

COPY EICETH JUDICIAL DISTRICT COURT
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CLARK COUNTY, NEVADA

09-14-06
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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 4
VOLUME IV

THURSDAY, SEPTEMBER 14, 2006

COURT RECORDER:

LISA LIZOTTE
District Court

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ADMITTED

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S VEGAS, NEVADA THURSDAY, SEPTEMBER 14, 2006

PROCEEDINGS

(THE PROCEEDINGS BEGAN AT 01:19:26)

(Jurors are present)

THE BAILIFF: All rise.

Department II is now in session, the Honorable

Valorie J, Vega presiding, Please be seated.

THE COURT: Good afternoon, everyone. The

record shall reflect we're resuming trial in State versus Kirstin Lobato under Case Number C177394, in the presence of the defendant, together with her three counsel, the two prosecuting attorneys, and the ladies and gentlemen of the jury who were seated yesterday.

Proceeding forward now with the opening statements. The prosecution may proceed.

MR. KEPHART: Thank you, Your Honor,

STATE'S OPENING STATEMENT

MR. KEPHART: If it pleases the Court, counsel for the defense, Ms. DiGiacomo

Ladies and gentlemen thank you for your patience in this last three days, we're here four days now and finally you get to hear what the State intends to prove in this matter, You heard that the State has charged the defendant with murder in the first degree. It's called open murder. And she's

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1 on Arville and he waited for a couple hours and then he called
2 the police, The police met him there, and he directed them to
3 this area where officers responded to the area, went in. And
4 you see the dumpster that is here, One of the officers moved
5 that dumpster back out of the way so you could gain entrance
6 in it. He will testify that it was on an angle when he first went
7 in and he had to move it so he could get back in there,

8 The -- what he found was a pile of garbage back in -
9 the back of that dumpster. And when they removed portions
10 of that, they found a man by the name of Duran Bailey. It's a
11 forty-four-year-old black male. But you're gonna hear, he's
12 gonna be introduced to you by his cousin and how he was a
13 homeless man, how he lived basically on the streets. But the
14 reason why he was at this area, at the Nevada State Bank, is
15 he actually had an account and he did some banking because
16 he was disabled and received SSI payments, and he had a
17 bank account to keep his account in,

18 Now you're gonna hear a lot of testimony from some
19 crime scene analyst that went out there and recovered this
20 garbage. And if you look back here at this picture, you can
21 see he's basically completely buried, And without moving
22 items of the garbage, they couldn't see him other than his
23 foot.

24 You're gonna hear from a coroner that's gonna tell

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1 also charged with sexual penetration of a dead human body.

2 You heard somewhat of the time frame of when this
3 occurred. This occurred back in July 8th of 2001. It happened
4 here on West Flamingo. You take a look over here. This is the
5 Palms Hotel as it currently is now This photo was taken back
6 then, Down here is the Gold Coast. This is Flamingo running
7 from your left to right, and Wynn Road here, This is the
8 Nevada State Bank parking lot. You're gonna hear some
9 testimony about how the Palms employees were using that as
10 well. There's a besert area here. It's not desert any longer.
11 It's been developed Right here where it says "Crime Scene" is
12 a trash dumpster. It's behind the -- behind the Nevada State
13 Bank there.

14 Okay. Around 10:36, 10:30 pm., on the 8th, it's a
15 Sunday, 2001, a man by the name of Mr. Shott was in the area
16 and dumpster diving. Now you're gonna hear some testimony
17 from previous hearing that he gave. And he went to this area
18 right here and the — it was unsecured, meaning that the gates
19 weren't locked He was able to go into the area. And when
20 he walked in, he saw this. Right here is the foot of a man. He
21 saw that. He backed out And he told us in a previous
22 hearing that he was afraid that somebody might think it was
23 him that he did this, He knew -- he recognized it as a person's
24 foot And he walked up to a gas station that's located up here

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1 you that Duran suffered multiple injuries. He suffered blunt
2 force trauma to his head, multiple stab and incised wounds,
3 multiple stab wounds, multiple cut wounds, multiple defensive
4 wounds, head wounds, and he also suffered some postmortem
5 wounds. And what I mean by that is that after he died,
6 additional things were done to him in the — meaning that they
7 severed his penis and his anus was stabbed, The doctor will
8 tell you that was sexually motivated.

9 Now Duran Bailey, when they tested his body, they
10 found that he obviously uses alcohol 'cause he had a .11 blood
11 alcohol concentrate in his blood. They also found that he uses
12 drugs because he had a cocaine metabolite in his -- in his
13 blood. And you'll also hear that in the past he had actually
14 provided drugs to individuals and he actually traded sex for
15 drugs.

