear to see whether or not it matches someone who you
20 think was involved in the crime.

21 The fourth step that's not on there is like defining the
22 problem or defining and predicting an outcome, which I think
23 is assumed by the creation of a good hypothesis. So —

24 Q And what is the purpose of crime scene

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1 investigation?
 2 A Well, the purpose of crime -- crime scene
 3 investigation or crime scene investigation is to recognize,
 4 document, collect, and log and submit and deliver pieces of
 5 physical evidence to the lab for testing. You are trying to
 6 service the scientific method. You are performing the scientific
 7 aspect of the -- of the criminal investigation. If you are failing
 8 to collect evidence, if you are deciding what occurred already,
 9 if you go to the scene and decide what already happened,
 10 there's no reason to even collect because you've already
 11 decided. You're just gonna go through the prove things, The
 12 purpose of collecting is because you don't know, you want to
 13 question the evidence at some point against either what you
 14 think you know or what you don't yet know about the crime,
 15 because one of the things that needs to happen is to approach
 16 it with humility. You've got to approach the crime scene and
 17 the evidence with humility. Do I know everything yet? No
 18 So I'm gonna collect as much as I can, document as much as I
 19 can, to make sure that later on I can answer questions that
 20 may come up with the evidence. So the purpose of the -- of
 21 the crime scene investigation is to service the scientific
 22 method,
 23 Q And is there anything further before moving on to
 24 the next?

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1 evidence or you don't.
 2 Q Thank you.
 3 A There we go.
 4 Q And so this screen assists your explanation of the
 5 main principle of forensic science?
 6 A It does, The primary and guiding principle of
 7 forensic science and crime reconstruction, the cornerstone of
 8 crime reconstruction, is Locard's Exchange Principle, which he
 9 started writing about in the 19 -- late 1920s and early 1930s,
 10 He was a French man who was looking, well,, he went around
 11 the world searching through police labs for evidence of
 12 scientific criminal investigation. He read Sherlock Holmes. He
 13 thought, oh, my gosh, this is the greatest thing ever, I want to
 14 see how police agencies are incorporating science into their
 15 investigations. And what he found was they weren't. So when
 16 he got back to France, he went to the police there in Lyon,
 17 France and he was given permission to start the world's first
 18 police crime lab. It is not the world's first crime lab but it is
 19 the world's first police crime lab. There have been -- crime
 20 labs have been around for more than 100 years prior to that,
 21 unrelated to the police. So law enforcement and forensic
 22 science didn't come together officially, really, until Locard, one
 23 might argue.,
 24 And he came up with the notion, eventually, after much

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1 A Yes. There is. Again, to serve the scientific method.
 2 You're trying very hard to make sure that you can have
 3 enough information to form competent hypotheses about what
 4 might have occurred, what associations might exist in the
 5 crime scene between the victim, the offender and the scene
 6 itself and any secondary scenes, like vehicles or other locations
 7 that may be involved that you don't know about.
 8 Q And what is the fundamental principle of forensic
 9 science?
 10 A I think that's on the next slide.
 11 Q Is there anything further to note at this —
 12 A About the scientific method? There may be. As we
 13 come to it, we can talk about it. I don't -- I want to get back
 14 to one very important point which may not be — may get lost
 15 in this, and that is you're designing tests to disprove your
 16 theories. You're not trying to prove them. You don't come up
 17 with a theory and go I'm in love, I'm sticking with this theory
 18 no matter what comes my way. What you say is as soon as
 19 there is something that comes along that disproves this theory
 20 that I've got that I love so much, it's gone,, You cannot be
 21 precious with your theories. Once the evidence disproves it or
 22 refutes it, it's gone. You have to let it go. You can't then go
 23 back and try to resuppose and recreate and hope that you —
 24 you're just not seeing pieces. You've -- either you've got the

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1 research, study and publication and case work, that between
 2 every — whenever two objects come in contact there's an
 3 exchange of evidence, and that is the fundamental and guiding
 4 principle of forensic science. That's the reason that we do
 5 crime scene investigations. It's the reason why we test
 6 evidence. It's the reason why those results are very important
 7 to the outcome of criminal proceedings. And stated simply, his
 8 exchange principle is that every contact leaves a trace, In fact
 9 I think there's a very popular book out right now by someone
 10 who wrote a bok with the title "Every Contact Leaves A Trace"
 11 about physical evidence and forensic science,
 12 Q Mr. Turvey, are you aware that at least two State
 13 witnesses testified that a perpetrator may not always leave
 14 physical evidence at the scene of a crime?
 15 A I would say that we don't know that. What we know
 16 is right now our ability to detect certain levels of physical
 17 evidence isn't always on par with what's there. Additionally,
 18 there's also the issue of just not finding stuff. Even though
 19 you look, you don't see it. So I don't know that that -- that
 20 that -- that the experiance and the testimony of those
 21 examiners actually disproves Locard's Exchange Principle-
 22 Q And is the Locard's Exchange Principle relevant to
 23 crime reconstruction?
 24 A It actually is. It's relevant to both forensic science

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1 and crime reconstruction. It is a fundamental and guiding
2 principle of forensic science that every contact leaves a trace.
3 That's why we look to using various tests, And you can see in
4 this case, we will talk about in this case extensive effort was
5 gone through to look for evidence. But then it's also the
6 cornerstone of crime reconstruction. You can't reconstruct a
7 crime without understanding that every contact will leave a
8 trace. That's the absolute cornerstone of the — of the method
9 that we use.

0 Q What happens in a situation where there is no
1 evidence linking a particular individual with a particular crime
2 scene?

13 A Again, this right here, again, we talk about this
14 issue. It goes round and round and round. Whenever you
15 don't have any evidence, you have no proof of contact. You
16 can't then go back and presume. Well, let me put it to you
17 this way. If you're looking for evidence on an object and you
18 find none, you cant presume, oh, well, it must have been
19 cleaned away. If you -- if you are gonna say it must have
20 been cleaned away, that's a new hypothesis about what the
21 evidence says, so you've got to go back and you've got to
22 prove it. You can't just cling to that and believe that that's
23 what occurred. You've got to prove the cleaning actually took
24 place. So if there's no evidence of cleaning, you can't actually

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1 The third opinion is that in this case we have a mountain
2 of potentially exculpatory physical evidence that was not
3 examined, so there are many items that in my report, in my
4 original report that I wrote, and we'll discuss that later, that I
5 requested be tested that had not been.

6 And on the next page are my two final conclusions, is
7 that, first of all, there's DNA evidence from the sexual assault
8 kit which is inconsistent with Kirstin Braise Lobato. That's an
9 important finding, too, which bootstraps the other finding.

10 And then, finally, this is where the crime scene analysis
11 component comes in. As you aggregate all these things and
12 you look at the evidence in this case, the physical evidence,
13 the crime scene, the behavioral evidence, the reconstruction,
14 without even having to look at the victimology, you can infer
15 that the primary motive is directed anger expressed in the
16 form of brutal injury, overkill, and sexual punishment to the
17 victim's genitals. This is not at all like the opinion -- and I'm in
18 agreement with Dr. Simms, the medical examiner in this case,
19 about his interpretation of the overkill and the injury and the
20 anger that's evident and how it's directed at the genitals, how
21 it's sexually oriented.

22 Q Do you also agree with Dr. Simms' testimony that --

23 MS. DiGIACOMO: Objection, leading.

24 THE COURT: Sustained.

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1 say that cleaning took place. You could theorize and
2 hypothesize all you want but it's not a conclusion. It's a
3 hypothesis that's awaiting verification through testing. So if
4 you have no evidence, then you have no proof of contact and
5 that's as far as you can take it. I talked earlier about humility
6 before the evidence, and that's part of it, understanding the
7 limits of what you're saying, the limits of the evidence. And
8 whether or not we like a particular theory has nothing to do
9 with how true, it's -- how true it is and it certainly doesn't have
10 anything to do with whether or not we've proven it. If we've
11 got a theory that cleaning or something like that has taken
12 place, you've got to show evidence that the cleaning has taken
13 place. So no evidence means there's no proof of contact.

14 Q And do you have a number of opinions regarding the
15 materials that you've reviewed in this case?

16 A I do and I've summarized them starting on the next
17 slide, I believe. The first opinion that I have is that there is
18 absolutely no physical evidence associating Kirstin Braise
19 Lobato to the crime scene in this case that we've reviewed.

20 The second opinion is that there is no physical evidence
21 associating Kirstin Lobato with the vehicle -- excuse me, to the
22 Lobato vehicle, the red Fiero, to the crime scene. She's got a
23 vehicle, It's a red Fiero., There's no physical evidence
24 whatsoever that associates it with the crime scene in this case.

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TURVEY - DIRECT

1 BY MS, ZALKIN:

2 Q Did you have an opportunity to review Dr. Simms'
3 testimony?

4 A Yes, I did.

5 Q And do you recall whether or not he testified as to
6 this crime being typically associated with male-on-male
7 offender?

8 MS, DiGIACOMO: Objection, leading.

9 THE COURT: Sustained.

10 BY MS. ZALKIN:

11 Q Was there anything that you disagreed with in Dr.
12 Simms' testimony as it pertains to the type of offender?

13 A No, not that I could -- not that I could see. He
14 stated that, essentially, this was a more commonly male-on-
15 male crime. And that what I would — what I would add is
16 when it's a homicide. When it's not a homicide, it's more
17 commonly a domestic situation.

18 Q Would an example of that be the infamous Lorena
19 Bobbitt case?

20 A I think so. I think the first thought that comes to
21 one's mind when you see a penis removal any more in this
22 country would be Lorena Bobbitt. And but this is not at all
23 similar. That's where the similarity ends. In this case you
24 have a homicide. The Bobbitt case was not a homicide. It's a

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1 very different dynamic, a very different type of crime. So
 2 when you have a homicidal situation where the penis has been
 3 removed, it's more common that it's a male-on-male crime.
 4 When it's not removed -- or, excuse me, when it's not a
 5 homicide, it's more commonly a domestic,

6 Q And while —

7 A But that would be a place where you'd start, not a
 8 place where you'd finish.

9 Q And while we're on this, the top of Dr. Simms'
 10 testimony, is there anything else or what else do you agree
 11 with that was contained in his testimony?

12 A Again, I hesitate to go much further because he's a
 13 medical examiner and I'm not. There is all these issues of
 14 wounds. And I'm in -- I'm in agreement with much of his
 15 testimony about cause and manner of death. But once you
 16 get down to the individual wound patterns and how they were
 17 caused, I think it starts to get pretty speculative. So —

18 Q That's fine. Turning now to the substance of these
 19 opinions that we've seen summarized.

20 A Yes, These are just the summary, just the summary
 21 of the opinion, but actually I've gone through and I've tried to
 22 make certain that I have the explanation for why my opinion is
 23 in each -- at each step of the way,

24 For opinion number one, again, we're looking at all the

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1 for the footwear to the footwear patterns found at the scene.

2 Q Can we move to the next screen, please? Why are
 3 fingernail scrapings of the victim significant, if at all?

4 A Because in a case where there's a victim who is
 5 conscious while they're being attacked, as in this case, and
 6 that's something, again, that I agree with Dr. Simms on, that
 7 Mr. Bailey had defensive injuries indicating that he's
 8 responding to being attacked, very often the defendant -- or, -
 9 excuse me, defendant, the victim will get tissue underneath
 10 their fingernails from defending themselves, from scratching
 11 and clawing at the person who's attacking them or even hair
 12 and fiber evidence, for that matter, all manner of trace may
 13 transfer. So when you have this negative finding, when you
 14 have this negative finding of DNA underneath the skin, that
 15 actually is important to show that there's a lack of association,
 16 a lack of connection between the fingernails and the -- and the
 17 connecting the victim to the -- to any suspect,

18 Q And what is your opinion with respect to the
 19 chewing gum that was recovered and submitted for analysis?

20 A Again, it's the same type of situation. You have a
 21 piece of evidence that the police deemed important enough to
 22 collect and test for DNA, and it was negative. Every single
 23 time we're collecting a piece of evidence, it's going to be --
 24 they're not collecting -- they didn't collect everything. There

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1 items of physical evidence that were found and that were
 2 collected and tested in this case. You have some pretty
 3 important ones. And one cannot underestimate the
 4 importance of the bloody footwear patterns in this case leading
 5 away from the body, concealed behind the dumpster. The
 6 dumpster, as it was found, was closed off. The police had to
 7 actually open it up to get inside.

8 MS. DiGIACOMO: Objection, Your Honor, he's
 9 misstating the testimony,

10 THE COURT: Sustained,

11 MS. DiGIACOMO: And I'd move to strike his answer.

12 THE COURT: Granted.

13 BY MS, ZALKIN:

14 Q Mr, Turvey, why is or why are the bloody footwear
 15 impressions so significant to your opinion?

16 A Because they are strongly associated with the crime
 17 and the actual area of the crime scene,

18 Q And are you aware of whether or not those footwear
 19 impressions were linked to Ms. Lobato?

20 A They were not. They -- there's a report by a former
 21 FBI footwear print examiner, and he was very clear in the fact
 22 that the footwear patterns were much too large to have been
 23 left by her and they weren't associated with any of the
 24 footwear that was seized from Ms. Lobato, So that's no match

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1 was many things out there to collect. They were very careful
 2 about what they collected. But everything they did collect
 3 came back negative. And this is one of the items that they at
 4 the scene deemed important at the time, They examined it for
 5 DNA and they found it did not match Lobato.

6 Q And just to clarify, briefly, you're not saying that the
 7 gum was necessarily left there by the assailant, or are you?

8 A I can't say that, All I can say is the police were in a
 9 better position than I am today to determine what was
 10 important, did collect this item of evidence. They did test it,
 11 theorizing that it might have been connected, and they did
 12 prove their connection to be false.

13 Q And what else was tested from the scene?

14 A Again, the sandal, not again, but the sandal was
 15 another item on this list of things that they deemed important
 16 enough to collect. You would expect there to -- I think they
 17 thought there might have been some blood on it. And then
 18 also the wearer would have deposited sweat and skin transfer.
 19 So in that -- inasmuch as that's true, you're testing it and
 20 you're looking for evidence of the wearer. And if the wearer
 21 were to have -- if this would have come back consistent with
 22 Blaise Lobato, it would be -- any one of these items coming
 23 back consistent with Blaise Lobato, they would have been the
 24 most important piece of -- pieces of evidence at the trial, but

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1 they all came back negative.
 2 Q Okay. The next screen, please.
 3 A Yes
 4 Q And the first diamond point entry here, can you
 5 please elaborate on the fingerprints at scene not matching Ms,
 6 Lobato?
 7 A Yes, I think there was at least one good print
 8 collected from the scene, according to CSA Renhard, and it did
 9 not match Kirstin Blaise Lobato.
 10 Q And we had just mentioned the footwear. Oh, I'm
 11 sorry, This is different footwear. Are you aware of whether or
 12 not any footwear was collected from Ms. Lobato?
 13 A Yes, I am.
 14 Q And do you recall what footwear items or item
 15 was —
 16 A Yeah, I think I -- oh, excuse me. Yes. There was a
 17 pair of black high heels, generic. I'm a male so I don't know
 18 what the appropriate term to call them are But they're a pair
 19 of black high heels that were collected by detectives in this
 20 case,
 21 Q And --
 22 A And they were negative for Duran Bailey's blood. If
 23 you — if you're walking around in that scene, it's possible but
 24 entirely unlikely, it's possible but very unlikely, that you're

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1 Wahl who testified regarding how he keeps his area clean in
 2 terms of cleaning it off with both bleach and then ethanol and
 3 then putting down a piece of wax paper before he starts his
 4 next procedure because of the potential for transfer. If you
 5 bleached it down and you examined this baseball bat with
 6 luminol, you might get a positive reaction. If you -- and
 7 phenolphthalein is not as -- not as sensitive but it's more
 8 specific. And I think Criminalist -- excuse me, C.SA Renhard -
 9 testified she worked very hard, even in the groove's and in the
 10 cracks and the chips that were in the bat, the actual metal
 11 part, to try to find evidence of using the phenolphthalein test,
 12 and she was not successful. But then on top of that, you have
 13 the handle, too. The handle is not nonporous. It's actually
 14 rubber. Rubber is very porous. And the rubber on the handle
 15 in this case is also cracked. So these are excellent surfaces
 16 through which blood can seep and collect. It would be
 17 extremely difficult to clean using commonly available
 18 household items.
 19 Q And turning to -- is there anything else that I didn't
 20 ask you about relevant to this screen or can we move on to
 21 the vehicle?
 22 A I think we can move on to the vehicle,
 23 Q Okay, please. Now your opinion is that there is no
 24 physical evidence associating the Lobato vehicle to the scene.

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1 going to be able to get through there without getting blood on
 2 your clothes and specifically on your feet. So to test it for
 3 blood of any kind, it was -- it's a very important exclusion,
 4 Q And, generally speaking, when police collect items of
 5 evidence, is that because they believe that those items would
 6 have evidentiary import or that they're trying to ascertain
 7 whether or not they will?
 8 A I think both are true. I think they don't collect
 9 things that they think are unimportant, and I think they don't
 10 waste the crime lab's time and resources testing things that
 11 they think are not going to bear fruit because it's simply the
 12 resources are just too strained these days.
 13 Q Was there another item collected that's relevant to
 14 this first opinion?
 15 A Yes, there was. There's a baseball bat, I believe.
 16 The aluminum baseball bat was collected from, I think, the
 17 back of her vehicle, and that was also negative for Bailey's
 18 blood or for any blood, for that matter,
 19 Q Well, if the aluminum baseball bat was nonporous
 20 then if there was no blood on it, wouldn't that indicate
 21 anything to you that no evidence -- that evidence may have
 22 been cleaned up?
 23 A It's very difficult to clean away blood evidence on
 24 that level. I'm in agreement with, I think it was, Criminalist

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TURVEY - DIRECT

1 And what is that opinion based on?
 2 A Well, the first issue is the issue that was covered, I
 3 think, by Crime Scene Analyst Joe Geller, and he stated that he
 4 did an examination of the tire treads and he was able to
 5 exclude these patterns that they documented at the scene
 6 from being associated with Lobath's vehicle. The reason that
 7 that's important, he said he couldn't put a time on it but,
 8 depending on what that is, if that's wet material there, that
 9 would have dried up in a very shorter -- in a short period of
 10 time. I can't tell you how short a period that time is because
 11 I'm not a -- I'm not out there timing it and performing tests,
 12 but it's not -- it's more closely associated than any of the other
 13 patterns that we might find out there, if it is indeed in a wet
 14 surface or in a wet substance.
 15 Q And are there some other photographs associated
 16 with the crime scene that we've discussed that we can — we
 17 can look at later? In essence, I'm —
 18 A Yes.
 19 Q -- awkwardly asking you to remind me at the
 20 conclusion of the PowerPoint to discuss a couple of
 21 photographs on this topic, if you would.
 22 A Absolutely, there are other photographs related to
 23 this topic,
 24 Q Okay,

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1 A And specifically, again, it comes back to the same
 2 thing. These tire tracks at the scene were examined and
 3 compared against the tire tracks from — that could be made by
 4 the vehicle and they were found to be from a different tread.
 5 That's important because, basically, what we're saying is we
 6 don't have any evidence of the vehicle driving through that
 7 parking lot. That becomes important.

8 Q And do you know if whether or not law enforcement
 9 were prepared to impound Ms. Lobato's vehicle when they first
 10 contacted her?

11 A I believe they did very shortly afterwards.

12 Q And is there anything else at this portion of your
 13 presentation with respect to the tire tracks or should we move
 14 on to the luminol?

15 A I think we can move on. The next -- oh, there's not
 16 a question. So -

17 Q Well, if you can just — we've heard a lot of
 18 testimony with respect to luminol. Can you just give us your
 19 overview of, briefly, of how luminol is utilized in the
 20 investigation of a suspected crime?

21 A Yes. Luminol is a -- again, it's a presumptive test for
 22 blood. It's not conclusive. If you have a positive luminol
 23 result, you might have blood, you don't know for sure. It
 24 reacts with the iron in the -- in the blood. Luminol also reacts

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1 you collect later on. So it's crucial to both the concept of
 2 forensic science, Locard's Exchange Principle and crime
 3 reconstruction.

4 Q And would the presence or application of a cleaning
 5 solvent, such as bleach or ammonia, prevent luminol from
 6 reacting with suspected blood?

7 A It would prevent it from reacting with blood but it --
 8 but the cleaning agent itself might react with the luminol. So;
 9 again, this is one of those issues where if you've got a theory
 10 that the evidence was cleaned away, you have to find proof of
 11 that cleaning effort. You can't just theorize it and leave it
 12 there.

