

EIGHTH JUDICIAL DISTRICT COURT  
CIVIL/CRIMINAL <sup>DIVIS</sup> TPN ) H  
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 17  
VOLUME XVII**

**TUESDAY, OCTOBER 3, 2006**

**COURT RECORDER:**

**LISA LIZOTTE  
District Court**

**TRANSCRIPTION BY:**

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XVII-2

1 LAS VEGAS, NEVADA TUESDAY, OCTOBER 3, 2006

**PROCEEDINGS**

2  
 3 PROCEEDINGS BEGAN AT 11:38:30 A.M.  
 4 (Jurors are not present)  
 5 THE COURT: That concludes the morning calendai.  
 6 We do have the trial matter that we set for 11:30 this  
 7 morning, And I see the defendant's present but I don't see  
 8 her counsel. I do see the two prosecutors present. So —  
 9 MS. DiGIACOMO: They're outside.  
 10 MR, KEPHART: Defense counsel's in the hall.  
 11 THE COURT: Oh, okay.  
 12 MR, KEPHART: May I approach, Your Honor?  
 13 THE COURT: Yes.  
 14 Defendant's counsel is now present.  
 15 State versus Lobato, C177394. Record shall reflect  
 16 the defendant's present with her three counsel, the two  
 17 prosecuting attorneys are present. And this was the time set  
 18 for counsel to do some legal research with regard to the  
 19 testimony issue and taking of the Fifth, which arose at the end  
 20 of yesterday's proceedings,  
 21 Mr. Kephart has just provided the Court with a copy  
 22 of the decision in Supreme Court of Nevada, Robert Byford,  
 23 Appellant, versus State of Nevada, Responded-. Rehearing  
 24 denied June 1, 2000. Decision entered February 28, 2000,

XVII-4

INDEX

NAME	DIRECT	CROSS	REDIRECT	RECROSS
<u>STATE'S WITNESSES</u>				
Brent Tutvey		16	72	77
Clint Hohman	87	94	104	106
Kendre Thunstrom	111	117		
Ashley Lobato	118	141		
Lorenzo Lobato	174			

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EXHIBITS

DESCRIPTION: ADM MID

STATES EXHIBITS

None.

DEFENDANT'S EXHIBITS

Noner

xvii-3

1 which I'm gonna take a minute to read through. I've read this  
 2 before, but it's been some time, so I want to read it through  
 3 anew.  
 4 Did Mr. Schieck have any that he wanted the Court  
 5 to read as well?  
 6 MR. SCHIECK: I do have the case that Word cited  
 7 to, Your Honor —  
 8 THE COURT: Okay.  
 9 MR. SCHIECK: -- on this issue, which is Funches  
 10 versus State. And the citation in Byford on this issue is  
 11 actually a pretty short citation because of the factual pattern in  
 12 there. This is the Funches case, which —  
 13 THE COURT: F-U-N-C-H-E-S?  
 14 MR. SCHIECK: Yes, Your Honor, which I think spells  
 15 out clearly what is admissible, I guess the defendant has  
 16 previously testified.  
 17 THE COURT: Okay. I'm gonna take us off the  
 18 record while I read these through.  
 19 (Court recessed at 11:41:32 a,m, until 11:57:48 a.m.)□  
 20 (Jurors are not present)  
 21 THE CLERK: On the record.  
 22 THE COURT: The Court's now reviewed both the  
 23 Avford case and the Funches case. The Funches case is in 113  
 24 Nevada and is from the year 1997, But I don't have the first

XVII-5

1 page of it, so I'm not sure what that cite is.  
 2 MR. KEPHART: It's 113 Nevada 916.  
 3 THE COURT: Thank you,  
 4 MR. KEPHART: I'm quoting from the Byford  
 5 decision, Your Honor,  
 6 THE COURT: Oh, where it was cited in Byford?  
 7 MR, KEPHART: Yes,  
 8 THE COURT: Thank you, I see that,  
 9 MR. KEPHART: Okay,  
 10 THE COURT: That's correct., Okay.  
 11 State?  
 12 MR. KEPHART: Your Honor, basically the issue here  
 13 is what do we call the statement that the defendant made in  
 14 this particular case when we're talking to this expert and we're  
 15 referencing his purpose and what he's looking at. And the  
 16 only thing that we could think of is what it is called, it's his —  
 17 her prior testimony. The interesting point about the Byford  
 18 decision is that the very argument that Mr. Schieck made  
 19 yesterday he made<sup>9</sup> in the Byford decision and the Supreme  
 20 Court said no to that.  
 21 He contended in the Byford decision that the use of  
 22 Robert Byford's prior testimony constituted an improper  
 23 comment on his decision not to testify at the second trial, and  
 24 the Supreme Court said no. And he made that same argument

XV11-6

1 Matter of fact, I was involved in both trials, like Mr..  
 2 Schieck, and the reason it came back was because the way the  
 3 Supreme Court interpreted our comment in closing argument  
 4 in the first trial as commenting on the Fifth Amendment right  
 5 to failure to testify.  
 6 But the concern that the State has here is that in  
 7 reference to — we talked to the bench about whether or not  
 8 we would consider this as a prior statement. Well, her prior  
 9 statement has been presented to the jury. Her prior statement  
 10 that she gave to the police department,  
 11 THE COURT: The tape recorded voluntary  
 12 statement?  
 13 MR, KEPHART: Yes. And what we're talking about  
 14 here with the use of her expert is her prior testimony,  
 15 statements that she gave her and testified to and was subject  
 16 to cross-examination and directed by the defense -- I mean by  
 17 her attorney, and it's prior testimony. And under the statute,  
 18 prior testimony is admissible if you fit within those guidelines,  
 19 as pointed out here in the Byford decision, but also under the  
 20 statutory provisions. And then Flinches is the one that actually  
 21 discussed that any further.  
 22 So we — we're of the position that if you — if we're  
 23 not allowed to call it what it is, then we're in a situation where  
 24 I believe it would be confusing, may even be misleading to the

XVII-8

1 here is that the use of the word "prior testimony" with this  
 2 expert is common -- is commenting on her Fifth Amendment  
 3 right here not to testify, and that's incorrect.  
 4 Under the statute as cited in the Byford decision,  
 5 which is interesting that they -- the way it was used, you  
 6 understand that in reading this, is that typically the statements  
 7 or the prior testimonies being introduced by the State, in this  
 8 particular case the co-defendant introduced it. And they found  
 9 that it nevertheless their -- his introduction versus the State's  
 10 introduction that his prior testimony was admissible under 51-  
 11 325, and they showed how it fit.. And certainly here you can't  
 12 argue that it's not admissible here.  
 13 But the issue that we have here is that in the Byford  
 14 decision the Supreme Court asked the decision as to whether  
 15 or not the term referred to "prior testimony" is being used by  
 16 the State 'cause that would be us trying to introduce this —  
 17 as a way of commenting on the defendant's silence in the  
 18 second trial, and they found not,  
 19 And I'll tell you, the term "prior testimony" was used  
 20 throughout that trial when -- after he testified. But  
 21 commenting would be getting up and saying well, she didn't  
 22 testify here. You know, why don't we hear from it now, why  
 23 didn't we hear from her here, that type of thing. And that  
 24 didn't happen,

1 jury and questions were gonna be — will be by the jury of  
 2 what other statement is she talking -- are you talking about?  
 3 And the statement is her prior testimony, so —  
 4 And the defense provided that to their expert. He  
 5 has it in his report that he reviewed the prior testimony of the  
 6 previous trial. So -- and we would hope that in their -- his  
 7 expert opinion, if he's reviewing these things he would've at  
 8 least looked at -- I mean he put it in his report. How come we  
 9 cannot cross on that? He termed it that, he used those words,  
 10 And he went one step further and said prior testimony from  
 11 the previous trial.  
 12 So we're just trying to use the words that are  
 13 appropriate here and what it is being called. And we've  
 14 already -- I think we've already overcome any requirement of  
 15 whether or not it's admissible or not. It's just now I think the  
 16 issue is what do we call it?  
 17 And I appreciate the Court giving me an opportunity  
 18 to address the Court again on this, and I'll submit it based on  
 19 that.  
 20 THE COURT: Okay.  
 21 MR. SCHIECK: Thank you, Your Honor,  
 22 I think the important point to be made is we're not  
 23 at this stage contesting that her prior testimony was not  
 24 admissible in the State's case in chief. They chose, for

1 whatever reason, not to attempt to admit that testimony. So  
2 that has not been heard by the jury by their choice.

3 Clearly under Byford and Funches, that previous  
4 testimony could've been presented during the cases -- State's  
5 case in chief. They didn't do that. So to refer to something  
6 that is not in evidence before this jury is because they didn't  
7 put it in evidence.

8 Secondly, if -- now that they've rested their case in  
9 chief they can't supplement the evidence that's been presented  
10 to this jury until such time as there's any rebuttal testimony,

11 If Ms. Lobato elects, as is her right, to not testify  
12 under the Fifth Amendment, she cannot be compelled both  
13 under the Fifth Amendment and by statute to testify, and  
14 invokes that right, then the question's going to arise whether  
15 or not the State can use that testimony in their rebuttal case.  
16 Whether or not they can seek to read that to the jury in their  
17 rebuttal case, to which we would take the position they can't  
18 because it's not rebuttal, anything the defense has presented.

19 And so by referring to prior testimony in previous  
20 proceedings, and Dr. — excuse me, Mr. Turvey said that he  
21 had read the testimony of Dr. Simms, and was very clear that  
22 he has not read either the testimony or the statement of the  
23 defendant in this case, and that he doesn't read their  
24 statements when he's examining the information that's given

XVII-10

1 MR, KEPHART: Your Honor, it's interesting that Mr.  
2 Schieck talks about the position of what time the State has to  
3 introduce this type of evidence because in the original  
4 Supreme Court opinions that dealt with the use of prior  
5 testimony under the Harris decision and the Edmonds rule, is  
6 that they were -- it was being used systematically as a rebuttal  
7 device. And not until 1982 when the State of Nevada  
8 addressed that very issue after it was used in a case called --  
9 Turner versus State as rebuttal, they went ahead and said can  
10 it also be used in the case -- the State's case in chief. And  
11 that's at the point in time where they said yes, it could  
12 because it is prior testimony and it's admissible as basically  
13 non-hearsay if you fit the rules that are required under NRS 51  
14 through 25.

15 And so for Mr. Schieck to say oh, we can't even use  
16 it in rebuttal, I disagree with that. I think it can be used at a  
17 point -- at any point in time by -- in this particular case it  
18 would be if the declarant is unavailable, if she's choosing not  
19 to testify obviously the rules are is that she's unavailable. If  
20 the proceeding was different the party again assume the  
21 former testimony's offer was a party or is imprivity with one of  
22 the former parties and issues and statute are the same, we're  
23 using it.

24 But they provided that information to their expert.

XVII-12

1 to him to examine, that his job is to look at the crime scene  
2 collection, the crime scene process and the reconstruction, the  
3 areas that he's qualified to testify about. If they want to ask  
4 him questions about whether or not it would make a difference  
5 in his opinion because the defendant has said previously that  
6 she was in the car and had blood on her, whether that would  
7 effect his discussion of luminol or phenolphthalein, that's one  
8 thing. But to specifically refer to the fact that she testified in  
9 the previous proceeding, if she doesn't testify in this  
10 proceeding is going to clearly implicate that she invoked her  
11 Fifth Amendment right as a comment on that invocation.

12 And Byford, when it was reversed the first time was  
13 for a Fifth Amendment violation, even though the defendant  
14 testified in this case. There can still be a Fifth Amendment  
15 violation because there was a comment made concerning that  
16 he had never testified before. And so it's very slippery slope  
17 that we have when we start talking about testimony of the  
18 defendant in a certain proceeding and whether he testifies  
19 here didn't testify here or testified before.

20 So I think the prudent course is to simply refer to it  
21 as previously stated or previous statement, and not refer to as  
22 testimony from a previous proceeding that is not in evidence  
23 before this jury because the State chose not to put it in their  
24 case in chief.

1 And when their expert's up here talking about physical  
2 evidence and that type of thing and how he's interested in  
3 people that are at the crime scene, but yet he can't even say  
4 that he even looked at the defendant's own statement I think  
5 is good for rebuttal. And we're also talking about a statement  
6 where she clarifies her original statement to the police when  
7 she testified, and talks in depth about how she got in the car  
8 with blood on her clothes and goes in further with our cross-  
9 examination.

10 So to call it something other than previous testimony  
11 is in an event -- in light of the strategy the defense has been  
12 going through in this trial, that the State hadn't done certain  
13 things, hadn't collected certain things. Their own expert got  
14 up there to say oh, the way the trial's going none, I don't  
15 know if I'm gonna see — what I'm gonna see tomorrow.

16 By that strategy, that's basically telling the jury  
17 there's things that we're hiding from them. And when I gotta  
18 stand up there and say another statement which they do not  
19 have, then what are we doing? Are we inviting their argument  
20 that we -- that something additional that we're preventing  
21 them from seeing? This is her previous testimony, and I think  
22 that the jury can make the finding that it's previous testimony  
23 and there's no obligation that she has to testify. She's gonna  
24 be instructed -- the jury's gonna be instructed on that. And

XVII-13

TURVEY CROSS

**BRENT TURVEY, DEFENDANT'S WITNESS, □  
REMAINS UNDER OATH □  
CROSS-EXAMINATION**

BY MS. DIGIACOMO:

Q All right. Mr. Turvey, you were hired back in August of 2005 by the defense, correct?

A I was originally contacted back in August of 2005. I don't remember the exact date the materials were sent to me, - I'm often contacted by people inquiring about cases, and that - the date that we made contact is not the date of hire., So within about three weeks I would say that I was hired,

Q So by September 2005?

A I would say that's accurate, yes,

Q Okay, And when you were hired what were you asked to do?

A I was asked to do two things, to at the very least. One was to examine the physical evidence in the case to determine what, if anything, could be made of it. What had been done, what had not been done in terms of testing, and what could still be done. And then probably most importantly, determine what could be said about the crime, based on the evidence that we had at the moment. And then also I was asked to look at the issue of the motivation and examine what motive might be present.

XVII-14

XVII-16

TURVEY - CROSS

Q And yesterday we spent quite a long time discussing the actual crime scene and basically your conclusion that you can draw from that as there's no physical evidence at the crime scene that links Lobato there, correct?

A That's correct.

Q All right. Then we discussed the car. And it's your opinion that there -- because there's no blood in -- confirmed in the car, that there's no physical evidence that links that car to the crime scene?

A That's part of it, yes,

Q All right. And so you say that's part of it, What's the other part?

A I think as we talked about yesterday, we'd be looking for other items of trace and transfer evidence like hairs and fibers that would associate either the suspect or the scene or the victim to the vehicle. So it's not just blood, it's the absence of any other evidence as well, And again, including fingerprints as well. We're not finding fingerprints that associate Mr. Bailey with the vehicle. We're not finding — there's three things we're looking at, the victim, the suspect, and the crime scene. And then the fourth thing, the fourth issue being the vehicle, and you're trying to find connections between all of them. And you're not just looking at blood, you're looking at any sort of transfer evidence, any sort of

XVII-15

XVII-17

1 I'm not saying anything about us violating or her — we're  
2 trying to violate her Fifth Amendment right here., She doesn't  
3 have to testify if she doesn't want to, but she did give a  
4 previous testimony and it -- I think it's appropriate that the  
5 jury knows where that's coming from in the context of this  
6 expert.

7 THE COURT: If she elects to testify in the retrial,  
8 the prior testimony would be available for impeachment  
9 purposes should she testify to anything different than what her  
10 prior testimony had been. In such a situation the examination  
11 of Mr. Turvey would not then be a comment on her electing to  
12 use her right to remain silent, If in this retrial she, however,  
13 decides to take the Fifth and remain silent, then she becomes  
14 unavailable under this case law and the statement comes in in  
15 rebuttal.

16 So it appears that the testimony is going to be  
17 utilized in the trial in one way or another. It's not clear to the  
18 Court at this junct4. ., whether she's going to take the Fifth or  
19 waive. But in either event, the testimony is going to become  
20 available to the jury,

21 So it appears that it is not an impermissible  
22 comment. However, we have tried to not tell the jury that it is  
23 a retrial, so it can be referred to as testimony from prior  
24 proceedings in this case.

1 The Court -- in light of the Court's review today of  
2 the Byforct and Funches matters reconsiders its ruling at the  
3 end of the day yesterday. And the State may proceed with  
4 that cross-examination at 1:00 pm.

5 We'll go off the record at this time and see everyone  
6 at 1 o'clock.

7 (Court recessed at 12:12:18 p.m. until 1:14:41 p.m.) □

8 (Jurors are present)

9 THE BAILIFF: „ Honorable Valorie J. Vega  
10 presiding. Ple<sup>9</sup>se be seated.

11 THE COURT: Good afternoon, Record shall reflect  
12 resuming trial in State versus Lobato under C177394, in the  
13 presence of the defendant, her three counsel, the two  
14 prosecuting attorneys, and the ladies and gentlemen of the  
15 jury.,

16 THE COURT: Mr. Turvey has returned to his seat on  
17 the witness stand, The Court reminds him that he remains  
18 under oath, and we proceed forward with his cross-  
19 examination.

20 Ms DiGiacomo, you may proceed,

21 MS. DIGIACOMO: Thank you, Your Honor.

22 111

23 111

24

TURVEY - CROSS

1 trace evidence,, So blood's part of it.  
 2 Q Okay. So there's no fingerprints of the victim found  
 3 in her car?  
 4 A That's correct,  
 5 Q Which tells us what?  
 6 A That the victim did not have contact with the  
 7 vehicle  
 8 Q And there's actually no fingerprints of the defendant  
 9 found in the car either. What does that tell us?  
 10 A It's not uncommon for people to not leave  
 11 fingerprints in their own car for them over time, especially in  
 12 this climate, for the fingerprints, the oils and the water to  
 13 evaporate and made them not collectable. However, they did  
 14 find fingerprints on the car,  
 15 Q So the fact that they didn't find her fingerprints, it's  
 16 not the same conclusion that she didn't have contact with that  
 17 car?  
 18 A No, I'm saying there's no evidence of contact.  
 19 Q Okay. But there's no evidence of contact with the  
 20 victim either, but you can draw the conclusion that the victim  
 21 had no contact with that car. Isn't it really that the victim —  
 22 we can't show the victim had contact with the car?  
 23 A You certainly cannot.  
 24 Q Okay. And you can't show the defendant had

XVII-18

TURVEY - CROSS

1 certain day?  
 2 A That's correct,  
 3 Q But you're saying that she did have some contact  
 4 with it just 'cause her belongings are in there and it's found in  
 5 front of her house?  
 6 A That would be -- that would be evidence of contact,  
 7 yes.  
 8 Q Okay, So if something from the victim was found in  
 9 the car, that would be evidence of contact?  
 10 A I think we could agree to that, yes.  
 11 Q All right, Now you base the fact that there's no  
 12 blood in the car because there's no confirmatory test that was  
 13 performed?  
 14 A That's correct.  
 15 Q So no confirmatory test, you cannot say that there  
 16 was blood?  
 17 A You cannot.  
 18 Q Okay. But at the crime scene, even though there's  
 19 no confirmatory test on what you call the blood droplets by the  
 20 footprints, you can say that those are blood droplets?  
 21 A I think you can. And I think it really stretches the  
 22 imagination to suggest that they're not. There's some really  
 23 good photographs that show the size, the association, and the  
 24 nature of the drops and the color. I think the jury will -- I

(VII-20

TURVEY - CROSS

1 contact with the car?  
 2 A But she had possession of the vehicle, so that's the  
 3 contact. And plus, it was in front of her home, so I think you  
 4 can. I think there are levels, other things that we can  
 5 investigate to show that contact.  
 6 Q Okay. Like what?  
 7 A Not using fingerprints. I just —  
 8 Q With — so you're not making an assumption that she  
 9 had because —  
 10 A No,  
 11 Q -- the vehicle was found in front of her house, are  
 12 you?  
 13 A That's not an assumption, that's an examination, an  
 14 interpretation. I'm looking at it. I don't have to assume. The  
 15 vehicle was found out in front of her home, the vehicle  
 16 contained her possessions, the vehicle had her keys in it, but  
 17 it's not an assumption.  
 18 Q Well, that only tells you that she had contact with it  
 19 at some point, correct?  
 20 A That's correct.  
 21 Q Okay, Doesn't tell you when she had contact with  
 22 it?  
 23 A That's correct.  
 24 Q It doesn't tell you that she had contact with it on a

XVII-19

TURVEY CROSS

1 don't think I need to explain that -- excuse me, I don't think I  
 2 need to interpret that for the jury. I think theyll see it for  
 3 themselves as blood,  
 4 Q Okay. But --  
 5 A It's very clear to me.  
 6 Q Okay. And that's what -- I'm trying to ask you a  
 7 question —  
 8 A And I just did.  
 9 Q I just want an answer. So —  
 10 A The shape -- I just said the shape, the association,  
 11 the proximity, the size, all these factors and the color and the  
 12 texture, all these factors make it more consistent with blood  
 13 than anything else. I would love to hear any other theories  
 14 about what it might be, however, I would be very surprised at  
 15 anyone who would look at those photos and say it's not blood.  
 16 Q Okay.  
 17 A There's some very clear photos that show it's blood.  
 18 To suggest otherwise is almost irresponsible.  
 19 Q But you're basing it just on the photographs. You  
 20 weren't there?  
 21 A Yes, that's correct, but the photographs are pretty  
 22 compelling.  
 23 Q Okay. So you weren't at the crime scene that night,  
 24 correct?

XVII-21

TURVEY - CROSS

1 A No, I was not.  
 2 Q Okay, And so the fact that somebody else was at  
 3 the crime scene did not believe they were blood. You're  
 4 saying that based on the photographs he was wrong?  
 5 A I would be very interested to see any testimony or a  
 6 report from somebody saying the drops that I'm talking about  
 7 are not blood. That person would be in a lot of trouble, I  
 8 think,  
 9 Q They'd be in a lot of trouble with you because they  
 10 conflict with your opinion?  
 11 A No, they'd be in a lot of trouble with the IEI... I think  
 12 anybody else -- any other reasonable person looking at that  
 13 saying it's not blood or not possibly blood, I think it defies  
 14 belief,  
 15 Well, you saw the testimony in this case from Dan  
 16 Ford?  
 17 A That's correct,  
 18 Okay.. And so you disagree when he said that it was  
 19 not blood droplets?  
 20 A I don't think that he said that I don't think we went  
 21 through and looked at each individual drop that we're talking  
 22 about here. I think we'd have to have him come back, and I'm  
 23 sure -- I hope that he does come back and confirm exactly  
 24 what he's talking about, because there are very clear areas

XVII-22

TURVEY - CROSS

1 do them on live crime scenes.  
 2 Q Okay. How many tests have you conducted  
 3 regarding false positives, what gives false positives?  
 4 A I have maintained currency with the literature, but I  
 5 do not -- I have not made the test myself,  
 6 Q So everything you're testing about -- or excuse me -  
 7 - testifying about regarding the luminol and the  
 8 phenolphthalein is just based on what you've read?  
 9 A No, it's based on what I -- my education, my  
 10 training, and my experience.  
 11 Q Okay. So your education, what you learned in the  
 12 classroom?  
 13 A No, Again, you're mischaracterizing my testimony.  
 14 My formal education, getting my masters of science in forensic  
 15 science was not just a classroom program, it was very much a  
 16 heavily intensive applied program. So to say it's just a  
 17 classroom program, that's -- that really misstates what I said.  
 18 Q Okay. But you just said you're basing it mostly in  
 19 the literature?  
 20 A No, I did not. You're misstating my testimony. I  
 21 said it was based on my education, my training, and my  
 22 experience, which includes not just my conversations with  
 23 other criminalists that I've had over the years, not just my  
 24 review of the literature, riot just my many hours of training in

XVII-24

TURVEY - CROSS

1 where there are blood droplets right next to and within the  
 2 footwear patterns.. I think it's very clear.  
 3 Q Okay, But you're basing that solely on what you  
 4 saw, there's no confirmatory tests that was done?  
 5 A Yeah, I don't think it's -- just like there's no  
 6 confirmatory test on the fact that it's blood on the footwear  
 7 impressions, I don't think it's really necessary. It's pretty  
 8 obvious it's blood. And to suggest otherwise is sort of  
 9 irresponsible. a  
 10 Q Okay. So -- but the fact that there's positive lumina'  
 11 tests in the car, positive reaction in the car for luminol and a  
 12 positive phenolphthalein test, which are both presumptive tests  
 13 for blood, that you cannot say that it's possible there was  
 14 blood there?  
 15 A You're really inappropriately comparing apples and  
 16 oranges here, We're not looking at a physical stain that has a  
 17 shape, size, color and an evident texture and an association  
 18 with other bloody areas. You're talking about a lumina' test  
 19 which creates a false presumptive positive with many items.  
 20 So you're inappropriately making a comparison where there  
 21 isn't one to be made.  
 22 Q How many tests with luminol have you conducted?  
 23 A Again, I don't conduct luminol tests myself, but I  
 24 have conducted them for the purposes of training, but I don't

XVII-23

TURVEY - CROSS

1 the classroom and in mock scenes, but also in cases that I've  
 2 worked where luminal has been used and applied by others in  
 3 my presence or as a part of the case record. So it's a little  
 4 more extensive than what you're suggesting.  
 5 Q Okay., Now with regard to the luminol and the  
 6 phenolphthalein, it's your testimony that you cannot say that  
 7 the car was cleaned, correct?  
 8 A I think there's evidence that it wasn't because  
 9 there's an absence of indication of cleaning. And I testified to  
 10 what those elements were yesterday.  
 11 Q Okay. What is the absence? Tell me again.  
 12 A Again, it would be the absence of evidence of  
 13 bleach, the absence of a false positive reaction with the  
 14 luminol with a substance that can be identified as bleach, it  
 15 would be the absence of -- the presence of dirt and grime on  
 16 the surfaces of the vehicle, an absence of wiping patterns, and  
 17 no indication from any of the people who testified who  
 18 examined the vehicle that there was evidence of cleaning.  
 19 Q What about the testimony that it appeared that the  
 20 floral seat cover had been laundered, had been recently  
 21 laundered?  
 22 A I'm interested to know how that was determined. I  
 23 -- it's an interesting opinion or theory, but I don't see how it  
 24 was established.

XVII-25

TURVEY - CROSS

1 Q So is it your testimony then the only way to clean  
 2 blood out of a car would be to use bleach?  
 3 A No\_ I'm certain that there are a number of ways to  
 4 clean it visibly. But to clean it to the level that would be  
 5 required for luminal to fail to detect and phenolphthalein to  
 6 detect it would be -- require extensive, repeated, with bleach,  
 7 with ethanol, other -- or other similar intensive industrial  
 8 cleaners that are not readily available. And I think I testified  
 9 to that yesterday as well.  
 10 Q Okay, So the fact that we had a positive luminol  
 11 reaction here, that's a failed attempt?  
 12 A You're mischaracterizing what I said. I said it's a  
 13 failed —  
 14 Q Well, you said that —  
 15 A No, I did not,  
 16 Q No, Okay, You said that the fact that there was  
 17 failed attempts at lumina' and phenolphthalein would show  
 18 that the cleaning -- okay, you tell me.  
 19 That's not -- you keep changing my words around  
 20 here.  
 21 Q I'm just trying to clarify, sir.  
 22 A I don't think that's the case. Let me —  
 23 MS. DiGIACOMO: Your Honor, I'd move to strike his  
 24 last comment\_

XVII-26

TURVEY - CROSS

1 strong cleaning agent to clean the car to the point there was  
 2 no reaction excuse me, that it would be a false positive for  
 3 lumina) and phenolphthalein and no blood?  
 4 A I think you're mixing up two elements in my  
 5 testimony. I don't think that's what I said. If you could ask it  
 6 maybe a little -- a little more slowing and not compound, one  
 7 question at a time, it would be easier for me.  
 8 Q Okay, Well, do you understand what I'm asking  
 9 you?  
 10 A I really don't, that's why I'm asking you to clarify.  
 11 Q Okay. What type of cleaning agent would it take to  
 12 clean blood out of a car so that it doesn't react with luminol or  
 13 phenolphthalein?  
 14 A Again, I've answered this question I think about six  
 15 times now and —  
 16 Q Sir —  
 17 A -- I'll answer it again, it's not gonna change.  
 18 MS. DiGIACOMO: Your Honor, would you instruct  
 19 the witness please to just answer my questions and not to  
 20 comment?  
 21 THE COURT: You need to listen to the question as  
 22 it's posed to you and do your best to answer.  
 23 THE WITNESS: I'm really -- I really am trying, Your  
 24 Honor.