16 Now once they, the police, got involved and
17 homicide arrived and they did what they could with the — with
18 the crime scene, you'll hear that they fingerprinted practically
19 everything they could fingerprint. They collected multiple
20 pieces of evidence or pieces of garbage to see whether or not
21 they could get some evidence off of it. The police really didn't
22 have much to go on. They really didn't. They didn't have a
23 suspect. They didn't have a -- they didn't catch anybody at
24 the scene. They didn't really know much what to do until the

1 20th of July of 2001. They received a phone call from a lady
 2 up in Pioche, Nevada, And keep this in mind, just keep this
 3 quote in mind, "I didn't think anybody would miss somebody
 4 like that." Keep that in mind, and I'll come back to you and I'll
 5 tell you why that's important. Well, they get a phone call from
 6 this lady up in Pioche and she tells the -- she calls and asks if
 7 there's anything in Las Vegas that involves a man getting his
 8 penis cut off. And as unique as that is, homicide quickly
 9 traveled to Pioche, contacted her, and that let her -- led them
 10 to the defendant.

11 Basically, what the police ended up finding out is
 12 there's a lady by the name of Dixie Tienken that -- and you'll
 13 get an opportunity to view her and see her and listen to her,
 14 And keep in mind that she will tell you that she was basically
 15 the defendant's confidante in that town, She was his -- she,
 16 the defendant, was one of her kids, She's a teacher from up
 17 there and part of the reason this defendant had felt that Dixie
 18 was somebody that she could go to and confide in and give
 19 her -- tell her about things that bothered her, Well, she ended
 20 up telling the police that what she believed was either the 11th
 21 or the 18th of July of 2001, the defendant came to her house
 22 early in the morning, extremely upset about something that
 23 she had done in Las Vegas, Well, they sat down and ended up
 24 speaking for about three hours. The defendant was looking

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1 stabbed a man's penis, she cut a man's penis off,
 2 Dixie says that before she did this, the defendant
 3 says that before she cut this man's penis off is the man tried to
 4 put it in her mouth. She said she pulled the knife out and cut
 5 his penis. She described, the interesting part is, she described
 6 to the police where the defendant told her it had happened.
 7 Dixie will tell you that she used to live on the west side of I-15
 8 and that when she was talking to the defendant, the
 9 defendant told her it was either on the west side of Tropicana
 10 or the west side of Flamingo. She said not Sahara, she
 11 remembers that, but she remembers those two hotel names.
 12 And this happens to be on West Flamingo.

13 She tells Dixie that when she cuts the man's penis
 14 off, Dixie's words that she said, "She got ick on her," meaning
 15 that she got blood on her. 'Cause she tells, eventually, the
 16 police -- the police do talk to the defendant as well. And what
 17 they do is they go to her house and she's just getting out of
 18 the shower, and it's two homicide detectives and they'll explain
 19 to you in detail what they did. When they got to her house,
 20 she comes out of that — out of the bathroom after taking a
 21 shower and she is -- they have with her -- their badges, they
 22 have with them their shirt and they have a satchel that says
 23 "Homicide" on it. They tell her that they're from homicide and
 24 they tell her why they're there. She puts her head down and

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1 through newspapers, trying to find out whether or not there
 2 was anything that had been reported in Las Vegas about a
 3 man, which she describes to Dixie as an old, smelly, black
 4 man, had lost his penis, had his penis cut off, Actually, Dixie
 5 will tell you they actually even looked in the Internet to see
 6 whether or not they could find anything on the Internet.

7 And Dixie went on to explain to the police that she
 8 felt, based on the defendant's demeanor, is that this just had
 9 happened, had to happen, she will say, she believed within a
 10 week of when this occurred. She said that the defendant was
 11 extremely concerned about whether or not this man — whether
 12 or not they found, the authorities, found out anything about
 13 this particular man. And she tells Dixie that what had
 14 happened is that she had been propositioned by this man,
 15 eventually attacked by this man, and she, the defendant, took
 16 out her butterfly knife, which you're gonna hear that she has
 17 had and many of her friends knew about that she'd used, Her
 18 father actually gave it to her. She was proficient with being
 19 able to open it with one hand, if any of you ever know what a
 20 butterfly knife is, and that she whipped that out of her skirt
 21 she was wearing, she reached down, grabbed the man's penis
 22 and cut it off.