13 Q What type of proof would you expect to find?

14 A Well, a couple things specific to the vehicle that
 15 we're gonna talk about. First of all, you're gonna — if you're
 16 gonna let somebody use bleach to clean up the blood, you're
 17 gonna find -- you've got to find the bleach. Where was the
 18 bleach? Did the person who you're saying cleaned it up have
 19 access to bleach, did they have bottles of bleach, was bleach
 20 found in the car, was there an odor of bleach, was there any
 21 positive reaction of the luminol that's consistent with bleach,
 22 were there -- and was there evidence of wiping down, was
 23 there evidence of a — of a cloth being wiped over a surface or
 24 wipe patterns on the surface, or did you actually find a vehicle,

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1 with many other different substances. It is very important to
 2 recognize that just 'cause you've got some glow there of any
 3 different kind, doesn't mean that you have blood. It means
 4 that now you're ready for the next round of testing. If you get
 5 a negative result, it's very likely that you not only do not have
 6 blood but blood was not ever there. That's an important
 7 feature of that, the negative documentation.

8 Q Would it — when you say negative documentation,
 9 can you elaborate on what that term means in your field?

10 A I can, Negative documentation is documenting not
 11 just what you found but what you didn't find. A good example
 12 would be on a -- on a victim of a crime, they've been shot.
 13 You take a picture not only of the bullet wound but of every
 14 other part of their body where there isn't injury, to show that
 15 there is no injury in those areas. It's a very important feature
 16 of that. The negative documentation would extend to the idea
 17 of crime scene investigation. You're not only gonna document
 18 where there is evidence but where there isn't evidence. You're
 19 gonna document where things were and where things weren't.
 20 You're gonna document not only what you found but they —
 21 but areas where you found nothing. So a negative finding is
 22 actually a finding and you must document it in your reports.
 23 And if you're not documenting it in your reports, you're leaving
 24 out vital information that can contextualize the evidence that

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1 as in this case, where there's grime and dirt all over it and they
 2 actually took fingerprints off of it.

3 Q And well come back to the vehicle.

4 A Sure.

5 Q But continuing with the luminol.

6 A I guess it's extremely sensitive. That's the next part
 7 of that. And, again, 1 parts per million. Like we already talked
 8 about, it works despite bleach or ammonia. It will still — you
 9 can use bleach but you've got to use many applications. You
 10 can't just do it once and wipe it down. Most people don't
 11 realize this but it takes many times, many efforts to -- and
 12 you've got to get in there deep. And it matters in terms of the
 13 -- excuse me. It matters in terms of the substance. On a —
 14 on a smooth substance or a nonporous substance, it would
 15 actually be easier to get off than a nonporous substance
 16 because you could wipe it off the surface, but it would still take
 17 many different applications. In a porous surface, it's almost
 18 impossible to clean out blood. It's gonna get in there, get in
 19 deep, and you can wipe as many times as you want. It's very
 20 unlikely you're gonna be able to clean it all away to the point
 21 where luminol can't detect it. That's one of the great things
 22 about it. It's so very sensitive and it works, again, despite a
 23 single application of bleach or ammonia to an effected area
 24 that you want to clean up.

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TURVEY - DIRECT

1 Q So when you -- when one obtains a positive result,
 2 what can be said?
 3 A When you've got a positive result with lumina!, as I
 4 already suggested, there might be blood. Now you're ready
 5 for that next round of testing. You're ready for the
 6 confirmatory test. You don't -- you can't say, oh, well, in my
 7 years of experience I just know it's blood, I just know. That's
 8 not how it works. You have to actually test it and then that
 9 test has to come back positive. You can't use your experience
 10 to suggest that you just think you know. That's one of the
 11 great dangers in the difference between a scientific
 12 interpretation and a non-scientific interpretation. The
 13 literature is very clear on this. If you get a negative result with
 14 iuminol, it's very likely that unless you have evidence of
 15 extensive cleaning with commercial-grade cleaners and
 16 multiple applications, unless you have evidence of that, there
 17 was very likely never any blood at this location.
 18 Q Can we have the next screen, please?
 19 A Yes.
 20 Q We have heard testimony of both luminol and
 21 phenolphthalein test results with respect to this vehicle.
 22 A Yes.
 23 Q And how is that testimony, if it is, relevant to your
 24 opinion?

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1 shows negative documentation of where lumina didn't react
 2 If somebody gets in there with a bloody hand and closes that
 3 door, where should it be, where should the luminol have
 4 reacted? On the handle. And, well, it's on the next slide,
 5 actually, if we just -- if you don't mind.
 6 Q I believe it's, yes, maybe one after the next
 7 A Oh, actually, it is one after. Let's just go --
 8 Q But we'll -- okay.
 9 A Well, you're right. Okay. My apologies.
 10 Q That's all right. We'll be brief on this one,
 11 A Yeah,
 12 Q What's depicted in this slide?
 13 A In this particular -- in this particular photograph, we
 14 have the seat cover that was eventually collected and
 15 examined and tested with luminol. It was negative for Duran
 16 Bailey's blood, so Duran Bailey's blood is not found, the
 17 victim's blood is not found associated with the seat cover.
 18 Q And, briefly, in that photograph we're seeing that
 19 the seat covers appear to be red, white, and there may have
 20 been black in there we've heard, In your expert opinion, if
 21 bleach or another strong cleaning solvent were applied, would
 22 you expect to find discoloration or not?
 23 A That's been my experience when you're working
 24 with a color like red or any other deep color and you apply an

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1 A It is because in this case they worked very hard with
 2 both luminol and phenolphthalein to search this vehicle fOr
 3 blood, and they got a couple of positive reactions. And these
 4 photographs show the areas of positive reaction with the
 5 luminol tests. But the — and what they say, weak positive
 6 presumptive tests for presence of blood on one area of each
 7 item, Human blood cannot be confirmed from either item,
 8 Human DNA was not detected in extracts prepared for swab
 9 and collected from both items. So what we have is a positive
 10 presumptive test that's weak but still positive, might be blood,
 11 and then a negative confirmatory test. Whatever this is that
 12 we're looking at is no proof it's blood,
 13 Q In your opinion, is it appropriate for a scientist to
 14 allege that the DNA in the blood might have simply been
 15 cleaned away?
 16 A Not without any proof of it. Again, it's a theory. It's
 17 an interesting hypothesis with no proof or evidence
 18 whatsoever. It's a -- if you want to hold on to the theory that
 19 this is blood and ignore all the science, that's what you would
 20 say, But if you're being an objective forensic scientist you'd
 21 say I have no evidence of that. There is no evidence that this
 22 is blood and there is no evidence that blood was cleaned
 23 away. Because it's not just important that this photograph not
 24 only shows positive documentation of where luminol reacted, it

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1 extensive cleaning agent to it. In fact many of them have
 2 warnings on the labels not to use them on these colored items.
 3 Believe me, I've done it and destroyed many an outfit,
 4 Q Okay. Next screen, please. What are necessary
 5 transfer sites?
 6 A Well, in this particular case we're talking about -- we
 7 talked, again, just previously, we have positive documentation
 8 of something that might have been blood but then it was
 9 tested and shown there's no evidence that it's blood, We have
 0 other sites in the interior, on the exterior of the vehicle, where
 1 there -- where we would expect to find blood if somebody with
 2 bloody feet and bloody hands got into the vehicle, as we would
 3 expect in this case. The necessary transfer sites, this is a very
 4 -- this is a short list of things that were tested that tested
 5 negative for blood. That includes the exterior door handle, the
 6 interior door handle, the keys, the steering wheel, the gear
 7 shift knob, the lights and the peddles. My understanding from
 8 testimony and from the reports that I read is that extensive
 9 phenolphthalein and luminol tests were done, the luminol
 0 being very sensitive, the phenolphthalein very -- being very
 1 specific. And so we -- and we found nothing or that the crime
 2 scene analysts found nothing. It's absolutely critical to the
 3 interpretation of whether or not this vehicle is involved in this
 4 crime.

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1 Q And before we move on, briefly, are you aware of
2 another biological substance located anywhere in the
3 passenger compartment?

4 A Jam.

5 Q What was that?

6 A There was some vomit located under one of the
7 seats,

8 Q And do you agree with testimony we've heard that
9 DNA cannot be detected in vomit because of the stomach
10 acids?

11 A No, I do not.

12 Q Why is that?

13 A When I was trained in 1996, they were talking about
14 how the stomach lining was the -- the stomach was the best
15 place to get DNA because the cells were of a particular high
16 quality in the stomach. But, in particular, within vomit the --
17 the cells, the cells that shed off the interior wall of the stomach
18 are trapped in that mucous that's in your stomach and that
19 protects it. So but then there's also a possibility of blood in
20 vomit. So you have the blood possibility and then you have
21 the shielded cells in the mucous membrane which are both
22 excellent sources for DNA,

23 Q Thank you. Moving on to a different subject area.
24 If we could have the next slide, please.

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1 her original testimony when she knew the results.

2 MS, DiGIACOMO: Objection, Your Honor,
3 speculation,

4 THE COURT: Sustained.

5 BY MS. ZALKIN:

6 Q Let me ask you this, Mr. Turvey, why, if at all, is it
7 significant whether or not she mentioned cigarette butts in her
8 testimony if testing had not been completed?

9 A Well, it's a serious omission because she was asked
10 whether or not --

11 MS. DiGIACOMO: Objection, Your Honor. May we
12 approach?

13 THE COURT: The Court sustains the objection.
14 There's no need to approach.

15 MR. KEPHART: Okay,

16 MS. ZALKIN: No, Ill withdraw,

17 THE COURT: You may proceed on --

18 MS. ZALKIN: I'll withdraw,

19 BY MS. ZALKIN:

20 Q Mr. Turvey, that -- you selected a photograph from
21 the photographs provided to you. Why did you select this
22 particular photograph for this portion of your opinion?

23 A This particular photograph was taken at the crime
24 scene by the crime scene analysts at the scene or the

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1 A And, again, the findings are negative for all these
2 items as I was talking about.

3 Q Now with respect to this slide, is this --

4 A I think these are the same.

5 Q Is this element of your opinion from your original
6 report?

7 A It is indeed,

8 Q And when was that report authored?

9 A My original report in this case was authored -- if I
10 may refresh my memory by looking at my report for the date,

11 Q Yes, you may.

12 A I have a copy of it here. It was authored on and
13 submitted on October 17th, 2005, so almost a year ago.

14 Q Is this still the state of the evidence as we know it?

15 A No, it is not

16 Q Please explain,

17 A I recently received information this week, excuse
18 me, not this week, last week that the cigarette butts had
19 actually been examined after the trial began,, And I asked to
20 speak with Criminalist Kristina Paulette regarding her analysis
21 since I had just received her report, I think it was, last
22 Wednesday, I think, on the 27th. I spoke with her several
23 times about that, about her examination, and reviewed her
24 testimony and was wondering why it didn't get mentioned in

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1 coroner's investigator, one of the two, I don't recall, and it
2 shows in context the cigarette and the match of the -- that are
3 associated with this collection. Right underneath the plastic
4 there's a photo -- if we were expand the photograph out, it
5 would be the one where the detectives have pulled back the
6 plastic and there is just the picture of the genital as it has been
7 -- the genitals as they have been shorn off, So it's beneath
8 the plastic and associated directly with the crime. That's why
9 this is so very important. It's protected underneath that layer
10 of plastic and connected with the -- the naked body. So we
11 have the body being naked at the point that this cigarette butt
12 and match come in contact with it, and then the plastic going
13 on over the top of that and keeping it associated with the
14 crime.,

15 Q Does the fact that there was a significant amount of
16 trash present at this crime scene in any way change or inform
17 your opinion that this particular evidence was associated with
18 the crime?

19 A Well, again, this -- this item of evidence is
20 transferred on to the body after the pants have come down
21 but before the plastic gets put down over top of it. And the
22 plastic isn't just dropped on top of the body; it's actually
23 tucked underneath the thighs on both sides. This is not a --

24 MS. DiGIACOMO: Objection, Your Honor.

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TURVEY - DIRECT

1 THE WITNESS: -- accidental act.

2 MS_ DiGIACOMO: That misstates the testimony as
3 well.

4 MS. ZALKIN: No, it doesn't I can —

5 THE COURT: Counsel, approach_

6 (Off-record bench conference at 14:39:57 until 14:40:53)□

7 THE COURT: The objection is sustained,

8 BY MS. ZALKIN:

9 Q Mr_ Turvey, whether or not the plastic was wrapped
10 around the body or not, is it fair to say that the plastic was in
11 direct contact with the body? Would that be your testimony?

12 A With certain parts of it, yes.

13 Q Certain parts, Okay. And if we can move on to the
14 next screen. Now, again, you prepared this. Did you prepare
15 this presentation in connection with your original report of
16 October, 2005?

17 A I did indeed.

18 Q And is there anything that you've learned within the
19 last few days that would change or modify any portion of this
20 screen?

21 A Yes,

22 Q What was that?

23 A It's that, I think it was, Criminalist Susan Schafer
24 [sic], Criminalist Coroner's Investigator Susan Schafer [sic]

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1 evidence number, on an evidence log, it has not been
2 "collected" in the sense that it was collected professionally and
3 competently. It may have been collected and lost but that's
4 not really collecting an item in the way that we understand it.

5 Q And why would paper towels be examined as a
6 source of evidence, if at all?

7 A Well, several things- First of all, you don't know
8 where the paper towels came from, If they're -- first of all, -
9 they're associated directly with the body and with the genitals,
10 They're underneath that plastic, again, just like the cigarettes.
11 You can physically match up a paper towel back to the original
12 roll, if you find the original roll, so you might be able to
13 connect it with a paper towel roll at some other location. You
14 can get fingerprints off of it, either bloody fingerprints from the
15 transfer of bloody fingers touching the paper towels, which
16 would be possible in this particular case and even likely. You
17 can also examine the paper towels for latent prints using a
18 Super Glue fuming method just simple — or a simple ninhydrin
19 wand. So there are -- and then also you might be interested
20 to find any other transfer of evidence that might be on it, any
21 other, oh, like hairs or fibers and things of that nature that can
22 be connected to somebody else. So there's all manner of
23 physical evidence that could be collected from something like
24 this. And it becomes especially important, again, because it's

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1 testified that she observed the objects, the paper towels, being
2 collected from the areas of the genitals and put into a paper
3 bag by investigators at the scene.

4 Q Mr. Turvey, would it — would it refresh your
5 recollection it was -- if it was Witness Shelley Pierce-Stauffer
6 from the Coroner's Investigator's Office?

7 A Rebecca Schafer. That's the stalking case, isn't it?
8 Yes,, It is Shelley Stauffer, My apologies. It is Shelley
9 Stauffer, not jIebecca Schafer, Rebecca Schafer is a stalking
10 victim.

11 Q And did you -- did you come — did you learn
12 anything about whether or not these white paper towels were
13 in fact collected in the same evidence bags that we have seen
14 in this courtroom?

15 A They --

16 Q The same type of evidence bags,

17 A My understanding is that her — well, of what I saw
18 of her testimony, is that she indicated that they were collected
19 into the same types of evidence bags. But I might add that
20 the term "collection" is a term of art. In my opinion, if we do
21 not have an evidence number, if the items are not logged in
22 and if they are not submitted for some kind of examination,
23 they're not actually collected. If we don't have the item in
24 front of me -- if I don't have the item in front of me with an

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1 associated directly with the body.

2 Q And if we can --

3 A And the injury.

4 Q I'm sorry, I didn't mean to cut you off,

5 A And the injury to the body, that specific injury that
6 the offender took time to make,

7 Q If we could go to the next screen. We've heard a lot
8 about this plastic sheet or wrap. It's been characterized as
9 being different substances. But regardless of what the
10 composition was, are you aware of whether or not this plastic
11 on the body was examined in the laboratory?

12 A I have not seen a report that says it has been
13 examined. I'm not aware that it was examined at all. I'm not
14 examined that it was -- or I'm not aware that it was examined
15 for fingerprints or for trace evidence or any other transfer
16 evidence. And I'm not aware that there was any instruction by
17 anyone to make these examinations. It's just — what I am
18 aware of is that it was sent with the body to the coroner's
19 crime lab.

20 Q Is that what your screen refers to with M.E.? Can
21 you elaborate on that?

22 A Yes, With the medical examiner, yes. It was sent to
23 -- the body with the medical examiner.

24 Q And what would have been the purpose of

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1 submitting that item for analysis?

2 A As with everything, we are talking about Word's
3 Exchange Principle, You are submitting an item of evidence to
4 demonstrate the association of this item of evidence with the
5 potential suspects or the crime itself. You already know it's
6 associated with the crime 'cause it's wrapped around the body
7 or however it's around the body, however we're characterizing
8 it. It's on the body, It's associated with the body. You are
9 trying to connect it to a particular suspect by virtue of the
10 transfers that exist And any failure to make that connection is
11 a failure to prove that theory, is a refutation of the theory. So
12 not only is the positive documentation important but whether
13 or not there were any -- if there's nothing on there, we'd want
14 to know that as well,

15 Q And is there anything that you've learned since trial
16 has commenced with respect to this portion of your opinion?

17 A I haven't

18 Q Is there anything else further on this screen that
19 may not be apparent on the screen?

20 A No.

21 MS. ZALKIN: May I approach the witness, Your
22 Honor?

23 THE WITNESS: Sorry.

24 THE COURT: Yes.

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TURVEY - DIRECT

1 Q And what item are you specifically referring to?

2 A The -- there are multiple items in the sexual assault
3 kit, the majority of which were tested and all came back
4 negative to associate them with the defendant, Blaise Lobato,
5 However, there were items that were not examined,

6 Q At the time you wrote your report?

7 A At the time that I wrote my report in October 17th,
8 2005. And, as I do in the majority of my cases, I note those -
9 items of evidence that I think have significant evidentiary value
10 and say these are items of evidence I would like to see tested.
11 And in my report, and this is language directly from my
12 original report back in 7 -- 10/17/05, "At the very least, the
13 penile swab and any pubic combings should be tested for DNA
14 in order to confirm or refute the theory that any particular
15 person had sexual contact with the victim prior to death,"
16 You'd want to know that It's absolutely vital. They -- and the
17 medical examiner knew this when he collected the evidence
18 from the body. He understood this, This was very important.

19 And can we move on to the next screen?

20 A We can,

21 Q Now you have, on this screen, indicated that there is
22 DNA evidence from the sexual assault kit. How does that
23 relate to Ms. Lobato, if at all?

24 A In this particular case, according to the report and

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1 THE WITNESS: Yes. There is one final item. The —
2 my understanding is that there were many items in this case
3 that were given a cursory exam at the scene and then
4 discarded because they were -- there was no evidentiary
5 value, I cannot stress how improper this is and how great a
6 dearth of information this presents us with in terms of knowing
7 the full context of the evidence. I cannot imagine the crime
8 scene school that somebody would go to that would teach
9 them to look at evidence and then throw it away without
10 logging it in and, certainly, without making note of their
11 findings. It's jaw-dropping,

12 BY MS. ZALKIN:

13 Q And if we can move on to the next screen. And
14 what's the relevance of this opinion to your testimony?

15 A Well, in this particular instance we have a piece of
16 evidence that was examined very late, very — excuse me, very
17 -- only very recently, right before the beginning of the trial.

18 MS. DiGIACOMO: Objection, again, misstates the
19 testimony,

20 THE COURT: Sustained.

21 BY MS. ZALKIN:

22 Q You -- are you talking about the sexual assault kit?

23 A I'm talking about the -- one particular item in the
24 sexual assault kit,

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1 testimony of Criminalist Kristina Paulette last week, no, excuse
2 me, the report of about three or four weeks ago, four weeks
3 ago, and the testimony last week, the DNA excludes Kirstin
4 Lobato as a potential contributor. There is a -- a hair was
5 found that she thought was a foreign hair. The hair had
6 turned out to indeed be Duran Bailey's, but there was material
7 on the outside of the hair, biological material of some kind,
8 that did not belong to him, that belonged to somebody else.,
9 And that's important because if you're going to -- if there was -
10 - it refutes the idea that there was any sexual contact between
11 those two.

12 Q So, Mr. Turvey, and again to clarify, you're not
13 saying that the source of that pubic hair is necessarily the
14 assailant?

15 A No, I am not.

16 Q Just is — would you say that that's simply a part of
17 the investigation or how would you -- how would you articulate
18 why that evidence should be tested if it's not a direct link to
19 the actual perpetrator?

20 A Well, there's a couple of reasons. The first of all is
21 you want to establish whether or not there's been any sexual
22 contact. Two, there are -- there's a sexual component to this
23 crime, which is that the penis itself was removed, so that's
24 gonna be an area of evidence that you're gonna want to look

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1 at to see what kind of contact was there. It could be vaginal
2 epithelial cells that could be this biological material, It could
3 be sweat from a person who is sweating on to the body as
4 they're removing the penis. It can be saliva from someone
5 who is performing fellatio on Mr. Bailey. There's all manner of
6 potential transfer sources for biological material. You want to
7 know who that person is. It remains an unanswered question.
8 It's extremely important

9 Q And is there anything else that you would include
10 with this slide that would --

11 A Yes, I would, In this particular case, it was ST&R.
12 It was a mixed sample, Obviously, I talked about this before.
13 The hair is from Duran Bailey, the victim, and then there's an
14 unknown, It was not linked to Blaise Lobato whatsoever,

15 Q Okay. And anything further before we move on?

16 A As I said, this language comes directly from Kristina
17 Paulette's report which is that he's excluded -- Kirstin Lobato is
18 excluded as the possible contributor.