TURVEY - CROSS

1 THE COURT: Motion granted.  
 2 THE WITNESS: I apologize, Your Honor.  
 3 BY MS. DiGIACOMO:  
 4 Q Okay. So explain what you mean by the cleaning  
 5 and how you — you get a negative result for luminal and  
 6 phenolphthalein. What were you trying to say?  
 7 A I've said this a number of times, I think, and that is  
 8 that -- I hope I'm being perfectly clear here. You can get a  
 9 false positive, it can be something other than blood, and  
 10 phenolphthalein and luminal can get a false positive for these  
 11 items. It's already been testified to me and everyone else who  
 12 sat in this chair. And then you come along looking for blood  
 13 and you don't find any, because again, it's a false positive,  
 14 That's how that happens, because it's not blood. When you do  
 15 the confirmatory test and you don't get a reaction, it's not  
 16 blood and you have to let theory go. The idea that it's blood,  
 17 It's gone, You gotta let it go. You gotta move on to  
 18 something else. It was a false positive.  
 19 Q And -- okay\_ So the fact that -- again, the couldn't  
 20 complete a confirmatory test, meaning extract DNA, means it's  
 21 not blood in your mind?  
 22 A Yes.  
 23 Q Okay. Now you were talking about the fact that  
 24 cleaning the car, something that you'd have to have a pretty

XVII-27

TURVEY - CROSS

1 BY MS. DiGIACOMO:  
 2 Q Well, if you've answered it before, sir, you should be  
 3 able to answer it again,  
 4 A I certainly can. There needs to be multiple repeated  
 5 attempts at cleaning with heavy cleaners, such as a  
 6 combination of bleach and ethanol — excuse me -- and other  
 7 industrial level cleaners, and it has to be repeated to multiple.  
 8 Now on a hard surface or nonporous surface, that may do the  
 9 job. On a porous surface, it's unlikely that even that level of  
 10 cleaning will get it out enough to the point where luminol  
 11 would fail to detect it. Again, we're talking one parts per  
 12 million. And I —  
 13 Q SO in this case it is not even an option that the car  
 14 might've been cleaned and there might've been some blood  
 15 there that reacted with the luminal or the phenolphthalein but  
 16 couldn't be confirmed?  
 17 MS. ZALKIN: Your Honor, I'm gonna object, asked  
 18 and answered.  
 19 THE COURT: Overruled, You may answer,  
 20 THE WITNESS: That is my opinion. And again, the  
 21 level of cleaning that's required is not small or minor,  
 22 BY MS. DiGIACOMO:  
 23 Q Now with regard to the bat found in the car, and  
 24 you said that there's no blood on it whatsoever, based on the

XVII-29



TURVEY - CROSS

1 fact that they could not do any sort of even presumptive  
 2 positive test regarding the phenolphthalein?  
 3 A That's correct.  
 4 Q Okay.  
 5 A Not only was there no blood there, there likely was  
 6 no blood there at any time.  
 7 Q Okay. So the only thing you can say about that bat  
 8 is that at no time did it have any blood on it, correct?  
 9 A That's correct,  
 10 Q Okay. Can't say whether or not it was used in a  
 11 crime, correct?  
 12 A That's correct. Maybe —  
 13 Q Can't say whether or not it might've been some  
 14 other bat used in a crime, correct?  
 15 A That's correct.  
 16 Q All you can say is that bat does not connect the  
 17 defendant to the crime scene because there's no victim's blood  
 18 found on it?  
 19 A That's correct.  
 20 Q Now you said that you had been provided with the  
 21 defendant's 27 page taped statement, but you discarded it,  
 22 you --  
 23 A I didn't discard it, I just did not review it or examine  
 24 it or read it.

XVII-30

TURVEY - CROSS

1 more reliable or who is not. That is not really I feel my  
 2 function.  
 3 Q Okay,  
 4 A So I'm not trying to beat up someone's statement  
 5 with my -- with the evidence.  
 6 Q Right, But that's -- but the reason you review it is  
 7 it's just trying to go into factors of how you can read the  
 8 evidence and what might possibly have happened at the  
 9 scene?  
 10 A Well, that's another interesting issue, because if  
 11 you're reading a statement that might contain a confession or  
 12 that might contain a statement about what occurred —  
 13 MS. DiGIACOMO: Your Honor, I'm gonna object at  
 14 this point as nonresponsive. It was a yes or no answer,  
 15 THE COURT: Sustained.  
 16 MS, DIGIACOMO: And move to strike.  
 17 THE COURT: Motion granted,  
 18 BY MS, DiGIACOMO:  
 19 Q Okay, sir, so it's important to you to just review  
 20 those statements of people that might've effected the crime  
 21 scene?  
 22 A No, that's an -- that misstates what I testified to,  
 23 Okay.. It's important for you to reveal -- or to review  
 24 those persons who might have some connection to either the

XVII-32

TURVEY - CROSS

1 Q Okay, But you testified yesterday that it is important  
 2 for you to review those statements by persons who are at the  
 3 crime scene or associated with some crime scene, correct?  
 4 A Yes.  
 5 Q You don't care about alibi witnesses or people who  
 6 are not associated with either the primary or the secondary  
 7 crime scenes?  
 8 A I don't care about the alibi witnesses, no.  
 9 Q Okay. So all you care about are those associated  
 0 with the primary or the secondary crime scenes?  
 1 A That's correct.  
 12 Q Anything else that doesn't relate to those crime  
 13 scenes would be unimportant to your —  
 14 A It's not that they're unimportant, it's I try very hard  
 15 to eliminate as many biasing factors as I can, and that's a very  
 16 heavily biasing factor,  
 17 Q Okay.  
 18 A But more importantly, more importantly on this very  
 19 issue, it is not my place to get into the truthfulness of people's  
 20 statements And very often when you try to compare what  
 21 you find at the crime scene as a forensic scientist to what  
 22 somebody says, there are many courts that will not allow you  
 23 to do that So as a practice I simply don't. I don't want to  
 24 invade the province of the jury and try to tell them who is

XVII-31

TURVEY - CROSS

1 primary or the secondary crime scene?  
 2 A Yes, but that answer's incomplete as it stands. It  
 3 needs an explanation,  
 4 Q Okay. Go ahead, explain.  
 5 A The explanation is that when you are looking at the  
 6 evidence you are trying to be as objective as possible. And  
 7 when someone is giving you a version of events about what  
 8 happened in terms of a suspect statement, it is a terribly  
 9 biasing influence if you know them.  
 10 Q And I'm sorry, sir, if I could just clarify. I'm not  
 11 talking about suspect statements, I'm talking about witnesses  
 12 who give statements. You talked about yesterday Richard  
 13 Shott, Diane Parker —  
 14 A That's correct.  
 15 Q -- that's what I'm talking about here, I didn't say  
 16 suspect statements,  
 17 A I understand that.  
 18 Q Okay. So if you want to explain now with regard to  
 19 those kind of witnesses.  
 20 A With regard to those kind of witnesses, those are  
 21 important.  
 22 Q And why?  
 23 A Because they can provide information about the  
 24 placement of evidence or where possible trace evidence may

XVII-33

TURVEY - CROSS

1 have been left behind or where one might want to look  
 2 investigatively for trace evidence.  
 3 Q Now you also said, you know, that you did review  
 4 Diane Parker's statement and her roommate's statement that  
 5 were given to the detectives investigating this homicide?  
 6 A Yes, I did.  
 7 Q And you also said yesterday that you reviewed  
 8 reports and witness statements related to the sexual assault of  
 9 Diane Parker that happened on July 1, 2001, correct?  
 10 A Yes, I did.  
 11 Q Okay,  
 12 A Quite awhile ago, but I did.  
 13 Q Okay., And that -- those reports regarding a sexual  
 14 assault the week before prior, how does that relate to your  
 15 doing your analysis of the crime scene?  
 16 A Again, the question came up as to whether or not  
 17 there were similarities between the attack in Mr. Bailey and the  
 18 attack on Ms. Parker, And an issue of motive and modus  
 19 operandi, again, crime scene analysis, comparing one crime to  
 20 the other, it became an issue.  
 21 And that was an issue that the defense proposed to  
 22 you?  
 23 A They asked me if I would look at it and see if I could  
 24 find any similarities.

XV[I]-34

TURVEY - CROSS

1 there's a connection?  
 2 A They just asked a general question, so they weren't  
 3 asking me anything specific because they wanted to know of  
 4 there was a -- if there was any connection between the two.  
 5 If there was any evidentiary connection, any behavioral  
 6 connection, they wanted to know. They were in a state of not  
 7 knowing and what could I tell them?  
 8 Q Okay. But you didn't tell them anything?  
 9 A I didn't give a firm finding, no.  
 10 Q Okay. You did read the 28 page officer's report in  
 11 this case, though?  
 12 A Which one?  
 13 Q The -- there's only one officer's report. It's authored  
 14 by Detective Thowsen and LaRochelle. It's 28 pages.  
 15 A Yes, I did.  
 16 Q All right. Now there's statements made by the  
 17 defendant in that report itself?  
 18 A Yes, there were.  
 19 Q Did you look at those?  
 20 A I skipped over them --  
 21 Q You skipped over those?  
 22 A -- purposely.  
 23 Q So it wouldn't be important to you in your analysis  
 24 with regard to whether or not the -- there might have been

XVii-36

TURVEY - CROSS

1 Q And there's nothing in your report regarding  
 2 similarities, is there?  
 3 A I didn't feel like that was the area that I wanted to  
 4 get into. I didn't feel comfortable with that area of testimony  
 5 and I didn't know if that would be admissible, so I decided to  
 6 focus my report on things that I felt were more important.  
 7 Q Okay, But you did review those things?  
 8 A Certainly did.  
 9 Q Okay, But you -- now we'll talk about, you did not  
 10 review a 27 page statement that was given by the defendant  
 11 to detectives back in July 2001?  
 12 MS, ZALKIN: Asked and answered, Your Honor.  
 13 Object,  
 14 THE COURT: Sustained.  
 15 MS. DIGIACOMO: Okay.  
 16 BY MS. DIGIACOMO:  
 17 Q When you were reviewing the reports regarding the  
 18 rape of Diane Parker a week before, did that come into play  
 19 with regard to your statement that there was directed anger  
 20 motives here?  
 21 A No.  
 22 Q Okay, So the defense didn't ask you that well,  
 23 there's directed anger here, can you look to see if there's  
 24 similarities between the rape and this crime scene to see if

XV11-35

TURVEY - CROSS

1 blood in her car if she admitted during that statement that she  
 2 had blood on her when she got in her car?  
 3 A That could be important, certainly,  
 4 Q Okay. But you chose not to look at that?  
 5 A Again, now maybe I can answer this question. This  
 6 is the issue. When you have again, a biasing influence, such  
 7 as a suspect statement, you want to try to be as objective and  
 8 as clean as possible with respect to your interpretation of the  
 9 evidence. So you try to look very hard at what the physical  
 10 evidence says without any biasing influence from the  
 11 statements of the suspects. There's a great mass amount of  
 12 literature on this with respect to crime or construction. Try to  
 13 keep very specific to the crime scene, very specific to the  
 14 evidence, very objective to your findings. And at some point  
 15 you will have a report and that will be compared by someone  
 16 else to the statement, so that you're not influenced one way or  
 17 the other by what a suspect may or may not have said that  
 18 they touched or did. I try to keep -- again, I'm trying to keep  
 19 objective as to my analysis,  
 20 Q So the fact that she may have admitted there was  
 21 blood in her car, that would not change your opinion regarding  
 22 the fact that there is no blood in the red Fiero?  
 23 MS, ZALKIN: Objection, Your Honor, misstates  
 24 testimony. There was blood on her clothes, not in her car, I

XVII-37

TURVEY - CROSS

1 believe.  
 2 THE COURT: Overruled.  
 3 THE WITNESS: It certainly would not. And the  
 4 reason why is you can't change the testing. There is no  
 5 suspect or witness statement on the plant that can change the  
 6 results of the forensic testing. The physical evidence comes  
 7 first. It is the most objective record of what occurred at the  
 8 scene. Does not matter what witnesses may or may not have  
 9 said.  
 10 MS, DiGIACOMO: Okay, So —  
 11 THE WITNESS: Only the physical evidence — the  
 12 physical evidence comes first,  
 13 BY MS. DiGIACOMO:  
 14 Q Even if she admitted there was blood in her car, the  
 15 fact that they could not confirm it means that no blood could  
 16 be in that car?  
 17 A The physical evidence comes first. Her — what she  
 18 may or may not have said about blood in her car does not  
 19 change the results of the evidence. You can't change the  
 20 science. Doesn't work that way.  
 21 Q Right. And you said before that once you come to  
 22 that conclusion, no blood in the car because it couldn't be  
 23 confirmed, you have to throw that out the window, right?  
 24 A I would say you have to let it go.

XVII-38

TURVEY CROSS

1 crime scene --  
 2 Q Right.  
 3 -- there would be a link to the crime scene?  
 4 Q Right.  
 5 A Yes, there would.  
 6 Q Right. But if we don't have those clothes to test we  
 7 don't know if there was any link there, correct?  
 8 A If we do not have the clothes to test, we do not  
 9 know —  
 10 Q Right.  
 11 A -- that is correct.  
 12 Q Same with the knife. We don't have the knife that  
 13 she said she had, so we have no idea whether or not that  
 14 would link her back, correct?  
 15 A We do not have a knife in this case that links her to  
 16 the crime, that's correct.  
 17 Q But is it possible that there could've been a knife  
 18 that was discarded by the assailant and we don't have it?  
 19 A It would be extremely inappropriate to suggest that  
 20 without any evidence of any knife.  
 21 Q Well, don't we have evidence that the victim  
 22 suffered incised wounds? That's in your report,  
 23 A I'm talking about a knife associated with the  
 24 defendant. You're asking me to accept a hypothetical based

XVII-40

TURVEY - CROSS

1 Q You have to -- that's right, you have to let it go —  
 2 oops, and I let my pen go.  
 3 A There you go. Exactly so,  
 4 Q So you let it go? So it makes no difference whether  
 5 or not it was her car and she admitted there was -- or she  
 6 could've admitted there was blood in the car? Makes no  
 7 difference, gone, no blood in the car?  
 8 A Again, there's no suspect or witness statement that  
 9 can change the evidence.  
 10 Q All right. And so it wouldn't have made any  
 11 difference to either the fact that she had discarded -- she had  
 12 stated she discarded the clothes she was wearing as well as  
 13 the knife?  
 14 A I can't comment on evidence that I don't have.  
 15 Q Right. And we don't have that. So if we had it and  
 16 it could've been tested, then maybe you could say there was  
 17 physical evidence or no physical evidence linking her to the  
 18 crime scene?  
 19 A I don't think I understand that question.  
 20 Q Well, let's just say clothes were found in her car with  
 21 blood on it.. If that blood come be linked back to the crime  
 22 scene, then there would be something linking her to the crime  
 23 scene?  
 24 A If there was blood in the car linking her back to the

XVII-39

TURVEY - CROSS

1 on the existence of a knife that doesn't exist.  
 2 Q Well, she said in her statement that there was a  
 3 knife that she discarded?  
 4 A That may be the case, but we don't have it. Again,  
 5 the physical evidence comes first,  
 6 Q Right. And if we had it and it could've been tested,  
 7 that may or may not have changed your opinion?  
 8 A This building may move 2 inches in the next 5  
 9 minutes, that's possible too, but we don't have -- we can't  
 10 comment on these things that look into the future like a crystal  
 11 ball, doesn't work that way.  
 12 Q Well no, I'm asking you, based on the evidence you  
 13 did see, there's evidence you didn't see, correct?  
 14 A I can't comment on evidence I didn't see. I don't  
 15 know if it exists if I didn't see it.  
 16 Q So you're just here to basically tell us what the other  
 17 witnesses already testified to then?  
 18 MS. ZALKIN: Objection, asked and answered, Your  
 19 Honor.  
 20 THE COURT: Sustained.  
 21 BY MS. DiGIACOMO:  
 22 Q Now you — you come in after the fact and you look  
 23 at all the evidence and you look at the witness statements that  
 24 you choose to look at and you look at the testimony you

XVII-41

TURVEY - CROSS

1 choose to look at in making your determinations about your  
2 crime reconstruction?

3 A Is that a question?

4 Q Yes, You come in after the fact, correct?

5 A I don't know of a case when anyone comes in before  
6 the fact. Everybody comes in after the fact, from law  
7 enforcement on down, We all do, yes.

8 Q Well — okay. Well, when I'm talking about after the  
9 fact, I'm talking about you're not at the crime scene, correct,  
0 after the body is found?

1 A I'm not at the crime scene during the interval in  
2 which it's being processed. Even if I'm working with the  
3 police, I would not do that, no.

4 Q Okay. And you -- in the majority of your cases  
5 you're hired by private persons to do that?

6 A That is -- in almost no cases am I hired by private  
7 persons. I think I've been hired by private persons maybe a  
8 couple times in my entire career.

9 Q So you're not hired in this case to come in here?

10 A Not by a private person, no.

11 Q Who hired you in this case?

12 A I'm working for the State's -- I'm appointed as an  
13 expert by the special public defender's office, which is the  
14 State.

XVII-42

TURN/EY - CROSS

1 Q But you said you're being paid by the special public  
2 defender's office?

3 A By the State, yes.

4 Q Okay. You're saying the State. Is the public -- the  
5 special public defender's office, that is a state entity to you?

6 A It certainly is.

7 Q Okay, Even though it's actually a county entity  
8 here?

9 A It's -- the state being a term of art to mean any  
10 state -- anything working for the State government or local  
11 government.

12 Q Okay. So when we use the term in this courtroom  
13 that State refers to prosecution, that's not the way you're  
14 using it?

15 A No, it certainly is not.

16 Q Okay, So how much are you getting paid to be  
17 here?

18 A Previously -- to be here? I don't —

19 Q Well, how much have you gotten paid total in this  
20 case from the special public defender's office?

21 A Let's see, my previous bill was for around \$4,000.  
22 That was to the date of my report. And then I guess the  
23 longer I'm here, the more my bill grows. I bill by the hour,  
24 so -

XVII-44

TURVEY - CROSS

1 Q Okay. So it wasn't Ms. Greenberger that hired you?

2 A She brought me into the case early on, but that's not  
3 who's paying me,

4 Q Okay. Okay. The special public defender's office is  
5 paying your fees?

6 A That's correct.

7 Q But you were hired by the private attorney?

8 A A private attorney, yes, but they are not a private  
9 individual, they're an officer of the court. That's a very —  
10 great distinction. It's not like someone who has no legal  
11 authority or obligations of our case. You said a private  
12 individual. I've worked -- I have worked on occasion for  
13 private individuals and I don't care for it. Maybe once or twice  
14 in my career. But working for attorneys I would not call  
15 working for a private individual, so maybe that's where the  
16 misunderstanding is occurred,

17 Q Okay, Well, in this case were you hired by the  
18 prosecution?

19 A I certainly was not.

20 Q Okay. In this case were you hired by the defense?

21 A Yes, I was.

22 Q Okay, And it was a private attorney that brought  
23 you into this case?

24 A Initially, yes.

XVII-43

TURVEY - CROSS

1 Q And how long have you been here for?

2 A I've been here for 9 days waiting to testify.

3 Q All right, And so have you had to pay for your own  
4 hotel?

5 A No, they put me up at the Four Queens,

6 Q Okay. And have you -- they've been paying for your  
7 meals as well?

8 A They give me a \$50 per day per diem.

9 Q And so you've been here for 9 days, Are they gonna  
10 -- did they pay for your plane ticket out here and back?

11 A They did. They gave me a round trip ticket,

12 Q And how much do you pay -- are you getting paid  
13 hourly?

14 A Well, I tried to work that out. I wanted to make  
15 sure I wasn't over billing. I'm not like a million dollar expert or  
16 even a \$100,000 expert, or even a \$50,000 expert. I -- it's  
17 gonna be right now just under \$7,500.

18 Q Well, how much is that an hour? Is it different hours  
19 in court versus out of court?

20 A It -- no, it is not. I'm billing the same because it's  
21 part of traveling and doing pretrial prep work and work on site,  
22 so it's about 195 an hour. It's not about 195 an hour, I  
23 apologize, it is 195 an hour. For some of the days I've billed 3  
24 or 4 hours, and for some of the days I've only billed for 2

XVII-45

TURVEY - CROSS

1 hours,  
 2 Q Okay. So you're only billing while you're here when  
 3 you're working on the case?  
 4 A While I'm here, when I'm working on the case. I'm  
 5 not billing for the time that I took my wife out to dinner or  
 6 things like that.  
 7 Q Oh, so your wife came with you?  
 8 A I got lonely waiting 9 days. I brought my wife  
 9 down. I got --  
 10 Q Is that a yes then?  
 11 A That's a yes. paid to bring her down,,  
 12 Q Okay. And how long ago did she come and join  
 13 you?  
 14 A She joined me on the third day when it became clear  
 15 that I wasn't gonna be coming back anytime soon.  
 16 Q And when you're doing this objective analysis of all  
 17 the evidence and reports and everything you review, you kinda  
 18 get to pick and choose what you agree with and what you  
 19 don't, correct?  
 20 A I don't think that's the case at all,  
 21 Q Well, I mean there's been testimony that there  
 22 wasn't blood droplets on the ground by the footwear  
 23 impressions, but you disagree... I mean you're the expert,  
 24 right?

XV11-46

TURVEY - CROSS

1 Q Right. But you understand, you're a part of this  
 2 whole process, you're an expert witnesses in cases like this.  
 3 This isn't the first time you've testified in court You're aware  
 4 that there's legal rules that control what evidence comes in  
 5 and comes out, correct?  
 6 Q I certainly am  
 7 Q Okay. But you're still gonna sit here and make your  
 8 opinions without any knowledge of what rulings there might -  
 9 have been or what rules of evidence might effect things?  
 10 A I'm not a legal scholar, ma'am, I'm really not, I'm a  
 11 forensic scientist and I'm just giving my opinion to questions  
 12 that I'm asked,  
 13 Q I didn't ask you that.. You went above and beyond  
 14 the question. You're not answering just the question, sir. If  
 15 you'd answered just the questions, it would've been yes or no.  
 16 MS. ZALKIN: Objection, argumentative, Your Honor.  
 17 MS. DiGIACOMO: That's fine. I'll withdraw.  
 18 BY MS. DiGIACOMO:  
 19 Q Now you also — you do kinda pick and choose what  
 20 you agree with when you're looking at the evidence, and more  
 21 specifically, let's talk about the white paper towels. You know  
 22 what I'm talking about there?  
 23 A I am -- I do know what you're talking about there,  
 24 Q Okay. And you picked and choosed [sic] who you

XVII-48

TURVEY - CROSS

1 A I don't think that states the testimony accurately,  
 2 that's the first thing. But the second thing is I don't see a  
 3 report from anyone saying that that's the case. I think  
 4 somebody was asked that on the stand and didn't look very  
 5 closely at the pictures. We don't have a full blow by blow  
 6 analysis of that concrete area in the enclosure looking for  
 7 exactly how many footwear patterns were there, looking for  
 8 exactly how many blood drops were there, what was  
 9 distributed to who. This is all very fast and loose for my taste.  
 10 So no, I don't necessarily agree with those opinions,  
 11 Q Fast and loose for your taste?  
 12 A A little too fast and loose for my taste, yes,  
 13 Q In fact, you have been giving quite a few comments  
 14 that you disagree with the way this investigation has run,  
 15 correct?  
 16 A I certainly do.  
 17 Q Okay, And you disagree with the way the witnesses  
 18 have come in and testified?  
 19 A I disagree with the way — we talked about one  
 20 witness yesterday that has testified in a manner that withheld  
 21 potentially exculpatory evidence, and that is completely  
 22 improper —  
 23 Q Okay, But --  
 24 A -- no matter what rules you're operating under,

XVII-47

TURVEY - CROSS

1 believed regarding those white paper towels, didn't you?  
 2 A No, I certainly did not. I picked and choosed [sic]  
 3 who was believable, based on what the evidence says. The  
 4 evidence, to me, there's several photographs that are very  
 5 clear that there looks to be something that appears to be a  
 6 paper towel there, then you have a coroner who's saying that  
 7 they saw one removed and packaged away,  
 8 Q No. Excuse me, if I can correct you. Not a coroner.  
 9 A A coroner's investigator, my apologies .  
 10 Q Okay. Right. So the two CSAs who were at the  
 11 scene said that they did not see white paper towels stuffed in  
 12 the opening, correct, they testified to and you watched their  
 13 testimony, correct?  
 14 A I did. I did watch that testimony,  
 15 Q And it's in CSA Renhard's report that there were no  
 16 paper towels?  
 17 A No, there's an absence of a reference to paper  
 18 towels. There's not a statement that says there is no paper  
 19 towels, That misstates the report.  
 20 Q Well, it says that there's white paper towels on top  
 21 of the plastic found on the body, correct?  
 22 A That's correct,  
 23 Q So it's your belief that they just skipped right over  
 24 the white paper towels that were stuffed into the opening?

XVII-49

TURVEY CROSS

1 A No, it's not belief of that. Again, we're looking at  
2 photographs that actually show what I believe to be the paper  
3 towels are. And we have them admitting to throwing away  
4 mountains of other evidence. So it's not just — we're not just  
5 looking at one thing out of context, we're looking at a total  
6 procedural problem.

7 Q So you're judging the credibility of these witnesses  
8 when you're making your decisions, correct?

9 A No, I'm judging the credibility of the evidence and  
10 their examination of it.

11 Q You just said that you thought that the coroner's  
12 investigator was more believable, correct?

13 A Because her opinions are based on things that we  
14 can see in the evidence that's -- that are --

15 Q So you got a picture with white paper towels stuffed  
16 into the opening?

17 A We have a picture with white paper towels  
18 underneath the plastic,

19 Q Right, I asked you, did you see a picture of white  
20 paper towels stuffed into the opening?

21 A No, but for the purposes of --

22 Q Thank you. You answered by question. Now you  
23 come in -- you came into this case four years after, correct?

24 A Let's see, 2000 — yes, that's correct.

XVII-50

TURVEY - CROSS

1 under, I'm not out to prove anyone guilty, anyone in this —  
2 I'm looking at everything as potentially exculpatory.

3 Q Right, And yesterday you also testified the sexual  
4 assault kit, the cigarette butts, the white paper towels  
5 should've all been collected and tested a long time ago,  
6 correct?