23 Now she tells multiple friends up in Panaca the same
 24 thing on various dates, that she cut a man's penis, she

1 she starts to cry, and she tells the police, "I didn't think
 2 anyone would miss him," Before they say anything about —
 3 anything about the crime, "I didn't think anybody would miss
 4 him," Then within twelve minutes of her getting her Miranda
 5 rights and signing a card and saying "I'll talk to them," they
 6 start a taped statement, and you're gonna have an opportunity
 7 to hear that full taped statement. And in that taped statement
 8 she says, "I didn't think anybody would miss anybody like
 9 that." And she describes the person like that as, "An older,
 10 smelly, black man, a person who smelled like alcohol and dirty
 11 diapers,"

12 After they show her a picture of the man, she says
 13 she was trying to put him out of her mind. While they're at
 14 the house, the defendant's mom comes home. And the
 15 defendant looks at the mom and says, "Mom, I did it, Now I
 16 have to do what I have to do," Her father comes home. And
 17 she says, "I'm sorry, Daddy, but I told you I did something
 18 awful," Now bear in mind she has spoken to her parents. "I
 19 told you, Daddy. I'm sorry, Daddy, I told you I did something
 20 wrong." Bear in mind and think about that when you hear
 21 other witnesses testifying about the small town of Panaca and
 22 about things that maybe her mother had influences over
 23 people, things that they may have -- that she may have been
 24 saying to people.

1V-13

1 On the way back to Las Vegas after the defendant
 2 was arrested, she tells the police officers that her father had
 3 provided her that knife for Christmas. They get to Las Vegas
 4 and she's being booked into the Clark County Detention
 5 Center, and she is standing inside of one of the holding cells.
 6 And you'll get an opportunity to see the very holding cell. As a
 7 matter of fact, she was in a holding cell when she tells the
 8 police officers, "This looks just like the place or similar to the
 9 place that this happened," And she describes, she describes it
 10 as the only difference is that she could see out, as she's
 11 looking up, and she says, "I could see the parking structure
 12 from inside," The top of this structure you'll see is covered
 13 with chainlink fencing and up to the left hand side in this
 14 photograph is the parking structure next to it. Notice the
 15 bottom of the parking structure, there's a curb that goes all
 16 the way around it, and you'll notice the inside of the cell when
 17 you get an opportunity to see that.

18 Now the officers, when they're talking to her, and
 19 she explained to them that she got blood on herself and she
 20 got in the car. She told Dixie, after she got ick on herself, all
 21 she wanted to do was get washed up and get back to Panaca
 22 to her father's. She tells the police that she got blood all over
 23 her and she threw away her clothes, she threw away the knife,
 24 and she had driven by herself in a red Fiero, her little car. She

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1 gonna hear from the medical examiner that will give you
 2 basically a ballpark time figure of when that body was
 3 probably killed, when Duran was probably killed, She says,
 4 she tells the police on the taped statement, that it happened
 5 on the 20th of July, that it happened a couple of weeks ago in
 6 Las Vegas. They ask her if there's a dumpster located near
 7 where it occurred. And she said, "There is one near but I
 8 didn't put him in it. I don't think I could have." But you're
 9 gonna have an opportunity to see the actual scene, More so
 10 than what I just showed you here, and show you that the body
 11 had been moved from the back corner over there towards
 12 where the dumpster was.

13 Now she tells the police that she was on a three-day
 14 binge of methamphetamine and she believed that this
 15 happened on the third day. You're gonna hear from her
 16 friends that tell you that whenever they were together she
 17 would bring methamphetamine to the table. You're gonna
 18 hear that one of her boyfriends broke up with her because of
 19 her methamphetamine use and issues. And they'd also tell
 20 you that she would do anything she could do to get her hands
 21 on methamphetamine and her attitude changed quite a bit
 22 when she was on methamphetamine.

23 Interestingly, in her statement, she tells the police,
 24 "I didn't tell anybody about this," But you're gonna see that

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1 told Dixie that she was concerned that somebody would have
 2 seen her red Fiero. She wasn't concerned about her being
 3 seen because she was in an enclosed area, but she was
 4 worried about her being seen in her red Fiero and that she'd
 5 be caught because of that But she drove her red Fiero back
 6 to Panaca,

7 Now Laura will tell you Dixie told her that the
 8 defendant told Dixie that she went back to Panaca because
 9 she needed to hide her car, needed to hide out, and there's a
 10 possibility her parents would even help her get it painted.

11 When the police are talking to her about her car and
 12 talking to her about the crime, they ask her is there anything
 13 else that you hit him with other than your knife. And her
 14 response to that was, "It's possible, I have a bat in the car. I
 15 had a bat in the car." And you're gonna get an opportunity to
 16 see that bat. You're gonna hear testimony from the medical
 17 examiner about the extent of the injuries that Mr. Bailey
 18 received and to the degree of the injury that would be
 19 consistent with the use of that bat.

20 The police talked to her about, and like I said you're
 21 getting the opportunity to hear that and see those words, the
 22 police talked to her about this and she says that it happened
 23 late at night or early in the morning. And she corrects herself
 24 and says, "No, it happened early in the morning," And you're

1 that's not correct. Many of her friends, many people from up
 2 in Panaca, were told by her words, Dixie one of them. She
 3 tells the police that when she got blood on her that it was
 4 smeared on her shoulder and on her clothing, mostly in the
 5 mid-section of her body. Her stories that she tells the police,
 6 her friends, Dixie, all seem to be consistent about her cutting a
 7 man's penis off.