19 Q Thank you.

20 A And, again, what I'm -- what I'm doing with these
21 findings is I'm not showing --

22 MS. DIGIACOMO: Objection, there's no question
23 pending.

24 THE COURT: Sustained,

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1 good reason not to test. I think you can use that. It's saying
2 we didn't have enough money to do it. I think you can say
3 that. But that's not where the explanation ends. What is
4 important to note is you can't then go into court with that
5 evidence and say we didn't have enough money to do it but
6 we're gonna bring this evidence in anyway and suggest that it
7 is and suggest that we can use it to put somebody away for
the rest of their life and take away their liberty.

9 MS. DiGIACOMO: Objection, Your Honor, It's
10 improper.

11 THE COURT: Sustained,

12 MS. DiGIACOMO: Move to strike his answer,

13 THE COURT: Granted.

14 BY MS, ZALKIN:

15 Q Moving on to your next slide in order then. I'd like
16 to finish this and then have a couple of additional questions for
17 you.

18 A Of course,

19 Q What is primary motive?

20 A Primary motive is meant to suggest that there is a
21 motive that is more evident than any other motive in the
22 crime. There may be other motives that you can't see. There
23 may be other things that are going on that you can't see. But
24 the primary one that you can see, that you have evidence of,

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TURVEY - DIRECT

1 BY MS. ZALKIN:

2 Q Could we move on to the next screen, please?

3 A We can,

4 Q This may have been what you were desiring to
5 explain.

6 A Yes.

7 Q Please explain the relevance of this portion of your
8 presentation?

9 A In this particular case, a sexual assault protocol was
10 conducted and it's not a random examination or as random of
11 a collection as you would find at a crime scene where you're
12 walking around and seeing things and looking at them and
13 picking them up. It's a very specific protocol that's been
14 developed over the years to look for very specific items of
15 evidence at very specific potential transfer sites. So you can't
16 just go in and go, oh, well, I don't want to collect -- I don't
17 want to test everything. You have to test it all because every
18 area is agreed upon that it is something that's potentially
19 important. And in this particular case, all of the other items
20 should have been tested, to include the penis as well. I'm not
21 sure that that's been tested yet.

22 Q Well, let me ask this. Is inadequate funding a good
23 reason to not process all pertinent physical evidence?

24 A Well, it is a good reason not to test. I think it is a

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1 is what we're talking about. The motive that you can see the
2 most of, that you have evidence of, the greatest evidence of,
3 that's the primary motive, the motive that runs thematically
4 throughout the crime.

5 Q And in your line of work, are motives evidenced in
6 the crime scene or how does this fit into your opinions in this
7 case?

8 A I try to stay very objective to the issue of motive
9 and not sort of get into the speculation of what goes on in
10 someone's head. I try to stick with the evidence that I have at
11 the crime scene of the behavior and not try to guess who the
12 are or what their fantasies are, or anything like that. I'm
13 trying to figure out in general what motives are at work. Is it
14 profit, is it power, is it some sexual motive, is it anger? In very
15 rare but obvious cases, if there's evidence of sadism where
16 you are getting sexual gratification from victims suffering, the
17 rarest of the rare and the worst of the worst. In this particular
18 case we're talking about a very common, a very common
19 motive but a very specific motive,

20 Q And what is that?

21 A Directed rage, directed angerr

22 Q And how do you -- why do you know that? Why are
23 you saying that?

24 A In this particular case it is evidenced in my opinion

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1 by the brutal level of force, the lethal level of the force, the
2 evidence of overkill, the time spent inflicting superficial injuries
3 and the time spent performing sexual mutilation. All these
4 things, when you put them together across the commission of
5 the crime, they show a level of directed anger. More
6 importantly, or most importantly perhaps, oh, this is just the
7 definitions of those terms. If you will allow me.

8 Q Yes,

9 A A brutal and lethal force would be repeated injuries
10 that inflict tremendous damage until death results, and this is
11 evidenced by the cumulative blunt force trauma, stab wounds
12 and incised wounds to the victim's face, neck and head,

13 Q So just to -- okay, Well, I believe your next screen
14 will answer my question.

15 A I'm sorry. Oh. An overkill is, apart from the brutal
16 level of force, is injury that goes beyond what is necessary to
17 kill someone. In this particular case the victim's already dead
18 and you have a pp t mortem removal of the genitals, you have
19 an incised wound to the rectum, incised wound to the
20 perineum, you have stab wounds to the upper abdomen. It's
21 more than what was necessary to kill the victim.

22 Q Okay. And moving on to your final screen then. Do
23 you -- have you previously had experience with
24 dismemberment homicide?

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TURVEY - DIRECT

1 the suspect or the offender has always been male.

2 Q And does that conclude your PowerPoint?

3 A Yes, it does,

4 Q I have — you've answered almost all of my
5 questions. I do have a couple of more and I'd like to show
6 you just a photograph or two. But before I do that, in your
7 past experience, is it common for items of evidence to be
8 tested four or five years after they were impounded?

9 A It's common in cold cases when you don't have a
10 suspect right away. It's common when the time between the
11 case, the processing of the crime scene, and the arrest of the
12 suspect are, you know, five -- four or five years later. It is not
13 common in cases where the suspect is immediately identified
14 and arrested within, say, a month's period of time,

15 MS. ZALICN: And may I approach the clerk, Your
16 Honor?

17 THE COURT: Yes,

18 BY MS. ZALKIN:

19 Q I have previously marked for identification purposes
20 two photographs. I'm gonna approach and ask you to identify
21 them after showing them to opposing counsel. And one of
22 those is Proposed Exhibit BBBB, as in boy.

23 MS. DIGIACOMO: They already have that one in,
24 MR. KEPHART: Those are all in,

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TURVEY - DIRECT

1 A With many dismemberment homicides, yes.

2 Q And what has your experience consisted of?

3 A I've worked many cases involving dismemberment
4 as it serves a function in the scene, to disarticulate a body and
5 transport it somewhere else or to disarticulate a body and
6 deliver different parts to different regions of a — of a vicinity or
7 a county or a state or the country to prevent identification, and
8 I've worked on cases involving sexual and genital mutilation
9 from females who have had their vaginas literally skinned and
10 removed and objects inserted, to having breasts removed and
11 used for various fetishistic purposes, to cases involving victims
12 who have had their feet removed and involved in fetishistic
13 practices, And I've had one case involving a murder of three
14 eight-year-old boys, one of whom had their penis removed,
15 penis and testicles removed.

16 Q And what, based on your experience with case work
17 and your review of the literature, can you tell us with respect
18 to these types of crimes?

19 A Well, like I was saying earlier, genital injury in non-
20 homicides is most commonly associated with female offenders
21 and genital removal in homicides is most commonly associated
22 with one or more male offenders. And my experience and my
23 review of the literature found that of the -- of the cases that
24 exist in terms of homicide and genital -- male genital removal,

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TURVEY - DIRECT

1 MS. ZALKIN: Not the -- these size ones.

2 MR. KEPHART: Not the big ones but they already
3 are,

4 MS. DiGIACOMO: But you already have those in
5 MR. KEPHART: That's fine. That's fine.

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

8 THE COURT: Yes,

9 BY MS. ZALKIN:

10 Q I'm showing you what's been marked first as
11 Defense Proposed Exhibit BBBB. Have you seen that
12 photograph before?

13 A I have, yes.

14 Q And can you describe what is reflected thereon?

15 A This is the interior of the garbage dumpster area
16 where the body was found, and the body is still in it in this
17 photograph and the dumpster has been turned sideways to
18 allow people access in. You can see the garbage piled up on
19 top of Mr. Bailey's body. You can see bloody footwear
20 impressions on the concrete. You can see a box which I
21 presume belongs to the crime scene analysts, next to a tripod
22 that has a —

23 MS. DiGIACOMO: Your Honor, I'm gonna object at
24 this point. These photographs that he's looking at are not in

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TURVEY - DIRECT

1 evidence and he's testifying to them.
 2 MS. ZALKIN: Well, let me -- let me --
 3 THE COURT: I'm gonna sustain the objection. You
 4 may pose your next question.
 5 MS. ZALKIN: Okay. Thank you.
 6 BY MS. ZALKIN:
 7 Q Do you -- do you identify this photograph as
 8 something that has been provided to you along with the other
 9 materials in this case?
 10 A It was, yes.
 11 Q And does this appear to be a photograph from the
 12 crime scene in this case?
 13 A It does, yes.
 14 MS, ZALKIN: I would at this time move to admit
 15 Defense Proposed Exhibit BBBB.
 16 MS, DiGIACOMO: Well, I mean, I -- the State -- I
 17 mean, objection as to foundation. He can't lay it other than he
 18 says he's seen the photographs before. He doesn't know
 19 where they're from. And they're already in evidence.
 20 MS. ZALKIN: Your Honor, if they're already in
 21 evidence and this is simply a larger version of the same
 22 photograph, I don't see why it would be problematic.
 23 THE COURT: It would be cumulative. But you may
 24 find the one that's identical to it that's already in evidence.

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TURVEY DIRECT

1 MS. DiGIACOMO: His entire PowerPoint was about
 2 that.
 3 THE COURT: He may answer.
 4 THE WITNESS: No, I have not found any evidence
 5 whatsoever associating her with this crime.,
 6 BY MS. ZALKIN:
 7 Q And are you aware of testimony that physical
 8 evidence linking Ms. Lobato may have been present but not -
 9 collected?
 10 MS. DIGIACOMO: Objection, asked and answered.
 11 MS. ZALKIN: Again, Your Honor, I don't believe that
 12 that was directly posed to the witness.,
 13 THE COURT: Overruled.
 14 MS. DiGIACOMO: Well, his slides and his PowerPoint
 15 and everything he's testified to in his report, plus more, has
 16 already come out. So unless she's asking him something
 17 additional, he's already testified to the items that should have
 18 been collected at the scene and tested,
 19 THE COURT: Overruled. You may answer,
 20 THE WITNESS: Can you ask the question again,
 21 please?
 22 BY MS. ZALKIN:
 23 Q Certainly. Are you aware of any physical evidence
 24 associating -- oh, wait. I'm sorry. Now I've gotten confused

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TURVEY - DIRECT

1 MS. ZALKIN: Okay. Thank you, Your Honor.
 2 BY MS. ZALKIN:
 3 Q And, Mr. Turvey, while I'm doing that, perhaps we
 4 can have the assistance of counsel in that respect, is it
 5 common -- is it common practice for a number of individuals to
 6 be present in an enclosed crime scene area before all the
 7 evidence has been collected?
 8 MS. DiGIACOMO: Objection, leading and
 9 foundation.
 10 THE COURT: Sustained.
 11 BY MS. ZALKIN:
 12 Q Let me ask you this question, going to a different
 13 topic while we're looking for the photographs. In this
 14 particular crime, are there any items of evidence that you
 15 would expect to find linking a particular assailant?
 16 MS, DiGIACOMO: Objection, foundation.
 17 THE COURT: Sustained.
 18 BY MS. ZALKIN:
 19 Q Are you aware of any physical evidence associating
 20 Ms. Lobato with this crime scene?
 21 MS. DiGIACOMO: Objection, asked and answered.
 22 MS. ZALKIN: I don't believe that exact question has
 23 been answered.
 24 THE COURT: Overruled.

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TURVEY - DIRECT

1 Is it -- are you aware of testimony that physical evidence
 2 linking Ms. Lobato may have been present, yet not collected?
 3 A I think that the inference from the majority of the
 4 people who have testified on this issue is that they just missed
 5 it or there should have been something but they didn't find it,
 6 and that's the sense that I got from the investigators who
 7 testified.
 8 MS. ZALICIN: And I'm holding what's been admitted
 9 as State's Exhibit 2. May I approach the witness, Your Honor?
 10 THE COURT: Yes,
 11 BY MS. ZALKIN:
 12 Q Actually, I'm going to display that.
 13 A Okay.
 14 Q Mr, Turvey, have you seen this photograph before?
 15 A I have,
 16 Q Can you please describe briefly what it reflects?
 17 A It reflects the crime scene the night that it was
 18 being processed. You have a bunch of detectives and scene
 19 investigators standing around inside the scene, with the
 20 vehicle providing light so that the collection efforts can be
 21 engaged in. And I don't see any other light sources other than
 22 the lamps that are in the parking lot. So they don't have their
 23 own light source. They're using the vehicle to shine light in
 24 them And they're all standing around in the area where there

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TURVEY - DIRECT

1 might be other bloody footwear impressions,
 2 Q And how big of an area would you expect to find
 3 there's a possibility of evidence?
 4 A Well, proper crime scene procedure suggests that
 5 there should be at least three stages of crime scene barrier
 6 tape, not just one. You have the barrier tape that goes around
 7 the primary scene so that anyone who has a job to collect and
 8 document and preserve should be inside that tape. The
 9 second layer that the -- the secondary layer should be where
 10 staging efforts are being conducted, That's where you keep
 11 your bags, that's where you keep your materials, that's where
 12 you keep your compounds, your preparations, your tools, and
 13 your film and batteries and your vehicle, maybe. Maybe. And
 14 your third layer is that's where you keep -- how you keep out
 15 the media from them coming in and spoiling the scene, the
 16 media and the public,
 17 In this particular case there no discrimination made
 18 whatsoever. We should have had barrier tape around much
 19 tighter in, at least -- at least around where the police car is
 20 The back of the police car is where I would have put the tape.
 21 I wouldn't even -- but I would not have put the police car in
 22 the scene on top, potentially, on top of evidence. It's a little
 23 disturbing.
 24 Q Thank you, And I'm holding what has been

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TURVEY - DIRECT

1 which may be visible, some of which may be not, You —
 2 Q Some of which may be wet?
 3 A Latent or invisible to the naked eye. You don't know
 4 what's in there until you've processed it. You would not put
 5 that stuff in there. You don't process the scene from on top of
 6 the other evidence. That's a very bad policy. However, when
 7 you are taking a one-to-one photograph of something that you
 8 are going to make a comparison to, such as a fingerprint or a
 9 footwear pattern or a tire tread, this particular type of
 10 photography is entirely important. In fact it telegraphs to us
 11 how important this piece of evidence was that they brought in
 12 this particular type of equipment to take these particular types
 13 of photographs because at the scene they determined how
 14 important this evidence was and that it should be compared to
 15 any and all suspects who came along, which they did.
 16 Q Okay. And finally, Mr. Turvey, when you discussed
 17 in the course of your presentation the plastic wrap, is — and
 18 this is, for the record, this is admitted as State's Exhibit 217,
 19 can you please describe what appears on the screen?
 20 A It appears to be the plastic wrap that may have
 21 been removed from the body. I can't -- I can't be certain. I
 22 can't vouch for the fact that this is that plastic wrap but I know
 23 it's plastic wrap removed from the -- from the scene that's
 24 covered in blood. It appears to be the plastic wrap but I can't

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TURVEY - DIRECT

1 previously admitted as Defendant's Exhibit B, as in boy. I will
 2 ask you to please identify what you see here.
 3 A This is the — of the small version of the photograph
 4 that I was originally shown, describing the interior of the
 5 dumpster area. It's not very visible here, but you can see the
 6 wheels on the bottom of the dumpster on the projector. You
 7 can see the silver box I was referring to. This is, no, this is not
 8 the same photograph that I was shown. This is a different
 9 photograph. in this photograph the tripod is in a different
 10 location. In the photograph you showed me before, the tripod
 11 was underneath in — was near the box. This is another
 12 photograph with the tripod directly over another of the
 13 footwear impressions or, excuse me, footwear patterns, bloody
 14 footwear patterns
 15 Q And in your training and experience, is that □
 16 advisable to have items directly on top of physical evidence?
 17 A Well, you would not have the -- the silver box is
 18 entirely improper. That shouldn't be anywhere even inside this
 19 area. It should -- it's —
 20 Q Why?
 21 A Because it could be on top of evidence,
 22 Q And what --
 23 A And it could be smearing around and smudging
 24 evidence, You're dealing with bloody transfer that some of

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TURVEY - CROSS

1 be certain,
 2 Q And this is the same -- assuming this is the same
 3 plastic wrap --
 4 A Yes,
 5 Q -- that was recovered from the body —
 6 A Yes.
 7 Q -- you have -- have you seen any evidence that this
 8 was submitted for testing or not?
 9 A Not to my knowledge, no,
 10 Q Okay,
 11 A And it's covered with blood, It would be rich. This
 12 would be an excellent surface off of which to get latent and
 13 be -- and plastic is a -- can be very -- can be very static and
 14 attract, is a great attracter of hair and fibers, so it would have
 15 the possibility of that as well.
 16 MS. ZALKIN: Thank you. Ill pass the witness,
 17 THE COURT: Cross.
 18 MS. DiGIACOMO: Thank you, Your Honor.
 19 CROSS-EXAMINATION
 20 BY MS. DiGIACOMO:
 21 Q Okay. Showing you State's Exhibit 217, where you
 22 just looked off -- with defense counsel. This is the plastic
 23 wrap, correct?
 24 A Again, I can't vouch for the fact that this is the stuff

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TURVEY - CROSS

1 that was taken off the body but this is the --
 2 Q Well, let's just assume this was what was taken off
 3 the body and this is what you've been discussing as being an
 4 important piece of evidence that should have been tested,
 5 correct?
 6 A Should have been, yes.
 7 Q Okay. And in fact you've got in your report, I don't
 8 have your actual PowerPoint, but this is the screen that you
 9 had showed from your PowerPoint. Does this look familiar,
 10 opinion Number 3, potential exculpatory physical evidence not
 11 examined?
 12 A Yes.
 13 Q Plastic sheet wrap recovered from crime scene,
 14 correct? This is what you just went through in your
 15 PowerPoint?
 16 A That's correct.
 17 Q All right, Now this is such a critical piece of
 18 evidence, correct,, the —
 19 A It is. It is an important piece of evidence, yes.
 20 Q All right. And in fact you had testified that you gave
 21 your or did your report back in October, 2005?
 22 A That's correct.
 23 Q Okay. And you tested -- or, excuse me, some of the
 24 — you listed things in your report that you use to draw your

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TURVEY - CROSS

1 conclusions?
 2 A That's correct,
 3 Q All right. And you -- if we just go through this, Las
 4 Vegas Metropolitan Police Department crime scene evidence
 5 list, is that correct?
 6 A That's correct.
 7 Q Las Vegas Metropolitan Police Department crime
 8 scene diagram?
 9 A That's correct.
 10 Q The Metro arrest and incident reports?
 11 A That's correct.
 12 Q The Metro crime scene and evidence reports?
 13 A That's correct,
 14 Q Metro investigators' reports?
 15 A That's correct.
 16 Q And when you say investigator reports, what do you
 17 mean by that?
 18 A They are investigators who write their own reports
 19 about what occurred at the scene, their actions, their activities,
 20 that sort of thing.
 21 Q Okay. Well, which -- what investigators are you
 22 talking about here?
 23 A In this particular case you have, for example,
 24 Detective Thowsen wrote a report, I believe, you have the

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TURVEY - CROSS

1 crime scene analysts who wrote their own reports, you have
 2 the coroner investigators who wrote reports, things of that
 3 nature,
 4 Q All right.
 5 A Investigators of that nature.
 6 Q Okay, And then you've got Metro voluntary
 7 statements of witnesses. What do you mean by these?
 8 A Witnesses who would have been related to the crime
 9 or the crime scene. I'm not so concerned about, say, for
 10 example, alibi witnesses or people looking to talk about
 11 suspects, things unrelated to the case. I'm talking about
 12 people who are witnesses to the crime or who are at the crime
 13 scene.
 14 Q What witness statements did you review?
 15 A Diane Parker and her roommate. And I can't
 16 remember his name at the moment.
 17 Q Stephen King?
 18 A I can't remember at this moment. I'd have to —
 19 Q Okay, Did —
 20 A — refresh my memory.
 21 Q Did you look at a report by Richard Shott?
 22 A Yes, I did.
 23 Q All right. So —
 24 A A statement by him as well, I think.