7 A It should have,

8 Q As well as the plastic sheet, which is in addition to  
9 your report, correct?

10 A It should have, yes.

11 Q And you said that DNA -- Thomas Wall, the DNA  
12 criminalist Thomas Wall, should've been able to extract DNA  
13 after positive phenolphthalein tests, correct?

14 A If it was there,

15 Q If it was blood there. You said that the vomit  
16 should've been collected and tested, correct?

17 A It should've been, yes.

18 Q You said that the sense you got from the  
19 investigators is that the evidence -- that evidence was missed  
20 or not found, correct?

21 A I'm not sure if that's correct. Could maybe you ask  
22 that in a different way? I don't recall that specific —

23 Q I wrote down a —

24 A seems sort of general,

XV11-52

TURVEY - CROSS

1 Q And pretty much all you — you're testifying to is the  
2 mistakes that the investigators, as well as other witnesses,  
3 have made?

4 MS, ZALKIN: Objection, misstates the testimony.

5 THE COURT: Sustained.

6 MS, DiGIACOMO: Okay.

7 BY MS. DiGIACOMO:

8 Q Well, yesterday you said big mistake, jaw dropping  
9 that all the evidence in this case was not collected, correct?

10 A I did.

11 Q And you also said mountains of potentially  
12 exculpatory evidence was not examined, correct?

13 A I did,

14 Q Now you're an objective observer in all of this,  
15 correct?

16 A I try to be as objective as possible, yes.

17 Q So why would you use the term "exculpatory"?

18 A Because it's -- I said "potentially exculpatory" is what  
19 I said\_

20 Q Potential exculpatory, it could be potentially  
21 inculpatory too, couldn't it?

22 A It is, it could be potentially inculpatory\_

23 Q But you said potentially exculpatory?

24 A Because that's the burden of evidence that I operate

XV11-51

TURVEY CROSS

1 Q I wrote down a quote that you said the sense you  
2 got from the investigators or investigation is that evidence was  
3 missed or not found?

4 A That doesn't sound right, And I'd have to see the  
5 context of that before I agree to it. I apologize.

6 Q You did say that the police should have put up  
7 police tape where the police car was in the photograph?

8 A Absolutely,

9 Q And just worked in the dark, correct?

10 A No, they should've brought in alternate lighting.  
11 There's many options for alternate lighting available to law  
12 enforcement and to anyone else. Anyone who's seen  
13 construction working at night, they have the big lights out  
14 there. They can just get them and set them up, or wait `till  
15 the morning.

16 Q Should've taken --

17 A Secure it and wait `till the morning.

18 Q Okay, And they should've taken the photographs of  
19 the footprints after the sun came up, when the sun was out,  
20 correct?

21 A They should've taken photographs of everything --

22 Q The silver —

23 A -- after the sun came up.

24 Q The silver box should not have been in the crime

XV11-53

TURVEY - CROSS

1 scene for the analysis?  
 2 A Certainly should not have been, that's correct.  
 3 Q Right. The luminol should not have been done at  
 4 the crime scene? Or excuse me, the luminol testing should've  
 5 been done at the crime scene?  
 6 A Certainly.  
 7 Q Okay, And that you made several comments too  
 8 yesterday about the credibility of some of the State's  
 9 witnesses, as well as the defense witnesses, you agree with  
 10 that?  
 11 A No.  
 12 MS. ZALKIN: Objection, misstates testimony.  
 13 MS. DIGIACOMO: Your Honor, you had to admonish  
 14 him yesterday.  
 15 THE COURT: I'm gonna overrule that objection,  
 16 THE WITNESS: Can you give me a specific  
 17 example?  
 18 BY MS. DIGIACOMO:  
 19 Q Well, for example, you just testified again about  
 20 Kristina Paulette and how unprofessional she was?  
 21 A You asked me and I told you. I agree that -- not  
 22 just -- not unprofessional, it's unethical,  
 23 Q Okay. Excuse me --  
 24 A It's not unprofessional, it's unethical.

XV11-54

TURVEY - CROSS

1 making a call, it's so evident that -- to not notice it up is --  
 2 would be unprofessional on my part. This is --  
 3 Q So even though you realize you're invading the  
 4 province of the jury when you comment on the credibility of  
 5 other witnesses, it's your duty to bring that up?  
 6 A In this particular instance when you have a forensic  
 7 scientist withholding potentially exculpatory evidence, it's  
 8 absolutely vital that we know that this is something that  
 9 professionally is unacceptable. In the community there's  
 10 specific ethical guidelines that must be followed, and one of  
 11 them has been broken in this case.  
 12 Q Okay. And that's your opinion, correct?  
 13 A Yes.  
 14 Q And you've also commented on the credibility of a  
 15 defense witness in this case, correct?  
 16 A I have,,  
 17 Q Dr. Laufer?  
 18 A No, I have not.  
 19 Q Didn't you commend him yesterday for -- yeah, you  
 20 recall now?  
 21 A Negatively -- I thought you meant negatively,  
 22 Q No. No. You commended him for the work he did  
 23 in this case yesterday in front of the jury.  
 24 A No, I don't think I commended him, I thought -- I

XV11-56

TURVEY - CROSS

1 Q Sir, can you --  
 2 MS. DIGIACOMO: Your Honor, I'd move to strike.  
 3 He did not answer my question,  
 4 THE COURT: Motion granted. Please listen to the  
 5 question and do your best to answer it,  
 6 THE WITNESS: I apologize, Your Honor. I really  
 7 am.  
 8 BY MS DIGIACOMO:  
 9 Q You stated several times that you thought Kristina  
 10 Paulette was unprofessional, correct?  
 11 A I don't believe that was my testimony at all. I  
 12 believe I stated that it was unethical --  
 13 Q Okay, Well, yesterday --  
 14 A -- not unprofessional.  
 15 Q If I wrote down unprofessional from yesterday, that  
 16 would be incorrect?  
 17 A I'm not saying that I'm saying that I don't recall  
 18 saying unprofessional, that she was an -- unethical would be  
 19 the word.  
 20 Q Okay,  
 21 A And I guess -- I guess they're synonyms.  
 22 Q Okay. And you can make that call that she's  
 23 unethical, correct?  
 24 A Her behavior telegraphs it. I don't -- it's not about

XVIT-55

TURVEY - CROSS

1 said I thought his opinion strengthened my findings. I didn't  
 2 say -- I didn't commend him.  
 3 Q You did use the word his findings were impressive or  
 4 you found him impressive?  
 5 A Yes, I did say his findings were impressive. I didn't  
 6 say he was impressive --  
 7 Q Okay.  
 8 -- I said his findings were impressive,  
 9 Q His findings were impressive. And that would be a  
 10 positive comment on that witness, correct?  
 11 A On his findings, not necessarily on his character or  
 12 his credibility. I'm commenting on whether or not I believed  
 13 his findings were impressive, and his findings were impressive  
 14 to me,  
 15 Q Sir, isn't it true really what you've been testifying to  
 16 for the last two days, it's what we call Monday morning quarter  
 17 backing?  
 18 A No, it is not,  
 19 Q Why not?  
 20 A Because it is absolutely vital that when crime scene  
 21 processing is done it be done with the mind set that at some  
 22 point a third party is going to review processing effort and ask  
 23 questions of it, a judge, a jury, attorneys for the defense or  
 24 the prosecution, other investigators or other forensic scientists.

XVII-57

TURVEY - CROSS

1 That's the purpose of it. If there was no -- the whole purpose  
 2 of doing the crime scene processing is to provide for the type  
 3 of analysis that I do. So it's not Monday morning quarter  
 4 backing, it's part of the process.

5 Q But you're not there on the field making the calls,  
 6 correct?

7 A I certainly am not.

8 Q Okay. You're not there for any of the tough  
 9 decisions, what do we collect, what do we don't collect,  
 10 correct?

11 A I certainly am not.

12 Q You're coming in on Monday morning and you're  
 13 making the calls what you think should've been done on  
 14 Sunday, correct?

15 A I think that's a gross mischaracterization and a gross  
 16 oversimplification of what I've done in this case.

17 Q So you're not coming in after the fact and making  
 18 your critiques and/or criticisms about what -- how this case  
 19 has been handled?

20 A Well, certainly that's been part of the things -- of the  
 21 testimony that I've given, but it's not the sum of the testimony  
 22 that I've given, Its not the only thing I've done. To say that  
 23 that's what I've done and that's all that I've done is a  
 24 misrepresentation.

XVII-58

TURVEY - CROSS

1 Q What else have you done?

2 A Again, I think I gave an entire report yesterday  
 3 talking about the evidence that I examined and the  
 4 conclusions that I reached, 1 through 5 based on that  
 5 evidence. So that's more than just —

6 Q Right. But that —

7 A -- Monday morning quarter backing.

8 Q Well, did you test any of the evidence yourself?

9 A I made an examination of the evidence in terms of  
 10 what was provided to me, and then I gave an interpretation. I  
 11 did not perform physical or chemical tests on the evidence, if  
 12 that's what you're asking,

13 Q Okay. So you took everything that was done in this  
 14 case and after the fact you made a call what you thought  
 15 should've been done or how it should've been handled?

16 A That's part of it, but I also made an interpretation  
 17 based on what had been done, and that's absolutely -- and  
 18 you make -- you may characterize it as Monday morning  
 19 quarter backing, but that's also called independent review, and  
 20 it's a vital part of the court process, in my view.

21 Q Right, But isn't that the jury's job to do independent  
 22 review, look at everything that's been presented and they get  
 23 to make the call --

24 A Not in expert areas.

XVII-59

TURVEY CROSS

1 Q -- how to view the evidence?

2 A Not in expert areas. In expert areas, what we're  
 3 talking about alternative interpretations or what the evidence  
 4 may — what evidence may be tested or collected. I'm not here  
 5 to tell them the facts, I'm here to tell him what my opinions  
 6 are about the nature of the evidence, and then they can take  
 7 that into consideration when they deliberate.

8 Q So you believe every contact leaves a trace, correct?

9 A That is the fundamental premise of forensic science.

10 Q Okay. But it is possible that there are times when a  
 11 contact will leave a trace and it's not found or it has been  
 12 disrupted, correct?

13 A That's correct

14 MS. ZALKIN: Objection, compound, Your Honor,  
 15 and asked and answered.

16 THE COURT: The Court will sustain the objection as  
 17 to compound.

18 BY MS. DiGIACOMO:

19 Q So there are times when a contact will leave a trace  
 20 and it's not found?

21 A That's correct.

22 Q All right, Let me give you a hypothetical. Think  
 23 about a lake with a long pier at the end of it. And this person  
 24 Bob knows about this pier, he's been out there many, many

XVII-60

TURVEY - CROSS

1 times fishing, it's not a well traveled area, correct -- or I mean  
 2 think about it, okay?

3 A Okay.

4 Q So then you've got his buddy Joe that comes in, and  
 5 Joe's gonna sell him drugs at the end of that pier. And they  
 6 go out to the end of that pier because they know no one's  
 7 gonna see 'em. There's nobody else around, it's only Joe and  
 8 Bob at the end of that pier.

9 A Okay,

10 Q Joe changes his mind, he just doesn't want to sell  
 11 him the drugs, wants all of Bob's money, just wants to rip him  
 12 off. Bob gets mad. Bob pushes Joe over into the water,

13 A Okay.

14 Q So again, the only two of them that were down  
 15 there are Bob and Joe.. Bob pushes Joe into the water. Three  
 16 days later Joe's body washes up on the shore, and it's been  
 17 degraded and decomposed and partially eaten. And the  
 18 coroner rules it as a drowning, okay. So at this point we don't  
 19 even have necessarily a homicide, do we?

20 A That's correct,

21 Q All right. Now Bob's conscious is getting to him, and  
 22 within a week or so of knowing what he did, because he just  
 23 left and never tried to help Joe, it's getting to him, so he tells -  
 24 - he confides in one of his friends what he possibly had done.

XVII-61



TURVEY - CROSS

1 He eventually goes to the police and tells him what he's done,  
 2 A Okay,  
 3 Q Now is there any way to prove that Bob was at the  
 4 end of that pier and pushed Joe into the water?  
 5 A Not at the end of the pier. But I think you would go  
 6 back through the entire story, frame by frame. You'd get the  
 7 entire story in a long movie-like sequence, frame by frame,  
 8 and then you would look to establish and investigate the  
 9 components of that story and be assured that every  
 10 component that could be established was established.  
 11 Q Now if it was several weeks before this came to light  
 12 that Bob was at the end of the pier and you're the investigator  
 13 out there, how do you go about investigating what had  
 14 happened when the body washes up?  
 15 A I would think this is criminal investigation 101.  
 16 You're gonna take a look at the statement and you're gonna  
 17 go through it again frame by frame, and look for every place  
 18 that the person --  
 19 Q Okay. I'm --  
 20 A -- claims to have had a contact with, and look at the  
 21 forensic evidence that would've been available to establish that  
 22 contact,  
 23 Q But you're assuming that the investigation's being  
 24 done after Bob comes to the police and tells them what he did,

XV11-62

TURVEY - CROSS

lake?  
 2 A This really isn't my way, this is again, N13, the  
 3 National Investigation — National Institute of Justice —  
 4 Q Well, what if —  
 5 A -- came out with guidelines in 1999, very clear, very  
 6 specific, every scene, every time. Not my guidelines, the  
 7 guidelines.  
 8 Q These are these guidelines, but you do agree that  
 9 there are times where you're at a scene and you can't possibly  
 10 follow every guideline?  
 11 A I think that's fair. I think there's a lot of room for  
 12 judgment.  
 13 Q Right. I mean let's think if it was Lake Mead, Are  
 14 you gonna drown [sic] the entire Lake Mead?  
 15 A Drain the lake? No, certainly not. Again, like I said,  
 16 depends on the size of the lake, it depends on the context.  
 17 You might send divers down —  
 18 Q What if this pier —  
 19 A — might drag the lack.  
 20 Q Okay. What if this pier is at the end of the ocean?  
 21 Are you gonna send divers in there?  
 22 A Certainly.  
 23 Q What are the divers gonna be looking for if there's  
 24 no evidence of any wounds or foul play on the body?

XV11-64

TURVEY - CROSS

1 and they have the statement, correct?  
 2 A You could still go back and redo it.  
 3 Q You could still go back and redo it. But at the time  
 4 that the police find the body and it washes up, do they have  
 5 any of this information?  
 6 A No, they don't, which is why you gotta - -which is  
 7 why the guidelines for processing crime scenes, the national  
 8 wide ND guidelines state every scene, every time has to be  
 9 done the exact same way with the exact same level. You  
 10 gotta assume it's a homicide every time.. If you don't do it that  
 11 way you're operating against national guidelines.  
 12 Q So even though the body washes up you're just  
 13 gonna assume it's a homicide. Okay. Let's say they assumed  
 14 it was a homicide, they processed the scene because the body  
 15 washed up a mile down shore from where the pier is. When  
 16 they investigate that body and they find it, what crime scene  
 17 are they gonna process?  
 18 A Well, your first thing you're gonna do is you're  
 19 gonna secure the lake and you're gonna secure access to the  
 20 lake, then you're gonna drain it, you're gonna look for any  
 21 possible weapons or maybe send divers in. There's a myriad  
 22 of things we can talk about. Do we want to do the whole  
 23 investigation?  
 24 Q So if we're doing it your way, we would drain the

XV11-63

TURVEY - CROSS

1 A It's like a crime scene, I mean you don't know what  
 2 you're looking for until you find it, You're -- but then at the  
 3 same time I wasn't just talking about the water. There's the  
 4 body of water, then there's the area around the body of water,  
 5 and there's the area that gives you access to the body of  
 6 water. All these areas that must be traversed by the person.  
 7 Then on top of that, how did he get out to the lake? Did he  
 8 get out, did he walk, did he take a vehicle? If he took a  
 9 vehicle, is there an association, any evidence between -- that  
 10 associates the vehicle with the crime? I've worked cases  
 11 where you can make that association right away, I've worked  
 12 cases where you gotta work hard to make that association.  
 13 But you —  
 14 Q And so in --  
 15 A — you gotta put in the time.  
 16 Q -- in every case that you've worked, have you  
 17 always found the trace from the contact?  
 18 A No,  
 19 Q I mean so it is possible that you have those times  
 20 where you can't find the contact -- or the trace regarding the  
 21 contact, but you do have that the suspect did the crime?  
 22 MS, ZALKIN: Objection, asked, answered, and  
 23 argumentative.  
 24 THE COURT: Overruled.

XV11-65

TURVEY CROSS

1 THE WITNESS: Yes,  
 2 BY MS. DIGIACOMO:  
 3 Q Now you said that one of the things you were asked  
 4 to do here is to examine the motive of the person who did this  
 5 killing, is that fair?  
 6 A The general motive. Not the specific like sort of  
 7 psychological state of mind or that sort of thing, but a general  
 8 motivation.  
 9 Q All right. And you mentioned four types of  
 10 motivation yesterday, profit, power, sexual, and anger?  
 11 A And there's also, like I said, sadistic, which would be  
 12 a fifth kind.  
 13 Q Okay. What do you mean by profit?  
 14 A Profit means somebody's killing something for a  
 15 gain,  
 16 Q And what do you mean by power?  
 17 A By power it means that the whole purpose of the  
 18 crime is committed to validate or reenforce a sense of  
 19 inadequacy on their part. It's very common among rapists, for  
 20 example, who demean and degrade their victims while they're  
 21 committing the rape, or who demean and degrade themselves  
 22 while they're committing the rape.  
 23 Q What is a sexual motive then?  
 24 A That would be simply to gratify sexual desires or

xvi1-66

TURVEY - CROSS

1 didn't need to spend doing. They took extra time to do this  
 2 particular act. That's pretty important,  
 3 Q Now you can't tell us why the person was angry,  
 4 though?  
 5 A Well, I don't think so. I think that would be  
 6 inappropriate. That's what I was talking about, getting into a  
 7 specific state of mind. I wouldn't do that.  
 8 Q Okay. So all you can tell is this person was angry. -  
 9 You can't tell us why?  
 10 A I don't think I can, no.  
 11 Q You can't tell if it was in response to any previous  
 12 experience or identity or anger, that it's just a directed anger  
 13 killing, that's it?  
 14 A Well, sexual in nature, but yes.  
 15 Q This is a sexual killing?  
 16 A It certainly is.  
 17 Q Okay. I'm sorry. You said that within the motives,  
 18 though, it's an -- it's a directed anger motive?  
 19 A Right, but the motive has a sexual component. And  
 20 I testified to this yesterday. The sexual component would be  
 21 the removal of the genitals, the area -- the time -- now I  
 22 don't know -- I can't extrapolate that back to a particular  
 23 event, so --  
 24 Q Right, But that could just be the directed anger to

XVII-68

TURVEY - CROSS

1 needs or urges,  
 2 Q And the anger I mean we kinda talked about  
 3 yesterday. So what would be sadistic?  
 4 A Sadistic is any crime that's committed that gives  
 5 sexual gratification to the offender based on victim's suffering.  
 6 Has to be a victim suffering, has to be alive, and has to be  
 7 getting sexual gratification of some kind. So you gotta show  
 8 all those components. You can't assume them, you gotta  
 9 show 'ern.  
 10 Is that kind of a sub-component of the sexual  
 11 motive?  
 12 A I think so, but it's a very specialized kind because it's  
 13 so rare.  
 14 And you said now in this case it's an angry -- or an  
 15 anger motive?  
 16 A Anger, yes, directed anger.  
 17 And you said directed anger?  
 18 A Yes.  
 19 What's the difference between just anger and  
 20 directed anger?  
 21 A Well, it's not like this individual was just -- just  
 22 beaten, they were beaten and had their penis removed, the  
 23 penis and the testicles removed. So that's directed right at  
 24 that area of the body. It's time spent doing something they

XV11-67

TURVEY - CROSS

1 the person who's doing this?  
 2 A It's a sexual anger, if that makes sense.  
 3 Q It's possible,  
 4 A Yeah. It's a sexual act.  
 5 Q I mean they did ask you to look at whether or not  
 6 there's --  
 7 A Yes.  
 8 Q -- similarities between this case and the rape of  
 9 Diane Parker?  
 10 A Yes, they did.  
 11 Q You testified yesterday that when you have this  
 12 postmortem sexual mutilation that it's usually male on male?  
 13 A That's correct.  
 14 Q Okay. But you're not saying it's not possible it was a  
 15 woman?  
 16 A I certainly am not. I would not exclude that  
 17 possibility.  
 18 Q And you said that in your report, I don't recall if you  
 19 testified to it yesterday, that there's certain reasons why the  
 20 sexual mutilation is done? I believe you listed three reasons in  
 21 your report?  
 22 A No. May I clarify by looking at my report?  
 23 Q Sure.  
 24 MS, DiGIACOMO: And Your Honor, I'm referring to

XV11-69

TURVEY - CROSS

1 page -- I'm not sure, page 8.  
 2 THE WITNESS: Page --  
 3 MS. DiGIACOMO: And I believe it was State's  
 4 Proposed Exhibit 271, marked for identification purposes only  
 5 yesterday.  
 6 THE CLERK: Yes.  
 7 MS, DiGIACOMO: It's 271. Oh, I'm looking at the  
 8 wrong page.  
 9 THE WITNESS: Yeah, I think it's page 7 is what  
 10 you're talking about.  
 11 MS. DiGIACOMO: Yeah, it is page 7. Thank you,  
 12 THE WITNESS: Yeah. That's four.  
 13 MS. DiGIACOMO: Oh, you listed four —  
 14 THE WITNESS: Yeah.  
 15 MS. DiGIACOMO: four. Okay,  
 16 BY MS. DiGIACOMO:  
 17 Q And what are the four different reasons why the  
 18 sexual mutilation is done postmortem?  
 19 A If I may read from my report, since the language is  
 20 better?  
 21 Q If that would help you, yes.  
 22 A It does. To satisfy jealousy, spite, or rage relating  
 23 to a real or perceived sexual rivalry. To punish or torture the  
 24 victim for a real perceived wrong, in other words, retribution.

XVII-70

TURVEY - REDIRECT

1 MS. ZALKIN: Thank you, Your Honor. I will be  
 2 brief,  
 3 THE WITNESS: Thank you.  
 4 **REDIRECT EXAMINATION**  
 5 BY MS. ZALKIN:  
 6 Q Mr. Turvey, you testified with respect to some  
 7 footwear pattern evidence at the scene. I just want to make  
 8 sure that this is what you're referring to,  
 9 THE COURT: Would you identify what you're putting  
 10 up?  
 11 MS. ZALKIN: I'm sorry, Your Honor, this is Exhibit E.  
 12 BY MS. ZALKIN:  
 13 Q Can you see that on the screen, or would you like  
 14 me to approach?  
 15 A I -- is that the whole picture that I'm seeing on the  
 16 screen, or is part of it -- okay. Yeah. That's better. Thank  
 17 you. I can see it perfectly,  
 18 Q Can you identify what that photograph shows?  
 19 A Yes, I can.  
 20 Q What is that?  
 21 A This is a section that was -- of cardboard that was  
 22 found at the scene. The investigators collected it by cutting  
 23 away a portion of it and collecting this portion. This cardboard  
 24 was, to my understanding and testimony and looking at the

XVII-72

TURVEY - CROSS

1 To collect a trophy. To feminize a victim in attempt to  
 2 normalize a sexual assault.  
 3 Q And what do you mean by the last one?  
 4 A Well, I've had a number of cases and there's a  
 5 number of cases cited in the literature where you have  
 6 offender — male offenders who are attacking male victims, and  
 7 it's essentially a homosexual act, maybe against a child, maybe  
 8 against an adult. But they don't want to think of themselves  
 9 as being homosexual, so they cut off the victim's genitals to  
 10 give them the appearance or so they can simulate a sexual act  
 11 with a more female looking person. It's a fantasy component.  
 12 Q Well, these four reasons that you've listed here, this  
 13 is -- this isn't exclusive only to males, is it, it's just —  
 14 A It is not.  
 15 Q — when these crimes are committed, these are the  
 16 four basic reasons why the genitals are mutilated post-  
 17 mortem?  
 18 A They're not the basic reasons, but they're the most  
 19 common I would say.  
 20 Q The most common?  
 21 A In my experience,  
 22 MS. DiGIACOMO: Court's indulgence.  
 23 Pass the witness, Your Honor.  
 24 THE COURT: Redirect.

XVII-71

TURVEY - REDIRECT

1 reports, this cardboard was found on top of the victim's body.  
 2 Q And does this photograph in any way influence of  
 3 change or in any way effect your opinion as --  
 4 A Certainly.  
 5 Q -- testified on cross-examination?  
 6 A It does.  
 7 Q And how so?  
 8 A In this particular case, I associate the footwear  
 9 patterns with the offender, or with the act of the crime itself.  
 10 In this particular case, whoever flipped over -- this indicates  
 11 that the footwear impressions occurred and then at some point  
 12 -- then the cardboard was put on top of the body. So in terms  
 13 of being good temporal evidence, evidence of timing, this  
 14 shows that whoever put the stuff on top of the body then  
 15 walked out of the scene, because we already have bloody  
 16 footwear patterns at the scene once the body is being covered  
 17 with debris. So temporally this associates the footwear  
 18 patterns with the crime.  
 19 Q Is there, or is there not, a spacial association with  
 20 respect to this being found on the body?  
 21 A I believe so. I believe this is found in the area  
 22 preceding the footwear impressions that leave the opening.  
 23 Q Thank you, And to clarify the prosecutor's  
 24 hypothetical, at least in part, is there a difference between

XVII-73

TURVEY - REDIRECT

1 cause of death and manner of death when you're talking about  
 2 drowning  
 3 A There absolutely is.  
 4 Q And what would that be?  
 5 A A cause of death is the way that a body interacted  
 6 with its environment in such a way that caused its demise.  
 7 And that's typically a medical finding, although there are  
 8 coroners who do that who are not medical doctors. And that's  
 9 the -- like a gunshot wound, or a -- it would be gunshot wound  
 10 to the heart, causing the brain to stop or causing the heart to  
 11 stop beating, or a gunshot wound to the head, causing the  
 12 brain to stop. That would be a cause of death.  
 13 A manner of death, as I believe there's already been  
 14 testimony, is a homicide, suicide, natural, accidental, or  
 15 undetermined. That's a more of a forensic determination.  
 16 Q So finding out that someone had, for example, □  
 17 drowned isn't relevant at all to the manner in which they died?  
 18 A Right, There could be a homicidal or non-homicidal  
 19 drownings,  
 20 Q Okay. Thanks. Moving on to another area. Are you  
 21 aware of any cases, recent or otherwise, where statements  
 22 were made by an individual incriminating statements, and yet  
 23 there was no physical evidence?  
 24 MS. DiGIACOMO: Objection, relevance.