8 You're also gonna hear about how she met a new
 9 boyfriend and that she moved out of one of her friend's house
 10 the end of June, the beginning of July, and that shortly after
 11 she moved in with her new boyfriend, who you'll hear that she
 12 and he did methamphetamine quite often together, that they
 13 would do these binging-type episodes, is that she wanted to
 14 go to Panaca for the 4th of July celebration. Now bear in mind
 15 we're telling you that this occurred on the 8th of July, and that
 16 you're gonna hear from some individuals in Panaca that talk
 17 about how her and her mother were fighting on the 5' and 6'
 18 in Panaca and that the fight was about her leaving and coming
 19 back to Las Vegas, Keep in mind she's got a new boyfriend,
 20 she's doing methamphetamine, she's up in Panaca with her —
 21 and she's fighting with her mom.

22 Well, we know that she traveled frequently between
 23 Las Vegas and Panaca and she drove her car. But on the 9th
 24 of July, after this occurred, her new boyfriend drove to Panaca

IV-17

1 in his car and picked her up and took her back to Las Vegas,
 2 leaving her car there, only to have her father then come down
 3 and pick her up later on just on that week.

4 Dates are important here. You heard the defense
 5 has indicated that they potentially are addressing and
 6 presenting a defense of alibi, so dates are important. I told
 7 you that the defendant's mother, there's some interest with
 8 the defendant's mother talking to people about dates. Keep
 9 that in mind,

10 Dixie will tell you that her family covers for each
 11 other, Michele Austria, a friend of the defendant's that will tell
 12 you about her conversation with the defendant, will tell you
 13 that when she spoke to the defendant, the defendant had
 14 indicated to her that she was now taking medication for
 15 depression and that she had just gotten on it by the doctor.

16 When the police found her, they also took her car
 17 and they impounded her car, brought it down here to Las
 18 Vegas, And when they first came into contact with the
 19 defendant, that's who they were talking to, And when she
 20 explained about the use of her car, and they knew information
 21 about her putting her car there or hiding her car, the crime
 22 scene analysts, they took her -- took her car and brought it
 23 back here to a lab in Las Vegas to process it. Interestingly,
 24 you'll hear from the crime scene analysts that will tell you that

1V-18

1 than the luminol or vice versa. You'll get an opportunity to
 2 hear the chemists on that. And the chemist won't come in
 3 here and tell you that it's 100 percent blood, but he will tell
 4 you —

5 MR. SCHIECK: Objection, Your Honor, that's not so,
 6 MR. KEPHART: He will not come in here and say
 7 that it's -- he's 100 percent positive that there's blood.

8 MR. SCHIECK: I thought you said it is 100 percent
 9 positive.

10 MR. !KEPHART: No, I did not say that,
 11 MR. SCHIECK: Then I withdraw the objection,
 12 THE COURT: Very well,

13 MR. KEPHART: And but he will tell you the effects
 14 that cleaning can do to affect blood and even destroy a blood
 15 sample. He'll tell you there was certain tests that you have to
 16 do to confirm that it's blood and he wasn't able to get what
 17 they call hemoglobin out of the blood in that -- out of that test.
 18 But you'll get an opportunity to see what they saw.

19 Now you — we told you it's gonna take
 20 approximately three weeks, maybe less, The State's case in
 21 chief won't be that long to present. It'll be probably about
 22 four or five days. Bear in mind, keep — you have notes there,
 23 keep your notes with regards to what you hear with the
 24 witnesses. You're going to -- I'd be real surprised if you didn't

1V-20

1 she had car seats on her car, slip covers on her seats in her
 2 car, so it was a — it's a small Fiero, 2-seater, and that she says
 3 she doesn't believe that the seat covers are new because the
 4 nature of what she believed -- I mean, seen with them but she
 5 believes that they were freshly laundered. And that's gonna
 6 play a part in whether or not they can locate or identify
 7 substances like blood in that car.

8 Well, they also did -- they fingerprinted her car and,
 9 interestingly enough, her car had none of her fingerprints in it.
 10 They did certain tests of the car. They -- there's two
 11 presumptive tests that they performed. One is what they call
 12 a luminol test, And you're gonna get an opportunity to
 13 actually see what that luminol showed. The door panel of that
 14 car, the driver's seat door panel, the driver's door panel shows
 15 what appears to be some type of smudge with leaving a hand
 16 print on that door. And bear in mind, she told the police that
 17 she had gotten in her car bloody, and she told Dixie she had
 18 gotten in her car bloody.