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TURVEY - CROSS

1 Q All right. Any other statements you looked at?
 2 A Off the top of my head, I can't recall any That
 3 doesn't mean there weren't. But, again, I would confine my
 4 examination to those things relative to the crime scene,
 5 Q All right. And then you looked also at Metro forensic
 6 laboratory reports of examination that were available to you
 7 back in October, 2005?
 8 A That's correct.
 9 Q Well, actually, let me strike that. When did you get
 10 hired by the defense?
 11 A I was first contacted by the defense in August of
 12 2005,
 13 Q So when was it that they got you all these things for
 14 you to review?
 15 A I'd say within a couple weeks, maybe three weeks at
 16 the most, I think.
 17 Q So is it fair to say you'd have all the reports up and
 18 through September, 2005?
 19 A I can't say that with certainty. I only know what
 20 they -- I only know what they gave me, and I can't say that
 21 they had everything. So, no, I can't say that I had everything.
 22 Q But you, when you made your report, and you just
 23 kind of went through in your -- in your PowerPoint what you
 24 had and what you didn't have?

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TURVEY - CROSS

1 A That's correct.
 2 Q So everything that you testified to today you had,
 3 other than the additional stuff, you had by your report of
 4 October 17th, 2005?
 5 A Yes,
 6 Q You looked at crime scene and autopsy photos?
 7 A Yes. That's correct.
 8 Q And the autopsy report that Dr. Simms did of Duran
 9 Bailey?
 10 A That's correct
 11 The autopsy evidence form. Is that all the evidence
 12 collected at the time of autopsy?
 13 A Yes. That would be correct.
 14 Q You looked at the toxicology report from the
 15 autopsy?
 16 A That's correct
 17 Q You've got preliminary hearing testimony?
 18 A Let's sp, Yes. That's correct.
 19 Q Would you have looked at the entire preliminary
 20 hearing testimony?
 21 A No. Again, I would try to confine my reading to
 22 those things that are relative to people that have to do with
 23 the crime scene or the body. So the detectives, the
 24 investigators, the medical examiner, anything that was related

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TURVEY CROSS

1 Coroner's Investigator," and there were reports by
 2 investigators from the Clark County Coroner's Office,
 3 Q But these are the notes that we've been referring to.
 4 They're called followup notes?
 5 A I'd have to look through the documents that I've
 6 got. But if you can see it's in capital -- it's capitalized there,
 7 "Clark County Coroner's Investigation Reports," it's taken right
 8 off the top of the report, just to be clear. So it wouldn't be a
 9 note, no, wouldn't be their notes,
 10 Q Okay. So later in your report where you reference
 11 followup notes from the Clark County Coroner's Office, that
 12 would be different than these investigator reports?
 13 A Precisely right.
 14 Q All right. You also looked at reports and testimony
 15 of Criminalist Tom Wahl?
 16 A That's correct.
 17 Q Report and testimony of Joe Geller, fingerprint
 18 examiner?
 19 A That's correct,
 20 Q Important testimony of another expert witness at
 21 the first trial?
 22 A Yeah. George Schiro from Louisiana. Yes,
 23 Q That's correct. And then it says, "Metro reports and
 24 witness statements related to the sexual assault with the

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TURVEY - CROSS

1 to that, anything that was related to somebody that saw
 2 something at the scene, not anything extraneous to that.
 3 Q So only the detectives or medical examiner?
 4 A No, Again, maybe if there was a witness.
 5 Q Well, let me just -- well, let's phrase it this way.
 6 A Sure.
 7 Q There was a lay witness, a detective and a medical
 8 examiner that testified at preliminary hearing. Which would
 9 you have reape?
 10 A The detective and the medical examiner.
 11 Q All right.
 12 A Yeah.
 13 Q So you would not read the testimony of somebody
 14 by the name of Dixie Tienken?
 15 A No, I would not,
 16 And you next refer to the trial testimony of Dr, Lary
 17 Simms?
 18 A That's correct.
 19 And that would have been from the prior
 20 proceeding?
 21 A That's correct.
 22 Q Clark County Coroner's investigation reports. What
 23 do you mean by that?
 24 A I had reports that were labeled "Clark County

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TURVEY - CROSS

1 weapon of Diane Parker." So you looked at not only her
 2 statement but all of the reports surrounding that incident?
 3 A That's correct.
 4 Q Anything else back then that you looked at?
 5 A Again, that's why I put included but limited to. I'm
 6 sure that I looked at other items and I'm sure that I reviewed
 7 other documents.
 8 Q But you --
 9 A But they --
 10 Q Well, you did testify you took your own photographs
 11 at the scene. You would have considered those?
 12 A I would have.
 13 Q All right. Now since you've given your additional
 14 report, have you also, and I believe we've gone through this,
 15 you looked at a report from Kristina Paulette regarding the
 16 pulled pubic hair?
 17 A One, yes. Yes, I have, regarding --
 18 Q And --
 19 A One report regarding the pulled pubic hair,
 20 Q And last Wednesday you also saw another report
 21 from Kristina Paulette regarding the cigarette butts?
 22 A Yes, I did.
 23 Q Now, did you look at the report from Myriad
 24 regarding the testing of the rest of the sex assault kit?

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TURVEY CROSS

1 A Yes, I did.
 2 Q Okay, When would that have been looked at?
 3 A I'm imagining that would have been looked at at the
 4 same time as I reviewed the other items of evidence that I
 5 got, unless I got it at a later time which I can't imagine that
 6 I —
 7 Q Well, if --
 8 A Which I may have.
 9 Q Okay. If that report was done the beginning of this
 10 year, would you have gotten it then?
 11 A No.
 12 Q Okay,, So you could have done it close to trial?
 13 A I could have. Yeah, I would have gotten it. I would
 14 have gotten it as soon as defense got it and they got it to me.
 15 And I could, I probably -- if I had the report in front of me, I
 16 could look at my fax and see the date that I received it But if
 17 I don't list it, I would be surprised if I had it if I didn't list it
 18 here,
 19 Q Okay.
 20 A Because that was an important report.
 21 Q And before testifying today, what have you reviewed
 22 of this trial?
 23 A I made certain to get the CD, the copies of the CDs
 24 that were being given to defense counsel, of the Court TV

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TURVEY - CROSS

1 Q Now, why not?
 2 A Well, he wasn't of interest to me. He is opining
 3 about wound patterns and that sort of thing. It really wasn't
 4 related to my particular findings in this case and I had other
 5 testimony to watch that was more vital, more important.
 6 Q Well, you watched the testimony of Dr, Simms,
 7 A Yes,
 8 Q Okay, That was important to you?
 9 A Yes. But I read Dr. Laufer's report so I knew what
 10 he was gonna testify to
 11 Q Oh, you did read his report?
 12 A Yeah,
 13 Q When did you do that?
 14 A I got it just about a couple weeks, oh, maybe a
 15 week before I testified, maybe two weeks ago.
 16 Q So a week ago, two weeks ago?
 17 A Yeah, very, very recently,
 18 Q Okay. Now, do you know which version of his report
 19 you got? There's —
 20 A I don't.
 21 Did you know there were three different reports?
 22 A I no,
 23 Q But you were provided with one?
 24 A I was provided with one. And let me -- let me

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1 coverage and looked at only, and I made a list if you'll -- if I
 2 may refresh my memory with my notes.
 3 Q That's fine if that will refresh your recollection.
 4 A Yes. I watched the testimony of Dr. Simms, the
 5 medical examiner, coroner, of Shelley Stauffer, who's name I
 6 previously messed up, the coroner investigator, of Detective
 7 Thowsen from Metro, of CSA Louise Renhard, of CSA Joe
 8 Geller, of Criminalist Wahl, and both -- I was -- I watched
 9 Criminalist Nulette's testimony on DVD, and then I was in
 10 court this morning and watched her testify the second time.
 11 And I may have seen other portions of other testimony, and I
 12 think I might have watched Ms. Mains [sic] testify as well. And
 13 I think there was another, Ford, CSA Ford.
 14 Q And you're saying Mains, Do you mean Maria
 15 Thomas?
 16 A Maria, My apologies. Maria Thomas, the -- from the
 17 coroner's office, Yes,
 18 Q Anything -- anyone else?
 19 A There may have been. Like I said, I may have
 20 watched other portions but I didn't specifically take notes on
 21 them,
 22 What about testimony of a Dr. Michael Laufer?
 23 A You know, I didn't actually watch Dr., Laufer's
 24 testimony.

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TURVEY - CROSS

1 correct that and say I may have been provided with a previous
 2 version of it. But, again, I would know that it was preliminary
 3 and would be waiting for a final report, So I may -- it may --
 4 that's entirely possible. I work a lot of cases, so it's entirely —
 5 Q Would it change your mind if I told you that none of
 6 his prior reports were labeled preliminary?
 7 A No. Like I said, I may have gotten a previous
 8 version. I -- but I somehow doubt it,
 9 Q Now --
 10 A I'm just trying not to mislead anyone here about
 11 what I got and when I got it.
 12 Q No, that's fine.
 13 A I only recall getting the one report. If I got another
 14 one, I don't recall it.,
 15 Okay,, But you know you looked at one of his
 16 reports?
 17 A Just the one, yes,
 18 And—
 19 A Not looked at. I read.
 20 You read?
 21 A Yes,
 22 Did you see any photographs associated with his
 23 report?
 24 A I was allowed to, not allowed to, I was given the

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opportunity to review his PowerPoint presentation before he testified.

Q So the one that was done right before he testified?

A That's —

Q Last week?

A That's correct,

Q Okay. Now, did his -- reviewing his PowerPoint or reading his report change any opinions you formed in this matter?

A Oh, it made them stronger.

Q How so?

A He just -- it was very impressed with the way he was able to demonstrate his and sort of show his very compelling theory that scissors were involved in the commission of the crime and it sort of showed the -- sort of the disinterest that there was in this case of attention to reconstruction issues. And so I was impressed by that And then also the issue of how the injury to the head was received, being hit against a hard surface rather than being beaten with a baseball bat. I'm very much -- I'm very much in support of that theory. I think that theory was very well borne out by his findings,

Q Did you also support his theories that some of the wounds are actual blunt force trauma instead of incise

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TURVEY - CROSS

there were two items that -- other items in the sexual assault kit that weren't tested.

Q What items weren't tested?

A Again, we're talking about the pulled pubic hair and the penile swab.

Q Okay,

A That's -- it's from my quote right there, I think.

Q But the penile swab and the pubic hair combings have been tested, correct, by --

A At this point, yes,

Q At this point. But you're saying at the time that you made your PowerPoint they hadn't been tested yet, right?

A Not to my knowledge, no.

Q Not to your knowledge. So when you made your PowerPoint, when was it?

A I made the PowerPoint, I made the — well, let me — let me correct this and say that I made two PowerPoint presentations in this case, one that I made about a few days before I testified to summarize my findings, and then I submitted that and I was asked to change it for purposes of evidence by the —

Q And you --

A -- by the Judge.

Q And you were asked to change it last Friday,

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TURVEY - CROSS

wounds?

A I'm not -- I'm not a medical doctor so I don't really - I don't know the qualify of that interpretation. You'd have to ask somebody else.

Q Well, here's another page from your PowerPoint, opinion 3, potential exculpatory physical evidence not examined. You talk about the cigarette butts, correct?

A That's correct.

Q And at the time that you said that you did this, you had no knowledge that the cigarette butts had been tested at the time you did your PowerPoint?

A That's correct, There was no report indicating that they had been tested.

Q Okay, You did not get the report until last Wednesday, correct?

A Yes, that's correct

Q September, actually —

A 27th.

Q 27th. Thank you

A Yeah. I think we're there.

Q And then you also have this page of your PowerPoint, potential exculpatory evidence not examined, and you talk about the sexual assault kit that wasn't tested,

A Well, wasn't fully tested. It was -- there was only —

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TURVEY - CROSS

correct?

A I think that's correct,

Q And you actually had to change every slide, something on every slide in your PowerPoint, correct?

A I changed the header. Instead of just putting Number 1, I put opinion. I added -- I added the single word "Opinion" to every slide.,

Q Right. So you did have to go in and change every slide, including the introductory slide?

A Yes,

Q Okay, And at the time that you went in and changed it over the weekend, you didn't change the fact that the cigarette butts were not examined even though you had those findings?

A I certainly did not,

Q Okay,

A Because I had already submitted it as a final PowerPoint presentation previously and I didn't want to -- I didn't want to change the content or the flavor of it and the tempo to surprise anybody., I wanted to make sure that it was consistent with what I had handed in before.

Q Even though you were gonna -- you planned on testifying regarding the findings?

A Certainly.

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"rURVEY - CROSS

1 Q Okay. And the same with the sexual assault kit,
 2 You had the opportunity to update this with regard to
 3 everything you viewed, Over the weekend, you chose not to?
 4 A No, I did update it. I think you're looking at only
 5 one slide. And if you look at the next slide, you'll see that. I
 6 wanted to point out the fact that I had noticed up that this
 7 was an issue.
 8 Q Okay,
 9 A Earlier, that I had noticed up this was an issue a
 10 year ago and it is just now being resolved. And I think that's
 11 pretty important.
 12 Q Okay.
 13 A So in the -- in fairness to what my original report
 14 said and what was being done now, I wanted to make sure
 15 that there was no -- that the jury understood that there was
 16 an original finding and that there is a current finding,
 17 Q Okay. And —
 18 A So I wsp't trying to surprise anybody.
 19 Q And that's what you're talking about here as well
 20 with the plastic sheet wrap recovered from the crime scene
 21 was never examined for latent or bloody prints?
 22 A My original finding, yes,
 23 Q Your original finding?
 24 • Mm-hmm :

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TURVEY - CROSS

1 report been marked for identification purposes?
 2 MS. DIGIACOMO: No. Would you like one, Your
 3 Honor?
 4 THE COURT: Yes, please.
 5 MS, DiGIACOMO: May I approach?
 6 THE COURT: Yes.
 7 MS. DiGIACOMO: State's -- and, Your Honor, for the
 8 record this will be State's Proposed Exhibit, for identification -
 9 purposes only, as 271.
 10 May I approach the witness again?
 11 THE COURT: Yes.
 12 BY MS. DiGIACOMO:
 13 Q I'm gonna ask you if you could look at it on State's
 14 Proposed Exhibit 271 so the record is clear.
 15 A Oh, certainly.
 16 Q Thank you.
 17 A All right, This one's highlighted, just to be clear
 18 Q Okay. That's the —
 19 A It's not an original,
 20 Q That's the only copy I have that's not written on.
 21 A I just wanted to note that I didn't highlight it,
 22 Q No. That's correct, It was me,
 23 A Okay.
 24 (Pause in the proceedings)

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TURVEY - CROSS

1 MS DiGIACOMO: Okay. Your Honor, may I
 2 approach?
 3 THE COURT: Approach the witness, approach the
 4 clerk?
 5 MS, DIGIACOMO: Yes. May I approach the witness?
 6 I'm sorry.
 7 THE COURT: Yes, you may approach the witness,
 8 MS. DiGIACOMO: Okay.
 9 M. ZALKIN: Counsel, may I see that since I did the
 10 direct on this witness? Thank you Thank you.
 11 MS, DiGIACOMO: May I approach?
 12 THE COURT: Yes,
 13 BY MS. DiGIACOMO:
 14 Q I'm gonna show you your original report dated
 15 October 17th
 16 A That seems to be a copy of the one I have right
 17 here.
 18 Q Okay. So if you could go ahead and turn to the
 19 page in your report where you talk about the plastic wrap that
 20 should have been tested.
 21 A This may take a moment.
 22 Q That's fine.
 23
 24 THE COURT: Ms, DiGiacomo, has a copy of that

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TURVEY - CROSS

1 A I mentioned the plastic bag on page 6. The first
 2 time I'm seeing it is page 6, third paragraph down, "As evident
 3 in photograph" --
 4 Q Well, hold on a second. Let me catch up to you.
 5 A Certainly.
 6 Q Page 6. Third paragraph where?
 7 A Third paragraph. "As evident in photograph
 8 40400009, JPEG, these cigarette butts were located under a
 9 plastic bag that shielded them from the garbage that was
 10 subsequently placed on top of the body. This associates them
 11 more directly with the crime and any related activity."
 12 Q Right. And you're just talking about the cigarette
 13 butts should have been tested. You don't have in here that
 14 the plastic wrap itself should have been tested for fingerprint
 15 or latent prints, correct?
 16 A Not in that section. And I may not have said it in
 17 this report. In fact I'm not seeing that I did.
 18 Q Okay, So is it possible you were mistaken that this
 19 was one of the your original findings?
 20 A Did I say that it was an original finding or did I say
 21 that —
 22 Q You just — you just testified it was one of your
 23 original findings.
 24 A Again, original findings back at the time of this

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TURVEY - CROSS

1 report, That doesn't mean I actually put it in the report. That
2 doesn't mean that I actually -- 'cause there are a lot of
3 evidence items that could have been included. We could have
4 spent days listing all the things that were not tested in this
5 scene, but I —

6 Q So but --

7 A By mentioning it, I think we bring it up, we notice it
8 up in saying this is a plastic bag, it associates things with the
9 body, therefore, it's associated with the suspect. It's not
10 unimportant.

11 MS. DiGIACOMO: Okay. May I approach?

12 THE WITNESS: Certainly.

13 BY MS, DiGIACOMO:

14 Q All right. But you have to agree with me that within
15 your report when you're talking about items that should have
16 been tested, there's subheadings, "Sexual Assault Kit,"

17 A That's correct,

18 Q "Cigarette Butts,"

19 A That's correct,

20 Q And "White Paper Towels."

21 A Those are, again, three taken from hundreds.

22 Q Okay. But you found it important enough, though,
23 to put this in your PowerPoint about the plastic sheet and wrap
24 that should have been tested?

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TURVEY - CROSS

1 A Yeah, but I mentioned it as an item that associates
2 things with the scene which means it's something that the
3 offender, in my view, would have put over the body. Anything
4 the offender touched is gonna be important. Now —

5 Q So -- I'm sorry. You don't specifically say in your
6 report —

7 A No.

8 Q -- that it needed to be tested. But you're saying
9 now you're including it because anything that the Offender
10 should have touched should have been tested?

11 A I think so. But we have -- this item is particularly
12 associated with covering up items at the body, And —

13 Q Right

14 A And because of its -- because of its context in this
15 crime, it's absolutely vital, There is no -- there's no cherry
16 picking going on here. I could go through and list off
17 hundreds of things in the scene.

18 Q But if it's absolutely vital, you have to agree with
19 me, sir, you did not include it in your report.

20 MS, ZALKIN: Objection, asked and answered, Your
21 Honor.

22 THE COURT: Sustained.

23 THE WITNESS: It's in there, just not the way you
24 like it,

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TURVEY - CROSS

1 A I think you've -- let's take a look at the front of that
2 report there, I think you'll find that I — yeah, hold on a
3 second here. The reason why that was important is 'cause I
4 got the — well, no, that was the paper towels. My apologies.
5 Absolutely. Absolutely, this is subheadings and these are three
6 items taken from hundreds that could have been mentioned.

7 Q Okay. When was it that you decided to put in your
8 PowerPoint this plastic sheet or wrap?

9 A wep, I didn't make the PowerPoint presentation until
10 just before the just before testimony, a few days before
11 testimony. But I had been talking with defense counsel many
12 times about the various different items of evidence that could
13 be tested.

14 Q Well, is it fair to say that you learned that it's
15 important about the plastic sheet or wrap to their defense and
16 that's why you included it?

17 A It is not fair to say that, no. Because, again, I
18 mentioned it in my report. It's in at least two places, so —

19 Q Where is the second place?

20 A I think it's right down at the bottom of the page
21 there, right after the —

22 Q Okay. But where you mention it, you've mentioned
23 it with respect to the cigarette butts, not that it needs to be
24 tested.

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TURVEY - CROSS

1 THE COURT: The objection was sustained,

2 THE WITNESS: Oh. My apologies.

3 BY MS. DiGIACOMO:

4 Q Now you said that the primary motive with a
5 scientific method is to prove or refute a theory or confirm or
6 refute a theory?

7 A I did not use the word "motive."

8 Q No, I said the primary — oh, okay. What is the --
9 what are you saying then with the scientific method? What's
10 the primary purpose of it?

11 A The primary purpose of the scientific method.

12 Q Is to confirm or refute a theory?

13 A It is actually the primary purpose of the scientific
14 method to develop hypotheses that you're going to try to
15 refute, that you're gonna try to beat up. And the ones that are
16 the strongest will survive that process.

17 Q All right. So when you look at a case such as this
18 when you're giving all the evidence, the reports, the
19 photographs, what is your theory or hypothesis you're starting
20 with?

21 A I don't start with one, typically. I'm just reading to
22 learn. It's like the — it's like reading a book. You don't know
23 what the ending's gonna be. You start out, you read it. You
24 may have ideas, you may have thoughts, but you're gonna go

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TURVEY - CROSS

1 all the way to the last page before you figure out what exactly
2 happened, And that's the discipline,

3 Q All right. So where is this hypothesis that you come
4 up with that you're either gonna confirm or refute?

5 A In this particular case, you're -- the hypothesis is
6 that somehow there is a connection between Kirstin Blaise
7 Lobato, the defendant, and the crime scene or the vehicle and
8 the crime scene. And I think the police and the medical
9 examiner and the crime lab did a good job of disconfirming
10 that theory. There is no evidence whatsoever connecting
11 either the car or Kirstin Lobato herself or her clothing or her
12 possessions to the crime scene or to the crime in general.