TURVEY - REDIRECT

1 MS. ZALKIN: Court's indulgence, Your Honor.  
 2 THE COURT: Yes.  
 3 BY MS. ZALKIN:  
 4 Q Finally, Mr. Turvey, you testified on cross that Ms.  
 5 Greenberger contacted you but that Ms. Greenberger did not  
 6 hire you?  
 7 A Well, she didn't actually -- well, not that day. It  
 8 wasn't that day, and there wasn't a fee agreement between  
 9 me and Ms. Greenberger at that point on that day.  
 10 Q And you -- was there eventually a fee agreement  
 11 with Ms. Greenberger or --  
 12 A With the special public defender's office. And I  
 13 believe Mr. Schieck was on the phone with yourself at the time  
 14 I was originally contacted.  
 15 Q And why is it that Ms. Greenberger did not hire you  
 16 without the special public defender?  
 17 MS, DiGIACOMO: Objection, speculation.  
 18 BY MS, ZALKIN:  
 19 Q If you know?  
 20 A I don't actually know. I mean I'm not privy to that  
 21 necessarily.  
 22 Q Okay,  
 23 MS. ZALKIN: I have nothing further, Your Honor.  
 24 THE COURT: As she added, if you know, the Court

XVII-76

TURVEY - REDIRECT

1 MS. ZALKIN: It was gone into at length on cross,  
 2 Your Honor.  
 3 THE COURT: Overruled.  
 4 THE WITNESS: Yes, I am.  
 5 BY MS, ZALKIN:  
 6 Q And what case was that?  
 7 A I believe recently --  
 8 Q What cases?  
 9 A -- recently there's heavily publicized case by an  
 10 individual named Karr who confessed to the murder of  
 11 JonBenet Ramsey while living in a foreign country, ultimately  
 12 was found that the physical evidence did not match his  
 13 statement whatsoever, He gave all manner of phony  
 14 statements This is a fairly common occurrence in the realm of  
 15 homicide investigation People make false statements quite  
 16 regularly,  
 17 Q And in your expert opinion, was there anything  
 18 wrong with the way that the prosecuting authorities handled  
 19 that? Do you have any desire to critique them, as the  
 20 prosecutor might ask?  
 21 A I wouldn't feel comfortable,  
 22 MS. DIGIACOMO: Objection, Your Honor, relevance.  
 23 That's outside the scope.  
 24 THE COURT: Sustained.

TURVEY RECROSS

1 overrules the objection as it was -- the question was  
 2 rephrased.  
 3 MS, ZALKIN: Thank you, Your Honor,  
 4 MS. DIGIACOMO: The --  
 5 THE COURT: Recross,  
 6 MS. DiGIACOMO: Thank you, Your Honor,  
 7 RECROSS EXAMINATION  
 8 BY MS. DiGIACOMO:  
 9 Q The Karr case that you mentioned that was tied to  
 10 the JonBenet Ramsey case, you talked about he falsely  
 11 confessed, and that's because the DNA evidence didn't connect  
 12 him to the crime?  
 13 A I think that's fairly well established, yes.  
 14 Q Okay.  
 15 A But that's not just because of that. His story was at  
 16 some point meticulously examined and it was shown that he  
 17 was confessing to be at locations where he was elsewhere.  
 18 There's all manner of problems, but the DNA was pretty  
 19 conclusive right up front.  
 20 Q Right, But you realize he had a pretty big motive to  
 21 make that false confession because he was trying to escape  
 22 child molestation charges in the country he was in,  
 23 MS. ZALKIN: Objection, speculation, Your Honor.  
 24 MR, KEPHART: He just answered it.

XVII-75

XVII-77

TURVEY RECROSS

1 THE COURT: Overruled,  
 2 THE WITNESS: I think that would be a speculation.  
 3 I don't know enough about why he confessed. I think there's  
 4 a lot of public speculation as to why. I only know what the  
 5 evidence is.  
 6 BY MS. DIGIACOMO:  
 7 Q Okay. So you've looked at the evidence in this case  
 8 yourself?  
 9 A No, I've seen what's been published and made  
 10 publically available,  
 11 Q Okay, So you haven't seen the -- it made publically  
 12 available the reasons why he had motives to get out of that  
 13 country?  
 14 A It may be,  
 15 Q Maybe you have?  
 16 A No, it may be publically available. I have not read it.  
 17 Q Okay. So you haven't read any news reports?  
 18 A I have read news reports about -- that show a lot of  
 19 commentators speculating as to why they think this might  
 20 have benefitted them or not, but certainly that's not evidence.  
 21 Q The DNA would be evidence?  
 22 A The DNA would be the strongest evidence.  
 23 Q And you said that the section of cardboard that was  
 24 found flipped over on top of the body that had the bloody

XV11-78

TURVEY RECROSS

1 A Yes, it is possible it was one person.  
 2 Q Okay. Now do you do your own footwear  
 3 impression comparisons?  
 4 A No, I do not.  
 5 Q Do you do your own tire impression or tire mark  
 6 comparisons?  
 7 A No, I do not.  
 8 Q So you have to rely on other people who actually cLO  
 9 that?  
 10 A As a generalist, I rely on a great many forensic  
 11 scientists for their input on various issues.  
 12 Q Now you looked at Geller's testimony in this trial,  
 13 correct?  
 14 A Yes, I did,  
 15 Q And he actually says that he can't say that it's the  
 16 same footwear? Similar out soles, but he can't say it's the  
 17 same footwear that left the marks on the cardboard that left  
 18 the marks on the concrete walking out, correct?  
 19 A Because they were partials, yes,  
 20 Q Okay, But it's your belief that it is one person's  
 21 footprint?  
 22 A I'm saying that it's consistent. I mean I'm agreeing  
 23 with Geller, it's difficult to say, but we have bloody footwear  
 24 impressions, and that's why I say there could be more than

XVII-80

TURVEY RECROSS

1 footwears —  
 2 A Yes,  
 3 Q Okay, You said that that strongly associates with  
 4 the killer because you have those footwear impressions and  
 5 then you have the impressions leading out of the dumpster  
 6 area?  
 7 A And the other items being put on top of the body.  
 8 Q Okay, So --  
 9 A On top of the cardboard.  
 10 Q So is it your belief from looking at the evidence that  
 11 the person who didn't kill him was the one that put all the  
 12 other items on top of the body?  
 13 A Well, let me just clarify at this point and say I don't  
 14 know how many people were involved in this crime. I couldn't  
 15 say, All I know is that we have a lot of -- there are people that  
 16 are involved -- one or more persons involved with the  
 17 commission of this homicide, and those people would've been  
 18 involved in turning the cardboard over, putting the objects on  
 19 top of the body, and then closing it off and walking — walking  
 20 out and closing it off.  
 21 Q But it is possible it was just one person —  
 22 A Yes,  
 23 Q -- that did this, left their bloody footprint, flipped it  
 24 over, left the trash, and left?

XVII-79

TURVEY RECROSS

1 one person. I think I've qualified that very carefully.  
 2 Q But that's not my question. You're basing the fact  
 3 that you think it's one person walking out, that's what you just  
 4 testified to, based on the fact you're — you believe that it's the  
 5 same footwear or shoe that made the impression on the  
 6 cardboard, the made the impression on the —  
 7 A I see what you're getting at, What I'm saying is the  
 8 offender flipped it over. And we have somebody with bloody  
 9 footwear then walking out. Geller didn't exclude them, he said  
 10 he couldn't say that they were a match, so we don't know if  
 11 they're a match or not.  
 12 What I'm saying is it's unlikely that you have  
 13 somebody walking around with all these bloody footwear  
 14 patterns and somehow they got out of the enclosure. There's  
 15 only one way out. You can't go out through the top, you can't  
 16 go out through three sides, you gotta go out through the front.  
 17 We know somebody's walking around, they're on the  
 18 cardboard with bloody footwear, and then somebody walks out  
 19 with bloody footwear.  
 20 Q Okay. So my question now was, you'd said when  
 21 the defense counsel asked you that you believe that the  
 22 person who made the footwear impression on the cardboard is  
 23 the same person that walked out and left the footwear  
 24 impressions on the concrete —

XVII-81

TURVEY - RECROSS

1 A I da.  
 2 Q -- correct?  
 3 A I do.  
 4 Q And you're basing that just because it's consistent  
 5 with Geller's report, even though he can't say it's a match?  
 6 A That, and there is no other alternative theory for the  
 7 person getting out of there with those bloody footwear  
 8 impressions. There's no other way out,  
 9 Q Okay. But isn't it possible that these footwear  
 10 impressions could've been made by somebody else who  
 11 stumbled upon the body and decided to get the heck out of  
 12 there?  
 13 A How else were they gonna get out? How were they  
 14 gonna get out without leaving bloody footwear impressions  
 15 through that front door -- through that front area? There's no  
 16 other way out. This is not Star Trek, you can't beam people  
 17 out, spaceships can't come down. There is only one way out,  
 18 Q Okay. Now my question is again, isn't it possible  
 19 that those footwear impressions left on the cardboard, left on  
 20 the concrete were not left by the killer but were left by  
 21 somebody else who came along -- came upon the dead body  
 22 sometime later?  
 23 A And then reburied the body under all the trash?  
 24 Q Yes.

XVII-82

TURVEY RECROSS

1 A I'm not agreeing to that, no.  
 2 Q You're saying reburied the body in the same way.  
 3 How do you know what way the killer did it?  
 4 A You're right, I don't,  
 5 Q So it's possible that maybe there was some other  
 6 trash and that cardboard was face up when somebody else  
 7 went back there and stepped in the blood and stepped on that  
 8 cardboard and hightailed it out of there?  
 9 A I have no evidence of that. That would be sheer  
 10 speculation.  
 11 Q But it's possible?  
 12 A It's possible but terribly unlikely. So terribly unlikely.  
 13 Q Terribly unlikely?  
 14 A Unlikely.  
 15 Q Okay. Unlikely that anybody but the killer could've  
 16 left those bloody footwear?  
 17 MS. ZALKIN: Objection, Your Honor, asked and  
 18 answered,  
 19 THE COURT: Sustained.  
 20 BY MS. DIGIACOMO:  
 21 Q That's why whoever left the bloody footwear  
 22 impressions would've had to have it in the floorboard of their  
 23 car or on the accelerator?  
 24 A We would expect to find some transfer at some

XVII-84

TURVEY RECROSS

1 A I find that possibility -- I think it's possible but again,  
 2 we have so thinly stretched the realm of possibility that I'm  
 3 embarrassed to agree to it. It's embarrassing for me to agree  
 4 to that, but it is possible.  
 5 Q Well, you did not testify that the officers were wrong  
 6 in taking a footwear impression of Richard Shott, the person  
 7 who discovered the body, correct?  
 8 A Of course not.  
 9 Q Okay. So you read his testimony where he stated he  
 10 took hours to call because the only reason he called is he  
 11 thought maybe he might be caught for the crime, somebody  
 12 might've seen him in there, correct?  
 13 A Certainly.  
 14 Q So he testified he wasn't gonna call even when he  
 15 found the dead body?  
 16 A But he did call, But I understand what you're  
 17 saying.  
 18 Q He did, So isn't it possible that somebody else had  
 19 gone in there dumpster diving and made the same discovery  
 20 and hightailed it out of there?  
 21 A Again, and reburied the body in the same way and  
 22 closed it off? Again, we're so thinly stretching, without leaving  
 23 another —  
 24 Q You're -- okay,

XVII-83

TURVEY RECROSS

1 point in the vehicle from the footwear impression -- from the  
 2 footwears, yes,  
 3 Q That's assuming whoever did it got into a car?  
 4 A Yes. And in this case everything suddenly stops,  
 5 according to the crime scene investigator, so that would be  
 6 consistent with somebody getting into a vehicle.  
 7 Q Right  
 8 A Unless we're assuming again they got beamed away.  
 9 Q It would also be consistent with walking off what  
 10 traces of blood you had on your shoe, correct?  
 11 A But it would get -- instead of going from like a lot of  
 12 blood to nothing, it would be slowly diminished, and we don't  
 13 have slowing diminishing in this case, we have -- it just goes  
 14 from almost several full patterns to nothing.  
 15 (Off-record colloquy)  
 16 MS. DIGIACOMO: Court's indulgence.  
 17 THE COURT: It was Defendant's D.  
 18 MS. DiGIACOMO: Yeah -- no, that's not the one.  
 19 I'm sorry, Your Honor,  
 20 BY MS. DIGIACOMO:  
 21 Q I can't find the one I'm looking for, but I did find  
 22 State's Exhibit 142, And I know the camera's in the way —  
 23 A It is.  
 24 Q -- but can you see that?

XVII-85

TURVEY RECROSS

1 A I can.  
 2 Q Okay. And can you see where this footprint ends  
 3 right there?  
 4 A I can.  
 5 Q Okay. And then do you see where the next  
 6 impression is?  
 7 A No.  
 8 Okay. So that person would've gotten into a car?  
 9 That's consistent?  
 10 A I'm not saying that. I'm saying that we have it -- it's  
 11 more consistent that they get into a car at some point. I'm  
 12 saying it goes from that to nothing, so —  
 13 Q Okay. But if it goes from that to nothing, wouldn't  
 14 they have had to get in the car right where the dumpster is?  
 15 They wouldn't have walked it off?  
 16 A If that's all that was there.  
 17 Q Okay, And you're referring to the luminol?  
 18 A That's right, I'm referring to the possibility that we  
 19 have other areas in here that we could've sprayed and  
 20 examined. We don't know.  
 21 Q All right, But based on just the ones that are in  
 22 blood, you agree that it -- it stops there, and as you said, it  
 23 doesn't walk off?  
 24 A I can't physically see any further ones that are as

XVII-86

HOHMAN - DIRECT

1 Q Do you see her here today?  
 2 A Yes.  
 3 Q Can you identify what she's wearing for the record?  
 4 A A black shirt.  
 5 Q When did you —  
 6 THE COURT: Record shall reflect identification of  
 7 the defendant.  
 8 MS. GREENBERGER: Thank you, Your Honor.  
 9 BY MS. GREENBERGER:  
 10 Q When did you first meet, if you can remember,  
 11 approximately?  
 12 A 9 years ago, about,  
 13 Q At that time where was she living?  
 14 A On -- her same house that she's always been at.  
 15 Q And where, what part of town?  
 16 A In Panaca.  
 17 Q When you first met her, were you living there also?  
 18 A Yes.  
 19 Q Taking you to the year of 2001, do you recall seeing  
 20 her in Panaca in July?  
 21 A I do.  
 22 Q Do you remember the first time that you saw her?  
 23 A In July?  
 24 Q In July 2001,

XVII-88

HOHMAN - DIRECT

1 complete as those,  
 2 Q Okay. And that's what you're referring to it doesn't  
 3 walk off?  
 4 A That's correct.  
 5 MS. DiGIACOMO: Pass the witness.  
 6 THE COURT: Redirect.  
 7 MS. ZALKIN: Nothing further, Your Honor.  
 8 THE COURT: You may step down from the stand.  
 9 THE WITNESS: Thank you, Your Honor.  
 10 THE COURT: You're welcome.  
 11 Defendant may call defendant's next witness.  
 12 THE CLERK: Please come all the way forward.  
 13 Remain standing and raise your right hand.  
 14 **CLINT HOHMAN, DEFENDANT'S wrrN ESS, SWORN** □  
 15 THE CLERK: Thank you. Please be seated.  
 16 State your name and spell it for the record, please.  
 17 THE WITNESS: Clint Hohman, C-l-i-n-t  
 18 H-o-h-m-a-n,  
 19 THE COURT: Ms, Greenberger may proceed.  
 20 MS. GREENBERGER: Thank you.  
 21 **DIRECT EXAMINATION**  
 22 BY MS, GREENBERGER:  
 23 Q Good afternoon. Do you know Blaise Lobato?  
 24 A I da.

)0/11-87

HOHMAN - DIRECT

1 A Would've been around the 2<sup>nd</sup>, I believe.  
 2 Q Did you see her in Panaca at that time?  
 3 A Yes.  
 4 Q Can you get off the witness stand and just put your  
 5 initials on the date that you recall seeing her, the first date in  
 6 July of 2001? You can sit down. When do you recall seeing  
 7 her after that day?  
 8 A It would've been the 8<sup>th</sup>, Sunday.  
 9 Q Can you kindly get down again and put your initials  
 10 on that date?  
 11 A Sure.  
 12 Q Do you recall where you saw her on July 8th?  
 13 A It was on the Panaca Springs Dirt Road.  
 14 Q Do you remember approximately what time?  
 15 A It would've been around 11:30ish 'cause I went to  
 16 church that morning.  
 17 Q You went to church that morning?  
 18 A Mm-hmm.  
 19 MS. DiGIACOMO: Is that a yes?  
 20 THE WITNESS: Yes.  
 21 BY MS. GREENBERGER:  
 22 Q What time did you go to church, approximately?  
 23 A At 9 o'clock a.m.  
 24 Q What were you doing when you first saw her?

XVII-89

HOHMAN - DIRECT

1 A I was riding my horse.  
 2 Q Were you alone?  
 3 A Yes.  
 4 Q Can you describe what you saw her doing?  
 5 A She was riding a four-wheeling with Michele Austria  
 6 and they were drinking. I remember seeing a beer,  
 7 Q You remember seeing a beer?  
 8 A Yeah.  
 9 Q Where?  
 10 A In Michele's hand.  
 11 Q This was at 11:30 a.m.  
 12 A Mm-hmm. Yes.  
 13 Q -- on July 8<sup>th</sup>? How do you remember the day of  
 14 July 8<sup>th</sup> specifically?  
 15 A The 7<sup>th</sup> is actually my little brother's birthday.  
 16 Q Did you talk with her on that day?  
 17 A I didn't  
 18 Q How long did you see her for?  
 19 A Just briefly, for —  
 20 Q Was she on the four-wheeler?  
 21 A Yes.  
 22 Q Can you describe where this place is that you saw  
 23 her?  
 24 A Just right outside of town. We're surrounded by

XVII-90

HOHMAN - DIRECT

1 BY MS. GREENBERGER:  
 2 Q When did you see Blaise again after the date of July  
 3 8<sup>th</sup>?  
 4 A After July 8<sup>91</sup>? I don't remember.  
 5 Q Do you remember seeing her any other time after  
 6 July 8<sup>th</sup> in the month of July, 2001?  
 7 MR. KEPHART: Objection, Your Honor, asked and  
 8 answered. He said he doesn't remember,  
 9 THE COURT: Overruled.  
 10 MS, GREENBERGER: You can answer,  
 11 THE WITNESS: What was that again?  
 12 BY MS. GREENBERGER:  
 13 Q I was asking you, do you remember seeing her any  
 14 other date after July 8<sup>1</sup> in the month of July, 2001?  
 15 A No.  
 16 Q How certain are you as you sit here today, that you  
 17 saw her on July 8<sup>th</sup>?  
 18 A 100 percent certain.  
 19 Q 100 percent?  
 20 A Mm-hmm,  
 21 MS. DiGIACOMO: Is that a yes?  
 22 THE WITNESS: Yes.  
 23 BY MS. GREENBERGER:  
 24 Q Did you spend July 7<sup>th</sup> with your little brother for his

XVII-92

HOHMAN - DIRECT

1 desert. It was just right —  
 2 Q And what was it called, the location?  
 3 A Panaca Springs Dirt Road.  
 4 Q Panaca Springs Dirt Road?  
 5 A Yeah.  
 6 Q Is that — well, strike that. Do you know where  
 7 Blaise was living at the time you saw her?  
 8 A At her parents' house.  
 9 Q Is Panaca Spring Road close to her parents' house?  
 10 A Mm-hmm. Yes.  
 11 Q How close?  
 12 A They link the dirt road.  
 13 Q They're connected?  
 14 A Yeah.  
 15 Q Were Michele and Blaise on the same four-wheeler?  
 16 A Yes.  
 17 Q Riding it together?  
 18 A Mm-hmm, Yes,,  
 19 Q How do you know Michele?  
 20 A Just -- everybody knows everybody, it's a small  
 21 community.  
 22 Q Did you see her —  
 23 MR., KEPHART: Objection, Your Honor, leading.  
 24 THE COURT: Sustained,

XVII-91

HOHMAN - DIRECT

1 birthday?  
 2 A I did,  
 3 Q Did you see Blaise any time in between July 2<sup>nd</sup> and  
 4 July 8<sup>th</sup>?  
 5 MR. KEPHART: Judge, objection, He -- she had  
 6 asked was the first time the 2<sup>nd</sup> and when was the next time,  
 7 and he said the 8<sup>th</sup>. Asked and answered,  
 8 THE COURT: Sustained.  
 9 BY MS. GREENBERGER:  
 10 Q Do you remember where you saw Blaise on July 2<sup>nd</sup>?  
 11 A I think it was at the mini mart.  
 12 Q Where would that be?  
 13 A In Panaca,  
 14 Q Did you two go to school together?  
 15 A No.  
 16 Q How did you know Braise?  
 17 A Just friends with -- I actually knew her little sister  
 18 more, but just everybody knows everybody.  
 19 BY MS. GREENBERGER:  
 20 Q I don't believe I have anything further, except one  
 21 thing. Can you just put the time that you saw her on July 8<sup>th</sup>  
 22 on the exhibit —  
 23 A Sure,  
 24 MS, GREENBERGER: And that's Defense Exhibit 33

XVII-93



HOHMAN - CROSS

1 for the record.  
 2 Nothing further.  
 3 THE COURT: Cross.  
 4 MR, KEPHART: Thank you, Your Honor. □  
 5 **CROSS-EXAMINATION**  
 6 BY MR, KEPHART:  
 7 Q Mr, Hohman, how old are you?  
 8 A 21.  
 9 Q Okay.  
 10 THE COURT: Would counsel approach?  
 11 (Off-record bench conference from 2:33:13-2:33:30 p.m.)  
 12 BY MR. KEPHART:  
 13 Q You indicated you're 21 years old, so 9 years ago  
 14 you would've been 12?  
 15 A About, yeah, Yes.  
 16 Q And that's about the time that you met the  
 17 defendant?  
 18 A 12 years no, 'cause I was 11, 11 or 10, 'cause I  
 19 was in the fifth grade.  
 20 Q Okay, And when you were living there, you were  
 21 living with your mom?  
 22 A Yes.  
 23 Q Okay, And you said you believe that your little sister  
 24 was more -- knew the defendant more than you?

XVII-94

HOHMAN - CROSS

1 Q You were working at where?  
 2 A The mini mart.  
 3 Q The mini mart?  
 4 A Yes.  
 5 Q And who was she with?  
 6 A I don't recall that.  
 7 Q By herself then?  
 8 A Could've been.  
 9 Q Okay. Maybe with a whole bunch of friends?  
 10 A Maybe.  
 11 Q Okay.  
 12 A I just briefly remember seeing her.  
 13 Q Okay,, Did you sell her anything?  
 14 A I didn't,  
 15 Q Okay. Were you working where you could sell stuff?  
 16 A Yes.  
 17 Q Okay, Did she — do you know if she bought  
 18 anything from the counter?  
 19 A I don't know.  
 20 Q Did she come inside?  
 21 A No, she went -- I don't think so.  
 22 Q How did she get to the mini mart?  
 23 A I don't know.  
 24 Q Okay, And is this the mini mart in downtown

XVII-96

HOHMAN CROSS

1 A I don't have a little sister.  
 2 Q Okay. You knew her little sister more?  
 3 A Yes.  
 4 Q You have an older sister though, don't you?  
 5 A Yes,  
 6 Q Okay. And you indicated that the first time that you  
 7 saw the defendant in July of 2001 was on the rd of July?  
 8 A Yes.  
 9 Q Okay. What time?  
 10 A It would've been later on in the evening.  
 11 Q Okay. And you have a watch on right now?  
 12 A I don't,  
 13 Q What time is it right now?  
 14 A About 3 o'clock.  
 15 Q Okay. And that's from sitting outside waiting to  
 16 come in here, you know what time it is, right? Or are you just  
 17 really good at the time, real good?  
 18 A Yeah.  
 19 Q Okay,  
 20 A Yes.  
 21 Q And you said in the evening. What time?  
 22 A Probably around 4:00ish, about.  
 23 Q Okay. And —  
 24 A I was working that night,

XVII-95

HOHMAN - CROSS

1 Panaca, or is it the mini mart out at the intersection?  
 2 A It's the one that's in Panaca. There's two of them,  
 3 actually,  
 4 Q Okay.  
 5 A But it's the -- the one on the outside of town, but it's  
 6 not at the junction.  
 7 Q Okay. She -- did she drive a quad there or a four-  
 8 wheeler?  
 9 A I don't know,  
 10 Q You don't know? So you don't know who she's with,  
 11 how she got there?  
 12 A Mm-hmm. Yes.  
 13 Q Is that a yes?  
 14 A Yes.  
 15 Q Okay. What days of the week did you work?  
 16 A I don't remember,  
 17 Q Okay.  
 18 A It kind of all varied,,  
 19 Q Kinda varied?  
 20 A Yeah.  
 21 Q What time did you start, usually? Varied?  
 22 A That varies,,  
 23 Q Okay. You remember when you started on Monday,  
 24 the 2?

XVII-97

HOHMAN - CROSS

1 A Uh-uh, No.  
 2 Q Okay, Do you remember — you do remember  
 3 working, though, right?  
 4 A Yes,  
 5 Q Did you work on the 3?  
 6 A I was just helping out around there,  
 7 Q Did you guys work on the 4<sup>th</sup> of July?  
 8 A Yeah, Yes,  
 9 Q Did you work on the 5<sup>th</sup>? Do you remember?  
 10 A I don't.  
 11 Q Long time ago?  
 12 A Yeah, It's kind of the family business, so I mean I'm  
 13 there on and off,  
 14 Q Kinda go, come and go when you want to?  
 15 A Yeah,  
 16 Q Okay, Now you said that you -- you saw her on the  
 17 8<sup>th</sup> was the next time that you saw her, is that right?  
 18 A Yes,  
 19 And you remember you were out on the Panaca  
 20 Springs Dirt Road, you said you were riding your horse?  
 21 A Yes,  
 22 Q And you said that you had went to church that  
 23 morning?  
 24 A Yes,

XV11-98

HOHMAN - CROSS

1 And after church then you went riding? Is that a  
 2 yes?  
 3 A Yes. Yes,  
 4 Q Okay. Did you see Blaise at church with you?  
 5 A No.  
 6 Q Okay. And you believe it was around 11:30 in the  
 7 morning?  
 8 A Yes,  
 9 Q And you weren't wearing a watch then, were you?  
 10 A No,  
 11 Q But you remember 'cause you got out of church, and  
 12 church gets out around what?  
 13 A Yes, 11:00,  
 14 Q 11 o'clock? So you went home, saddle up your  
 15 horse —  
 16 A No,  
 17 Q -- or you rode your horse to church?  
 18 A No. I went --  
 19 Q Okay,  
 20 A -- from church right to my horse. I was still in my  
 21 church —  
 22 Q Okay  
 23 A — shirt and everything,  
 24 Q Okay. So you -- did you ride your horse to church?

xv11-99

HOHMAN - CROSS

1 A No,  
 2 Q So you went home from church?  
 3 A No,  
 4 Q No? Oh, you went to your horse?  
 5 A From church I went to my horse and rode my  
 6 horse.  
 7 Q Okay. And where's your horse, it's kept at some  
 8 stall or something up there?  
 9 A It's probably two buildings down from the church.  
 10 Okay. And then you headed out onto Panaca  
 11 Springs?  
 12 A Just around.  
 13 Q Okay. And that's when you saw the defendant  
 14 riding a four-wheeler?  
 15 A Yes.  
 16 Q Do you have a four-wheeler?  
 17 A Not of my own, no.  
 18 Q Okay. What kind of four-wheeler were they riding?  
 19 A I don't remember,  
 20 Q Okay. They were riding together?  
 21 A Yes.  
 22 Q And you remember the young lady that was with her  
 23 drinking a beer or holding a beer?  
 24 A Yes,

XV11-100

HOHMAN - CROSS

1 Q Who was driving?  
 2 A Blaise was.  
 3 Q And you remember that because the day before was  
 4 your brother's birthday?  
 5 A Correct,  
 6 Q Blaise bring a birthday present over to your brother?  
 7 A I don't think so.  
 8 Q Okay. Blaise come over for birthday cake?  
 9 A No.  
 10 Q Okay, But because it was your [sic] birthday, that  
 11 reminds you of Blaise -- or your brother's birthday?  
 12 A No.  
 13 Q Okay, What was she wearing, Blaise?  
 14 A It was a darker shirt,  
 15 Q Okay. A shirt? A swimsuit top?  
 16 A No, not a shirt shirt, but it was kinda like a girl's  
 17 darker shirt,  
 18 Q Okay.  
 19 A A smaller one.  
 20 Q What about for pants?  
 21 A I think she had shorts on.  
 22 Q Shorts? Do you remember what kind of shoes she  
 23 was wearing?  
 24 A No.