19 The seat cover showed a small, minute trace of what
 20 could be consistent with blood. Then when they took the seat
 21 cover off, they sprayed it on the seat itself, and you'll get an
 22 opportunity to see that as well, That's a presumptive test.
 23 Then they did another presumptive test called
 24 phenolphthalein, and phenolphthalein is a little more sensitive

1V-19

1 hear certain things that were conflicting. But you're going to
 2 hear a lot of information at little pieces from more -- from
 3 different people, and you need to keep good notes with that
 4 so that you can remind yourself as to what you heard from
 5 these witnesses.

6 Now the Court tells you that what we say as
 7 attorneys is not evidence, Well, I'm not telling you anything
 8 other than what you're gonna hear from the evidence, what
 9 you're gonna hear from the stand, what people are gonna tell
 10 you, what they saw, what they heard when they testify to you.
 11 And keep in mind, when you listen and sit here, keep in mind
 12 and ask yourself certain questions. Ask yourself is this a mere
 13 coincidence that the defendant would be interested in
 14 somebody in Las Vegas that's dirty, smelly, old, alcohol-stinky,
 15 black man or diaper -- stinky-diaper, black man without a
 16 penis. Is it a coincidence that she appears to be depressed
 17 shortly after this man is dead, and is it a coincidence that she
 18 tells Dixie that she was concerned about her vehicle being
 19 seen to the point where she wanted to leave it in Panaca, hide
 20 it, clean it up, possibly get it painted, and is it mere
 21 coincidence that she just happened to have a bat in her car?

22 Ladies and gentlemen, when you get an opportunity
 23 to sit here and listen to this full trial, at the end of the trial Ms.
 24 DiGiacomo and I are gonna be asking you to find her guilty of

1V-21

1 these charges. You need to make the decision whether or not
 2 you believe she did this and you need to base it on what you
 3 hear from these witnesses.

4 Thank you,
 5 THE COURT: Defendant's opening,
 6 MS. GREENBERGER: Thank you, Your Honor.
 7 DEFENDANT'S OPENING STATEMENT
 8 MS. GREENBERGER: Good afternoon, ladies and
 9 gentlemen of the jury, Your Honor, defense counsel, counsel,
 10 ladies and gentlemen, audience.

11 As you know from yesterday, my name is Shari
 12 Greenberger and I'm one of the attorneys representing Kirstin
 13 Blaise Lobato. And I ask you, please keep an open mind until
 14 you hear all of the evidence.

15 As the prosecution stated, this opening statement is
 16 not evidence. And I ask you to keep an open mind until you
 17 go back to the jury deliberation room. I ask you to not take
 18 my word for what I'm saying here in opening statement but to
 19 please carefully scrutinize the evidence, analyze the forensic
 20 evidence that comes in in this case, pay attention to the
 21 science. It is our position that the evidence in this case speaks
 22 volumes

23 I've prepared a presentation of what the evidence
 24 case — in this case will show, and there is a lot of information

IV-22

1 so I'm gonna try to go through it quickly just to give you an
 2 overview of what we believe the evidence in this case will
 3 show. And, as indicated by the prosecution, the evidence is
 4 based on the testimony of witnesses and the evidence that
 5 was collected at the scene. This is just a framework for you to
 6 see the direction this case is going, so I've tried to summarize
 7 it

8 My client's name, Kirstin Blaise Lobato. She was
 9 named Blaise as a nickname that for -- after a movie actress,
 10 was her testimony, and is known as Blaise in the community of
 11 Panaca where she lives. The evidence will show that when
 12 she was eighteen years old she was wrongly charged with
 13 murder As she sit here today, she is twenty-three years old.

14 There is no dispute in this case that a terrible crime
 15 was committed. And I apologize that in this case there is
 16 going to be a lot of gruesome photographs from the crime
 17 scene There is no dispute that Duran Bailey, a homeless man,
 18 with crack cocaine in his system and alcohol, was killed, There
 19 is also no dispute that Duran Bailey's cause of death was a
 20 stab to his carotid artery. There is no dispute that he was
 21 dismembered postmortem, after death. There's no dispute on
 22 those facts. What there is a dispute about in this case is
 23 whether my client, Kirstin Blaise Lobato, committed this crime,
 24 And I say to you she never met the victim in this case, Duran

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1 Bailey, and we will demonstrate that through the evidence.
 2 The reason we know this is because we have witnesses, a
 3 number of witnesses, that will testify she was not in Las Vegas
 4 when this crime was committed.