13 Q All right.

14 A So that's the theory that we start out with, is there
15 an association. And if there's no association, there's no proof
16 of it, then you have to say that hypothesis has been
17 disconfirmed,

18 Q So the only hypothesis here is whether or not the
19 defendant had any connection to the crime scene?

20 A That's -- no. You asked me what did I -- what was I
21 -- what was I asked to look at, And in this particular case
22 that's one of the issues I was looking at, Then another issue
23 would be what are the possible motives here, And we -- like
24 we talked about, there are multiple motives for the type of

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TURVEY - CROSS

1 from the moment that it is transferred to the scene and it is
2 ultimately disposed of after a case is done, There -- it goes
3 through changes, whether those changes be chemical,
4 biological, there would be whether there would be failure to
5 collect. The item of evidence maybe gets bags in and then
6 they're lost It's a -- I mean, evidence in its own state is
7 dynamic. It suffers influences as time goes forward.

8 Q In fact there's approximately fifteen different things
9 that can affect the evidence?

10 A I'd say there -- I'd say there are thousands. But if
11 we --

12 Q That you list?

13 A I think we -- I think we list fifteen,,

14 Q Okay,

15 A We give fifteen examples in the -- in the -- Jerry and
16 I talk about fifteen common examples.

17 Q All right. And the most common or the one you
18 listed first is offender actions?

19 A Yes. That's correct.

20 Q What do you mean by offender actions?

21 A Well, sometimes offenders attempt to either conceal
22 their involvement in a crime, well, they attempt to conceal
23 their involvement in a crime by either moving a body from a
24 primary scene to a disposal site because they're associated

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TURVEY - CROSS

1 crime, Is it profit? Well, there's no evidence that any -- I
2 mean, anything was stolen from this person, there's no
3 evidence that he had any valuables, anything that anyone
4 would have wanted to take, there's no evidence that the -- a
5 person was necessarily sexually, well, there's no evidence that
6 they were -- that this was all about power or anything like —
7 any of the other motives that I listed off, The most consistent
8 motive for all the behavior is anger. So, again, you're trying to
9 -- you come vp with all these possibilities and you beat off the
0 ones that don't fitr

1 Q Okay. So you cannot sit here today and say — you
2 cannot exclude the defendant as being the person who
3 committed this crime?

4 A I'm not here to testify who committed this crime at
5 all. That is a legal question. It's a question for the jury. I
6 would never intrude on that, not for any reason,

7 Q Okay, All you can say is there is no physical
8 evidence in your opinion that links the defendant to the crime
9 scene?

10 A That's correct, Or her vehicle.

11 Q Okay, Now with regard to looking at a crime scene
12 and doing reconstruction and looking at Locard's Exchange
13 Principle, explain what you mean by evidence dynamics,

14 A Evidence dynamics is the way that evidence changes

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TURVEY - CROSS

1 perhaps with the primary scene and they -- if the body's found
2 there, they're going to be thought of as a suspect so they
3 move the body. That's one way. Another way would be -- so
4 that's moving evidence, Another way would be to try to clean
5 it up, to try to get rid of evidence that the crime occurred or
6 their involvement in the crime. Yet another way is crime scene
7 staging where they try to make it look like something
8 happened that didn't happen. All of these are theories that
9 must be tested against the evidence. You can't just go and
10 say, ah-ha, it must be this one 'cause I didn't find this or it
11 must be this one 'cause I like this one, You come up with
12 these theories and you must try to examine them in light of
13 the evidence that you have. And the less evidence you have,
14 the harder that is,

15 Q So it's possible sometimes persons who commit
16 homicides can try and confuse, hamper or defeat investigative
17 or forensic efforts in order to conceal their identity or the crime
18 itself?

19 A I've seen that many times, yes,

20 Q All right. And in this case you're aware that there
21 was pound -- or mounds and mounds of trash that covered the
22 body, correct?

23 A I wouldn't say mounds and mounds 'cause the body
24 itself wasn't actually concealed. You could see the sock, you

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TURVEY - CROSS

1 could see portions of the body through that. I'd say there was
 2 some trash, There was trash that was put on it. I've seen
 3 cases where the body's just been buried under trash.
 4 Q Okay. But there —
 5 A And this isn't that.
 6 Q There was enough trash here where the entire back
 7 of the dumpster area was covered in trash?
 8 A I'd say that's a fair statement.
 9 Q All right. How does this play into your opinions
 10 regarding why there's so physical evidence linking the
 11 defendant to the crime?
 12 A It doesn't.
 13 Q So it doesn't affect whatsoever the fact that this
 14 person tried to conceal what they did or the body in trash?
 15 A Just throwing trash on top of evidence doesn't make
 16 the evidence go way,
 17 Q Okay. So it's your opinion that there was evidence
 18 there that would N^e linked whoever did it to the crime
 19 scene?
 20 A I think we have it, yes,
 21 Q We do? What is it?
 22 A I would say we would start with the — with the
 23 bloody footwear patterns. And I think that the police were in
 24 agreement with that theory the moment they started collecting

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TURVEY - CROSS

1 A I know.
 2 Q -- how do you know that those tire tracks are
 3 connected to that crime scene?
 4 A Because they're at the crime scene and they're wet.
 5 So they're proximal.
 6 Q Where are you getting that they're wet?
 7 A From the photographs I looked at, they appear to be
 8 wet to me. But that's just my opinion.
 9 Q Okay. So you think the -- they're wet?
 10 A They appear to be in my opinion. They -- like I said,
 11 I'd like to have more evidence and I'd like to have that looked
 12 at more thoroughly. I'd be -- I'd be pleased if it were better
 13 documented.
 14 Q So because they're wet the —
 15 A Because they might be wet,
 16 Q Because they might be wet, it's possible they're
 17 connected to the crime scene?
 18 A It's more likely that they're connected,
 19 Q Okay. But it's possible they're not connected to the
 20 crime scene?
 21 A That is a possibility.
 22 Q Okay. And it's also possible that whoever left the
 23 footwear impression is not the killer?
 24 A And, again, the police were diligent enough to

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TURVEY - CROSS

1 those things. And the tire tracks. Those are things that would
 2 link back.
 3 Q How do you know when you can date those things?
 4 A When you can date them? You can't.
 5 Q You can't. So it's very possible those bloody
 6 footprints had nothing to do with the actual killing?
 7 A I'd say possible but so unlikely as to I would -- I
 8 would probably -- I would be embarrassed to mention the
 9 possibility, A
 10 Q Well, you're aware that the footprints were not
 11 completely dry when the body was found?
 12 A I'm aware that some of them weren't. I don't think
 13 they made an accurate record of that. I think some of the
 14 thicker areas of blood were wet and some of the thinner areas
 15 were dried up and had blown away. Some areas were dry and
 16 some areas weren't. And we're going off, I think, the guy's
 17 recollections. Some of them were, some of them weren't.
 18 Q Right. And with regard to the tire tracks, how do
 19 you know that that was actually connected to the crime scene?
 20 A Well, I think we proved that it -- that it wasn't
 21 connected to Blaise Lobate and that's —
 22 Q No, that's not my question,
 23 A -- the important question.
 24 Q My question is —

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TURVEY - CROSS

1 collect these items of evidence. So that means in their minds
 2 it was very important at the time. So I'm willing to -- I'm
 3 willing to go along with that and go with what they collected.
 4 Q Okay. But my question was, sir, it's possible that
 5 whoever left the bloody footwear impressions is not connected
 6 to the killing?
 7 A Again, it's possible but I'm embarrassed to mention
 8 the possibility.
 9 Q But it's possible?
 10 A It's possible.
 11 Q Now when you were going through the things that
 12 you looked at, you said you wouldn't have looked at any alibi
 13 witnesses, as you mentioned, but you would only care about
 14 people who had knowledge of the crime scene itself or claimed
 15 to be at the crime scene, correct?
 16 A Or claimed to be associated with the crime of that or
 17 an associated -- a potentially associated crime.
 18 Q Okay. Now if every contact leaves a trace at a crime
 19 scene, does that mean that you always have to find proof of
 20 whoever the suspect is at a crime scene?
 21 A I think that in many cases it's been borne out that
 22 that does not happen.
 23 Q Okay. So it is possible that you can have a crime
 24 scene where there's not physical evidence linking the person

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TURVEY - CROSS

1 who committed the crime to it?

2 A I would not agree with that, I would agree that
3 there -- it is possible that there are types of physical evidence
4 that are left behind that, for whatever reason, get missed by
5 the investigation either because they don't have the competent
6 training, the competent skills, the right experience, the right
7 knowledge or it's a type of evidence that we just can't detect
8 It's at a level that we can't detect it,

9 Q Okay. So it's possible in this case that the defendant
10 left physical evidence at the scene and we just don't know
11 about it?

12 A Just to be clear, you're asking me to ignore the
13 mountain of physical evidence that excludes Lobato, the --

14 Q No, what I meant --

15 A -- mountain of evidence that we did find, we're
16 ignoring all that and saying there's some other evidence that
17 was not -- that was there?

18 Q Well, ygg¹re just -- you testified earlier that there's
19 evidence that was missed, there's evidence that should have
20 been collected, there were --

21 A Yes,

22 Q -- things that were not done,

23 A Absolutely.

24 Q What I'm saying is it is possible that those things

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TURVEY - CROSS

1 as a hypothetical question to an expert.

2 THE WITNESS: I will not assume that she was
3 there. And since I cannot assume that she was there, the
4 answer to your question is, no, it is not possible, Unless I had
5 proof -- if I had proof that she was there, if I had proof that
6 she was there and you were to ask me she was there, Mr.
7 Turvey, everybody knows that, is it possible there's evidence
8 that she might have been there, yes, then it would be possible.
9 I mean, without any evidence that she was there, without any
10 proof that shows that she's at the location, I can't assume that
11 for the purposes of your hypothetical. That would be not just
12 inappropriate. It would be borderline unethicalr

13 BY M. DiGIACOMO:

14 Q Okay. So without somebody saying or without her
15 saying I was there, you're not gonna even assume that there's
16 possible physical evidence that would have linked her to the
17 scene there that was missed?

18 A That would be what we call reductive reasoning,
19 working back through the facts to find things that you like.
20 Again, we already warned against that. That's a real problem
21 in this kind of work. You can't decide on a theory and then
22 just go, well, just 'cause I didn't find it doesn't mean it wasn't
23 there. You've got to prove it, This is -- and you lawyers do it
24 differently than forensic scientists do, We are not allowed to

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TURVEY - CROSS

1 you're saying that weren't done, that her evidence or her
2 physical evidence could have been left with, her physical trace
3 or whatever you want to call it, her contact?

4 A I don't know that's the case 'cause I don't know that
5 she was ever there. I have no evidence that she was there.

6 Q I'm asking you, sir, is it possible?

7 A I really don't like the way you phrased the question.
8 And I think it -- I think it misleads the issue. So I don't think I
9 can answer it in the way that you like.

10 Q Okay. I'm not asking you to give me an answer I
11 like, I'm asking you --

12 A No.

13 Q -- is it possible since we have -- that the police in
14 this case missed collecting evidence and/or testing it, is it still
15 possible that some of that evidence, if it had been collected or
16 had been tested, could lead to the defendant?

17 A You're asking me to assume that she was there and
18 I can't do that.

19 MS. ZALKIN: Your Honor, I'm gonna object as this
20 line of questioning assumes facts not in evidence, that it's
21 posed as a hypothetical, so be it, but it doesn't appear to be --

22 MS. DiGIACOMO: This is a hypothetical, Your
23 Honor.

24 THE COURT: The Court will overrule the objection

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TURVEY - CROSS

1 assume facts for the purposes of our analysis. In fact I have a
2 very specific ethical guideline in my canon of ethics which
3 states that very -- that very thing. We are not allowed to
4 assume facts for the purpose of analysis, and that's what
5 you're asking me to do. I would not do that.

6 Q But aren't you making an assumption when you say
7 that she's not at the scene because there's no physical
8 evidence that links her there?

9 A I'm saying there is no physical evidence that links
10 her to the scene. I'm not saying that that means that she was
11 never there. I'm saying you -- we have not shown it. I'm
12 saying there is no evidence that links her to the crime scene.
13 That is an accurate statement,

14 Q Okay. So you're just saying there's no evidence that
15 links her there. You're not saying that she couldn't have been
16 there?

17 A That's a whole other area of questioning that has
18 nothing to do with physical evidence. That's -- you're, again,
19 you're asking me to assume something that's not in evidence
20 or assume a fact that's not there. The evidence that has been
21 tested, which has been everything that we've asked -- or,
22 excuse me, it's been everything that's been tested so far has
23 excluded her.

24 Q As being at the scene?

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TURVEY - CROSS

1 A As being at the scene and as her car being at the
 2 scene. And those are the —
 3 Q Okay.
 4 A Those are the issues that I testified here today.
 5 Q But if we were to assume that she said she was at
 6 the scene, then you could answer the question? If she said I
 7 was at that scene, 'cause you just said a minute ago that you
 8 couldn't answer the fact that it's a possibility —
 9 A Right. Oh, okay.
 10 Q -- unless you knew she was there. So if I say, okay,
 11 let's assume she said she was there, doesn't that change your
 12 opinion?
 13 A Yes,
 14 Q Okay. How so?
 15 A If she was at the scene, inside of it, I would expect
 16 to find her footwear patterns in blood all over the place.
 17 Q Okay. 'Cause you're assuming that whoever did this
 18 killing had to get, their feet wet in blood?
 19 A I don't know how they couldn't have. Looking at
 20 that crime scene, looking at these photographs, with my
 21 education, training and experience, I don't see how they could
 22 have gotten anywhere near that body without getting blood all
 23 over their feet.
 24 Q All over both feet?

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TURVEY CROSS

1 Q Okay.
 2 A At least.
 3 Q And you're saying that because you know that there
 4 was only right footwear impressions found at the scene?
 5 A I know that's what was testified to, but I don't know
 6 that that's the case 'cause I didn't do the examinations myself
 7 and I didn't -- I didn't see Bodziak doing them, So I know
 8 that's what was testified to, but I don't necessarily agree with
 9 it
 10 Q Okay. You —
 11 A I don't necessarily know. I know that that's what
 12 was testified to,
 13 Q I was gonna say you don't agree 'cause I thought
 14 you made all of your deductive reasoning from what you found
 15 at the scene, the —
 16 A I did?
 17 Q -- crime scenes. You said Bodziales report
 18 A I did? Bodziak's report, yes, talked about shoe size.
 19 Q But you say you don't necessarily agree?
 20 A I don't necessarily agree that it's only right feet
 21 'cause I haven't seen it. I haven't seen the actual comparison
 22 of each individual shot and made an analysis to say that it was
 23 only right feet. I don't know that to be the case.
 24 Q Okay.

XV1-204

TURVEY - CROSS

1 A Well, it depends on how they stepped through it or
 2 how careful they were. But getting blood all over their feet,
 3 but not -- it's not always transfer on the concrete, There was
 4 no luminol applied. I wouldn't --
 5 Q Oh, wait, wait,, Let's back up,
 6 A Well, sure,
 7 Q So you would expect that they would, because of
 8 the bloody crime scene, in the back southwest corner --
 9 A Yesr
 10 Q — where all the concentration of blood was, it wasn't
 11 -- it wasn't to the east of the body?
 12 A Yes.
 13 Q You'd expect that whoever did the killing would have
 14 blood all over their feet, both feet?
 15 A I said at least one. That's what I said,
 16 Q No, you didn't say it. You said both feet,,
 17 A Well, I corrected myself but you're not listening to
 18 that. So --
 19 Q Okay. So now you're saying they would have —
 20 A Well, I'm not.
 21 Q No. Okay. Well, let's say, because of the amount of
 22 blood in your experience at the crime scene, they would have
 23 to have blood at least on one shoe now?
 24 A Yes.

XV1-203

TURVEY - CROSS

1 A Bodziak's report has -- is specific to the footwear
 2 size, the brannock device that he used, the measurements he
 3 made.
 4 Q Right. But you saw Joe Geller's testimony?
 5 A Yes, I did.
 6 Q And the CSA's testimony and the detective's
 7 testimony?
 8 A Right.
 9 Q Okay. So if they all said it was only a right foot
 10 impression, you still wouldn't agree?
 11 A I'd like to be shown myself. I'd like to see pictures
 12 myself that of -- of every footwear pattern that was collected .
 13 We're getting lots of surprises in this case, lots of last minute
 14 stuff, lots of reports coming out at the last minute. It wouldn't
 15 shock me to find that there was other evidence that we're
 16 missing here.
 17 Q Oh, okay.
 18 THE COURT: I'm gonna interrupt counsel to allow
 19 the jury to have a stretch break at this time.
 20 You may step down from the stand.
 21 We're gonna take a ten-minute stretch break,
 22 Ladies and gentlemen, you're admonished not to
 23 talk or converse among anyone, not amongst yourselves, nor
 24 with anyone else, on any subject connected with the trial, and

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TURVEY CROSS

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

8 In ten minutes, please be out in the hall and the
 9 bailiff will meet you there to reseal you.

10 Court's in recess.

11 THE BAIUFF: All rise,

12 (Court recessed at 15:48:03 until 16:11:21)□

13 (Jurors are present)

14 THE BAILIFF: All rise, please.

15 Department II is back in session. Please be seated,

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

17 resuming trial in State versus Lobato under C177394, in the
 18 presence of the 0,,efendant, her three counsel, the two
 19 prosecuting attorneys, and ladies and gentlemen of the jury,
 20 and the witness, Mr. Turvey, who remains on the witness
 21 stand under oath.

22 Resuming with cross, Ms. DiGiacomo, you may
 23 proceed,

24 MS. DIGIACOMO: Thank you, Your Honor,

XV1-206□

TURVEY - CROSS

1 BY MS. DIGIACOMO:

2 Q Now you stated your opinion is that there's no
 3 physical evidence linking Blaise Lobato to the crime scene,
 4 correct?

5 A That's correct

6 Q Okay. And, in reality, you haven't told the jury□
 7 anything that that State's case didn't already present, correct?

8 MS, ZALKIN: Objection, argumentative and assumes
 9 that he reviewed the entire State's case,

10 THE COURT: The Court sustains the objection as to
 11 argumentative.

12 BY MS. DIGIACOMO:

13 Q Okay, Well, you're aware that there was -- there
 14 has not been any testimony in the State's case or in any of the
 15 reports that there's any physical evidence linking Lobato to the
 16 crime scene?

17 A I'm glad to hear you say it out loud, but yes.

18 MS. DIGIACOMO: Your Honor, I'd ask to move his
 19 response -- strike it for being non-responsive and a little
 20 argumentative himself,

21 THE WITNESS: It was not intended that way, Your
 22 Honor,

23 THE COURT: The Court will grant that request.

24 Would you please restate the question?

XV1-207

TURVEY - CROSS

1 ask the witness to listen to the question and do
 2 his best to answer it as phrased.

3 BY MS. DIGIACOMO:

4 Q You're not aware of any evidence that the State has
 5 that shows physical proof that she was at the scene, correct?

6 A That's correct.

7 Q Okay, So what you're coming in here and testifying
 8 to is with regard to no physical evidence linking her is nothing

9 new?

10 A I can't know that.

11 Q Okay. Well, you didn't -- there's nothing in any of
 12 the documents you reviewed, any of the crime scene
 13 photographs, any of the expert opinions that contradict that,
 14 correct, what you just testified to?

15 A That's correct. The — of the reports that we have at
 16 this moment.

17 Q And, again, you're assuming there might be more
 18 reports coming?

19 A The way this has been going, I have no idea.

20 Q Well, let's talk about the —

21 A I'm not assuming anything,

22 Q — way this has been going. Your report was dated
 23 October 17th in 2005, correct?

24 A That's correct.

XV1-208

TURVEY - CROSS

1 Q There's three things in your report that you said
 2 should have been tested, correct?

3 A Well --

4 Q That you had big headers for. The sexual assault
 5 kit, the cigarette butts that were in the body bag and the white
 6 paper towels, correct?