XVII-101

HOHMAN - CROSS

1 Q Did she have a helmet on?  
 2 A Nor  
 3 Q Okay, Is there anything different about her today  
 that you remember her back then?  
 5 A Say that one more time?  
 6 Q Is there anything different about her today than you  
 7 remember her when you saw her back then?  
 8 A Yeah, she's gotten grown up.  
 9 Q Okay, Okay Now you said that you don't  
 10 remember ever seeing her after the Bth?  
 11 A No.  
 12 Q Okay, And you said that it's a small community and  
 13 everybody knows everybody?  
 14 A Yes.  
 15 Q That's how you knew who Biase was riding with at  
 16 the time?  
 17 A Yes.  
 18 Q Okay, Have you ever driven that four-wheeler?  
 19 A No.  
 20 Q And everybody's kinda talked about this case since  
 21 this — since she got arrested, haven't they?  
 22 A Yes.  
 23 Q Okay. Matter of fact, you were aware that  
 24 somebody actually talked to your mom?

XVII-102

HOHMAN - CROSS

1 A No.  
 2 Q You're not? Your mom never told you that  
 3 somebody went up there and talked to her?  
 4 A No,  
 5 Q Okay. And —  
 6 MS. GREENBERGER: Objection, hearsay.  
 7 MR, KEPHART: I didn't ask for him what anything  
 8 needs to be said.  
 9 THE COURT: Overruled,  
 10 BY MR, KEPHART:  
 11 Q Okay. You -- did you ever talk to the defendant's  
 12 mom?  
 13 A In --  
 14 MS. GREENBERGER: Objection, vague,  
 15 BY MR KEPHART:  
 16 Q Since the defendant was arrested, did you ever talk  
 17 to the defendant's mom?  
 18 A Yes.  
 19 Q And that's Becky Lobato, right?  
 20 A Correct.  
 21 Q Okay. And are you aware that the first time that  
 22 your name appeared as a witness in this case is October 20,  
 23 2005?  
 24 A Yes. Now -- I am now.

XVII-103

1OHMAN - REDIRECT

1 Q Okay. That's what, at least three years after a  
 2 previous proceeding and four years after the arrest?  
 3 A Yes,  
 4 Q And you say you're 100 percent positive that you  
 5 saw her on the 8th —  
 6 A Yes,  
 7 Q at 11:30 in the morning? Couldn't have been  
 8 11:00 -- I mean 11:40 or 12 o'clock or 12:30 or 1 o'clock?  
 9 A No, it was some -- it was right around 11:30, right  
 0 around there,  
 1 Q And you're positive that you saw her on the 2?  
 2 A Yes, I --  
 3 Q Okay,, So you don't know what she was doing  
 4 between the 3<sup>rd</sup> and the morning that you saw her?  
 5 A No.  
 6 MR. KEPHART: Court's indulgence, Your Honor,  
 7 I'll pass the witness. Thank you, sir.  
 8 THE COURT: Redirect.  
 9 REDIRECT EXAMINATION  
 10 BY MS. GREENBERGER:  
 11 Q You testified that there's been a lot of gossip about  
 12 this case where you live?  
 13 A Yes.  
 14 Q Is there a lot of gossip about many things?

XVII-104

HOHMAN REDIRECT

1 A Yes.  
 2 Q Has any of that gossip in any way influenced your  
 3 testimony as you sit here today?  
 4 A No.  
 5 Q You mentioned that you had spoken to Blaise's  
 6 mother about this case, correct?  
 7 A Correct.  
 8 Q Has speaking to her in any way influenced your  
 9 testimony here today?  
 10 A No.  
 11 Q Are you testifying right now based on what your  
 12 memory is?  
 13 A Yes.  
 14 Q Has anyone put any pressure on you to testify in any  
 15 certain way?  
 16 A Not at all,  
 17 Q Is your memory of seeing her on July 8<sup>th</sup> completely  
 18 clear in your mind as you sit here today?  
 19 A Yes,  
 20 MS, GREENBERGER: I don't believe I have anything  
 21 further.  
 22 MR. KEPHART: Couple questions if I could, Your  
 23 Honor.  
 24 THE COURT: Yes, sir, you may.

XVII-105

HOHMAN RE CROSS

MR, KEPHART: Yes. Yes. Thank you, Your Honor.

**RE CROSS EXAMINATION**

BY MR. KEPHART:

Q Okay. Sir, you said that you talked to the defendant's mom, and that was after the defendant was arrested, is that right?

A Before and after.

Q Okay. You talked to the defendant's mom about this case after the defendant was arrested, though?

A Yes.

Q Okay. When was the last time that you talked to the defendant's mom before coming in here today and testifying?

A Today. Just talking, yes, today.

Q And when was it that you told the defendant's mom that you had seen the defendant on the 8<sup>th</sup> at 11:30 in the morning? Was that around October **20'** of 2005?

A No,

Q When was it?

A Way before, like —

Q Way before?

A Yeah,

Q Okay. Like —

A In the first trial.

Q Okay, Before that?

XVII-106

HOHMAN RECR.OSS

A Before the first one?

Q Mm-hmn

A I don't know if it was before or after that. I don't really remember when that was, but it was kind of —

Q The person you told was the defendant's mom?

A Yes.

Q And then you became a name on this list?

A Yes, Well, I told I mean other people too. Like I told a few people that I'd seen her.

Q Okay, And how old was your brother back in July 7, 2001?

A He would've been 7.

Q Okay.

A Or 7?

Q Did you guys go anywhere for a birthday party?

A No.

Q Did your mom make a cake?

A Yes,

Q Do you remember what kind of cake it was?

A No,

Q You don't remember? Did you have any of it?

A Probably,

Q Did your brother blow out candles?

A Yes,

M/11-107

HOHMAN RE CROSS

Q Sing happy birthday to him?

A Yes.

Q What did you buy him for a birthday present?

A A Mongoose bike.

MS. GREENBERGER: Objection, relevance.

BY MR. KEPHART:

Q What's that?

A A bike.

Q He have any friends over?

A No.

Q And was your sister there?

A No.

Q Was she even living in Panaca at that time?

A I -- she kinda was on and off.

Q She went to Florida sometime though, didn't she?

A Yeah, and then she moved back and —

Q Okay. Was she in Florida at that time?

A I don't know.

Q You don't remember?

A I don't remember that.

Q Okay. In July of 2001, how old were you?

A **6** -- no, July 2001?

Q Yes.

A I would've been 15 or 16.

XVII-108

HOHMAN - RE CROSS

Q Okay, How old was your sister?

A 20 -- no, 2001, I don't know.

Q Okay. But you do know that she had traveled back and forth to Florida?

A Mm-hmm, Yes.

Q Is that a yes?

A Yes.

Q And you don't know if she was home on that date, do you, on July 2nd?

A I don't,

Q You don't remember her singing happy birthday to your brother?

A No,

Q You don't remember her eating any cake or anything with your brother?

A No, I don't think she was there.

Q You don't think she's there now? Okay. Are you sure?

A Yeah, I'm not 100 percent she was there or not. She was just kinda —

Q Okay,

A -- coming and going. She was going through a rough time, so —

Q Okay,

XVII-109

HOHMAN - RECROSE.

1 MR, KEPHART: Pass the witness.  
 2 MS, GREENBERGER: Court's indulgence.  
 3 MR. KEPHART: Thank you.  
 4 THE WITNESS: Mm-hmm,  
 5 THE COURT: Redirect?  
 6 MS. GREENBERGER: Nothing further with this  
 7 witness,  
 8 THE COURT: You may step down from the stand.  
 9 The defense may call defendant's next witness.  
 10 MR, SCHIECK: We'd call Kendre Thunstrom, Your  
 11 Honor.  
 12 THE COURT: Okay.  
 13 THE CLERK: Please come all the way forward,  
 14 Remain standing and raise your right hand,  
 15 **KENDRE THUNSTROM, DEFENDANT'S WITNESS,**  
 16 **SWORN**  
 17 THE CLERK: Thank you, Please be seated,  
 18 State your name and spell it for the record, please.  
 19 THE WITNESS: Kendre Lynn Thunstrom,  
 20 K-e-n-d-r-e L-y-n-n T-h-u-n-s-t-r-o-m,  
 21 THE COURT: You may proceed.  
 22 MS, GREENBERGER: Thank you, Your Honor,  
 23 /1/  
 24 /1/

XVII-110

HUNSTROM - DIRECT

1 A Ely State Prison,  
 2 Q And what time period?  
 3 A '96.  
 4 Q What occupation?  
 5 A Correctional officer,  
 6 Q Did you live down in Ely during that time period?  
 7 A I lived in Caliente, Nevada at the time.  
 8 Q You testified your fiancé worked with Blaise's  
 9 father --  
 10 A Yes.  
 11 Q -- at Ely State Prison?  
 12 A Yes,  
 13 Q Through your relationship with her father, is that  
 14 how you came to meet Blaise?  
 15 A Correct.  
 16 Q How old were your children at the time that she was  
 17 babysitting?  
 18 A One was a year and my son was six.  
 19 Q During 2001 where were you living?  
 20 A 2001 I was here in Las Vegas, Nevada,  
 21 Q In July 2001, where were you living?  
 22 A Here in Las Vegas, Nevada. Oh, I'm sorry, in 2001?  
 23 I was living in Panaca,  
 24 Q Would you have been living there from -- in January

XVII-112

THUNSTROM - DIRECT

DIRECT EXAMINATION

1 BY MS. GREENBERGER:  
 2 Q Good afternoon. Where do you reside?  
 3 A Panaca, Nevada,  
 4 Q How long have you lived there?  
 5 A Off and on for 11 years.  
 6 Q Do you know Blaise Lobato?  
 7 A Yes, I do.  
 8 Q Do you see her here today?  
 9 A Yes, I do.  
 10 Q Can you please identify what she's wearing for the  
 11 record?  
 12 A A black shirt.,  
 13 MS, GREENBERGER: Please let the record reflect  
 14 she has been identified.  
 15 THE COURT: The record shall so reflect,  
 16 BY MS\_ GREENBERGER:  
 17 Q How did you first meet Blaise?  
 18 A She babysat my children for me.  
 19 Q When was that, approximately?  
 20 A '96, '97.  
 21 Q How did you come to meet her?  
 22 A Her father and my ex-fiancé worked together.  
 23 Q When was that?

XVII-111

TI-HUNSTROM - DIRECT

1 2001?  
 2 A No, I lived in Caliente, Nevada, and then I moved up  
 3 to Panaca, Nevada.  
 4 Q And how close are those two towns?  
 5 A 15 minutes, or 14 miles,  
 6 Q So in July 2001 you were living in Panaca, Nevada?  
 7 A Correct.  
 8 Q Small town?  
 9 A Yes.  
 10 Q When do you recall first seeing Blaise in 2001 in  
 11 July?  
 12 A My ex-boyfriend and I, we lived together. We were  
 13 driving around the block, which the Lobatos had lived on the  
 14 other side of us, and the truck had broke down right in front of  
 15 their house and she was standing in the driveway,  
 16 Q Do you remember what date that was?  
 17 A It was Sunday the 8th.  
 18 Q Of July?  
 19 A Yes.  
 20 Q Do you remember what time it was?  
 21 A It was right before the sunset,  
 22 Q Would that be -- can you give us an approximation?  
 23 A It could've been anywhere between 5 o'clock to 6  
 24 o'clock in the evening.

XVII-113

THUNSTROM - DIREC

1 Q Can you kindly get off the witness stand, using the  
 2 pen, and indicate on Defense Exhibit JJ the time and day you  
 3 saw her wit your initials? Just put your initials and the time  
 you saw her  
 5 A Right here,  
 6 Q And you can put an arrow from the 8 to maybe —  
 7 onto the left side if there's not enough room there. And the  
 8 time that you saw her, approximately. You may sit down,  
 9 Had you seen her in Panaca prior to July 8, 2001?  
 10 A No, I don't recall.  
 11 MS. DiGIACOMO: Objection —  
 12 MR, KEPHART: Oh, she answered it,  
 13 MS, DiGIACOMO: That's fine, Withdrawn.  
 14 BY MS. GREENBERGER:  
 15 Q Where — what street were you living on at the time?  
 16 A Rowan.  
 17 Q And what street were the —  
 18 THE COURT: Can you spell that, please?  
 19 THE WITNESS: R-o-w-a-n, I believe, is how they  
 20 spelled it,  
 21 BY MS. GREENBERGER:  
 22 Q And what street were the Lobatos living on at the  
 23 time?  
 24 A Oh, my goodness, I don't remember the name of the

XVII-114

HUNSTROM - DIRECT

1 Ken to go to work the next day, which he worked Monday  
 2 through Friday.  
 3 Q Do you have that same memory?  
 4 A Yes,  
 5 Q How long did you stay and talk with Braise?  
 6 A It was probably 30 minutes, 45 minutes at the very  
 7 most.  
 8 Q Was that the first time you had seen her in Panaca -  
 9 that summer?  
 10 A Correct,  
 11 Q How certain are you that you saw her on that exact  
 12 date and time?  
 13 A I'm very certain,  
 14 Q Is methamphetamine prevalent in Panaca?  
 15 MS. DiGIACOMO: Objection, relevance,  
 16 THE COURT: Sustained.  
 17 MS. DiGIACOMO: And move to strike the answer,  
 18 THE COURT: Granted.  
 19 BY MS. GREENBERGER:  
 20 Q Did you know if Blaise was using methamphetamine  
 21 when you saw her?  
 22 MS. DiGIACOMO: Objection, foundation,  
 23 THE COURT: Sustained.  
 24 MS. GREENBERGER: Courts indulgence.

XVII-116

THUNSTROM - DIRECT

1 street,  
 2 Q How far away from their house was your house?  
 3 A Right around the block. A small town block, not a  
 4 city block,  
 5 Q You were with your boyfriend at the time?  
 6 A Correct,  
 7 Q And what is his name?  
 8 A Ken Hefner.  
 9 Q And what were you doing at the time his truck broke  
 10 down?  
 11 A His truck broke down, my son and I got out of the  
 12 truck and was talking to Blaise, and he went back to the house  
 13 to get gasoline for the truck.  
 14 Q How is it that you remember that particular day?  
 15 A Well, I had — after we were -- as soon as he got the  
 16 truck started we had to go back to the house to fix dinner so  
 17 that he can go to work the next day.  
 18 Q So you remember it was a weekend?  
 19 A Mm-hmm, And he was fixing the truck that  
 20 weekend. And I know it was after 4th of July.  
 21 Q And how do you know it was Sunday versus  
 22 Saturday?  
 23 A My son and I were talking and my son said that he  
 24 remembers having to go home to fix dinner and get ready for

XVII-115

THUNSTROM CROSS

1 I don't believe I have anything further,  
 2 THE COURT: Cross.  
 3 CROSS-EXAMINATION  
 4 BY MS. DiGIACOMO:  
 5 Q Good afternoon. You said that you saw -- and I  
 6 believe you wrote it on the calendar -- Blaise on July 8<sup>th</sup> at  
 7 approximately sunset or right before sunset?  
 8 A Before the sun had set. When the sun sets up there  
 9 it's really dark 'cause there's not lights and streetlights and  
 10 stop lights, so it was prior to sunset,  
 11 Q So the entire time you talked to her for  
 12 approximately 45 minutes it was still light out?  
 13 A Correct, just starting to get dark.  
 14 Q Do you know approximately what time that would've  
 15 been?  
 16 A I would say it was probably about 5:00 or 6:00,  
 17 somewhere in there,,  
 18 Q So evening time --  
 19 A Mm-hmm.  
 20 Q -- like almost dinner time?  
 21 A Yes.  
 22 MS. DIGIACOMO: Court's indulgence,  
 23 Nothing further. Thank you.  
 24 MS, GREENBERGER: Nothing further,

XVII-117

A LOBATO DIRECT

1 THE COURT: I heard a sound like a piece of paper  
 2 ripping out of the notebook, so I'm looking at the jury, but it  
 3 appears that nobody's raising their hand. So you may step  
 4 down from the stand.

5 Defendant may call defendant's next witness.

6 MR, SCHIECK: Ashley Lobato, Your Honor.

7 THE CLERK: Please come all the way forward.

8 Remain standing and raise your right hand.

9 ASHLEY LOBATO, DEFENDANT'S WITNESS, IS SWORN

10 THE CLERK: Please be seated.

11 State your name and spell it for the record, please,

12 THE WITNESS: Ashley Lobato, A-s-h-l-e-y

13 L-o-b-a-t-o,

14 DIRECT EXAMINATION

15 BY MS. ZALKIN:

16 Q Good afternoon.

17 A Afternoon.

18 Q How old are you right now, Ashley?

19 A I'm 19:

20 Q And where do you currently reside?

21 A In California --

22 Q What part of --

23 A -- Ontario.

24 Q I'm sorry?

XVII-118

A. LOBATO - DIRECT

1 Q Can you please describe what she's wearing?

2 A A black shirt. She's got long dark hair over there.

3 MS. ZALKIN: Would the record reflect witness has  
 4 identified Ms. Lobato?

5 THE COURT: The record shall so reflect.

6 MS. ZALKIN: Thank you, Your Honor.

7 BY MS. ZALKIN:

8 Q Taking us back to July of 2001, where were you  
 9 living at that time?

10 A At my house on 670 Callaway Street,

11 Q And do you recall whether or not Blaise graduated  
 12 high school?

13 A She had graduated before July 2001,

14 Q Do you know when she graduated?

15 A Not the exact date.

16 Q Do you know if it was in the spring or before that in  
 17 the winter?

18 A I think it was in the spring.

19 Q Okay. And what did Blaise do after she graduated  
 20 high school?

21 A She moved to Vegas.

22 Q After she moved to Las Vegas, when do you first  
 23 recall seeing her back in Panaca?

24 A A couple days before the 4<sup>th</sup> of July.

XVII-120

A LOBATO - DIRECT

1 A Ontario.

2 Q Onseriado [sic]?

3 A Ontario.

4 Q Ontario, Sorry, I misheard you. Are you in school  
 5 or employed right now?

6 A Yes, I'm in college and --

7 MS. DiGIACOMO: Objection, relevance.

8 MS. ZALKIN: Foundation.

9 THE COURT: Overruled.

10 THE WITNESS: I'm in college,

11 BY MS, ZALKIN:

12 Q And are you missing college right now to be here  
 13 with us?

14 A Yes, I am.

15 Q Before Ontario, where did you reside?

16 A In Panaca, Nevada.

17 Q And how long had you lived in Panaca?

18 A About 10 years or so.

19 Q And for most of those 10 years, who did you live  
 20 with in Panaca?

21 A My parents and my sister, Blaise,

22 Q Your sister, Blaise? Do you see Blaise in the  
 23 courtroom?

24 A Yes,

XVII-119

A. LOBATO - DIRECT

1 Q And how do you remember that?

2 A I just know that it was before the 4<sup>th</sup> of July, but it  
 3 wasn't -- it was still -- it was in July.

4 Q We have a calendar over here. It's Exhibit 31 Do  
 5 you mind stepping down and putting your initials on whichever  
 6 day in July you believe you first saw her, whether or not it was  
 7 the 2<sup>nd</sup> or the 3, whichever date you believe you saw her?  
 8 And if you need to draw an arrow to the space above, that's  
 fine,

9 A Just the date that I first saw her?

10 Q Yes. I might have you get down again at some  
 11 point, but for now that's great. Were you home when Blaise  
 12 arrived back in Panaca?

13 A Yes, I was.

14 Q And how did she get back home?

15 A She pulled up in her car.

16 Q And what was her car?

17 A It was a red Fiero,

18 Q Was she by herself?

19 A Yes,

20 Q Who else was home when she got home, if you  
 21 recall?

22 A My parents.

23 Q Do you recall what you did on her first night home?  
 24

xvii-121

A. LOBATO - DIRECT

1 A No, I don't.  
 2 Q Where was Blaise sleeping during her visit home?  
 3 A She was sleeping in the living room on a futon on  
 4 the floor.  
 5 Q And why was she sleeping there?  
 6 A Because my parents had moved back into her room  
 7 'cause she moved out,  
 8 Where were you sleeping when she got home?  
 9 A In my room.  
 10 Q Do you recall whether or not you would be with  
 11 Blaise when she was going to sleep that night?  
 12 A Yes, I slept with her about almost every night while  
 13 she was home,  
 14 Q And why is that?  
 15 A She was having nightmares and she just -- she was  
 16 really cuddly and she just wanted to sleep with her little sister,  
 17 Q Did you sleep next to her on the futon the entire  
 18 night, or just until she fell asleep?  
 19 A No, Usually I'd get up in the middle of the night and  
 20 I'd just move to my room.  
 21 Was the futon comfortable or not?  
 22 A No, not really.  
 23 Was your own bed more comfortable than the  
 24 futon?

XVII-122

LOBATO - DIRECT

1 a cold or flu or how — why do you say she was sick?  
 2 A She was sleeping a lot and she just wasn't -- she  
 3 couldn't eat very well, and she just was sick.  
 4 Q Do you know whether or not she sought medical  
 5 attention?  
 6 A Yes, she was going to the doctor with my mom  
 7 during the week.  
 8 Q And where would she have been seeing a doctor?  
 9 MS. DiGIACOMO: Objection, speculation unless she  
 10 was with her.  
 11 THE COURT: Sustained.  
 12 BY MS. ZALKIN:  
 13 Q Do you know where she went to see the doctor?  
 14 A In Caliente at the medical clinic.  
 15 Q Do you remember whether or not Blaise was  
 16 interacting at the barbeque on the 4<sup>th</sup> of July?  
 17 A A little bit, not too much, She was inside a lot or out  
 18 in the garage if people were out in the garage with her.  
 19 MS, DiGIACOMO: And Your Honor, I hate to  
 20 interrupt. I can't hear the witness. I don't know if it's the air  
 21 or what.  
 22 THE WITNESS: Okay.  
 23 MS, DiGIACOMO: If she could speak closer to the  
 24 microphone.

XVII-124

A LOBATO - DIRECT

1 A Yeah, I love my bed.  
 2 Q Did you invite Blaise to come and fall asleep in your  
 3 bedroom at any time?  
 4 A Not that I can recall,  
 5 Q Was she more comfortable on the futon?  
 6 A T  
 7 MS. DiGIACOMO: Objection, speculation.  
 8 THE COURT: Sustained  
 9 BY MS. ZALKIN:  
 10 Q Do you recall the 4<sup>th</sup> of July, 2001?  
 11 A Yes, I do.  
 12 Q Did you spent the 4<sup>th</sup> of July with your family or not?  
 13 A Yes.  
 14 Q Do you recall where you spent the day?  
 15 A At our house.  
 16 Q And do you recall what you did on the 4th?  
 17 A There was a barbeque and it was just a family get  
 18 together with a couple friends.  
 19 Q Do you remember who all was there?  
 20 A Shayne, John, Marilyn Parker, her kids, my parents,  
 21 Blaise, me, and that's about all I can remember for sure.  
 22 Q Was Blaise in good health around the 4<sup>th</sup> of July?  
 23 A She was sick,  
 24 Q When you say she was sick, do you know if she had

XVII-123

A. LOBATO - DIRECT

1 THE WITNESS: I can speak up. Sorry.  
 2 MS. DIGIACOMO: I didn't hear the last answer at  
 3 all,  
 4 BY MS. ZALKIN:  
 5 Q I believe I had asked you if Blaise was interacting  
 6 with the guests or not?  
 7 A She was a little bit. She'd come out and she was  
 8 just interacting with everybody, but they hung out in the  
 9 garage a lot. I was out in the front yard,  
 10 Q Do you recall July 5<sup>th</sup> of 2001?  
 11 A No.  
 12 Q Were you in any kind of summer school during that  
 13 month, or what were you -- how old were you back then?  
 14 A I was 14. I was getting ready to start my freshman  
 15 year.  
 16 Q Do you remember seeing Blaise on the 6<sup>th</sup> of July?  
 17 A I most likely did, I don't remember any specific  
 18 times.  
 19 Did you see Blaise's car on the 6<sup>th</sup> of July?  
 20 A Yes, I was always in and out and it -- I never saw it  
 21 move.  
 22 Q And where was her car —  
 23 A It was --  
 24 Q on the 6' of July?

XVII-125



A. LOBATO - DIRECT

1 A It was in the front, right next to the fence.  
 2 Q And who were your neighbors as you're -- back in  
 3 July of 2001, as you're standing with your back to the front  
 4 door of your house, who are the neighbors on your left?  
 5 A On the left it would be Bob and Wanda McCrosky,  
 6 Q And same question but to the right of your house.  
 7 Who are you neighbors to the right?  
 8 A Jo Dennert.  
 9 Q Would you — strike that. At any time between July  
 10 2<sup>nd</sup> and July 7<sup>th</sup> did you see Blaise's car move?  
 11 A No,  
 12 Q But you testified you weren't home every minute of  
 13 every day?  
 14 A Yeah, I was out a lot with Clint usually,  
 15 Q But --  
 16 A In and out ail day.  
 17 Q But when you were home the car was there as well?  
 18 A Yeah, it was in where it was —  
 19 MS. DiGIACOMO: I can't hear the witness, Your  
 20 Honor.  
 21 MS. ZALKIN: If you could, the microphone there  
 22 may be somehow —  
 23 THE COURT: She can scoot the chair in a little bit  
 24 closer.

XVII-126

LOBATO - DIRECT

1 Q And do you know the birthday date that Kyle has?  
 2 A It was July 7th.  
 3 Q And did you celebrate your friend's brother's  
 4 birthday or not with him?  
 5 A Yes.  
 6 Q On -- drawing your attention to July 8<sup>th</sup> of 2001. Do  
 7 you recall seeing Blaise when you woke up in the morning —  
 8 MS. DiGIACOMO: Objection, leading.  
 9 MS. ZALKIN: -- or not?  
 10 THE COURT: Sustained.  
 11 BY MS. ZALKIN:  
 12 Q Do you — what time did you get up that morning,  
 13 approximately?  
 14 A Probably around 7:00 or 7:30.  
 15 MS. DiGIACOMO: And I'm sorry, what date?  
 16 MS. ZALKIN: On July 8th.  
 17 MS. DIGIACOMO: I can't hear.  
 18 MS. ZALKIN: July 8th.  
 19 MS, DiGIACOMO: Thank you.  
 20 BY MS. ZALKIN:  
 21 Q Do you know whether or not anyone not living in the  
 22 house came over that morning?  
 23 A No,  
 24 Q Did you see your sister Blaise at some point on the

XVII-128

A LOBATO - DIRECT

MS, ZALKIN: Thank you.  
 2 BY MS. ZALKIN:  
 3 Q Do you recall whether or not Blaise had any friends  
 4 that were over at the house that week?  
 5 A Chris Carrington was there all week.  
 6 Q When you say all week, did he move in with your  
 7 guys or —  
 8 A No, he was just over a lot. He was staying at his  
 9 grandmother's house down the street.  
 10 Q We heard testimony from a gentleman who was  
 11 friends with you who had a horse,, Were you hanging out with  
 12 a particular friend -- just first name only — during that week?  
 13 A Clint,  
 14 Q Were you with your friend Clint on July 7<sup>th</sup> or not?  
 15 MS. DiGIACOMO: Objection, leading.  
 16 MS. ZALKIN: Do you -- I'll rephrase.  
 17 THE COURT: Sustained.  
 18 MS. ZALKIN: I'm sorry, Your Honor.  
 19 BY MS. ZALKIN:  
 20 Q Do you recall what you were doing on July 7th?  
 21 A Not the whole day, just parts.  
 22 Q Do you know whether or not your friend Clint has  
 23 any younger siblings?  
 24 A Yes, Kyle.