5 She was raised in the town of Panaca. We've had
 6 some discussion in voir dire about Panaca. It's a small town, I
 7 think some of you described it as a one-horse town. I've been
 8 there myself. One gas station, one convenience store, a very
 9 small town, I think maybe 800 people, and it's 160 miles from
 10 Las Vegas,

11 More importantly, or equally significant, in this case
 12 is that there is no physical evidence, none, that ties her to this
 13 crime. And let me inform you, this was a crime scene that was
 14 rich, rich, with physical evidence. All of the physical evidence,
 15 and I'm going to get into that further in my presentation, but
 16 I'm talking DNA, I'm talking bloody shoe prints, tire tracks,
 17 fingerprint analysis, analysis on my client's vehicle, no
 18 evidence connecting her. And, ladies and gentlemen, the
 19 reason this is so important is because the physical evidence in
 20 this case excludes my client. And I want you to listen very
 21 carefully because there is gonna be a lot of testimony from
 22 homicide detectives, crime scene analysts, forensic scientists,
 23 and these people combed through the crime scene and they
 24 analyzed it at the lab, and the tests have conclusively come

IV-24

1 back showing the physical evidence does not match my client.
 2 That's why when I began, I said to you the physical evidence
 3 speaks for itself. Please don't just rely on my words but look
 4 at the physical evidence. You are the trier of fact. You will
 5 make that decision in the jury deliberation room, And
 6 consider, because in the prosecution's opening he advised that
 7 there's gonna be a number of witnesses that come in, and
 8 when you're analyzing the evidence there's a lot of he-
 9 said/she-said, she said that, consider that when you're
 10 analyzing the physical evidence. And you will weigh this
 11 evidence. You will make the final decision.

12 I'm gonna start with the time line of relevant events.
 13 Around Memorial Day, 2001, which is a number of years ago,
 14 my client, Kirstin Blaise Lobato, had been living in Las Vegas.
 15 She was alone. It was a dark night. She had been staying at
 16 a hotel in town, some of you might know it, the Budget Suites.
 17 It's on Boulder Highway and East Flamingo, As she got out of
 18 her vehicle in a dark parking lot, out of nowhere a man from
 19 behind pushed her on the ground. She did not get a good
 20 glimpse of her assailant. What she saw, he was big, he
 21 smelled, he was over 6 feet, over 200 pounds, and he was
 22 exposed. This man was attempting to rape my client. She
 23 was on the ground. She had a short skirt on He pushed up
 24 her skirt. Knowing that she was gonna get raped if she didn't

IV-25

1 do something and not prepared to be victimized, she was able
 2 to remove a knife that she had in her back pocket that she
 3 carried for protection. Ladies and gentlemen, she took that
 4 knife, she stabbed him and she fled the scene, When she
 5 looked back, she saw the man holding himself and standing.
 6 This attack occurred on the east side of town, East Flamingo,
 7 and it's very important because Duran Bailey, the homeless
 8 man in this case that was found in the dumpster, he was
 9 found —

10 MR. KEPHART: Judge, I'm gonna object. He was
 11 not found in a dumpster.

12 MS. GREENBERGER: He was found --

13 THE COURT: Sustained,

14 MS. GREENBERGER: -- next to a dumpster, excuse
 15 me.

16 Thank you

17 He was found on the west side of Vegas, across
 18 from what is now the Palms Hotel, wasn't built yet. Separate
 19 parts of town. No 'dispute that at the time my client was
 20 attacked she was using drugs. She had been using
 21 methamphetamine for several days, and you will hear
 22 testimony about that. She was using methamphetamine,
 23 Duran Bailey was found with cocaine in his system, another
 24 important distinction,

IV-26

1 of fact. Please, please, consider this. And when he was
 2 found, another key point, there was plastic wrap around his
 3 body, plastic wrap with blood on it. You will see pictures when
 4 he was in the autopsy room. This plastic wrap would have
 5 been rich with physical evidence. You will hear testimony
 6 about it. It was not tested,

7 Want to talk about another coincidence? Diane
 8 Parker, rape victim of Duran Bailey, she was at the crime
 9 scene where Duran Bailey was found. Ladies and gentlemen,
 10 she identified his body. So when we talk about coincidence,
 11 please, please consider that, one block away. This is Diane
 12 Parker, attacked July 1st, 2001.

13 Let me tell you a little bit about Diane Parker, She
 14 was a former sexual partner of Duran Bailey, She was outside
 15 her apartment on July 1, having a beer with some friends,
 16 acquaintances, at her apartment complex, the same apartment
 17 complex that's one block from the crime scene. Duran Bailey
 18 came up to her. He wanted to talk with her, And she was
 19 having a beer with her friends. We only know them, and
 20 forgive me, it may not be politically correct but she testifies to
 21 they're -- describes them as Mexicans, She's having a beer
 22 with her friends. Duran Bailey comes up to talk to her She
 23 says something to the effect of, no, not now, I'm hanging out
 24 with these people, What does he do? He smacks her across

IV-28

1 She was able to flee from the scene and escape her
 2 attacker. She was not raped. And she returned to the town of
 3 Panaca, where she was -- grown up, July 2', 2001, The
 4 reason why these dates are important, and you'll hear
 5 testimony filling in the time in between, is that she returned to
 6 Panaca July 2nd, 2001 and remained in Panaca until July 9th,
 7 2001. And there's not just one or two witnesses. There's
 8 gonna be a number of witnesses that come here to testify
 9 about seeing her in Panaca during that time period. Duran
 10 Bailey was killed July 8th, 2001.