7 A That's correct.

8 Q Okay. So is your complaint now that the DNA kit
 9 and the cigarette butts have been tested?

10 A Not at all.

11 Q All right.

12 A My --

13 Q So

14 A My complaint is the timing and the withholding of
 15 that testimony from -- by Ms. Paulette, that she withheld it
 16 when she knew that there were -- there were tests being
 17 performed,

18 Q Okay. How --

19 A That's improper.

20 Q Oh, it's improper? So now you're —

21 A Entirely improper.

22 Q You're commenting on what another witness has
 23 done in this case?

24 A I'm commenting on the fact that a witness, an

XV1-209

TURVEY - CROSS

1 expert witness, was on the stand, a forensic scientist who
 2 purports to be objective, and withheld the fact of -- that there
 3 were actual results that could have been known that were, yet
 4 again, exculpatory that they didn't,
 5 Q You're assuming, sir, that she withheld that
 6 information?
 7 A She did withhold the information because she did
 8 not tell anyone that the tests were being done. That
 9 information was not given until the 27th, two days after her
 10 testimony. I'm assuming nothing,
 11 Q Okay, Well, you -- it's true when a witness is called
 12 to the stand they have to testify to what they're being asked,
 13 A They have to testify to what they're being asked.
 14 But if they know of -- but there's a -- see, there's ethical
 15 guidelines out there that they're very clear about --
 16 Q Okay. But, you know what, sir --
 17 A -- withholding exculpatory evidence.
 18 Q Sir, because she knew how to answer a question
 19 that was posed to her and didn't just give narratives, you're
 20 holding it against her?
 21 MS. ZALKIN: Objection, argumentative, Your Honor.
 22 MS. DiGIACOMO: That's fine.
 23 THE COURT: Overruled.
 24 MS. DiGIACOMO: I'll withdraw it.

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TURVEY - CROSS

1 THE WITNESS: Not at all, I'm not holding that
 2 against her at all,
 3 BY MS, DIGIACOMO:
 4 Q Well, it sounds like it. You're --
 5 A No.
 6 Q You're commenting on the credibility of another
 7 witness which you know is improper, correct?
 8 A That's entirely proper. Actually, it's required, In fact
 9 this will be a point of issue in future discussions in the
 10 professional community about this particular witness.
 11 MS. ZALKIN: Objection, Your Honor, he's not
 12 commenting on credibility
 13 THE COURT: Overruled.
 14 BY MS, DiGIACOMO:
 15 Q All right. You said there's a mountain of potentially
 16 exculpatory evidence that was not admitted, not examined,
 17 correct?
 18 A All the garbage from the scene and the interior of
 19 the garbage bin itself was not processed. That's correct,
 20 Q Okay, If the police department and lab and all the
 21 outside labs, if they had tested every piece of evidence and
 22 found no fingerprints and found no DNA evidence, okay, that
 23 linked the defendant to the stand [sic], then it doesn't change
 24 your opinion what you're testifying today, there's just no

XVI-211

TURVEY - CROSS

1 physical evidence at the scene that links her there, correct?
 2 A It makes it stronger. It makes it all the more
 3 stronger,
 4 Q Okay. What if we tested every piece and there's one
 5 piece in there that did have the defendant's DNA on it?
 6 A That would be a problem.
 7 Q Okay. Would that change your opinion?
 8 A It absolutely would.
 9 Q Right, Because your only opinion here is there's no
 10 physical evidence linking her to the crime scene.
 11 A That's not my only opinion I gave,
 12 Q But what we're talking about right now.
 13 A Oh, in this particular line of questioning?
 14 Q Right.
 15 A Yes.
 16 Q Okay. So all it would do is change your opinion to
 17 there was physical evidence linking her to the crime scene,
 18 correct?
 19 A That's correct.
 20 Q But it has no effect on whether or not she
 21 committed the crime, correct?
 22 A It does not,
 23 Q Talking about -- we already kind of talked about the
 24 footwear, You -- that's a big point for you because whoever

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TURVEY - CROSS

1 did this should have gotten blood on at least one of their feet,
 2 correct?
 3 A At least one and likely two. But that doesn't mean
 4 they would have necessarily transferred it into the scene in a
 5 visible fashion. It could be there. That scene wasn't
 6 processed very well with luminol or with phenolphthalein on
 7 the ground or anything like that, so there could be bloody
 8 footwear impressions that could have been missed, which the
 9 vehicle was likely parked right on top of.
 10 Q Okay. Why do you say that?
 11 A Because the vehicle was parked right on top of the
 12 path that the footwear was walking.
 13 Q Okay,
 14 A And people have two feet, most of them.
 15 MS. DiGIACOMO: Let's see. Okay. The Court's
 16 indulgence while I try to find a better picture.
 17 (Pause in the proceedings)
 18 BY MS. DiGIACOMO:
 19 Q Okay. I'm gonna show you State's Exhibit Number
 20
 21 A Yep.
 22 Q Okay. This is one that you reviewed earlier, correct?
 23 A That's correct,
 24 Q Okay, Where in this picture would the assailant's car

XVI-213

TURVEY - CROSS

1 have been parked?
 2 A We can't know that for certain. But, again, the --
 3 you have the footwear impressions walking in the direction of
 4 the police vehicle.
 5 Q You know you can touch the screen.
 6 A I didn't know that
 7 Q Yes. You can touch the screen,
 8 A I saw the witnesses doing it but I didn't know how
 9 they were doing it.
 10 Q Yeah.
 11 A I thought it was magic.
 12 Q No. If you touch the screen, you can draw a line for
 13 the jury where you're talking about,
 14 A Okay. What if -- how do I erase it?
 15 Q Bottom right corner.
 16 A What happens at the bottom right? Oh, there, it
 17 goes away. Hey.
 18 Q Okay.. ,So --
 19 A This is great.
 20 Q All right, So now put where the car would have
 21 been.
 22 A I can't. Like I said, I don't know where the car
 23 would have been. I do know the -- that the police vehicle is
 24 parked directly pointing their beams into the interior of the

XV1-214

TURVEY - CROSS

1 Okay.
 2 A I'm just not convinced.
 3 Okay.
 4 A I'm not convinced.
 5 Okay. You're not convinced. But that is --
 6 A But that doesn't matter. It's irrelevant to my
 7 opinion,
 8 Okay. So the footwear impressions come out and
 9 they stop right here, There are none past this point, according
 10 to the testimony of a crime scene analyst and the detectives,
 11 A Well, there are none that they saw.
 12 Q Okay, You're saying --
 13 A But you can't testify with certainty that there are
 14 none because you didn't do any chemical tests to see if there
 15 were any that had been --
 16 Q So if they had done luminol that might have shown
 17 it?
 18 A Or any other of the chemicals. There's all kinds of
 19 bloody -- blood enhancement reagents out there, not just
 20 luminol. Luminol is just the sexy one of the moment
 21 Q Okay,
 22 A There's a lot more out there.
 23 Q So they could have done some sort of presumptive
 24 blood tests with a spray that would illuminate what they saw?

XV1-216

TURVEY - CROSS

1 enclosure to give light because they have no other light
 2 sources out there. And it's parked right over in a direct line to
 3 where the footwear impression was walking, the direction it
 4 was walking.
 5 Q All right.
 6 A They were walking out of the -- and this is very
 7 crude, but the footwear is walking out of the enclosure.
 8 Q Okay. Now I'm showing you State's Exhibit 1214.
 9 A 011, wow,
 10 Q Okay. Do you recognize that?
 11 A Yes, I do,
 12 Q Okay, This shows the footwear walking out.
 13 A Well, this one might be walking in like -- but I'm not
 14 a footwear analyst. I don't know, I-- there's a footwear
 15 pattern here, there's a footwear pattern and there's footwear
 16 patterns here, and they're in a -- in this fashion that way.
 17 Q And you said you're not an expert?
 18 A I'm not an expert, That's why I was relying on
 19 Bodziak's report.
 20 Q Okay. Well, the crime scene analyst testified they
 21 were all leading out,
 22 A --
 23 Q And there's one down here.
 24 A Yeah, I see it.

XV1-215

TURVEY - CROSS

1 A Yes,
 2 Q Okay. So you have to agree, though, there is only
 3 bloody footwear impressions that you can see with the naked
 4 eye up until this point?
 5 A I can't agree with that. I can only agree that it's in
 6 this photo,, I don't know what we can see with the naked eye
 7 because we have a flash exposure here that is -- that is
 8 whitening out a lot of the area. So I can't agree to that. I
 9 wasn't --
 10 Q Okay.
 11 A I wasn't there. I only know what the photo shows.
 12 Q All right. Well, the testimony by the CSAs that they
 13 could only see with the naked eye up until these footwear
 14 impressions.
 15 A Again, that's not really true because they're out
 16 there, they're not looking with natural light. They're out there
 17 in the dark, with the high beams on, and they're walking.
 18 There's a bunch of them walking around in the scene. So I'm
 19 not, again, I'm not at all impressed by that interpretation,
 20 Q If there had been them walking around the scene
 21 and this is still partially wet, wouldn't you expect to see more
 22 blood transfer from their footprints?
 23 A I'm assuming they took great caution to get around
 24 it.

XV1-217

TURVEY - CROSS

1 Q Okay.

2 A But --

3 Q But you just told me a minute ago that they couldn't

4 see what they were doing and they could have been walking

5 on it?

6 A That's not what I said at all. You're misstating what

7 I said.

8 Okay. So you're -- well, then tell me, what am I

9 missing here?

10 A You're miss --

11 Q Are you saying that they would have missed what

12 couldn't be seen with the naked eye?

13 A That's one. They are -- they're gonna miss what

14 couldn't be seen with the naked eye and, two, they are not

15 working with natural light. So their observations at the scene

16 are made with a great deal of light. That doesn't mean that --

17 well, their observations are not made with natural light. I

18 would have been more happy to see photographs of this

19 during the day without washed-out photos. That would have

20 made me happier.

21 Q But you understand that when somebody discovers a

22 crime scene they have to process it when it's found?

23 A Oh, absolutely, but that doesn't mean they can't

24 keep it for a few hours and stick around and take some

XV1-218

TURVEY - CROSS

1 Q Okay.

2 A And that doesn't mean that it had to happen but

3 there's a potential for it, so that's why we look.

4 Q All right. But --

5 A We didn't find any,

6 Q No finding here. But it is possible or could be

7 expected that somebody who's being attacked with a knife

8 would not possibly get that opportunity to actually physically --

9 touch their assailant?

10 A That's certainly possible

11 Q And with regard to the chewing gum, you wouldn't

12 necessarily expect that the person who did the killing spit out a

13 piece of gum at the crime scene, would you?

14 A No. But, again, these are items I'm selecting

15 because they were collected by detectives at the scene. They

16 thought they were important enough to collect. They didn't

17 collect everything. They thought they were important enough

18 to test. They didn't test everything. This is what they thought

19 was important enough to collect and test. Everything else they

20 were throwing away.

21 Q Well, you --

22 A So this is what was important to them,

23 Q Right, And you understand at the time that they're

24 processing this crime scene they had no idea even how the

XV1-220

TURVEY - CROSS

1 pictures in natural light. In fact that's required.

2 Q Okay.

3 A You've got to go back and do it again or you gotta

4 hold on to it until the natural light is available, especially an

5 outdoor scene.

6 Q Okay, So that's what they should have done and

7 they didn't do that here?

8 A Undoubtedly.

9 Q You said with regard to the fingernail scrapings

10 that --

11 A Yes.

12 Q -- the victim should have had foreign DNA from his

13 assailant underneath his nails?

14 A No. I didn't say they should have had. I said it's an

15 expected finding, so we always look. And they did in this case.

16 They were hoping to find some, They didn't, And so it's a

17 negative finding.

18 Q But you said earlier that you would assume that

19 somebody that's being attacked with defensive wounds would

20 have been, I wrote, scratching and clawing.

21 A I did not assume. I said I would expect.

22 Q You would expect?

23 A I would expect that And because there is that

24 expectation, there is that potential for transfer.

XV1-219

TURVEY - CROSS

1 person had been killed, let alone who did it or any leads,

2 correct?

3 A All the more important. Yes, I do. All the more

4 important to collect everything and be very meticulous.

5 Q All right, So you -- it's your opinion that every piece

6 of trash should have been collected?

7 A Oh, absolutely. I would have been there for days.

8 Q And so they should have collected every piece of

9 trash and tested every piece of trash?

10 A If they were interested in solving the crime, yes.

11 Q Okay, How would that help them solve the crime?

12 A Because you might find a piece of evidence that

13 links back to a suspect and --

14 Q You might?

15 A You might,

16 Q Did --

17 A And that's the whole purpose of doing this sort of

18 examination, if you really care. I remember --

19 Q If you really cared. So now you're testifying to what

20 the investigators thought that night?

21 A No, I'm testifying to what they did,

22 Q Okay. But you said if they really cared,

23 A I meant to say if I really cared, and I do really care

24 so that's what I would do.

XV1-221

TURVEY - CROSS

1 Q Okay. So you would test every piece of evidence
 2 and collect it all because you might find the suspect?
 3 A Yeah, it's --
 4 Q Or something linking it to them.
 5 A If you're gonna put --
 6 Q But --
 7 A If you're gonna put somebody away, that's what you
 8 gotta do,
 9 Q Okay, But that was your word, "might"?
 10 A Yeah, you might.
 11 Q So it's very possible that even if processing every
 12 piece that you wouldn't find anything linking a suspect to the
 13 crime scene?
 14 A But you did.
 15 Q Excuse me?
 16 A You did in this case. The footwear impressions, the
 17 footwear patterns.
 18 Q Oh, the footwear. No, but that's not what my
 19 question was, sir. I said if you look at every physical piece in
 20 the trash and you --
 21 A Yes,
 22 Q -- collect it all, 'cause you said that you might find
 23 somebody connected, but you also might find that the suspect
 24 didn't leave a physical trace?

XV1-222

TURVEY - CROSS

1 could be taken away by the assailant, whatever physically link
 2 them.
 3 A It could be collected and lost by investigators. As
 4 I --
 5 Q Okay.
 6 A I think I already -- I think I covered this area when
 7 we first started the cross,
 8 Q Well, you never answered my question, so that's
 9 why we're back,
 10 A Oh, okay.
 11 Q So it is possible then that whatever was left by the
 12 assailant might not be able to be found by detectives or --
 13 A Not that it's not there but that -- but they don't find
 14 it for whatever reason. There's a -- I think I listed a myriad of
 15 reasons why they might not find it.
 16 Q Okay. So it's possible that there's physical evidence
 17 at the scene linking, for instance, Lobato to the crime scene
 18 but it was never found, never tested, never located?
 19 A It's possible that there -- there's a -- there are a
 20 huge universe of possibilities and you're focusing on Lobato.
 21 I'm not. I would not focus in on one person, I'd say that we
 22 don't know and that's where we're at today in this
 23 proceedings. We do not know.
 24 Q We do not know who physically was at that scene?

XV1-224

TURVEY - CROSS

1 A No, You might have a problem because of evidence
 2 dynamics, that it might blow away, the blood might dry up and
 3 blow away, you might -- the fingerprints might evaporate
 4 before you get to the item, Your analytical methods might
 5 destroy the object of evidence for a particular type of testing.
 6 I'm not saying you wouldn't find a trace. I'm saying you might
 7 not be able to find it because of the methods of collection, the
 8 timing and because of other evidence dynamic issues that we
 9 talked about.
 10 Q Okay. So it's possible then that you could have a
 11 suspect but no physical evidence at the crime scene linking
 12 them to the crime?
 13 A After all --
 14 Q Based on what you said.
 15 A Based on --
 16 Q About those things that could get --
 17 A Because of evidence dynamics, not because it wasn't
 18 left behind and not because of --
 19 Q And I'm not saying that I disagree with Locard's
 20 theory.
 21 A Right.
 22 Q I'm saying that it's possible we might not find it
 23 based on what you said, it could be destroyed, it could blow
 24 away, it could be tampered with, it could be transferred, it

XV1-223

TURVEY - CROSS

1 A We haven't found them yet.
 2 Well, you said him. Don't we have multiple people's
 3 DNA --
 4 A I mean -- I mean him in the generic,
 5 -- found at the scene?
 6 A I mean -- I mean him in the generic sense. Found
 7 them is what I should say, be more cautious with my
 8 language.
 9 Q When -- okay, Wait a minute. When you're saying
 10 them or him, who are you referring to?
 11 A I'm not here to play word games. I'm just saying --
 12 I said the word "generic," I mean generically, them, the
 13 suspect, the person who --
 14 Q Okay. And that's what I'm saying,
 15 A -- actually committed.
 16 Q You're saying --
 17 A The person who committed the crime,
 18 Q You're saying we haven't found the suspect who
 19 committed the crime?
 20 A We have not found -- we have not linked any
 21 physical evidence to anyone who's committed this -- to anyone
 22 related to this crime.
 23 Q Right. Now even the DNA that we do have, this
 24 foreign DNA that was found at the --

XV1-225

TURVEY - CROSS

1 A That's correct.

2 Q -- crime scene, doesn't necessarily mean there are
3 other suspects_

4 A It's enough that people want to put it into CODIS so
5 they're putting it into the suspect CODIS database,, But then,
6 on top of that, they're testing it so they think it's important
7 enough to make a link. So the criminalists at the crime lab,
8 the detectives that are collecting it, the criminalists who are
9 testing it, and everybody's agreeing it's important enough to
10 test and spend resources, but then when the result comes
11 back against the theory of the State everybody pretends like
12 it's no big deal. That's a problem.

13 Q But every -- okay. You're saying everyone's
14 agreeing it's important to test. The testimony earlier was that
15 I was the one that put in for the cigarette butts to be tested,
16 and that was based on your report. So are you still gonna
17 hold that against the detectives and the crime scene analysts
18 that they --

19 A No, I'm --

20 Q -- thought it was important?

21 A I'm really not holding it against them. You're
22 characterizing it that way. I'm not. I'm saying they thought
23 enough of the evidence, they thought enough to collect it, they
24 thought enough to submit it. And the crime lab clearly agreed

XVI-226

TURVEY - CROSS

1 Q Okay, And do you understand the way it works
2 when they bag a body and it's taken to the coroner's office?

3 A Yes, I do.

4 Q Okay. And do you understand that there's a crime
5 scene analyst on the other side waiting for the body?

6 A In this case, I understand that was the case. It's
7 not always the case.

8 Q Sometimes --

9 A But it was here.

10 Q Sometimes it's the same crime scene analyst that
11 goes, but there's always a crime scene analyst at the other
12 end?

13 A Not always. Sometimes it's the medical examiner.
14 It depends on the size of the county and the resources that
15 they have.

16 Q Okay.

17 A It depends.

18 Q Well, would you believe me that when I say in Clark
19 County that it's a crime scene analyst?

20 A Yes, I would.

21 Q Okay, And you know it's the job of whoever the
22 crime scene analyst is that gets the body to just impound
23 everything that's with the body, correct?

24 A Yes.

XVI-228

TURVEY - CROSS

1 with you that it was important enough to test. So everybody is
2 in agreement that this is important. But when the finding
3 comes back negative, all of a sudden it's not important. And
4 that's the problem that I'm having.

5 Q Well --

6 A It's a little dishonest,

7 Q Well, wait. Who's saying it's not important?

8 A Well, you're saying it's not important because you're
9 asking me to ignore it in your hypotheticals,

10 Q If it's so -- okay.

11 A You're asking me to ignore it in your hypotheticals.
12 You're saying it's unimportant.

13 Q No. You're here to testify as an expert. I'm giving
14 your hypotheticals and asking you what the different
15 possibilities are, correct?

16 A I'm hoping.

17 Q Yes or no, sir.

18 A That appears to be what's going on, but it also
19 appears something else is going on, too.

20 Q Okay,, If you'd just answer my questions, we can
21 get through this so much easier. Now the cigarette butts that
22 you felt were very important, okay, have you -- have you ever
23 been to a crime scene when it's processed?

24 A Yes, I have,

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TURVEY - CROSS

1 Q Okay. So the fact that this crime scene analyst
2 impounded what appeared to be three cigarette butts in the
3 body bag, that was because she was impounding everything
4 that was with the body, not because a detective told her
5 impound that, correct?

6 A That's not correct. In fact the testimony is very
7 clear that once they found, underneath the layer of plastic,
8 items they put the plastic back and they said stop. That was
9 the testimony. It was very --

10 Q Well --

11 A -- clear about how important all the objects beneath
12 that plastic was,

13 Q Oh, Are you saying that it was -- it was because of
14 the objects underneath the plastic or it was the fact that his
15 penis had been severed why they decided to stop and to bag
16 the body?

17 A I think the testimony was very clear on the fact that
18 they thought anything beneath that plastic was gonna be
19 important so they put it back up and they put it back in the
20 bag,

21 Q But that's the way you're remembering it?

22 A I'm not -- I guess, yes, that's the way I'm
23 remembering it based on having watched it again last night,

24 Q Okay. So but you understand it is up to the jury to

XVI-229

TURVEY - CROSS

1 make their call?

2 A Absolutely,

3 Q Okay.

4 A It's not up to me to make the call.

5 Q Just to testify to it.

6 A To give my opinions about it,

7 Q And you also testified that -- that the investigators
8 and the crime scene analysts, they're not gonna waste their
9 time collecting or testing items that are not gonna prove to be
10 helpful to the case, correct? You just testified to that.