XVII-127

A. LOBATO - DIRECT

1 801?  
 2 A Yes, I did.  
 3 Q Can you please initial on the board, Exhibit 33, on  
 4 July 8<sup>th</sup> at this time? And you can draw any arrow out to the  
 5 left. And while you're still down there, do you recall  
 6 approximately what time you saw Blaise on the 8th?  
 7 A Do I just write it?  
 8 Q Yes. And answer out loud, I'm sorry.  
 9 A It was sometime in the late afternoon.  
 10 Q And for the record, what time did you note up  
 11 there?  
 12 A I put about 3:00 or 4:00 p.m. I know the sun was  
 13 just about to go down or it was getting ready to go down.  
 14 Q At 3:00 or 4:00 p.m.?  
 15 A Well, it was -- you know how it gets kind of in the  
 16 high up in the air, that's —  
 17 Q So the sun was beginning it's —  
 18 A Yeah  
 19 Q -- decent? Okay. And where did you see Blaise?  
 20 A She was in the garage.  
 21 Q And who else, if anyone, was with her?  
 22 A Chris Carrington.  
 23 Q And was it just the two of them when you first saw  
 24 her?

XVII-129

A LOBATO DIREC1

1 A Yes, at the time.  
 2 Q And do you recall what Chris was doing?  
 3 A He was using the Bowflex.  
 4 Q Do you recall what your sister was doing?  
 5 A She was sitting, probably -- she was just sitting in  
 6 the chair next to the counter,  
 7 Q Did you have any conversation with her? Yes or no,  
 8 without getting into what you said.  
 9 A Yes,  
 10 Q And how long were you in the garage with Blaise  
 11 and Chris, approximately?  
 12 A A couple hours.  
 13 Q And what happened next?  
 14 A Shayne came over, she was picking up something,  
 15 and -- well, she was picking up a pan and some tiger balm and  
 16 I was going to her house for dinner,  
 17 Q Is that Shayne Kraft?  
 18 A Yes,  
 19 Q And what's your relationship with Shayne?  
 20 A She's my cousin,  
 21 Q And when Shayne came over did you interact with  
 22 Shayne directly?  
 23 A Yes,  
 24 Q And was Shayne interacting with Blaise or not?

XVII-130

A. LOBATO - DIRECT

1 THE COURT: That is rephrased. Overruled,  
 2 MS. DiGIACOMO: Thank you, Your Honor.  
 3 THE WITNESS: Until about midnight,  
 4 BY MS. ZALKIN:  
 5 Q And how did you get home?  
 6 A Shayne dropped me off,  
 7 Q And how long does it take by vehicle to get from  
 8 Shayne's house to your house?  
 9 A About a minute and a half.  
 10 Q And when you got home was there anyone else at  
 11 your house?  
 12 A Braise,  
 13 Q And what was Blaise doing?  
 14 A She was getting ready to go to Vegas,  
 15 Q And was that -- did you testify that was around  
 16 midnight?  
 17 A Yeah.  
 18 Q Who else was home, if anyone?  
 19 A I don't remember.  
 20 Q And can you describe when you said she was getting  
 21 ready to go to Vegas, what did that involve?  
 22 A She was out in the garage and she was packing and  
 23 she was standing next to the Bowflex. That's all I remember,  
 24 Q Did you know how she was going to get to Las

XVII-132

A. LOBATO - DIRECT

1 A Yes.  
 2 Q Do you recall for how long Shayne was over at your  
 3 residence that day?  
 4 A A couple hours,  
 5 Q Do you recall at what time Shayne left your house  
 6 that day?  
 7 A It was getting dark,  
 8 Q And when Shayne left, what did you do?  
 9 A I went with her.  
 10 Q And why were you leaving with her?  
 11 A Her husband had come over and was yelling at her  
 12 because she was taking too long, and we needed to hurry up  
 13 and go home and make dinner and he wanted the tiger balm  
 14 for his neck.  
 15 Q And did you go home and make dinner with her?  
 16 A Yeah, I was there while she was making dinner.  
 17 Q Did you assist in the preparations?  
 18 A Not that I can remember.  
 19 Q Did you get the recipe --  
 20 MS. DiGIACOMO: Objection, leading.  
 21 MS. ZALKIN: -- or not?  
 22 THE WITNESS: No, not that I can remember.  
 23 BY MS. ZALKIN:  
 24 Q How long did you stay at the Krafts?

XVII-131

A. LOBATO DIRECT

1 Vegas?  
 2 A Her friend, Doug, was coming to pick her up,  
 3 Q And how long did you stay with Blaise while she was  
 4 packing?  
 5 A Probably about 15 minutes. Long enough to say  
 6 goodbye, and then I went to bed.  
 7 Q And hopefully for the last time, do you mind  
 8 stepping down and just noting the time that you said goodbye,  
 9 which, just to clarify, would that have been still on the 8<sup>th</sup> or  
 10 the early hours?  
 11 A It would be probably around 12:20.  
 12 Q Okay. So technically that would be on the 9<sup>th</sup>  
 13 A It was the 9<sup>th</sup>.  
 14 Q To your knowledge, did Blaise, in fact, leave  
 15 sometime on the 9<sup>th</sup>?  
 16 A Yes.  
 17 Q Was her car still in front of your residence?  
 18 A Yes.  
 19 Q So from July -- is it your testimony that from July 2<sup>d</sup>  
 20 to July 8<sup>th</sup> she was in Panaca every one of those days?  
 21 A Yes.  
 22 Q And did you see the car move from July 2<sup>nd</sup> to July  
 23 8<sup>th</sup>?  
 24 A No.

XVII-133

A. LOBATO DIRECT

1 Q And if you recall, was Chris Carrington over every  
 2 day that week?  
 3 MS. DIGIACOMO: Objection, Your Honor. She  
 4 already stated she can't remember the 6<sup>th</sup> and the 7th.  
 5 MS. ZALKIN: I'll withdraw, Your Honor,  
 6 BY MS, ?ALIGN:  
 7 Q Do you recall where Chris Carrington was residing at  
 8 that time, that particular week?  
 9 A That particular week he was at his grandmother's  
 10 house, and they hung out a lot during the week,  
 11 Q And how far away was his grandmother's house  
 12 from your house?  
 13 A It was about four houses down on the opposite side  
 14 of the street,  
 15 Q Going back briefly to July 7<sup>th</sup>, did you help your  
 16 sister fall asleep that night?  
 17 A I believe so,  
 18 Q And did you see your sister when you got up on the  
 19 8th?  
 20 A I don't remember not seeing her.  
 21 Q When you got home from the Krafts the night of the  
 22 8<sup>th</sup>, did you see your sister's car?  
 23 A Yes.  
 24 Q And can you describe exactly where it was parked,

XVII-134

a, LOBATO - DIRECT

THE COURT: Sustained.  
 2 BY MS ZALKIN:  
 3 Q When did you next see Blaise after saying goodbye  
 4 to her early on July 9<sup>th</sup>, if you recall?  
 5 A I don't remember. It was a couple weeks later.  
 6 Q Do you recall any Las Vegas Police Officers coming  
 7 to your home?  
 8 A Yes.  
 9 Q Do you recall on what date that occurred?  
 10 A No, I don't know the exact date.  
 11 Q Where were you when police arrived at your house?  
 12 A I was in the garage with Clint.  
 13 Q Did you let the police in or —  
 14 A No, I made them stand in my driveway until she got  
 15 out of the shower.  
 16 Q Did the police ask you any questions?  
 17 A No,  
 18 Q Were you willing to speak with them?  
 19 MS. DiGIACOMO: Objection, relevance.  
 20 THE COURT: Overruled,  
 21 BY MS, ZALKIN:  
 22 Q Were you willing to speak with the police at that  
 23 time?  
 24 A Yes.

(VII-136

A. LOBATO - DIRECT

1 to the best of your ability?  
 2 A It was behind this trailer in front of our house, kind  
 3 of -- the butt was kind of in the beginning of the McCroskys'  
 4 yard.  
 5 And that was the house to the left?  
 6 A To the left of my house.  
 7 Did you know -- let me ask you this, Would you  
 8 have remembered if you had not seen Blaise?  
 9 MS. DiGIACOMO: Objection, leading,  
 10 THE COURT: Sustained..  
 11 BY MS ZALKIN:  
 12 Q Was July r<sup>d</sup> -- strike that, After Braise left for Las  
 13 Vegas, when was the first time that you saw her again?  
 14 MS, DIGIACOMO: Objection, vague,  
 15 BY MS, ZALKIN:  
 16 Q After Blaise graduated high school and left for Las  
 17 Vegas--  
 18 MS. DIGIACOMO: Objection, asked and answered,  
 19 THE COURT: Sustained,  
 20 BY MS. ZALKIN:  
 21 Q Where you awake when Blaise left on the early  
 22 morning hours of July 9th?  
 23 A No.  
 24 MS, DiGIACOMO: Objection, asked and answered.

XVII-135

A. LOBATO - DIRECT

1 Q Was there any time subsequently that you've been  
 2 unwilling to speak with the police?  
 3 A No,  
 4 Q Have the police ever contacted you with respect to  
 5 your sister's situation?  
 6 A No  
 7 Q Going back to your family home at the time, was the  
 8 home decorated?  
 9 A Yes.  
 10 Q Were there decorations on the hallway walls or not?  
 11 A Yes, there were.  
 12 Q And how would you describe those items on the  
 13 walls?  
 14 A There was a sombrero hat, like a Zoro outfit, and it  
 15 had a sword across it with a little ball on the end of it, and  
 16 there was wooden pieces of -- like the sticks that the cops  
 17 carry, and a horn that was actually a canteen hanging on the  
 18 wall.  
 19 Q Were any of those items ever used as weapons, to  
 20 your knowledge?  
 21 A No,  
 22 Q Were those items there for decoration or use?  
 23 A They were decoration,  
 24 MS ZALKIN: Court's indulgence, Your Honor.

XVII-137

A LOBATO - DIREC1

1 THE COURT: Yes.  
 2 MS. ZALIUN: I'll pass the witness.  
 3 THE COURT: We're gonna take our afternoon  
 4 stretch break at this time.. You may step down from the stand.  
 5 In 10 minutes please be in the hallway and the  
 6 bailiff will return you to your seats in the courtroom.  
 7 During the recess you're admonished not to talk or  
 8 converse among yourselves nor with anyone else on any  
 9 subject connected with the trial And you're not to read,  
 10 watch, or listen to any report of or commentary on the trial or  
 11 any person connected with the trial by any medium of  
 12 information, including without limitation, newspaper, television,  
 13 radio, and Internet. And you're not to form or express any  
 14 opinion on any subject connected with the trial until the case is  
 15 finally submitted to you.  
 16 Court's in recess for 10 minutes.  
 17 (Court recessed at 3:25:05 p.m. until 3:51:19 p.m.)□  
 18 (Jurors are present)  
 19 THE BAILIFF: Please be seated.  
 20 THE COURT: The record shall reflect that we're  
 21 resuming trial in State versus Lobato under C177394, in the  
 22 presence of the defendant, her three counsel, the two  
 23 prosecuting attorneys, and ladies and gentlemen of the jury.  
 24 Coming back from the stretch break the bailiff

XVII-138

A. LOBATO - DIRECT

1 MS. DiGIACOMO: Objection, relevance to ever and  
 2 vague.  
 3 THE COURT: Sustained.  
 4 BY MS. ZALKIN:  
 5 Q Did you see your sister use methamphetamine the  
 6 week of July 2nd.  
 7 A No.  
 8 Can you describe your sister's demeanor that week?'  
 9 MS, DiGIACOMO: Objection, vague.  
 10 BY MS. ZALKIN:  
 11 Q Was your sister --  
 12 MS. DIGIACOMO: Objection, leading.  
 13 BY MS. ZALKIN:  
 14 Q How did your sister look physically the week of July  
 15 the 2nd?  
 16 A She was -- she looked very pale, she was very sick,  
 17 she was --she just slept a lot.  
 18 THE COURT: The first two questions were  
 19 withdrawn.  
 20 MS. ZALKIN: Yes, Your Honor,  
 21 BY MS. ZALKIN:  
 22 Q Was she talkative that week?  
 23 MS. DiGIACOMO: Objection, leading.  
 24 THE COURT: Sustained.

XVII-140

A LOBATO - DIRECT

1 provided me with two jurors' notes, which the Court will have  
 2 marked collectively as the Court's next in number.  
 3 THE CLERK: 77.  
 4 THE COURT: After review with Court and counsel in  
 5 chambers, the way the deliberations are presided upon is  
 6 dependant upon the ladies and gentlemen of the jury and  
 7 whom is selected to be the foreperson who is in charge of that  
 8 process- That is not under the control of the Court, but rather  
 9 it is under the control of the ladles and gentlemen of the jury.  
 10 The -- one of the notes references a Thursday  
 11 afternoon appointment. That will need to be moved. You will  
 12 be in this trial through Thursday.  
 13 Proceeding with Ashley Lobato's testimony. She has  
 14 been returned to the witness stand and remains under oath,  
 15 MS. ZALKIN: Your Honor, may — would the Court  
 16 grant permission to briefly reopen direct for a few questions?  
 17 I had passed the witness before the break,  
 18 MS, DiGIACOMO: There's no objection,  
 19 THE COURT: All right.  
 20 MS. ZALKIN: Thank you very much,  
 21 **DIRECT EXAMINATION (Continued)**  
 22 BY MS. ZALKIN:  
 23 Q Ms. Lobato, have you ever seen your sister use  
 24 methamphetamine?

XVII-139

A. LOBATO - CROSS

1 BY MS. ZALKIN:  
 2 Q Did your sister appear different to you the week of  
 3 July 2<sup>nd</sup> than she previously had been or not?  
 4 A Yes.  
 5 Q And in what way did she appear different to you?  
 6 A She wanted me around. She was --  
 7 MS. DiGIACOMO: Objection, nonresponsive. The  
 8 question was how she looked,  
 9 THE COURT: Sustained.  
 10 MS. DIGIACOMO: And move to strike.  
 11 THE COURT: Granted,  
 12 BY MS. ZALKIN:  
 13 Q How did she appear different with respect to her  
 14 personality traits?  
 15 MS. DiGIACOMO: Objection, assumes facts not in  
 16 evidence. She said she looked --  
 17 THE COURT: Sustained.  
 18 MS. ZALKIN: Nothing further,  
 19 THE COURT: Cross.  
 20 MS, DiGIACOMO: Thank you,  
 21 **CROSS-EXAMINATION**  
 22 BY MS. DiGIACOMO:  
 23 Q You said that the week of July r<sup>d</sup> that your sister  
 24 looked pale, sick, slept a lot?

XVII-141

A. LOBATO - CROSS

1 A Mm-hmm,  
 2 Q Is that a yes for the record?  
 3 A Yes. Sorry.  
 4 Q She was like that the entire week she was there?  
 5 A Yes, pretty much,  
 6 Q So even on Sunday night, July 8<sup>th</sup>, when you said  
 7 you saw her, she was also pale and sick then?  
 8 A Oh, oh, no. She was getting better as she was  
 9 going to the doctor,  
 10 Q Okay, So she -- is it fair to say then that she was  
 11 pale and sick July e<sup>d</sup> 3<sup>rd</sup>, 4, and the 5<sup>th</sup> when she went to  
 12 the doctor?  
 13 A Yes,  
 14 Q And then after July 5<sup>th</sup> she got better?  
 15 A She was getting better.  
 16 Q Getting better? So she wasn't completely herself by  
 17 July 8<sup>th</sup>?  
 18 A No,  
 19 Q At the time of this week in July 2001, you were on  
 20 school break?  
 21 A Yes,  
 22 Q You were actually in between schools?  
 23 A Yes. Yes, There was a junior high and then a high  
 24 school, I was going into high school

XVU-142

A. LOBATO - CROSS

1 A We were out around town a lot. We never just  
 2 stayed at each other's houses. Just in and out of both.  
 3 Q Where would you hang out with him?  
 4 A We would go out like horseback riding, we'd ride our  
 5 bikes, we'd go -- there's desert everywhere, so we'd just  
 6 always be out and around,  
 7 Q Would you ever hang out with him when he was  
 8 working at the mini mart?  
 9 A Sometimes.  
 10 Q And you said that -- I believe what you marked on  
 11 the calendar, and correct me if I'm wrong, you saw your sister  
 12 on July 2 when she came home? You know --  
 13 A Well, I think -- I know it was a couple days before  
 14 the 4<sup>th</sup> of July,  
 15 Q Okay. So you know it was a couple of days before  
 16 the 4<sup>th</sup> of July that she came home?  
 17 A Mm-hmm,  
 18 Q Is that a yes?  
 19 A Yes. Sorry,  
 20 Q And she drove her red Hero home?  
 21 A Yes,  
 22 Q Do you know when she got the car?  
 23 A I don't, I just remember cleaning it with her. I  
 24 don't know exactly -- the exact day when she got it.

XV11-144

A. LOBATO - CROSS

1 Okay, So you were gonna be starting high school in  
 2 the fall?  
 3 A Yes.  
 4 Q And you had graduated from your junior high?  
 5 A Yes.  
 6 Q So at this time, you weren't working, were you, in  
 7 July 2001?  
 8 A No  
 9 Q You were just hanging out with your friends and  
 10 enjoying the summer break?  
 11 A I had a babysitting job, actually.  
 12 Q Okay. What was your babysitting job?  
 13 A I babysat three days a week for Marilyn Parker most  
 14 of the summer.  
 15 Q In that week of July 2001, that first week in July,  
 16 were you babysitting that week?  
 17 A I actually had her kids the 4<sup>th</sup> of July and I was  
 18 watching them on the 4<sup>th</sup> of July while like everybody was  
 19 partying for the barbeque, But I don't -- I didn't have them  
 20 that weekend after, like the weekend of the 9<sup>th</sup>.  
 21 Q But -- and most of that week you said from the 5<sup>th</sup>,  
 22 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, you were spending it a lot with Clint?  
 23 A Yes,  
 24 Q At his house?

XV11-143

A. LOBATO CROSS

1 Q When did you clean it with her?  
 2 A Well, I remember cleaning it with her when she got  
 3 it. I don't remember exactly when.  
 4 Q Oh, you mean when she first got the car?  
 5 A Yeah,  
 6 Q Okay. So it -- was it around the time she  
 7 graduated?  
 8 A Yes, I think it was a graduation present or  
 9 something.  
 10 From your parents?  
 11 A Yeah.  
 12 Are you aware of the license plate she had on her  
 13 car?  
 14 A Yes. It was -- it was a --  
 15 Q A personalized plate?  
 16 A Yeah, it was a personalized plate.  
 17 Q Was that a gift as well, or was that what she did to  
 18 the car herself?  
 19 A I think she picked it out.  
 20 Q And she drove that car to Vegas when she moved  
 21 there?  
 22 A Yes.  
 23 Q And you testified that your parents moved back into  
 24 her room after she moved to Vegas?

XV11-145

A. LOBATO - CROSS

1 A Yes,  
 2 Q How long, from the time she graduated 'till she  
 3 came home July 2<sup>nd</sup>, had she been gone? Was it like a couple  
 4 of weeks, a couple of months?  
 5 A It wasn't -- I don't think it was that long. I wouldn't  
 6 -- I don't even know 'cause I didn't -- I don't even remember  
 7 when she graduated, so --  
 8 Okay,  
 9 A -- I don't know about how long it is at all,  
 10 Well, do you recall seeing her in the month of June,  
 11 2001?  
 12 A No,  
 13 Do you --  
 14 A I don't --  
 15 Well, is it okay. Let me do it this way. You know  
 16 she moved to Vegas --  
 17 A Mm-hmm  
 18 Q -- correct?  
 19 A Yes.  
 20 Q And you know you saw her when she came back  
 21 around the 4<sup>th</sup> of July 2001?  
 22 A Yes,  
 23 Q Did you see her any other time in -- any other time  
 24 between when she moved to Vegas and came home for the 4th

XV11-146

A. LOBATO - CROSS

1 A I don't know. I didn't know my way around Vegas.  
 2 I just know she was on the other side.  
 3 Q Okay. So Shayne was there -- you were there with  
 4 Shayne?  
 Mm-hmm,,  
 6 Q Shayne knew her way around Vegas?  
 7 A Yes.  
 8 Q And all you remember is that your sister was too far  
 9 away to go see?  
 10 A Yes,  
 11 Q But you almost did go see her?  
 12 A Almost.  
 13 Q Did you call her to tell her you were in Vegas?  
 14 A Yes.  
 15 Q You called your sister?  
 16 A Yes.  
 17 Q Do you know how you called her? Did she have a  
 18 cell phone?  
 19 A I don't remember if she had a cell phone or not. I  
 20 don't know how I got a hold of her,  
 21 Q Did you have a cell phone back in 2001?  
 22 A No.  
 23 Q Did your parents have cell phones?  
 24 A Not that I can remember.

XV11-148

A. LOBATO - CROSS

1 of July?  
 2 A No.  
 3 Q And you can't recall how long that was? Was it  
 4 more than a couple of weeks?  
 5 A She graduated in the springtime, so I'm saying May  
 6 -- all of June probably, a little bit of May, until the July.  
 7 Q Do you recall --  
 8 A That's what I can assume.  
 9 Q Okay, And you're assuming --  
 10 A Yeah,  
 11 Q -- but you're not sure?  
 12 A Yeah. 'Cause that's when usually the graduations  
 13 happen is in the spring, so --  
 14 Q Do you have a memory though of not seeing her for  
 15 quite some time?  
 16 A Yes. I remember going to Vegas and she was there  
 17 and not being able to see her and just -- just for instances,  
 18 Q You mean after she moved to Vegas?  
 19 A Yeah  
 20 Q You actually went down to Vegas yourself?  
 21 A I went to Vegas with my cousin, Shayne, and I  
 22 almost went to visit her, but we didn't get a chance to, she  
 23 was on the other side of town, but --  
 24 Q What side of town did you go to?

XV11-147

A. LORATO - CROSS

1 Q Okay. So it's not possible that you and your sister  
 2 could borrow your parent's cell phones back then?  
 3 A Well, I know they had cell phones. I know at one  
 4 point they were Verizon, they were small, but I don't  
 5 remember when they had them exactly.  
 6 Q Okay, But it's possible it was in 2001?  
 7 A Yeah, it is,  
 8 Q When they had the cell phones were you or your  
 9 sister ever able to borrow it?  
 10 A Yes.  
 11 Q Okay. And both of your parents had cells phones or  
 12 they had just one?  
 13 A I believe both of them had one.  
 14 Q So they shared one?  
 15 MS, ZALKIN: Objection, Your Honor. This is beyond  
 16 the scope of direct,  
 17 MS. DiGIACOMO: It's cross-examination. I'm  
 18 testing her memory. And actually they did ask when she had  
 19 seen her between the time she moved down and the time that  
 20 she saw her in July. And so she brought up and she tried to  
 21 se her in Vegas. I'm just following up.  
 22 THE COURT: Overruled.  
 23 BY MS. DiGIACOMO:  
 24 Q Did you see your sister around Mother's Day in May

XV11-149

A LOBATO - CROSS

1 2001 that year?  
 2 A I don't remember.  
 3 Okay. So you don't remember if she had come  
 4 home?  
 5 A I don't think she came home.  
 6 Q Your parents moved into Blaise's room when she  
 7 moved out?  
 8 A Yes.  
 9 Q Okay. What happened to Blaise's stuff that was in  
 0 her room when your parents moved in?  
 1 A She had actually moved it, most of her stuff to  
 2 Caliente, all of her stuff. Her — yeah, I don't remember what  
 13 happened with most of her stuff,  
 14 Q So her clothes, her —  
 15 A Well, I think she had her clothes,  
 16 Q Okay, She had her clothes with her in Vegas. Okay.  
 17 Is that fair?  
 18 A Yes.  
 19 And her other belongings she moved to Caliente?  
 20 A I just -- I remember her living in Caliente at one  
 21 point and her entertainment wall unit and all that stuff was  
 22 gone, so I don't know what happened to it after that,  
 23 Q Okay. So in her bedroom she had an entertainment  
 24 wall center --

XVII-150

A. LOBATO - CROSS

1 A I didn't consider them weapons. They were just  
 2 hanging there.  
 3 Q Okay, But somebody else might consider them  
 4 weapons, is that fair to say?  
 5 MS. ZALICIN: Objection, speculation, move to strike.  
 6 THE COURT: Sustained.  
 7 BY MS, DIGIACOMO:  
 8 Q You didn't consider them weapons, why?  
 9 A Because they were just hanging on the Wall as  
 10 decoration and there -- they just have always. been that way.  
 11 I've never seen 'em used.  
 12 Q Not even in the movies —  
 13 A No.  
 14 Q as weapons?  
 15 A I know that they are used, you know, in the  
 16 Japanese movies or Chinese movies, but I've never watched  
 17 them, so —  
 18 Q Okay. So you know that it's possible they can be  
 19 used as weapons, but to you they were just decoration?  
 20 A Yes. But when I bump into them and stuff they  
 21 were like wooden plastic things,  
 22 Q Okay, So they weren't real weapons?  
 23 A I didn't --  
 24 Q Now your sister has -- had a knife collection,

XVII-152

A. LOBATO - CROSS

1 A Mm-hmm.  
 2 Q — while she lived there?  
 3 A Yes.  
 4 Q But after she moved out it was gone?  
 5 A Yeah, I don't remember what happened to it.  
 6 Q Okay. But then your parents moved their furniture  
 7 into her bedroom and it became their bedroom?  
 8 A Yes,  
 9 Q Was this house a three bedroom or a two bedroom?  
 10 A It was a two bedroom,  
 11 Q Where did your parents sleep before Blaise moved  
 12 out?  
 13 A In the living room.  
 14 Where she slept on the futon?  
 15 A Yeah, but they had their bed out there.  
 16 Okay. Now you talked about some stuff that was  
 17 hanging on your wall that was for decoration?  
 18 A Yes.  
 19 Q Weapons, Zoro outfit, correct?  
 20 A Mm-hmm. It was a Zoro outfit. I didn't -- I don't  
 21 consider them weapons.  
 22 Q Okay, The — were there nunchucks?  
 23 A Yes,  
 24 Q Okay But that's not a weapon to you?