11 Now, as I mentioned, there's a complicated set of
 12 facts in this case, so I want to explain to you a little bit about
 13 what's going on on the west side of town in Vegas. There's a
 14 woman. Her name is Diane Parker, You will hear her
 15 testimony, Diane Parker was raped by a man, Duran Bailey,
 16 the victim in this case, exactly, exactly one week before he
 17 was found next to the dumpster. Why is that important?
 18 Well, Diane Parker knew Duran Bailey. And I'll get into the
 19 details of that rape in a minute. But he was found one week
 20 after she was raped, one block from where she lived, because
 21 the dumpster where he stayed at night, he was homeless, at
 22 the Nevada State Bank was one block from Diane Parker's
 23 residence. The prosecution says, ladies and gentlemen, let's
 24 talk about coincidence, I ask you the same You are the triers

IV-27

1 the face in front of her friends, and some of them or one of
 2 them gets into a confrontation, verbal, and tells him bug off.
 3 He leaves.

4 She goes to do the laundry, It's July 1st still. It's
 5 nighttime, She's washing her laundry, carrying it back to her
 6 room, looks over her shoulder as she's putting the key in the
 7 door, Duran Bailey is there. She doesn't want anything to do
 8 with him. Ladies and gentlemen, at that time he pushes his
 9 way into the apartment and punches her, to-wit: the black
 10 eye, and begins what you will hear evidence is of a series of
 11 rapes and badly, badly beats her. Now this is one week prior
 12 to his death, He rapes her on the bed, Then he drags her
 13 into the bathroom and he tries to sodomize her multiple times
 14 And just so you know all the evidence, my client, Kirstin Blaise
 15 Lobato, never met Diane Parker ever, separate victim,
 16 separate incident. And, again, my client has never met Duran
 17 Bailey but Diane Parker has, Another coincidence in this case,
 18 When he rapes her, he rapes her at knife point at her carotid
 19 artery. You want to talk about coincidence. His cause of
 20 death, severing carotid artery. Keep note of that, another
 21 important point.

22 She contacts the police. And let me say, she's very,
 23 very afraid of this man. She told the police, "Yes, he told me
 24 he was going to kill me." The police say where did he hold the

IV-29

1 knife. She tells them, "He held it at my neck," He gave her
 2 two black eyes, he kicked her in the shoulder, he had the knife
 3 on the side of her vein. And you will hear this testimony. He
 4 had her down and he had, this is what she told the police and
 5 will testify to, "He had me down. He had the knife to my neck,
 6 like I said, right by the vein and he said, 'Now I've got to kill
 7 you,- He held it to her throat and threatened her. And she
 8 called the police because she was scared because after he did
 9 this horrible rape, beating, attempted sodomy to her, he came
 10 back and was knocking on her window and she was afraid,
 11 rightfully

12 Interestingly, when he was found dead at the crime
 13 scene, he had on the same clothes he wore, you'll hear
 14 evidence of this, when he raped her. That's an important fact
 15 to keep note of.

16 When the police interviewed Diane, she told them
 17 the full story, as I'm telling you now, including that when she
 18 was earlier in the day having a beer, there were some people
 19 that witnessed him slap her She thought, you know, that was
 20 important, there were witnesses that could corroborate this.
 21 You're gonna hear testimony that the police did not do any
 22 followup investigation on these Mexicans, despite the fact she
 23 showed them where these people lived, no investigation done
 24 except for running their rap sheets through the system. She

1V-30

2 home, but I can show you where he lives." Did the police
 3 follow up on the investigation? She said she could take them
 4 to him. "I can show you this is the man that raped me,"
 5 Ladies and gentlemen, they said we'll get to that later. They
 6 wanted to take her to the hospital, get her some treatment.
 7 And keep in mind, these pictures are taken days after the
 8 rape, so you can only imagine what they looked like at the
 9 time. The police said we'll get to that later. Well, you know
 10 what, the police never got to it until they were at the crime
 11 scene when he was lying there dead on July 8th, had been
 12 brutally beaten from head to toe, And, again, you'll see these
 13 photos, And after the stab to the carotid artery that killed him
 14 and the various other beatings, he was dismembered after
 15 death, postmortem. When my client freed herself from her
 16 attacker in May, 2001, the man was standing, holding himself,
 17 Duran Bailey was dismembered after death, and that is
 18 significant.