11 A I would hope that's not the case, and I'm gonna -- I
12 would be willing to operate on not that assumption but that
13 belief based on their education, training and experience as I
14 heard it.

15 Q Okay. Well, you made it as a general statement, not
16 about the people in this case. You said generally that they're
17 not -- that there's limited resources, there's limited resources
18 for testing, that they're not gonna waste their time collecting
19 or testing items that are not gonna prove to be valuable,

20 A Let me correct that then. I didn't mean it as a
21 general statement. I meant it as a specific statement in this
22 case based on the testimony and reports that I read_ So I
23 mean it as a specific statement,

24 Q So you do understand that police agencies have

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TURVEY - CROSS

1 Q Right. But what I'm saying is --

2 A They're not out there with a rubber band and a
3 pencil, you know.

4 Q At the time that they're processing this crime scene,
5 they don't know what had happened, they don't know what
6 evidence is linked to the crime, correct?

7 A I think that's fair, yes.

8 Q Okay.

9 A Of course not

10 Q And in a lot of cases like that, that's the -- that's
11 what holds true. They go out to -- they've got a dead body,
12 they've got a crime scene. They don't know anything about
13 who did it, what happened, right?

14 A Yes. That's correct.

15 Q That's very common. Isn't it very common also to
16 collect evidence that you think might be pertinent and it turns
17 out not to be?

18 A I think that's true-

19 Q Now with regard to the car, you stated that there's
20 no physical evidence linking Lobato's car to the crime scene.
21 Did I state that correctly?

22 A Yes, you did.

23 Q That is your conclusion?

24 A Yes.

XV1-232

TURVEY - CROSS

1 limited resources?

2 A Some do, some do not,

3 Q Okay. Well, you have to understand in Clark□
County, if you don't, that they do have limited resources here.

4 A Which is why we need to approach the evidence
5 with a lot of humility.

6 Q Was that a yes?

7 A It is a yes. I'm agreeing,

8 Q Thank you. Now when talking about other -- well,
9 let's -- the tire tracks at the scene. Again, you're -- they're
10 valuable to your analysis because it's possible that whoever
11 committed the crime made those tire tracks?

12 A Well, yes, And not only that but because the
13 detectives deemed them important enough to collect and
14 document. There were other --

15 Q Well --

16 A -- patterns in the scene that they didn't document.
17 So --

18 Q Right. But they're doing the best they can without
19 having any information of what had occurred, correct?

20 A They have the information at the scene. They have
21 the scene itself. They have the results of their investigation to
22 that point. They don't have nothing. And they have their
23 education, training and experience.

XVI-231

TURVEY - CROSS

1 Q Okay. The only way to have physical evidence that
2 linked Lobato to the crime scene would be if you found the
3 victim's DNA in the car, correct?

4 A I don't think that's correct. I think there are other
5 ways,

6 Q How?

7 A But in this -- well, there are other ways.

8 Q Okay.

9 A But in this case, I think that's the best way,

10 Q Okay. What --

11 A That's one of the best and most obvious ways.

12 Q What are some other ways? Possibly the tire
13 impressions?

14 A Possibly the tire_ Well, they're not impressions_
15 They're tire marks, But, yes, possibly the tire marks. I would
16 -- I would have to, again, I was asked not to give this list
17 before. You objected to it. But there are other things that we
18 would be looking for. We're looking for potential hair and fiber
19 transfer from the victim on to the suspect and then into the
20 vehicle,

21 Q But that would be assuming that they came into
22 some sort of contact,

23 A Right.

24 Q Okay.

XVI-233

TURVEY CROSS

1 A I'm not -- I'm not willing to make that assumption.
 2 I'm just saying you're asking me what we would look for
 3 Q Well, in this case —
 4 A That's what really needs to be looked for.
 5 Q In this case, really, with what we tested with the
 6 lumina] and the phenolphthalein.
 7 A And also fingerprint examination. There was -- this
 8 finger -- this car was given the thorough once-over in terms of
 9 fingerprints, lumina' and phenolphthalein. It was very
 10 thoroughly examined in that respect.
 11 Q Okay, But the only way really to link, with regard to
 12 the lumina] and the phenolphthalein, the only way to link the
 13 defendant's car to the crime scene would be if there was
 14 testing positive of the victim's blood in her car, correct?
 15 A Because those are, yes, because those are specific
 16 tests for, presumptive tests, for blood. And fingerprints would
 17 be if the guy had --
 18 Q Okay, wait,
 19 A -- contact with the car,
 20 Q Let's stay on the blood evidence, okay?
 21 A Okay,
 22 Q We'll talk about fingerprints in a minute, I promise.
 23 A Sure,
 24 Q The blood evidence.

XVI-234

TURVEY - CROSS

1 A You're assuming that cells were present from which
 2 DNA could be extracted, and I won't make that assumption.
 3 What I will say is that a test for DNA was performed and it
 4 came back negative. They couldn't find any cells there. So,
 5 no, it's not that there weren't -- it's not that there were cells
 6 and we couldn't extract the DNA from them. It's that there
 7 were no cells found whatsoever. So let's be very clear about
 8 that.
 9 Q Okay, So you're saying that there were no cells
 10 found there?
 11 A That's my understanding of the -- that they -- not
 12 that there were no cells, no biological cells that had DNA in
 13 them.
 14 Q Right. Right. It was -- it was possible they were
 15 there but they couldn't extract them. That was the testimony
 16 of Tom Wahl.
 17 A Yeah, that was very helpful.
 18 MS, DIGIACOMO: Your Honor, would you please
 19 admonish the witness not to comment on all the other
 20 testimony by the other witnesses? That's improper, and he's
 21 been doing it the entire time.
 22 THE COURT: The Court sustains the objection.
 23 THE WITNESS: My apologies, Your Honor. It will
 24 not happen again,

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TURVEY - CROSS

1 A Yes.
 2 Q Luminol is a presumptive test for blood?
 3 A That's correct.
 4 Q Okay. The next step when they got the presumptive
 5 test for blood, the DNA analysts or criminalists tested those
 6 items with phenolphthalein, another presumptive test for
 7 blood, correct?
 8 A That's correct.
 9 Q And loth of those yielded positive results?
 10 A The — yes,
 11 Q Okay,
 12 A Positive presumptive results,
 13 Q Positive presumptive results for blood. But those
 14 two positive presumptive results cannot tell us whether or not
 15 there was blood in that car, correct?
 16 A Absolutely not,
 17 Q Okay, Can't tell us Whether or not there was not
 18 blood in that car, correct?
 19 A Doesn't tell us anything other than another test
 20 needs to be performed.
 21 Q Okay, Now the fact that this other test couldn't be
 22 performed because DNA couldn't be extracted, that's where
 23 you base your opinion that there's not physical evidence
 24 regarding the blood linking the defendant's car to the scene?

XVI-235

TURVEY - CROSS

1 THE COURT: Okay.
 2 THE WITNESS: Will you repeat the question,
 3 please?
 4 BY MS. DiGIACOMO:
 5 Q Sure. Okay. With regard to the blood evidence, it's
 6 possible that there was DNA there that couldn't be detected on
 7 the -- on the items that tested positive in the car?
 8 A It's -- it's possible but, again, very unlikely.
 9 Q Okay.
 10 A And then I would be -- it would be irresponsible to
 11 start suggesting that kind of thing. That's a theory. It's a very
 12 interesting theory but there's no proof of it. So it would be
 13 irresponsible to suggest it in court as an opinion.
 14 Q Okay. Are you a DNA criminalist?
 15 A No, I am not a criminalist.
 16 Q Have you ever done DNA testing?
 17 A No.
 18 Q Have you ever done luminol testing?
 19 A I have done it in a — at the — when we were trained
 20 to do it originally, but I've never done it at a crime scene,
 21 Q Okay, Have you done phenolphthalein testing?
 22 A Not --
 23 Q Other than in an in-class testing?
 24 A At a -- at mock crime scenes, yes, but not in a —

XVI-237

TURVEY - CROSS

1 Q Okay.
 2 A Not in a crime scene, no. That would, again, that
 3 would not be my role. I'm not a crime scene technician.
 4 Q Okay, So but it's your role here to testify what DNA
 5 could possibly still be there after a positive presumptive test,
 6 two positive presumptive tests?
 7 A You're asking me. I didn't ask the question.
 8 Q No, I asked you, it's possible because you have the
 9 two presumptive blood tests that there was DNA that was so
 10 broken down it couldn't be extracted,
 11 A Again, that's -- again, that's a theory. It's possible
 12 but there's no proof of that theory. So it would be
 13 irresponsible for me to mention that in a forensic context.
 14 Q I'm just asking you what's possible, sir. I'm not
 15 asking you if it's your opinion. But it is possible?
 16 A It is. It is possible. But, again —
 17 Q It's also possible the other way that, I mean,
 18 assuming he could have extracted the DNA, it's possible that
 19 there could have been DNA and it could have been extracted?
 20 A Again, it's possible but I would hate to put these
 21 theories forward as my own or as ones that are legitimate.
 22 Q I think it's clear to the jury it's not your own, sir.
 23 Just answer the questions. It's possible?
 24 A Yes. Extremely unlikely but possible.

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TURVEY - CROSS

1 Q Okay. What's that?
 2 A It's -- again, it's a picture of the underside of the --
 3 after the -- after it's been taken off.
 4 Q Right. This is the —
 5 A After the seat cover has been taken off,
 6 Q Right. This is the positive luminescence on the grey
 7 seat cover?
 8 A That's correct.
 9 Q All right, Now it's your testimony that there should
 10 be certain places where blood should be found in the car if the
 11 person who did this got in the car, correct?
 12 A Yes,
 13 Q All right. And one of those is the door handle?
 14 A That's correct. Underneath the door handle as they
 15 open the door.
 16 Q Okay. Where's the door handle here?
 17 A It's not pictured.
 18 Q Okay, This isn't the door handle right here?
 19 A That's the interior door handle. I meant the —
 20 Q Oh, you --
 21 A I thought we were starting in linear fashion, The
 22 exterior door handle is what I really meant.
 23 Q Okay.
 24 A And then the —

XVI-240

TURVEY - CROSS

1 Q Now with regard to the luminol, you had two
 2 pictures. You had -- I'm gonna show you what's State's 114.
 3 You had a picture like this in your PowerPoint, correct?
 4 A I believe that it was either this picture or one very
 5 much like it because there are multiple pictures like this. So I
 6 can't say it's —
 7 Q Okay. But it was —
 8 A -- the exact same.
 9 Q It was of the door?
 10 A Yeah,
 11 Q The left door frame. Okay.
 12 A The interior door. Right.
 13 Q And then you also had in a similar picture to State's
 14 Exhibit 112, and that is the floral seat cover?
 15 A Can you zoom out so I can see the whole thing?
 16 Q Oh, I'm sorry.
 17 A That's okay. I'm not sure I used this picture but it
 18 was a picture like this,
 19 Q Okay. Well, you're aware that they only got a
 20 positive test from one of the floral seat covers?
 21 A Yes,
 22 Q Okay, And then State's Exhibit 113, do you
 23 recognize that?
 24 A Yes.

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TURVEY - CROSS

1 Q And it should have been --
 2 A And then the interior one.
 3 Q But that -- now that assumes that whatever handle,
 4 hand they used to open the door, had blood on it?
 5 A Yes, it does.
 6 Q It's possible that there's blood on one and not the
 7 other?
 8 A Blood on one what?
 9 One hand and not the other when leaving this crime
 10 scene,
 11 A Again, that's really unlikely.
 12 Q Okay.
 13 A With so much blood and this so -- so much involved
 14 in removing and/or whether or it's a knife or scissors, or
 15 whatever it was, to do that.
 16 Q Well --
 17 A To do that —
 18 Q Well --
 19 A — you're gonna get it on both.
 20 Q Okay.
 21 A You're gonna -- you're gonna have transfer,
 22 Q Now you're aware that the penis was cut off
 23 postmortem?
 24 A Yes.

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TURVEY - CROSS

Q So there was no bleeding after it was cut off,

A There was still blood coming out. It doesn't mean there was like -- there wasn't any spurting is what you're getting at. There wasn't any just --

Q No, there was no hemorrhaging whatsoever with that wound,

A I understand what you're saying, but there's blood all over the inside of the scene, it's so unlikely that they didn't get anything on their hands. I'm just -- I would be very --

Q

A I would be very hesitant.

Q But possible?

A Unlikely but possible, again, as with all these.

Q Now these three marks right here.

A Yes,

Q How do you explain those?

A I don't, I don't have to explain them.

Q Okay, ApAyou don't --

A They're not blood. They're not -- there's no evidence that they're blood. □

Q Okay, But --

A They're just marks.

Q But you're --

A On the door,

) (VI-242

TURVEY CROSS

1 BY MS. DIGIACOMO:

2 Q You're not a DNA criminalist?

3 A I believe I've asked and answered that question several times.

4 Q And --

6 A Yes,

7 Q Okay.

8 A I'm not a DNA criminalist.

9 Q And you've never tried to extract DNA?

10 A No, that would not be my function.

11 Q So you would have to defer to somebody like Tom Wahl or Kristina Paulette that do that on a daily basis whether or not it's possible to still have blood in there but it cannot be extracted for confirmatory tests?

13 A I don't know that I would defer necessarily to them in specific but I would defer to a senior crime scene -- excuse me, a senior criminalist with education, training and experience that meets a certain threshold, But I have no reason to doubt their findings in this case.

20 Q Now you looked at the crime scene photos and there's trash on top of the body. Do you have an opinion how that trash got there?

23 A Well, the trash would have to be put there subsequent to the body coming down. So anything that gets

XVI-244

TURVEY - CROSS

1 Q But they -- it tested positive for a presumptive test for blood,

2 A That's what a presumptive test means. We don't know, it means -- and then when you do the confirmatory test and nothing comes back, then you don't -- then you'd have to say it's not consistent,

3 Q So because you have no confirmatory tests in this case, any luminol evidence means absolutely nothing to you?

4 A In terms of blood, yes. Well, it means -- it means that lumina' is usually used to search for other evidence.

5 You're using it to try to direct your investigation. And if you get a positive result it means you gotta do that confirmatory test. That's what it means. And when the confirmatory test comes back negative, you've got to let go of your theory that it's blood. It's time to let it go. The failure to let that go means that you're not really acting in a scientific manner.

6 Q Okay. So you're saying that Tom Wahl is not acting in a scientific manner now,

7 MS. DIGIACOMO: Your Honor, I'm asking that that be stricken,

8 THE WITNESS: I didn't say that,

9 MS. DIGIACOMO: He's, again, commenting.

10 THE WITNESS: No, I -- that's not what I said.

11 MS. DIGIACOMO: withdraw it.

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TURVEY CROSS

1 put on to the body is going to be potentially associated back to the person who is piling it on it. And that person is most likely going to be the person who committed the crime.

2 Q Okay. But the --

3 A So that's my opinion.

4 Q Okay. But you're aware there were no bloody hand prints or bloody fingerprints found on any of the trash?

5 A I am not aware of that, What I'm aware is that there was not a -- that there was not any reported. That's what I'm aware.

6 Q Okay. Well, and you saw the testimony of Dan Ford. He went through everything piece-by-piece. He didn't find any obvious bloody hand prints on anything, did he?

7 A Right. But you can still leave latents that you can't see with the naked eye, which is why it's --

8 Q I'm --

9 A -- improper to throw stuff away,

10 Q Right. I'm not talking about latents. I'm talking about something left in blood.

11 A Right.

12 Q Okay. And there was nothing left on the trash.

13 A That he found. That's correct.

14 Q Okay. So you're saying possibly it was there and they just missed a bloody hand print?

XVI-245

TURVEY CROSS

1 A Very possible.
 2 Because the assailant would have had to have blood
 3 on their hands?
 4 A I'm saying that's the most likely and most plausible
 5 scenario in my opinion.
 6 Q Have you seen the pictures from after all the trash
 7 had been removed, the back portion of the dumpster with no
 8 trash where you just see the pool of blood in the back
 9 southwest corner?
 10 A I'm sorry. Could you ask that question again,, I was
 11 distracted there for a moment by some communication that
 12 was going on_
 13 MR, KEPHART: Your Honor, just for the record since
 14 he's noted that, Juror Number 1 held his hand up, so I got the
 15 bailiff's attention, And I just don't want to be in a situation
 16 where this man here on the stand is making any kind of
 17 gestures that I'm communicating with the jury.
 18 THE COURT: The --
 19 THE WITNESS: He was,
 20 THE COURT: -- Court saw Mr. Kephart point to the
 21 bailiff to draw his attention to something. I wasn't sure what
 22 the something was because I hadn't -- I hadn't noticed that
 23 the juror, Juror Number 1, Mr. Arieno, had something that he
 24 wanted to turn over.

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TURVEY - CROSS

1 Q Or a drag mark,
 2 A Something.
 3 Q Okay,
 4 A Something like that. That something has passed
 5 over the surface of the blood to move it
 6 Q But that's still in the back southwest corner?
 7 A In the same general area, yes,
 8 Q Okay, And you're aware that these footwear
 9 impressions that we've noted start some feet away from where
 10 the bloody pool was, from looking at the crime scene
 11 photographs?
 12 A I'm not aware of that because there is actually
 13 bloody footwear prints on the underside of the -- on the
 14 underside of the cardboard that's on top of the body. So we
 15 don't know where they actually start. They could --
 16 Q Okay.
 17 A And if you flip that over, you find all these blood
 18 footwear marks, and we don't know where that starts. So to
 19 suggest that it starts right at that point, that would incorrect.
 20 Q Okay. Let me -- let me rephrase then, There's no
 21 bloody footwear impressions on the concrete until you get to
 22 State's Exhibit 144. I believe they start back here,
 23 A I think that's about accurate, yes.
 24 Q Okay, But the pool of blood is all over on this area?

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TURVEY - CROSS

1 Would counsel please approach?
 2 THE WITNESS: Your Honor --
 3 (Off-record bench conference eat 16:46:15 until 16:47:17)
 4 THE COURT: The answer is yes and the note will be
 5 marked as the Court's next in number.
 6 THE CLERK: 76,
 7 BY MS. DIGIACOMO:
 8 Q All right We're back to the crime scene
 9 photographs.
 10 A Oh, yes.
 11 Q After all the trash is removed.
 12 A Yes.
 13 Q Okay. And you see the concentration or pooling, the
 14 blood pool in the back southwest corner?
 15 A There's a pool, a blood pool, and there's also blood
 16 spatter back there as well.
 17 Q And blood spatter. And there's also, where the body
 18 was found, some runoff from the body, from the head?
 19 A That's fair to characterize, yes.
 20 Q But that's where all the concentration of blood was.
 21 A There's that,
 22 Q Back there,
 23 A And then there's some along the side that looks like
 24 it's been smeared, like somebody walking or maybe some --

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TURVEY - CROSS

1 A What would be in that area, yeah.
 2 Q Okay_
 3 A If there were pictures there, yes.
 4 Q So there is some void between where the blood pool
 5 is and where the bloody footwear impressions start on the
 6 concrete?
 7 A I don't think, again, I don't think that's fair to
 8 characterize it that way. That void might be filled by that
 9 piece of --
 10 Q Right. But I'm just talking about the void on the
 11 concrete.,
 12 A Oh, yeah. Yes. Okay. My apologies.
 13 Q Okay, I'm not --
 14 A Not a void in general, just a void specifically on the
 15 concrete.
 16 Q That's why I specifically limited it to that.
 17 A Okay,
 18 Q Now the other places that there should have been
 19 blood on the interior of the car is the steering wheel, correct?
 20 A That's correct,
 21 Q The gear shift?
 22 A Yes,
 23 Q Driver's side floor pads?
 24 A Yes,

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TURVEY - CROSS

1 Q And the foot pedals, correct?
 2 A Yes,
 3 Q Okay, And these are all places that are nonporous
 4 surfaces. Well, maybe with the --
 5 A Oh, I don't know,
 6 Q -- exception of the driver's side floor pads,
 7 A I think that there are --I think some of those areas
 8 are more porous than others, but they -- I think some are
 9 more porous than others,
 10 Q Okay, Well, the exterior door handle. That's a
 11 nonporous surface,
 12 A No, that's not a porous surface.
 13 Q Okay. The interior door handle. That's a nonporous
 14 surface.
 15 A Largely, yes.
 16 Q Okay,
 17 A I'm just saying there's a possibility that it's a little
 18 more porous than the metal.
 19 Q Okay, And the steering wheel would have been the
 20 same kind of material as the door handle?
 21 A I'd have to look at it, but I don't -- I'm not sure. I'm
 22 not sure that that's accurate. I'd have to look at again to
 23 refresh my memory.
 24 MS. DiGIACOMO: The Court's indulgence,

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TURVEY - CROSS

1 Q Okay, And --
 2 A But it -- and this one is far more nonporous, the --
 3 Q The steering?
 4 A The steering -- the gear shift knob there. Right,
 5 Q Or the gear shift. Okay.
 6 A Yeah,
 7 Q And the driver's side floor pads. I don't have -- oh,
 8 here we go, State's Exhibit 184. This area here would be
 9 porous, correct, where the carpet is?
 10 A Absolutely,
 11 Q And then this area here could be nonporous but it
 12 looks like there could be some cracks and grooves in there?
 13 A That's correct.
 14 MS, DiGIACOMO: Okay, The Court's indulgence,
 15 (Pause in the proceedings)
 16 BY MS. DiGIACOMO:
 17 Q Now when the person, the assailant, left this crime
 18 scene, how much blood would be on their hands?
 19 A There's no way of knowing. I'm just saying there
 20 would be some.
 21 Q Okay. It's possible it's a very small amount?
 22 A It's possible. It's less likely that it's a small amount
 23 But I -- for example, next to the footwear impressions or
 24 footwear patterns, we see drops of bloods, drops of what

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TURVEY CROSS

1 THE COURT: Yes,
 2 BY MS, DiGIACOMO:
 3 Q Here's a copy of the steering wheel or, excuse me,
 4 here's a photo, 186, which shows the steering wheel.
 5 A Yes. It's the same type of material, yes. I would
 6 agree.
 7 Q Okay. And the gear shift. So you can see that here
 8 in State's Exhibit 187. Is that like a hard --
 9 A Yeah, a hard --
 10 Q -- plastic?
 11 A Yeah, hard rubber.
 12 Q Okay, So --
 13 A And, again, with the steering wheel there may be
 14 cracks and imperfections in there that blood would have gotten
 15 in, could have gotten into, rather,
 16 Q Okay.
 17 A So it's --
 18 Q Down here at the baseboards, this leather material?
 19 A No, not there. I'm talking about the actual steering
 20 wheel itself, looking at it from this angle.
 21 Q Oh, the steering wheel.
 22 A There might be -- it might be a little less perfect
 23 than we're -- than we are seeing where there might be cracks
 24 and imperfections in it that blood could have gotten into.