XVII-151

A. LOBATO - CROSS

1 correct?  
 2 A Yes, I think so.  
 3 Q How many knives did she have?  
 4 A Not very many.  
 5 Q Did she have 10?  
 6 A She was working on her collection at the time. I  
 7 don't know how many she had.  
 8 Q What kind of knives did she collect?  
 9 A Any kinds that people would get her.  
 10 Q Did she know how to use the knives that she was  
 11 collecting?  
 12 A Not that I know of,  
 13 Q Did you ever see her with a butterfly knife?  
 14 A When my dad gave it to her, yes,  
 15 Q And what did — when did you see your dad give her  
 16 that?  
 17 A I don't remember the exact date.  
 18 Q Wasn't a gift for Christmas?  
 19 A I can't really say that it was for Christmas,  
 20 Q All right, But it was a gift from your dad to your  
 21 sister?  
 22 A Yes.  
 23 Q Did you know how to work a butterfly knife yourself?  
 24 A No,

XVII-153

A. LOBATO CROSS.

1 Q Did your sister know how to work one?  
 2 A No, I don't think so.  
 3 Q Did you dad teach her how to maneuver it, get it out  
 4 with one hand?  
 5 A I don't know. I didn't see him do that.  
 6 Q So you never saw your sister with this knife, other  
 7 than when your dad gave it to her as a gift?  
 8 A Yeah, and it was -- she just carried it,  
 9 Q So she did carry this knife, the butterfly knife?  
 10 A Yeah, that I -  
 11 Q Where would she carry it?  
 12 A In her bag usually sometimes.  
 13 Q I can't hear you,  
 14 A In her bag.  
 15 Q In her bag, her purse? Did you ever know her to —  
 16 is that a yes for the record?  
 17 A Yes.  
 18 Q Did you ever know her to carry it in her pocket or  
 19 boot?  
 20 A No,  
 21 Q How long did she carry it?  
 22 A I really can't say,  
 23 Q How long before she graduated did she get this gift  
 24 from your dad? Was it a year, was it a month?

XVII-154

A. LOBATO - CROSS

1 know what the bat looked like that was in her car?  
 2 A I don't know what the bat looked like exactly.  
 3 Q But you knew she carried a bat?  
 4 A I just remember seeing a bat behind her seat in her  
 5 car,  
 6 Q When was that?  
 7 A When she had the car. I don't —  
 8 Q Was that before she left to move to Vegas?  
 9 A It was between the time that she got the car and  
 10 she left for Vegas,  
 11 Q When she came back to Vegas on July 2<sup>nd</sup> or  
 12 somewhere around there before the 4<sup>th</sup>, did you ever ride in  
 13 her car with her?  
 14 A No,  
 15 Q And you testified that she pulled it in front of your  
 16 house but partially over the fence line to where the  
 17 McCroskys's property is?  
 18 A Yeah, right outside on the street.  
 19 Q Okay, So it's on the street but it's half on your side  
 20 of the fence line, your parents' house, and half on the  
 21 McCrosky's?  
 22 A Well, yeah. The back end of the car was slightly in  
 23 front of McCroskys's yard,  
 24 Q Okay, So just part of her back end was in front of

XVII-156

A LOBATO - CROSS

1 A I really can't say,  
 2 Q After she got it did she carry it in a regular basis?  
 3 A Not that I know of.  
 4 Q You just saw her carry it sometimes?  
 5 A Well, usually when we go out of town, it's like  
 6 protection. We don't really have to carry anything around  
 7 Panacar  
 8 Q Okay. So when she would leave Panaca she'd carry  
 9 it for protection?  
 10 Yes.  
 11 And that wasn't uncommon for girls from Panaca to  
 12 do?  
 13 A Yeah, Most people carried bats or something in  
 14 their car, something like that.  
 15 Did your sister ever carry a bat in her car?  
 16 She had a bat in her car, yes.  
 17 What did it look like?  
 18 A A wooden baseball bat. Or maybe it was a metal  
 19 one. I don't know. I have a wooden one. I don't know what  
 20 she has.  
 21 I'm sorry. I cannot hear you. You have a —  
 22 A I don't know what it looked like. I think it was a  
 23 metal one.  
 24 Q Okay. But -- so you're guessing then, you don't

XVII-155

A LOBATO - CROSS

1 their yard?  
 2 A Yeah. Not very far, just enough because the trailer  
 3 was parked kind of in front of our house,  
 4 Q And the car stayed in that same position until the  
 5 police came on July 20th?  
 6 A From what I saw, yes,  
 7 Q From what you saw? But you weren't there every  
 8 minute of the day?  
 9 A Not every minute. I was in and out throughout the  
 10 day.  
 11 So it's possible it could've gotten moved and you  
 12 wouldn't have known?  
 13 A Yes, it is,  
 14 Q That week you said you'd been -- you were in and  
 15 out every day. Did you sleep there at the residence every  
 16 night?  
 17 A Yes.  
 18 Q On the 4<sup>th</sup> of July, the barbeque that your parents  
 19 had at the residence, what time did that start usually -- or  
 20 what time did it start that day in 2001?  
 21 A I really can't say about what time it started. I don't  
 22 know.  
 23 Okay. Was it afternoon, was it getting dusk, was it  
 24 dark?

XVII-157



A. LOBATO - CROSS

1 A Well, it was about -- it was late afternoon, you  
 2 know. It was — it was in the afternoon, I know that, like after  
 3 12:00,  
 4 Did you and the other people there watch fireworks?  
 5 A I went to the fireworks, but it wasn't until later.  
 6 Okay, You said you went to the fireworks? Is there  
 7 only one fireworks display up there?  
 8 A Yeah, there was fireworks in Caliente. You had to  
 9 go to Caliente to watch them. We lived in Panaca.  
 10 Q And when would you have gone to watch the  
 11 fireworks in Caliente?  
 12 A They start at 9:00, so probably around 8:30 or 8:00.  
 13 Q So you'd go shortly before?  
 14 A Yeah.  
 15 Q And as part of this, was there also like booths set up  
 16 where you could get food and drink and everything in Caliente  
 17 where the fireworks were?  
 18 A Yes. There's a concession stand that's always open.  
 19 Q Oh, okay. So it's not just for the fireworks, or is it  
 20 the concession stand for the fireworks?  
 21 A Well, there's -- they have softball tournaments too  
 22 during the day sometimes, and — yeah, there's concessions  
 23 stand, it's at the park and they open the concession stand to  
 24 serve food.

XVLI-158

A. LOBATO - CROSS

1 remember her driving me, though.  
 2 Q Did she go to the fireworks with you?  
 3 A No.  
 4 Q So she wasn't there to watch the fireworks?  
 5 A I don't remember her being there to watch the  
 6 fireworks.  
 7 Q Okay. So you don't remember her there, you know,  
 8 where this park is, watching the fireworks, or being at the  
 9 softball games —  
 10 A No.  
 11 Q -- or anything like that? And you said that that  
 12 night, 4<sup>th</sup> of July, that your sister was kind of pale, withdrawn,  
 13 sleeping a lot?  
 14 A She was sick. She was starting to get better, but  
 15 she was sick.  
 16 Q On the 4<sup>th</sup> of July she was still —  
 17 A Yeah. She was kind of eating a little bit and she was  
 18 kinda talking, but a lot of the time she was in the house.  
 19 Q So she was in the house, or I think you said in the  
 20 garage, for the barbeque?  
 21 A Yeah, or in the garage, yeah,  
 22 Q Did you hang out with her a lot at the barbeque?  
 23 A I spent most of my time in the front yard with  
 24 Marilyn's kids, and I saw her whenever I'd go in the garage or

XVII-160

A LOBATO - CROSS

1 Q So that's open at the park where they have the  
 2 fireworks?  
 3 A Yes.  
 4 Q Okay. Did you go by yourself to the fireworks?  
 5 A No.  
 6 Q Who went with you?  
 7 A Clint,  
 8 Q So you and Clint went alone?  
 9 A Mm-hmm,  
 10 Q Is that a yes?  
 11 A Well, no, he didn't have a license. I don't remember  
 12 who took us, though. But neither of us had a license back  
 13 then. I just know I went to the fireworks,  
 14 Q So you and Clint went to the fireworks, but you're  
 15 not sure how you got there?  
 16 A No.  
 17 Q No, you didn't go?  
 18 A I'm not sure how I got there.  
 19 Q Okay. But you and Clint did go?  
 20 A Yes.  
 21 Q Is it possible that your sister drove you down there?  
 22 A Yes,  
 23 Q Okay. Well, you're kind of —  
 24 Q Well, it's possible that she drove me. I don't

A... LOBATO - CROSS

1 whenever I'd go in the house. But I was around, I just -- I  
 2 didn't spend any like direct time with her,  
 3 Q So she wasn't hanging out with you in the front yard  
 4 with the kids?  
 5 A She was, you know, we were all around. I just -- I  
 6 don't remember, you know, just sitting there hanging out with  
 7 just her —  
 8 Q Okay.  
 9 A — you know it was everybody.  
 10 Q But she was around the whole party?  
 11 A Yeah, area.  
 12 Q Now you marked also on the calendar that you saw  
 13 your sister not just the 4<sup>th</sup> of July but also on the late  
 14 afternoon of July 8<sup>th</sup>?  
 15 A Yes.  
 16 Q And if I — correct me if I'm wrong, but I believe  
 17 what you said, the July 5<sup>th</sup>, July 6<sup>th</sup>, July 7<sup>th</sup>, and July 8<sup>th</sup>, up  
 18 until when you saw her late afternoon, you're not saying that  
 19 you saw her on those days, but you just can't remember not  
 20 seeing her?  
 21 A Yes.  
 22 Q Okay. So you were in and out the 5<sup>th</sup>, the 6<sup>th</sup>, the  
 23 7<sup>th</sup>?  
 24 A Yes.

XVII-161

A. LOBATO - CROSS

1 Q Okay, So were you spending the majority of your  
 2 time away from the home?  
 3 A Yes.  
 4 Q Do you recall your mom, Becky, and your sister  
 5 fighting on any of those days?  
 6 A No,  
 7 Q So if there was fighting going on you weren't there  
 8 for it?  
 9 A I wasn't there.  
 10 Q And when would you get up and leave during --  
 11 A Usually it was early in the mornings, between 7:00  
 12 and 8:00,  
 13 Q And why was that?  
 14 A I just -- I didn't like being at home all the time  
 15 during the summertime. I always just wanted to go out and  
 16 hang out with Clint, so I was gone a lot of the day,  
 17 Q Okay. And were you -- would you consider yourself  
 18 more of an early riser?  
 19 A Yes.  
 20 Q So you weren't sleeping in late?  
 21 A Well, I wasn't --  
 22 Q Well, I mean during the time you were getting up  
 23 and leaving by -- between 7:00 and 8:00, so you weren't  
 24 sleeping in 'till noon?

XV11-162

A, LOBATO - CROSS

1 the time.  
 2 Q Okay. And that went for July 8<sup>th</sup> as well? You got  
 3 up early and left and came back in the late afternoon?  
 4 A Mm-hmm.  
 5 Q Is that a yes?  
 6 A Yes.  
 7 Q So you wouldn't know what your sister did earlier in  
 8 the day on July 8<sup>th</sup>?  
 9 A No.  
 10 Q You didn't see her at any time until the later  
 11 afternoon on July 8?  
 12 A Well, I know for a lot of the week, you know, I'd get  
 13 up and she'd be, you know, in and out of the house. Well,  
 14 she'd go out in the garage a lot, you know, like smoke a  
 15 cigarette or something, and then she'd be in. But she was  
 16 inside a lot, and I'd see her whenever I'd come in,  
 17 Q But I'm asking you specifically on July 8<sup>th</sup>?  
 18 A Specifically on July 8<sup>th</sup>, I don't know what she did in  
 19 the early morning.  
 20 Q Okay. But you got up that morning, left between  
 21 7:00 and 8:00, came back in the late afternoon, you said when  
 22 the sun was kind of starting to come down, and that's -- you  
 23 know you saw her then?  
 24 A Yes.

XV11-164

A. LOBATO - CROSS

1 A No, I wasn't sleeping in. I don't sleep in.  
 2 Q What time would you normally get home at night,  
 3 for -- and be in for the night?  
 4 A Usually a little after dark, maybe while it was getting  
 5 dark,  
 6 Did you have a curfew?  
 7 A Not exactly, It depended on where I was going.  
 8 On July 7<sup>th</sup>, that was Kyle's birthday?  
 9 A Yes.  
 10 And you went over to the house, Clint's house, and  
 11 helped his brother celebrate his birthday?  
 12 A I can probably say I did, you know, but I don't  
 13 remember the exact, you know, what we did for his birthday  
 14 or anything.  
 15 Q Well, you did spend all of your days with Clint,  
 16 though?  
 17 A Yes, and it's just hard to remember what we did,  
 18 you know, on the days.  
 19 Q All right Well, so if he said that he was at the party,  
 20 would you assume that you were with him?  
 21 A Yes.  
 22 Q I mean 'cause you weren't at home on the afternoon  
 23 -- or the day of the 7<sup>th</sup>?  
 24 A Not that I know of, I mean I was just in and out all

XV11-163

A, LOBATO - CROSS

1 Q She was hanging out in the garage with Chris  
 2 Carrington?  
 3 A Yes.  
 4 Q Okay. But you can't specifically remember what  
 5 days you saw her --  
 6 A Yes,  
 7 -- in the morning?  
 8 A Yeah. I just know that I've seen her throughout the  
 9 week, you know, at different times of the day for different  
 10 reasons.  
 11 Q But you can't be more specific than that, other than  
 12 you saw her throughout the week?  
 13 A Yes.  
 14 Q On the night of July 8<sup>th</sup> you were going back with  
 15 Shayne to her house to have dinner?  
 16 A Yes.  
 17 Q And what did she make?  
 18 A Chicken fried steak,  
 19 Q And who else was present for the dinner?  
 20 A John,  
 21 Q Her husband, John?  
 22 A Yes.  
 23 Q So the three of you sat down and had dinner?  
 24 A Yes, That's what I can remember.

XV11-165

A LOBATO CROSS

1 Q Well, that's what you can remember? So you do  
 2 remember the three of you having dinner?  
 3 A Yes,  
 4 Q Do you remember whether or not you liked the  
 5 chicken fried steak?  
 6 A I liked it. John didn't, He said the gravy was burnt,  
 7 Q Okay. Was there anyone else present for dinner?  
 8 A Not that I can remember.  
 9 Q They don't have any other kids? At that time I know  
 10 she was pregnant, but they didn't have any other kids?  
 11 A No,  
 12 Q When you saw Blaise on July 8<sup>th</sup> in the afternoon,  
 13 what was she wearing?  
 14 A I don't remember what she was wearing,  
 15 Q Do you remember if she had any injuries to her?  
 16 A No.  
 17 Q After July 8<sup>th</sup>, Blaise left sometime in the late hours  
 18 or the early morning hours of July 9<sup>th</sup>, correct?  
 19 A Yes.  
 20 Q When was the next date that you saw her?  
 21 A I don't know,  
 22 Q But she didn't take her own car back to Vegas?  
 23 A No.  
 24 Q But you know that Doug was coming to take her

XVII-166

A. LOBATO - CROSS

1 Q Okay. But they didn't tell you why they were there  
 2 when you first met them outside the house?  
 3 A No,  
 4 Q They just asked to speak to your sister?  
 5 A Yes.  
 6 Q All right. And you eventually let them in to speak to  
 7 your sister after she got done with a shower?  
 8 A Yes.  
 9 Q Okay, And did you tell her who was there to see  
 10 her?  
 11 A I -- I just told her that Cary Lee was outside with a  
 12 couple people in suits, and I went and like told her, I didn't  
 13 know who they were.  
 14 Q Okay. So -- and who's Cary Lee?  
 15 A He's the -- a local cop.  
 16 Q And so you knew him?  
 17 A Yes.  
 18 Q After your -- the police spoke with her, did your  
 19 sister end up leaving that night?  
 20 A Yes,  
 21 Q With the police?  
 22 A Yes,  
 23 Q Okay And after the police left did you talk to your  
 24 mom about what was going on?

XVII-168

A. LOBATO - CROSS

1 back to Vegas?  
 2 A Yes.  
 3 Q So the next time that you can say you recall seeing  
 4 your sister is the date that the police came over?  
 5 A Yes, for sure,  
 6 Q Now before the police came over, did you -- do you  
 7 know if you saw her any other day between the time she left  
 8 on the early morning hours of July 9<sup>th</sup> until the police came  
 9 over?  
 10 A I can't name any specific days. I don't --  
 11 Q Did you know she was back in Panaca?  
 12 A Yes. I know my dad went to pick her up --  
 13 Q Okay.  
 14 A -- and she came home.  
 15 Q How was she looking at that time?  
 16 A She seemed okay.  
 17 Q Okay. So --  
 18 A Normal.  
 19 Q She seemed normal? Didn't seem sick or need to go  
 20 to the doctor?  
 21 A Not that I can remember. I don't remember.  
 22 Q Now when the police came you said you were willing  
 23 to speak to the police?  
 24 A Yes,

XVII-167

A. LOBATO - CROSS

1 A No.  
 2 Q You never asked why -- what happened?  
 3 A I actually heard what was happening when the  
 4 police were questioning her, I already knew what was going  
 5 on.  
 6 Q Okay, So you heard what she was telling the police,  
 7 what your sister told the police?  
 8 A Yes. I was in my room, I heard.  
 9 Q All right, And then after she was arrested you and  
 10 your mom never talked about whether or not she was home  
 11 on July 8th?  
 12 A No. I -- I didn't know what was going on. We didn't  
 13 -- we just assumed that, you know, what she had said was the  
 14 truth and that maybe she had killed somebody, I don't know,  
 15 Q Okay. So did you overhear your sister actually say  
 16 she'd killed somebody?  
 17 A When they were questioning her, she didn't say that.  
 18 She said -- she just basically told her story, that --  
 19 Q Okay. Well, you don't have to tell me.  
 20 A Well, yeah,  
 21 Q But I mean, so you didn't hear her say I killed  
 22 somebody?  
 23 A I didn't hear her say that.  
 24 Q Okay. And it wasn't a very long conversation that

XVII-169

A LOBATO - CROSS

1 she had with the detectives?  
 2 A It was,  
 3 Q It was a long conversation?  
 4 A They questioned her once and then they questioned  
 5 her again with the tape on the second time. And then they sat  
 6 around and waited for my dad to get there and then they left.  
 7 They were there for a long time.  
 8 Q Well, no, but I'm asking the actual questioning when  
 9 she was telling her story. That wasn't very long?  
 10 A I don't think so. I don't —  
 11 Q Okay. But you don't recall?  
 12 A I don't recall.  
 13 Q So at no time did you talk to your mom about any  
 14 information you had after she was -- after Blaise was arrested?  
 15 A Yes.  
 16 Q Okay, So you never talked to your mom?  
 17 A I never talked to my mom.  
 18 Q You never talked to my dad?  
 19 A No,  
 20 Q Okay. And in fact, you weren't even noticed as an  
 21 alibi witness in this case until October of 2005, correct?  
 22 A Actually I was noticed the first time.  
 23 Q Okay. You -- it's your testimony that you were  
 24 noticed the first time?

XVII-170

A. LOBATO - CROSS

1 Q Okay, So if you weren't with Clint you would've just  
 2 been out and about on your own?  
 3 A No, I would've been home.  
 4 Q Okay. So if you weren't with Clint on the 8<sup>th</sup> then  
 5 you would've been home?  
 6 A Yes.  
 7 Q Did Clint ever come over and hang out at your  
 8 house?  
 9 A Not very often.  
 10 MS. DiGIACOMO: Nothing further.  
 11 THE COURT: Redirect.  
 12 MS, ZALKIN: Nothing further, Your Honor.  
 13 THE COURT: You may -- hold on a second.  
 14 Counsel approach.  
 15 (Off-record bench conference from 4:26:33-4:29:47 p.m.)  
 16 THE COURT: Ms. Lobato, the ladies and gentlemen  
 17 of the jury have two questions that they wish to ask you. I'm  
 18 gonna read each question to you and after I read it you may  
 19 answer it. After you've answered the questions then the  
 20 attorneys for each side will have an opportunity to pose  
 21 followup questions to you if they deem them appropriate.  
 22 "When Blaise came back to visit the first week of  
 23 July, did you help clean her car from when it had been  
 24 allegedly vandalized by Jeremy Davis?"

XVII-172

A. LOBATO - CROSS

1 A I was — yes. I was subpoenaed the first court date,  
 2 I just never -- I never testified.  
 3 Q But -- okay. You were subpoenaed, but you — did  
 4 you even come down to —  
 5 A Yes, I sat outside the courtroom.  
 6 Q Okay. But nobody ever told you whether or not you  
 7 were noticed as a witness?  
 8 A I was a witness. I was questioned by the -- I don't  
 9 know, I guess the defense team the last time, and they said I  
 10 was going to testify but I never testified r  
 11 Q Okay.  
 12 MS, DiGIACOMO: Court's indulgence.  
 13 BY MS, DIGIACOMO:  
 14 Q When -- okay. On the 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup>, when you  
 15 weren't home you were normally hanging out with Clint?  
 16 A Yes.  
 17 Q Okay. Do you recall specifically on -- I know you  
 18 don't remember the 7<sup>th</sup>, the birthday party, but on the 8<sup>th</sup> do  
 19 you recall being with Clint on that day --  
 20 A No.  
 21 Q -- before you came home?  
 22 A No, I don't recall actually being with him, I just  
 23 assumed I was because he was my only friend and that's who  
 24 I hung out with every day.

XVII-171

A, LOBATO - CROSS

1 THE WITNESS: No.  
 2 THE COURT: That will be marked as Court's next in  
 3 number,  
 4 THE CLERK: 78.  
 5 THE COURT: "Where were you exactly when Las  
 6 Vegas Police were talking to your sister? What room?"  
 7 THE WITNESS: I was in my bedroom, which is kind  
 8 of down the hall.  
 9 THE COURT: That will be marked as Court's 79.  
 10 Any followup by the State?  
 11 MS, DIGIACOMO: No, Your Honor.  
 12 THE COURT: Any followup by the defense?  
 13 MS. ZALKIN: No, Your Honor.  
 14 THE COURT: You may step down from the stand.  
 15 Defendant may call —  
 16 MS. DIGIACOMO: Your Honor, what we discussed at  
 17 the bench, do you want the State to wait?  
 18 THE COURT: It's up to you how you wish to  
 19 proceed in that regard.  
 20 MS. DiGIACOMO: Your Honor, we'd ask you to take  
 21 judicial notice that Ashley Lobato was not noticed as an alibi  
 22 witness until October 20, 2005. She wasn't even noticed as a  
 23 witness until that time.  
 24 THE COURT: October 20, 2005?

XVII-173

L. LOBATO - DIRECT

1 MS. DiGIACOMO: That's correct.  
 2 (Pause in the proceedings)  
 3 THE COURT: The Court takes judicial notice that on  
 4 October 20, 2005, amended notice of alibi witness was filed in  
 5 this case, which for the first time listed Ashley Lobato., The  
 6 Court takes judicial notice of that,  
 7 Defendant may call defendant's next witness.  
 8 MS, GREENBERGER: Larry Lobato.  
 9 THE CLERK: Please come all the way forward.  
 10 THE WITNESS: This way?  
 11 THE CLERK: Remain standing and raise your right  
 12 hand,  
 13 LORENZO LOBATO, DEFENDANT'S WITNESS, SWORN  
 14 THE CLERK: Thank you. Please be seated. State  
 15 your name and spell it for the record, please.,  
 16 THE WITNESS: Lorenzo Lobato, L-o-r-e-n-z-o  
 17 L-o-b-a-t-o.  
 18 THE COURT: Ms, Greenberger may proceed,  
 19 DIRECT EXAMINATION  
 20 BY MS, GREENBERGER:  
 21 Q Good afternoon.  
 22 A Hi,  
 23 Q Are you related to Blaise Lobato?  
 24 A Yes, I am.

XVII-174

L, LOBATO - DIRECT

1 Q Was your daughter, Blaise, in school at that time?  
 2 A In 2001, I believe she was,  
 3 Q What kind of school?  
 4 A She went to adult education,  
 5 Q Who was her teacher?  
 6 A Dixie Tienken.  
 7 Q Did she graduate?  
 8 A Yes, she did.  
 9 Q Were you at her graduation?  
 10 A Yes, I was,  
 11 Q Do you know when that was?  
 12 A I'm not really sure what the date was, whether it  
 13 was around the same time as regular graduation or a little bit  
 14 before, so it could've been April or May.  
 15 Q Of 2001?  
 16 A Yes.  
 17 Q Did she get a car around that time?  
 18 A She got it a little after graduation.  
 19 Q What kind of car?  
 20 A It was an '84 Pontiac Fiero..  
 21 Q Who were your neighbors at the time directly next to  
 22 your house on both sides?  
 23 A On the right side was Jo Dennert and her son and  
 24 daughter, and on the left side were the McCroskys.

XVII-176

L LOBATO - DIRECT

1 Q How are you related?  
 2 A I'm her father.  
 3 Q Where do you live?  
 4 A I live in Ontario, California.  
 5 Q How long have you lived there?  
 6 A 3 years now.  
 7 Q Where did you used to live?  
 8 A I lived in Panaca, Nevada.  
 9 Q How long did you live there?  
 10 A 10 years.  
 11 Q Do you remember your address?  
 12 A Well, we really didn't have an address on the street,  
 13 so we kinda made up our own 'cause everything was P.O, Box,  
 14 But the street address was 670 Callaway Street.,  
 15 Q Did you have mail delivery to the house?  
 16 A No.  
 17 Q Just --  
 18 A Everything went to the post office.  
 19 Q Going back to the year 2001, let's say the beginning  
 20 of the year, January 2001, who was living in your household?  
 21 A Well, myself and my wife, and my two daughters,  
 22 Ashley and Blaise.  
 23 Q What is your wife's name?  
 24 A Becky,

XVII-175

L. LOBATO - DIRECT

1 Q Did there come a time after graduation that your  
 2 daughter, Blaise, went anywhere?  
 3 A Yes, she went to Las Vegas,  
 4 Q How did she get thee?  
 5 A She took her car.  
 6 Q How long was she gone?  
 7 A She was gone, you know, a few weeks at a time and  
 8 then she'd come home for a little while. She wasn't sure what  
 9 she was wanting to do, I don't think.  
 10 Q Did you see her while she was in Las Vegas?  
 11 A Yes, I did.,  
 12 Q Do you recall when?  
 13 A I saw her towards the end of June when she was  
 14 staying at a house that her friends Steve and Cathy had.  
 15 Q Can you describe how she looked?  
 16 A Well, she didn't look too good to me. She looked  
 17 like she'd been up for a few days.  
 18 Q How could you tell?  
 19 A Well, I'm a recovering drug addict of my own, and I  
 20 know what it looks like, I know what the symptoms are.  
 21 Q Did you do anything with her when you saw her?  
 22 A Yes, I took her out to eat, we went to the Galleria  
 23 Mall.. I had her mother's wedding band, the diamond in it was  
 24 loose, so I had it repaired at a jewelry store there, and we

XVII-177

L LOBATO DIRECT

1 went out to eat.  
 2 Q Did she confide in your —  
 3 MR. KEPHART: Your Honor, I'm gonna object to  
 4 leading,  
 5 THE COURT: Sustained,  
 6 BY MS. GREENBERGER:  
 7 Q Did you have a conversation over lunch?  
 8 A We had a conversation over lunch about a variety of  
 9 different things,  
 10 Q Did she confide in you?  
 11 A Not until later in the evening when I was getting  
 12 ready to go home,  
 13 Q Without telling us the nature of your discussion,  
 14 were you concerned?  
 15 A Yes, I was,  
 16 Q Concerned about her well-being?  
 17 A Yes,  
 18 Q Was there a time that she returned to Panaca after  
 19 being in Las Vegas?  
 20 A Yes, Actually the night that we had a conversation  
 21 before I came back home, I told her she could always come  
 22 back home. And she came home about a week later on the  
 23 2' of July.  
 24 Q Can I ask you — well, strike that. Do you remember

XVII-178

L. LOBATO - DIRECT

1 A Probably goofing around in my garage,  
 2 Q Do you spend a lot of time there?  
 3 A Yes,  
 4 Q Why is that?  
 A Well, it was like the centerpiece of my basic life. I  
 6 had my tools for working on cars out there, I had my gym out  
 7 there, I had a TV out there, the phone, so I didn't have to go  
 8 in the house much. And we didn't let anybody smoke in the  
 9 house, so that was basically the smoking spot.  
 10 Q How did Braise look when she arrived home?  
 11 A She looked happy to be home.  
 12 Q Do you recall where she first parked the car?  
 13 A Well, right directly in front of my house. I have a  
 14 driveway that comes right up to the garage, on the left side  
 15 there's a fence that goes down the front of the yard. And it  
 16 was right to the lefthand side of the fence, right next to the  
 17 McCrosky house.  
 18 Q So the fence you're describing separates your house  
 19 from the McCroskys?  
 20 A Yes.  
 21 Q And your testimony is that her car was parked in  
 22 front of your house on the side closer to the McCroskys?  
 23 A Well, the McCrosky house and my house sits side by  
 24 side, and there's a fence that separates the two yards of

XVII-180

L. LOBATO - DIRECT

1 approximately what time she came home?  
 2 A It was sometime in the afternoon. The sun was still  
 3 bright, so I'm not really sure exactly what the time was.  
 4 Q Were you home?  
 5 A Yes.  
 6 Q Can I ask you to get off the witness stand and initial  
 7 on the calendar with your initials -- there's a pen right in front  
 8 of you -- when you saw her on July 2. And if there's not  
 9 enough room,..maybe draw an arrow from the 2 upwards  
 10 and --  
 11 A Is this kind of a time indicator or —  
 12 Q If you could put the time and just your initials.  
 13 Maybe do it above the M on the 2',  
 14 A Right here?  
 15 MS ZALKIN: May I approach, Your Honor?  
 16 THE COURT: Yes.  
 17 THE WITNESS: Above the HMM right here?  
 18 MS. ZALKIN: Sure, You could -- oh, yeah, I see  
 19 what you're saying. You could put your initials there and  
 20 maybe put what approximate time you think it was,  
 21 THE WITNESS: It was about 4 o'clock in the  
 22 afternoon,  
 23 BY MS. GREENBERGER:  
 24 Q What were you doing at the time?