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TURVEY - CROSS

1 could be blood.
 2 Q Okay. So you're --
 3 A If you take a look.
 4 Q You're assuming --
 5 A Something could be dripping off of them. Take a
 6 look right there. You can see them right in a row, right along
 7 with it, there's blood dripping.
 8 Q Oh, okay, So you -- these marks here you're
 9 assuming are blood drops?
 10 A Not assuming. I'm looking in the photographs, that
 11 when I was looking at them they were the same color and
 12 consistency and looked like drops, where they have the --
 13 Q Okay. I'm confused, Which one are you looking at?
 14 A In the -- in this area here. Like there's one that's
 15 shaped like a --
 16 Q You can circle it before I --
 17 A Okay.
 18 Q Thanks.
 19 A It could be --
 20 Q 'Cause I moved the picture on you,
 21 A Again, actually, again, without looking at the better
 22 pictures, I can't tell which ones are which but there are --
 23 inside the footwear pattern or footwear patterns, you can see
 24 drops, droplet areas,

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TURVEY - CROSS

1 Q Okay. Now if there was —
 2 A That's dripping blood.
 3 Q If there was testimony from people who were there
 4 that that just appeared to be staining in the concrete that had
 5 been there from like the trash, would that change your opinion
 6 that it wasn't blood drops?
 7 A It might. But in the photographs I looked at, it
 8 looked like it was blood,
 9 Q Okay.
 10 A So it might change my opinion,
 11 Q But if it wasn't blood drops, then that would just
 12 change your opinion possibly how much blood was on the
 13 assailant's hands?
 14 A There wouldn't be -- it wouldn't be the amount that
 15 was dripping.,
 16 Q Okay.
 17 A But it still would be some.
 18 Q If there
 19 A In this particular case there appears to be blood that
 20 was dripping off the assailant as they were walking out.
 21 Q Okay. But that's based on what you see in the
 22 photographs?
 23 A That's correct.
 24 Q But you'd have to agree that somebody who was

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TURVEY CROSS

1 Q Okay, So until we disprove that to you, you're just
 2 gonna assume it's blood drops?
 3 A No, I'm not assuming it. I'm looking at it and it's
 4 most consistent with it in my opinion. I'm not assuming
 5 anything,
 6 Q But you don't have confirmatory tests that that's
 7 blood.
 8 A But it's within the pattern that's already there, It's --
 9 I mean, we can parse words all day, but it's -- that's my
 10 opinion,
 11 Okay. I'm just -- I'm confused. I thought you said
 12 that —
 13 A I'm sorry.
 14 Q — you couldn't make assumptions --
 15 A I'm not.
 16 Q — in making your — you're just -- but you're going
 17 by is blood droppings 'cause that's what it looks like to you
 18 You're not assuming it. You're like I see it, those are blood
 19 drops.
 20 A That's correct.
 21 Q But it's very possible that they're not?
 22 A I didn't say it was very -- no, I don't think it's very
 23 possible that they're not. The shape, size, orientation, with the
 24 other things, leads me to believe that they are,

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TURVEY - CROSS

1 there might have a better, clearer idea of that than you do?
 2 A They might have a different idea. I don't know if it
 3 would be better or clearer or more accurate,
 4 Q Okay. You don't think that somebody who's
 5 physically there and can -- and get real close to the stains and
 6 even take blood swabs wouldn't have a better understanding
 7 of whether --
 8 A Well --
 9 Q aunt there is blood drippings?
 10 A If they took blood swabs, yes. If they were just
 11 visually looking at it, no.
 12 Q Okay.
 13 A Because people miss that kind of stuff all the time.
 14 Q So you're more qualified looking at a picture than
 15 they are looking in person?
 16 A I didn't say that I said I'd be -- I would -- if they
 17 had done physical tests and excluded that as blood, then that
 18 would be more important to me.
 19 Q Okay, But so your opinion, are you basing it on
 20 assumptions that that's blood droplets?
 21 A I'm not assuming it's blood drops. It looks like blood
 22 droplets to me, Until I see a report saying it's not, I think it's
 23 most consistent with blood drops than inside the footwear
 24 pattern.

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TURVEY CROSS

1 Q Okay,
 2 A And if there was a -- but if there were confirmatory
 3 tests that came back and said, no, this is grapefruit juice that's
 4 dropped in this pattern because the assailant was carrying
 5 grapefruit juice and that dripped out, that would be important
 6 to me.
 7 Q Okay. So is it possible then, probably not with your
 8 opinion, that the person who did this didn't have blood
 9 dripping off of their hands?
 10 A It's possible.,
 11 Q Is it possible it was a small enough amount that they
 12 could have just wiped it on their clothing before getting into
 13 the car?
 14 A Yeah, and that's a good theory. And I'd want to see
 15 the clothing before I —
 16 Q So it's possible until you see the clearing [sic] to
 17 disprove it, to refute it?
 18 A Right,
 19 Q But you understand then with crimes it's -- a lot of
 20 times evidence is discarded?
 21 A In this case, yes, I'm understanding that,
 22 Q I'm not asking you in this case. Okay. I'm asking
 23 you in crime scenes in general, when you're — when police are
 24 investigating, a lot of times assailants take evidence from the

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TURVEY - CROSS

1 crime scene and discard it.
 2 A Oh, that's not what I thought you asked, I thought
 3 you asked whether or not the crime scene processing people
 4 discarded evidence.
 5 Q No, That's not what I asked.
 6 A Oh,
 7 Q I'm asking you, in general, isn't it true that assailants
 8 take evidence away from crime scenes and discard it?
 9 A Some evidence of some types, But, typically, if
 10 they're gonna discard something it's gonna be something like a
 11 weapon.
 12 Q Well, in fact in this case there's no weapon found at
 13 the scene, is there?
 14 A There's no weapon found at all in this case that I'm
 15 aware of. Yes.
 16 Q I'm not asking you at all or what you're aware of, I
 17 said at the crime scene. If you'd please just answer my
 18 questions.
 19 A My apologies, There was no weapon found at this
 20 crime scene.
 21 Q Okay. Now you said there's no evidence that a
 22 weapon is found at all?
 23 A Not a weapon associated with the crime, no,
 24 Q Okay, How do you have that knowledge?

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TURVEY - CROSS

1 Q Why a remote possibility?
 2 A Because we have done a confirmatory DNA test and
 3 it came back negative. If there was blood there or -- if there
 4 was blood there, there would be leucocytes. The leucocytes
 5 would have DNA in them and we would have been able to
 6 extract them. We were not.
 7 Q Okay, Now, were you provided a copy of a twenty-
 8 seven-page statement given by the defendant to detectives
 9 back in 2001 to review?
 10 A I was not provided anything in 2001;
 11 Q No, My question is were you provided a twenty-
 12 seven-page statement to review that was given by the
 13 defendant to detectives in 2001?
 14 A I was given a statement. I was given several
 15 statements made by the defendant, but I read none of them.
 16 I never read suspect confessions or statements, as a -- as a
 17 rule,
 18 Q Okay. So it would have no bearing on your opinion
 19 at all that the defendant testified previously in a —
 20 MR. SCHIECK: Objection, Your Honor. Can we
 21 approach?
 22 THE COURT: Yes.
 23 (Off-record bench conference at 16:59:10 until 17:01:56)
 24 THE WITNESS: Your Honor, I truly need to use the

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TURVEY - CROSS

1 A Because of you.
 2 Q Is that what the defense -- go ahead. How do you
 3 know there's no weapon ever found?
 4 A There is no report provided to me that a criminalist
 5 or a crime scene analyst collected an object that was then
 6 connected with this crime or with the homicide of Duran
 7 Bailey,
 8 Q Okay, So you're just —
 9 A There are weapons that were collected but none of
 10 them have been associated with the crime.
 11 Q What weapons were collected?
 12 A I believe there were a couple knives collected from a
 13 couple homes. There was a baseball bat collected from the
 14 back of the Fiero. I believe there was a fire -- a couple
 15 firearms collected, at least one that I recall, things of that
 16 nature. Nothing was associated back to the crime.
 17 Q Okay, Now there's, in your opinion, no evidence
 18 linking the defendant's car to the crime scene, correct, 'cause
 19 there's --
 20 A That's correct.
 21 Q Okay. Now, is it possible that this was blood in her
 22 car from the two presumptive tests that were given positives?
 23 A It's a very extremely remote possibility given this —
 24 a very remote possibility.

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1 restroom. This is not —
 2 THE COURT: We'll be taking a break,
 3 THE WITNESS: Thank you.
 4 THE COURT: We will be resuming at 1:00 o'clock
 5 tomorrow. And the Court expects you back at that time.
 6 You may step down from the stand and exit the
 7 courtroom at this time.
 8 THE WITNESS: Thank you, ma'am,
 9 THE COURT: Ladies and gentlemen of the jury,
 0 would you please be in the hallway at 1:00 o'clock tomorrow
 1 afternoon? The bailiff will meet you there to return you to
 2 your seats in the courtroom.
 3 During this evening recess you're admonished not to
 4 talk or converse among yourselves, nor with anyone else, on
 5 any subject connected with the trial, and you're not to read,
 6 watch or listen to any report of or commentary on the trial or
 7 any person connected with the trial, by any medium of
 8 information, including, without limitation, newspaper,
 9 television, radio and Internet, and you're not to form or
 0 express any opinion on any subject connected with the trial
 1 until the case is finally submitted to you.
 2 You all have a good evening and we'll see you at
 3 1:00 o'clock,
 4 The jury may exit at this time.

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1 The Court will ask that counsel remain.
 2 (Jurors recessed at 17:02:52)
 3 THE COURT: The record shall reflect that the jury
 4 has exited.
 5 Counsel asked to approach the bench, and Mr.
 6 Schleck indicated that he was concerned that the State may be
 7 commenting on the defendant's right to remain silent,
 8 MR. SCHIECK: That's correct, Your Honor. During
 9 the cross-examination, and I'm sure the Court will correct me if
 10 I'm wrong, that Mr. Turvey indicated he had seen, I believe he
 11 said, three statements of the defendant. And the prosecutor
 12 at that point referenced whether or not he had read her
 13 testimony from a prior proceeding, which clearly indicates that
 14 she gave a sworn testimony, a sworn testimony, and
 15 references the waiver of her Fifth Amendment rights. And if
 16 she chooses not to testify in this case, I think that's a comment
 17 on the fact that she wouldn't be testifying even if she testified
 18 previously, which I think we're getting into territory that I'm
 19 not familiar enough if there's ever been a case quite like this
 20 one we're in [unintelligible].
 21 With respect to his reference to other statements,
 22 the record has already been established that Ms. Lobato not
 23 only gave a statement to Detective Thowsen but made a
 24 statement to Michelle °sterling.

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1 referring to he's aware that she has made statements, In fact
 2 there's a lot of people that she's made statements to,
 3 MS. DiGIACOMO: Well, Your Honor, I didn't hear
 4 three statements. I just heard, when I was asking specifically
 5 about her twenty-seven-page statement, that he said I got -- I
 6 thought it was several or multiple statements and I didn't
 7 review any of them. So at that point, I was just trying to ask
 8 him about what else he reviewed, I shouldn't have used
 9 testimony, I guess. If that's what they're objecting to, then
 10 that's fine. I won't use that. 191 use prior statement when I
 11 cross him. But I think the State has a right to ask him whether
 12 or not he had reviewed those and where she had testified or
 13 where she had said in her statements that she had gotten
 14 blood on her after her attack, whether that would change his
 15 opinion that there couldn't possibly be blood in the car, with
 16 the positive luminol and the positive phenolphthalein. That's
 17 what the point was I was trying to get at,
 18 THE COURT: I'm gonna sustain the objection as to
 19 testimony. The jury should not be informed of prior testimony,
 20 at least not at this juncture in the proceedings. And I don't
 21 know if it will ever become appropriate. It depends on what
 22 happens down the road. But at least at this juncture, the
 23 State should avoid referencing the defendant's prior testimony•
 24 MS, DiGIACOMO: That's fine. I will,

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1 MS. DiGIACOMO: Austria,
 2 MR. SCHIECK: To the State —
 3 THE COURT: Austria.
 4 MR. SCHIECK: Austria. That she testified to which,
 5 although not a formal statement, is a statement attributed to
 6 the defendant in this case, and that Paul Brown had overheard
 7 that statement. There's also statements that have been
 8 attributed to the defendant that Dixie testified to And so
 9 there are other statements They don't have to necessarily
 10 be —
 11 THE COURT: And Heather McBride also.
 12 MR. SCHIECK: Heather McBride. Although the
 13 contents of that statement, there was a conversation so I
 14 suppose we could call that a statement also. And so her
 15 statements have been brought before this jury by the State.
 16 And I don't know exactly what Mr. Turvey was referring to
 17 when he said three statements, but that could be the
 18 statements contributed that she made to Dixie and that she
 19 made to Michelle or maybe the statement made to Heather.
 20 So there are other statements, just not taped statements to
 21 policemen, So we don't have to call it testimony, which is —
 22 which is the phrase that really caused me this concern in this
 23 case. And I would prefer they do not reference prior
 24 testimony by the defendant any further as opposed to

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1 THE COURT: I'm gonna —
 2 MS, DiGIACOMO: But I should be able to cross him
 3 on it.
 4 THE COURT: I'm gonna ask the recorder to take us
 5 off the record and back up the tape so that we can listen to
 6 that part of the question and the answer again so that we're
 7 clear on just what he did testify to.
 8 (Off record at 17:07:54 until 17:10:27)
 9 COURT RECORDER: On the record.
 10 THE COURT: Okay,
 11 MR, KEPHART: Your Honor, I understand the Court
 12 is sustaining of the objection that defense raised on this, but
 13 could I re-raise this issue tomorrow? I want to do some
 14 research on this. I think that the fact that the defendant has
 15 waived her right to a -- in a previous proceeding, her Fifth
 16 Amendment right, and comes in here and has an expert
 17 testifying as to the presence or her ability to be there, and she
 18 talked directly to that issue, I think is certainly fair game. To
 19 say now that she gets to hide behind her Fifth Amendment
 20 right, and since we're not saying anything about her not
 21 waiving it or doing anything, she has that right, she can do
 22 whatever she wants, but in a previous proceeding where she
 23 has in fact waived her right to the -- her Fifth Amendment
 24 right and gave testimony, I think that it is certainly something

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1 that can be explored with a witness who's talking to the
2 evidence in this particular case.

3 I want to -- I mean, we're not gonna go forward
4 with that based on the Court's sustaining of the objection, but
5 I'd like to be able to research that tonight and give you some
6 case law on that, And I think Mr. Schieck has also indicated
7 he's not real familiar with that area as well. But I don't want
8 to be forestalled from that at this point,

9 THE COURT: Then I'm gonna ask counsel to come
0 back at 11:30 with --

1 MR. KEPHART: Okay.

2 THE COURT: -- any such research and further
3 argument on this issue.

4 MR. KEPHART: Okay, Thanks.

5 THE COURT: I think that the State can make inquiry
6 of this particular witness as to -- I think Ms. DiGiacomo had
7 indicated at sidebar that she could clean it up and say, you
8 know, I'm referencing statements given by the defendant and
9 have you read any of them, do you know the content of any of
0 them. And I think he's gonna say no, from where we're at at
1 this point in time.

2 MR., KEPHART: Okay.

3 THE COURT: I think he said it's kind of his standard
4 operating procedure to never read defendant's statements, so

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1 gonna tone it that way either,

2 THE COURT: I would -- I'd be happy to take a look
3 at any research that you might find between now and
4 tomorrow at 11:30. I think we all know what the status of the
5 case law is. If somebody -- if somebody waives at the prelim
6 and gives testimony in the case and then is bound up to trial,
7 that that is prior testimony under oath in the case. But when
8 there's a -- when there's a retrial and the Supreme Court
9 sends it back to -- basically, wipes the slate clean and you start
10 all over again, I would think that that would be a different
11 situation. But I --

12 MR. KEPHART: Okay,

13 THE COURT: I don't know of any cases right off the
14 top of my head that have dealt with this exact scenario.

15 MR. KEPHART: I --

16 THE COURT: So --

17 MR. SCHIECK: There are --

18 MR. KEPHART: The reason I asked the Court, Your
19 Honor, is 'cause there is because the issue is when she swears
20 in to tell the truth, that kind of over -- forestalls everything
21 because she's waived it at one point in time. It's almost like
22 it's set in concrete because she has exercised that right and
23 she has waived that right. And the whole purpose and the
24 whole issue --

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1 you can explore why that is. And I don't think the State needs
2 to -- needs to delve into the prior testimony for any legitimate
3 purpose, really, but --

4 MS. DIGIACOMO: Well, the problem is, Your Honor,
5 the statement is before the jury, the defendant's statement is
6 before the jury, and she does reference getting blood on her a
7 little bit. But in her prior trial testimony, three different times
8 she testified that she had blood on her, on her upper chest
9 area. And so, I mean, I don't know how to reference the
10 second statement without the jury going why didn't we get
11 that one. That's the problem it leads to.

12 THE COURT: Well, you can make the point with the
13 one that was played and scrolled to the jury.

14 MS. DIGIACOMO: Okay,

15 MR. SCHIECK: And I think -- I think in that
16 statement she did make a reference to the fact that she got it
17 on her or she got it on her clothes, that she had discarded her
18 clothes. And so I think the jury has already heard that one, so
19 I think they can phrase the question based on that statement
20 and get the same point they're trying to make, which is she
21 said she had blood on her and got in the car on a previous
22 occasion.

23 MR. KEPHART: Well, she didn't necessarily say
24 previous occasion, Your Honor, We're not gonna -- we're not

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1 THE COURT: Well, I'm saying she didn't.

2 MR. KEPHART: -- and the belief --

3 THE COURT: She didn't exercise it. She waived it,

4 MR. KEPHART: That's what I mean, is that -- is that
5 the whole purpose is to believe that sworn testimony is telling
6 the truth. And so -- and she was subject to cross-examination,
7 she was subject to being directed by her attorney. And so I
8 think the courts are speaking to say, no, that's basically
9 testimony. You don't -- you don't get to take it back. That's
10 why we're allowed to present it in our case in chief, 'cause it's
11 a statement made by her. But I'd like to look at it because I
12 believe that there is some case,

13 THE COURT: We did have a motion in limine that
14 asked that it be --

15 MR. KEPHART: Admitted in our case in chief,

16 THE COURT: No, that it be discarded,

17 MR. KEPHART: Right.

18 MS. DiGIACOMO: Right, They did a --

19 THE COURT: Which --

20 MS. DiGIACOMO: -- motion to suppress.

21 THE COURT: Which it -- what the Court denied
22 because that was the testimony. But the question now is I
23 don't know whether she's gonna exercise or waive in this
24 retrial. That's the Court's concern,

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