XVII-179

L. LOBATO - DIRECT

1 course. But then I had a fence in the front right by the street.  
 2 And right at the corner where the fence makes the corner is  
 3 where she parked on the street,  
 4 Q How long did she remain in Panaca after July 2<sup>nd</sup>, as  
 5 far as you know?  
 6 A She was there until about -- approximately 1:00 in  
 7 the morning on the morning of the 9th.  
 8 Q During that time period do you recall ever seeing her  
 9 car being driven?  
 10 A No,  
 11 Q Do you know if the car was ever moved?  
 12 A It wasn't moved.  
 13 Q How do you know that?  
 14 A I saw it every day and it was -- it had some  
 15 mechanical problems, that's why she came home so that I  
 16 could fix it,  
 17 Q Did you have -- strike that. What did you do no the  
 18 4th of July?  
 19 A We had a barbeque at my house,  
 20 Q Who was there?  
 21 A My niece and my nephew, Shayne and John, Marilyn  
 22 Parker and her two little kids, Marilyn's mom came by, Kendra  
 23 and Ken had come by, my wife of course was there, and —  
 24 Q Was Blaise there?

XVII-181

L LOBATO - DIRECT

1 A Excuse me?  
 2 Q Was Blaise there?  
 3 A Yes, but Blaise really wasn't active outside, she was  
 4 inside laying down.  
 5 Q Where was she lying down inside?  
 6 A In our living room, We have a big futon by the  
 7 fireplace.  
 8 Q How long did the 4<sup>th</sup> of July barbeque last?  
 9 A Oh, probably 'till about 8 o'clock. We were all gonna  
 10 go down and watch the fireworks, however, there was a nice  
 11 lightening storm, so we just stayed and watched that instead.  
 12 Did Blaise stay with you?  
 13 A Yes.  
 14 Do you recall her going to see the doctor that week?  
 15 A I know that she had went with her mother to the  
 16 doctor.  
 17 Q Do you know when?  
 18 A I believe, they went on the morning of the 5th.  
 19 Q Do you know why?  
 20 Yes. She believed that she had --  
 21 MR. KEPHART: Your Honor, I'm gonna object.  
 22 Unless he knows for sure why he's asking her -- no, It's  
 23 hearsay and he's speculating. Plus he knows. I mean you're  
 24 talking about he went -- she went with the mom,

XVII-182

L LOBATO - DIRECT

1 THE COURT: The Court sustains the objection as to  
 2 hearsay and lack of foundation.  
 3 BY MS, MS, GREENBERGER:  
 4 Q Do you have personal knowledge why she went to  
 5 the doctor?  
 6 A Yes, I do.  
 7 Q Can you tell us what that is?  
 8 MR. KEPHART: Objection, foundation.  
 9 THE COURT: Overruled.  
 10 MS, GREENBERGER: You may answer,  
 11 THE WITNESS: Yes, She went to the doctor  
 12 because she believed that --  
 13 MR. KEPHART: Objection, hearsay,  
 14 THE COURT: Overruled.  
 15 THE WITNESS: She thought she was being  
 16 poisoned while she was in Las Vegas.  
 17 BY MS, GREENBERGER:  
 18 Q Do you know a poison from what?  
 19 THE COURT: The Court will reconsider and sustain  
 20 the objection,  
 21 MR. KEPHART: I'd ask that it be stricken, Your  
 22 Honor,  
 23 MR. SCHIECK: Your Honor, can we approach?  
 24 THE COURT: Counsel may approach.

XVII-183

L LOBATO - DIRECT

1 (Off-record bench conference from 4:14:45-4:45:55 p.m.)  
 2 BY MS. GREENBERGER:  
 3 Q Do you know how she was feeling the week of July  
 4 2<sup>nd</sup> through the 9<sup>th</sup>?  
 5 A Yes, she was -- she was very tired, feeling ill. She  
 6 was in bed for most of the time.  
 7 Q What were you doing at the time employment wise?  
 8 A I was working -- I worked for myself. I did some  
 9 construction work for a local dentist and on Friday, Saturday,  
 10 and Sunday nights I tended bar in Caliente.,  
 11 Q During the time period of the 2<sup>nd</sup> through the 9<sup>th</sup>,  
 12 were you in Panaca that entire time?  
 13 A Not the entire time, no, 'cause I was in Caliente  
 14 working for some of it,  
 15 Q Did you come home from work every night and  
 16 sleep at home during that time period?  
 17 A Yes.  
 18 Q Do you remember seeing your daughter each night?  
 19 A Yes.  
 20 Q What time do you normally get up in the morning?  
 21 A Well, I normally get up about 6:30 or 7 o'clock in the  
 22 morning on the days that I'm working construction type work,  
 23 And then on the weekends I get up a little later 'cause  
 24 sometimes I wouldn't get home until a little later at night. We

XVII-184

L LOBATO - DIRECT

1 normally close the bar about 12:00 and some nights I wouldn't  
 2 get out of there until, you know, 1:00 or 2 o'clock in the  
 3 morning,  
 4 Q When Blaise came back to town on the 2<sup>nd</sup>, where  
 5 was she sleeping at your place?  
 6 A She slept on the futon in the living room,  
 7 Q Did you see her there every morning when you got  
 8 up from the time period of July 2<sup>nd</sup> through July 9<sup>th</sup>, 2001?  
 9 MR. KEPHART: Objection, leading.  
 10 THE WITNESS: Yes,  
 11 THE COURT: Sustained.  
 12 MR, KEPHART: Move to strike.  
 13 THE COURT: Motion granted.  
 14 BY MS, GREENBERGER:  
 15 Q Can you tell us when you got up each morning what  
 16 you saw?  
 17 A Well, every morning when I got up I usually, you  
 18 know, go into the kitchen. And to get into the kitchen I'd have  
 19 to come down the hallway and the hallway opened up. I'd go  
 20 into the kitchen, I'd come out of the kitchen, and either going  
 21 or coming from anywhere in the house I'd have to pass  
 22 through the living room, and I'd see Blaise there sleeping,  
 23 Q Do you recall if you worked the evening of July 7,  
 24 2001?

XVII-185

L. LOBATO DIRECT

1 A Yes, I did work.  
 2 Q And where would that be?  
 3 A At the Hideaway Club in Caliente, Nevada,  
 4 Q What were your business hours?  
 5 A I went to work at 4 o'clock and we were to stay  
 6 open until midnight, unless of course, because it's a gaming  
 7 community, we had gamblers, then I'd stay open until they all  
 8 left, and normally that would be no later than 2 o'clock in the  
 9 morning.  
 10 Q Is July 7<sup>th</sup> a special day in your family?  
 11 A Yes, it is. It's my father's birthday.  
 12 Q Okay. Did you speak to him on his birthday?  
 13 A Yes, I did.,  
 14 Q Were you present when Blaise spoke to him?  
 15 A No. But when I talked to my dad he told me that he  
 16 had spoken to her,  
 17 MR. KEPHART: Objection, hearsay, Your Honor,  
 18 THE COURT: Sustained.  
 19 MR. KEPHART: And I'll move to strike that.  
 20 THE COURT: Motion granted,  
 21 BY MS. GREENBERGER:  
 22 Q Did you see Blaise the night of July 7<sup>th</sup> while you  
 23 were at work?  
 24 A Yes.

XV11-186

L. LOBATO - DIRECT

1 -- or outside the bar?  
 2 A Yes.  
 3 She remained outside in your car the entire time?  
 4 A Yes.  
 5 And what time did your wife come to get her?  
 6 A I would say it was around 7 o'clock.  
 7 What time did you get home from work that  
 8 evening?  
 9 A It could've been between midnight and 1 o'clock in  
 10 the morning, somewhere in that area.  
 11 Q Was that the standard time you would get home?  
 12 A Yes.  
 13 Q And how many miles is the bar from your house?  
 14 A 14.  
 15 When you got home that evening did you see  
 16 Blaise?  
 17 A Yes.  
 18 Q What was she doing?  
 19 A Sleeping.  
 20 Q Where?  
 21 A Same futon that she'd been sleeping on.  
 22 Q Is there any way to enter the home without going  
 23 through the living room?  
 24 A When my garage door is open, sometimes we come

XV11-188

L. LOBATO - DIRECT

1 Q What time would that have been?  
 2 A I would say it was probably around 6 o'clock in the  
 3 evening. It was still light out,  
 4 Q And how did that come about?  
 5 A She came and knocked on the door of the bar since  
 6 she wasn't old enough to come in, and I went out and spoke  
 7 to her.  
 8 Q How long was she there?  
 9 A I would say she was there approximately 45 minutes  
 10 or so.  
 11 Q What was she doing there?  
 12 A After she talked to me she was waiting in my truck  
 13 until her mom came to pick her up.  
 14 Do you know how she got there?  
 15 A She rode down there with Rusty and Michele, friends  
 16 of hers.  
 17 And how old was your daughter at that time?  
 18 A I believe she was 18.  
 19 There's a 21 year old drinking age there?  
 20 A Yes,  
 21 Were Michele and Paul in your bar that night?  
 22 A No, they didn't come in my bar,  
 23 Did your wife come pick Blaise up from the bar —  
 24 A Yes,

XVII-187

L. LOBATO - DIRECT

1 in through there.  
 2 Q Do you have dogs?  
 3 A Yes,  
 4 Q Do the dogs bark?  
 5 A Yes,  
 6 Q What entryway did you come into the house that  
 7 night, if you recall?  
 8 A I believe that my garage door was three-quarters of  
 9 the way closed. We did that so the cat could get in and out. I  
 10 went in through the front door,  
 11 Did you normally leave the garage door like that for  
 12 the cat?  
 13 A Yes,  
 14 Q What did you do when you got home from work that  
 15 night?  
 16 A Most probably I went in and changed my clothes, I  
 17 talked to my daughter.,  
 18 Q Which daughter?  
 19 A I talked to Blaise 'cause she was right there in the  
 20 living room when I first came in, then I changed my clothes. I  
 21 normally check on Ashley to make sure that she's okay in her  
 22 room. And my routine was to go out into the garage and  
 23 unwind, watch TV.  
 24 Q Do you recall if you did that that night?



L. LOBATO DIRECT

1 A No, I don't recall, but it was standard for me to do  
 2 that  
 3 Q Did you usually have a snack?  
 4 A Pretty much so,  
 5 Q Is the -- did you get the snack from your kitchen?  
 6 A Yes,  
 7 Q Is your kitchen adjacent to the living room?  
 8 A Yes.  
 9 Q Was Ashley in bed that night?  
 10 A Yeah, she was,  
 11 Q Was your wife home?  
 12 A I believe she was,  
 13 Q Recall seeing the vehicle that night when you got  
 14 home, the Fiero?  
 15 A Yeah, it was parked in front of my house.  
 16 Q Is there any time that you don't recall the Fiero  
 17 being parked into your -- front of your house during that time  
 18 period?  
 19 A No,  
 20 Q Do you know what time you went to bed that  
 21 evening?  
 22 A I don't know exactly what time I went to bed, but I  
 23 usually unwind for half an hour, 45 minutes, and then I went  
 24 to bed, so probably around 2 o'clock,

XVII-190

L. LOBATO - DIRECT

1 asked me to, you know, man to man kinda thing to watch out  
 2 for her.  
 3 Q Did he subsequently leave town?  
 4 A Yes, he did,  
 5 Q For how long?  
 6 A Almost 8 months.  
 7 Q Did you do what he asked and watch over his  
 8 family?  
 9 A I was gonna do that anyway 'cause she's my niece,  
 10 but yes, I did,  
 11 Q Do you remember what Braise was wearing when  
 12 she woke you?  
 13 A No, I don't remember what she was wearing, but  
 14 she was probably wearing pajamas,  
 15 Q Did you notice any injuries on her?  
 16 A No,  
 17 Q Where did you go talk with your nephew?  
 18 A We went out in the garage.  
 19 Q How long did he stay?  
 20 A Oh, 10, 15 minutes.  
 21 Q Did you see what Braise was doing during that time  
 22 period?  
 23 A She went back to bed after she talked to me,  
 24 Q Where?

XVII-192

L LOBATO - DIRECT

1 Q Did you pass by your daughter when you went to  
 2 bed that night?  
 3 A Yes,  
 4 Q What was she doing?  
 5 A Sleeping,  
 6 Q Did you sleep that night?  
 7 A Yes.  
 8 Q What time did you get up the next morning?  
 9 A I got up pretty early. Blaise woke me up.  
 10 Q What time?  
 11 A I'd say it was about 7 o'clock in the morning,  
 12 Q Why did she wake you up?  
 13 A My nephew was knocking on the door.  
 14 Q What is his name?  
 15 A John.,  
 16 Q What is his last name?  
 17 A Kraft.  
 18 Q Why did he come over?  
 19 A Well, he was moving -- well, he was going to work in  
 20 Minnesota with the telecommunications company that he was  
 21 working with, and he'd come over to talk to me about  
 22 watching out for his wife, Shayne, she was pregnant at the  
 23 time, And she had concerns because she had lost a child the  
 24 year before So he was really concerned about her and he

XVII-191

L LOBATO - DIRECT

1 A Same spot in the futon in the living room,  
 2 Q Were you home that day?  
 3 A Off and on I was home during the day. It was  
 4 Sunday, so there's no telling what I was doing. I was probably  
 5 fooling around in the garage or the backyard.  
 6 Q Did you work that evening?  
 7 A Yes, I did.  
 8 Q Where at?  
 9 A The same place. the Hideaway Club in Caliente.  
 10 Q What were your hours?  
 11 A 4:00 to midnight,  
 12 Q Did you see Blaise before you went to work?  
 13 A Yes, I did,  
 14 Q What was she doing?  
 15 A I guess she had been out four-wheeling with  
 16 Michele.  
 17 Q Why do you say that?  
 18 A Well, that's what she told me she was gonna do, and  
 19 she looked -- her hair was all windblown, so she looked like  
 20 she had been out and about.  
 21 Q Was anyone else at the house before you went to  
 22 work that day?  
 23 A Could've been. You know, there was people in and  
 24 out all the time, I don't know,

XVII-193

L. LOBATO DIRECT

1 Q Did there come a time on that date when you  
 2 learned she was returning to Las Vegas?  
 3 A Later in the evening.  
 4 Q That's when you found out?  
 5 A Yes.  
 6 Q And how did you find out?  
 7 A My wife talked to me on the phone.  
 8 Q How did you feel about that?  
 9 A Oh, I wasn't real thrilled about that.  
 10 Q Why?  
 11 A Well, with everything that had already happened  
 12 and some of the choices that she had been making, I wasn't  
 13 real thrilled about that idea. I was wanting her to stay home.  
 14 Q Did you know how she planned to get to Las Vegas?  
 15 A Yeah, she told me that Doug was gonna come and  
 16 pick her up,  
 17 Q Had you met Doug before?  
 18 A Yes, I had, I'd been to his house.  
 19 Q What time did you get home from work that night?  
 20 A I got home about 12:30.  
 21 Q Was Blaise there?  
 22 A She was waiting in the garage and she had been  
 23 talking with Doug and was expecting him at any time.  
 24 Q Was she packed?

XVII-194

L. LOBATO - DIRECT

1 A Talked to him for a few minutes, helped to put  
 2 Blaise's stuff in the car, and then helped him put the  
 3 convertible top up on his car 'cause it was down and it was  
 4 getting pretty cool at night.  
 5 Q What time did they depart your house for Las  
 6 Vegas?  
 7 A Little after 1 o'clock in the morning.  
 8 Q Can I ask you to get off the stand again --  
 9 A Okay,  
 10 Q -- and notate on the calendar the times that you saw  
 11 your daughter on July 8<sup>th</sup>, with your initials next to them. And  
 12 you may want to just draw --  
 13 MS. GREENBERGER: May I approach, Your Honor?  
 14 THE COURT: Yes.  
 15 BY MS. GREENBERGER:  
 16 Q -- an arrow from the 8' into the margin here so you  
 17 can write it so that there would --  
 18 A I saw her about 7:00 in the morning.  
 19 Q Will you put a.m.?  
 20 A Okay, I put military time, 0700.  
 21 Q Okay. And then put your initials.  
 22 A Okay, And I saw her again midday, around noonish,  
 23 And then I saw her about 3:30 before I left for work. And  
 24 after midnight it would be the 9<sup>th</sup>, right? You want me to go

XVII-196

L LOBATO DIRECT

1 A Yes,  
 2 Q You saw her luggage?  
 3 A Yes,  
 4 Q What did you do? Did you go to bed or did you stay  
 5 up?  
 6 A No, I stayed up and talked with her. Becky was in  
 7 the garage with her, so you know --  
 8 Q At some point did Doug come to your house?  
 9 A He did.  
 10 Q Did he have trouble finding his way there?  
 11 MR. KEPHART: Objection, Your Honor.  
 12 THE WITNESS: Yes, he did,  
 13 MR. KEPHART: Withdrawn.  
 14 BY MS. GREENBERGER:  
 15 Q What time did he come to your house?  
 16 A He got to my house about quarter to 1:00 I think it  
 17 was.  
 18 Q Were you home at the time?  
 19 A Yes, I was.  
 20 Q Who all was there?  
 21 A Just Becky, Ashley was sleeping, and me.  
 22 Q And Blaise?  
 23 A And Blaise of course, yes.  
 24 Q What did you do when he arrived?

XVII-195

L LOBATO - DIRECT

1 ahead and mark that too?  
 2 Q Yes, So you could put the 9<sup>th</sup>, I guess, in the a.m.  
 3 A Okay,  
 4 Q The last time you saw her and she --  
 5 A And she left a little after 1:00.  
 6 Q You may return to the seat.  
 7 A Hmm?  
 8 Q I said you may sit.  
 9 A Thanks.  
 10 Q Did you speak to your daughter when she returned  
 11 to Las Vegas?  
 12 A Yes, I talked to her, made sure she got there okay.  
 13 Q Did she?  
 14 A Yeah, she got there just fine. And then I didn't talk  
 15 to her for a couple of days 'cause that wasn't unusual, and --  
 16 Q When did you talk to her next?  
 17 A She I talked to her on the morning of the 13111,  
 18 Q How do you remember that day?  
 19 A 'Cause it as Friday the <sup>13111</sup>, and it was my nephew's  
 20 birthday.  
 21 Q And as a result of that discussion, did you do  
 22 something?  
 23 A Yes. She told me she was ready to come home, so I  
 24 drove down and picked her up,

XVII-197

L. LOBATO - DIRECT

1 Q Did you bring her back to Panaca?  
 2 A Yes, I did.  
 3 Q Did she remain in Panaca until July 20<sup>1111</sup> when she  
 4 was arrested?  
 5 A Yes.  
 6 Q Did you see her each day during that time period?  
 7 A Yes, I did.  
 8 Q In the morning when you got up?  
 9 A In the morning when I got up, at night when I went  
 10 to bed, and periodically during the day sometimes. And we  
 11 spent a little time, you know, doing — we like to call it the  
 12 father son thing, but it's just me and Blaise,  
 13 Q Did there come a time —  
 14 THE COURT: We have hit the 5 o'clock hour.  
 15 MS. GREENBERGER: Should we break?  
 16 THE WITNESS: Excuse me, Your Honor?  
 17 THE COURT: We'll be taking our evening recess and  
 18 resuming tomorrow, morning at 10:30.  
 19 THE WITNESS: Okay. I wasn't sure if you were  
 20 talking to me.  
 21 THE COURT: You may step down —  
 22 THE WITNESS: Thank you,  
 23 THE COURT: -- from the stand at this time. We'll  
 24 see you tomorrow morning.

XVII-198

1 had objected on the basis of hearsay. And I'd indicated that  
 2 our basis was an existing mental, emotional, physical  
 3 condition, which is in our 5-51.105, which states that a  
 4 statement of declarant's then existing state of mind, emotion,  
 5 sensation, or physical condition, such as intent, plan, motive,  
 6 design, mental feeling, pain and bodily health was not  
 7 inadmissible under the hearsay rule. I just want to make a  
 8 record. We were offering it under it under that exception to  
 9 the hearsay rule,  
 10 THE COURT: Where's Ms. DiGiacomo?  
 11 MR, KEPHART: Sandy.  
 12 MS. DiGIACOMO: Yes, Your Honor,  
 13 THE COURT: Ms. DiGiacomo was the one who made  
 14 the argument contrary?  
 15 MS, DiGIACOMO: Right, Your Honor, They were  
 16 just trying to get out that she thought she was being poisoned,  
 17 which really doesn't go to her mental state. They weren't  
 18 trying to say she told me she wasn't feeling well. They're  
 19 trying to get out through this witness the defendant thought  
 20 she was being poisoned, which doesn't really go to her mental  
 21 state. It's not a statement of her physical condition, what she  
 22 thought was happening.  
 23 It would be different if she said to him, you know  
 24 what, I'm not feeling good, I think I took something bad. But

XVII-200

1 THE WITNESS: Okay,  
 2 THE COURT: Ladies and gentlemen, please be in  
 3 the hallway tomorrow at 10:30. The bailiff will meet you there  
 4 to return you to your seats in the courtroom.  
 5 During this evening recess you are admonished not  
 6 to talk or converse among yourselves nor with anyone else on  
 7 any subject connected with the trial. And you're not to read,  
 8 watch, or listen to any report of or commentary on the trial or  
 9 any person connected with the trial by any medium of  
 10 information, including without limitation, newspaper, television,  
 11 radio, and internet. And you're not to form or express any  
 12 opinion on any subject connected with the trial until the case is  
 13 finally submitted to you.  
 14 You all have a good evening. We'll see you at 10:30  
 15 tomorrow, The jury may exit.  
 16 (Jurors recessed)  
 17 THE COURT: We'll see everyone at 10:30 in the  
 18 morning.  
 19 MR, SCHIECK: Your Honor, can we make a quick  
 20 record, two things at the bench?  
 21 THE COURT: Yes,  
 22 MR. SCHIECK: The first has to do with we have  
 23 approached concerning — asking Mr. Lobato concerning the  
 24 reason that Biaise went to the Caliente Medical Center, State

XVII-199

1 the way that they posed the question and the response that  
 2 they were listening, it didn't fall within that exception.  
 3 THE COURT: Okay. So the Court sustained the  
 4 objection.  
 5 MR. SCHIECK: The next is the State had requested  
 6 the Court make judicial notice that Ashley Lobato was not  
 7 listed in the original -- or in the notice of alibi or alibis. I'm not  
 8 sure whether or not more than one was filed previous to the  
 9 first trial, that she was not listed as an alibi witness on those  
 10 two filings.  
 11 We objected because there is no requirement that a  
 12 defendant list every possible known witness to an alibi, only  
 13 those alibi witnesses they intend to introduce at the time of  
 14 trial. The Court indicated that the objection would be  
 15 overruled and allowed the State's request and did take judicial  
 16 notice of that filing, which omitted Ashley Lobato. She was  
 17 listed in the filing that we filed nearly a year ago now, listing  
 18 her as an alibi witness.  
 19 THE COURT: The request was to take judicial notice  
 20 that she was first noticed as a defendant's witness on October  
 21 20, 2005.  
 22 MS. DIGIACOMO: And that's correct. That's  
 23 because she volunteered on the stand that she was outside  
 24 ready to testify last time but not called, and it's the State's

XVII-201

1 position that she couldn't have even been called because she  
2 had never been noticed as a witness before, let alone an alibi  
3 witness. They do have to give us notice of that, and so that's  
4 why the State asked the Court to take judicial notice that she  
5 was not noticed until a year ago.

6 MR. SCHIECK: That doesn't mean she wasn't  
7 outside in the hallway and subpoena, Your Honor. And we are  
8 gonna make inquiries and possibly we'll be calling a witness to  
9 testify that she was under subpoena and was here to testify to  
10 corroborate her testimony. It's not her fault whether or not  
11 she was listed as a witness, as somehow she was hiding from  
12 coming forward to testify, which is not the case.

13 MS, DiGIACOMO: Well Your Honor, we went  
14 through this the last trial and they tried to give late notice of  
15 the McCroskys and the Court excluded their testimony because  
16 we were well into the defense case when they tried to give us  
17 notice.

18 There's no way that Ashley Lobato could've been  
19 called to the stand the last time because she had not been  
20 noticed as a witness. They didn't even try as she was sitting  
21 out in the hallway to notice her as a witness like they did with  
22 the McCroskys. Doesn't matter what the attorney's intent was,  
23 they didn't notice her, they couldn't call her.

24 MR. SCHIECK: It doesn't mean she wasn't here

XVII-202

**AFFIRMATION**  
Pursuant to C177394

The undersigned does hereby affirm that the preceding Transcript filed in District Court, Case No. A528457 does not contain the social security number of any person.

Kari Riley  
Transcriber

5/8/07  
Date

XV11-204

1 under subpoena under the belief she was gonna testify, and I  
2 think we're entitled to rehabilitate her on that basis.

3 MS. DiGIACOMO: I'm not denying, Your Honor, we  
4 didn't deny that she wasn't here or wasn't ready to testify. All  
5 we were stating is that we wanted the Court to take judicial  
6 notice of when the State first learned that she was gonna be a  
7 witness. 'Cause I'll tell you right now, and you know that, we  
8 were here last time, we never knew that she was outside  
9 waiting to testify, because first, we had no notice of her,  
10 second, they never attempted to give us notice of her during  
11 the trial.

12 THE COURT: Okay. We'll see everybody at 10:30.  
13 COURT ADJOURNED AT 5:07:05 P.M. UNTIL  
14 THE FOLLOWING DAY, OCTOBER 4, 2006  
15 \* \* \* \* \*

XVII-203

**CERTIFICATION**

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER,

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ANAGER/OWNER

Kari Riley  
TRANSCRIBER

5/8/07  
DATE

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XVII-205