19 The police told Diane Parker you gotta do what you
 20 gotta do to protect yourself the best you can. She had
 21 concern what if he comes back, what if he comes back to my
 22 apartment. You're not going to find him. What if he comes
 23 back. And she had that serious concern, Now this case is not
 24 about Diane Parker. It's about my client, who's being charged
 with the murder of this homeless rapist who brutally raped,

1V-32

1 told the police she was afraid. She told the police this would
 2 get her killed, And she stated, If you don't catch him, I will
 3 be dead." She was afraid because he had threatened to kill
 4 her. She almost didn't tell the police but she did because he
 5 came back and she didn't want to go through what she went
 6 through on July 1,

7 Another coincidence. Two black eyes. What the
 8 prosecution didn't tell you when Duran Bailey was found, in
 9 addition to his carotid artery being severed, two black eyes,
 10 You be the judge of that significance.

11 She told the police she wanted protection. She said,
 12 "I know him," This is July 4th when they're interviewing her.
 13 "I know him. I can show you where he lives. I know he's
 14 homeless but he lives next to the dumpster, Nevada State
 15 Bank, a block away." Because, after all, as indicated, they
 16 were having a sexual relationship in the past where they did,
 17 you'll hear evidence, exchange -- she would give him sex for
 18 cocaine, not methamphetamine that my client had a problem
 19 with in the past but cocaine. And when he raped and
 20 sodomized her on the 1st, as you can see, not voluntary. So
 21 despite the past sexual relationship for drugs, this was not a
 22 voluntary, consensual sexual episode. She called the police
 23 and she feared for her life.

24 She told the police, "I'm scared to walk outside my

1V-31

1 beat and sodomized Diane Parker. Another injury. There's
 2 volume of them. And I don't want to overload you but I want
 3 to give you a taste of what the evidence that is coming your
 4 way is gonna show.

5 JUROR ANDERSON: I can't tell what we're looking
 6 at. I'm sorry.

7 MS, GREENBERGER: Oh, I'm sorry. That is the
 8 shoulder —

9 THE COURT: The record shall reflect that Tai
 10 Anderson, who is in chair Number 2, spoke.

11 MS, GREENBERGER: That is her right shoulder, a
 12 punch to the right shoulder. And there's also a video-camera
 13 up on that end, just so you know, although not the same size,

14 But so we have her right shoulder, black eyes on her
 15 fact, bruising to her arms. The black-and-blue on her neck is
 16 where the knife was held, right up there, and then some
 17 bruises to her legs. Unfortunately, Diane Parker was not as
 18 lucky as my client, was not able to free herself from the victim
 19 in this case, Duran Bailey.

20 What's important, my client was not in Las Vegas
 21 July 8th, 2001. That is when Duran Bailey was murdered. She
 22 has an alibi. She was 160 miles away. Multiple witnesses saw
 23 her in Panaca, Nevada before, during and after his death, and
 24 that's why I say July 2nd to July 9th because it's not, oh, she

1V-33

1 just was there for the night. She was back in town, in Panaca,
2 staying with her parents and multiple witnesses saw her.
3 Phone records will confirm it. Again, don't take my word. This
4 is what the evidence is going to show. July 2nd through July 9th
5 are the important dates. And he died on July 8th, 2001.

6 And I'm not certain that I finished with Diane Parker
7 being at the crime scene, She did come to the crime scene,
8 saw Duran Bailey, and then later was able to identify him, said
9 This is the rapist Yes, this man that's lying here is the
10 rapist."

11 So let's look at the physical evidence because the
12 physical evidence speaks volumes in this case. DNA found at
13 the crime scene, a piece of chewing gum on top of the blood
14 that surrounded Duran Bailey tested two sources of DNA on
15 the gum, two sources. One matches Duran Bailey, The other
16 one remains unidentified. Just so you know, they took my
17 client's DNA She gave it to them consensually, and we'll get
18 into that, did not match her DNA.

19 This is extremely interesting, A pubic hair combing
20 was done on the victim, homeless rapist, Duran Bailey's private
21 area And the forensic lab said there's one hair that doesn't
22 match the others. They were able to determine that. And so
23 they did testing on the hair to see whose it could be. There
24 were two sources of DNA on this hair, one Duran Bailey's, the

1V-34

1 sophisticated is a meth user who's on a three-day binge gonna
2 be, So sophisticated we're gonna recruit someone like this to
3 the special forces, not leave a trace, and evidence of other
4 people that are unidentified? I don't think so. Ask yourself
5 that,

6 MR. KEPHART: Your Honor, I'm gonna object.
7 She's making argument,

8 THE COURT: Sustained,

9 MS, GREENBERGER: Blood. There is no blood or
10 other physical evidence anywhere. Where is the blood? She's
11 covered in blood after she stabs this man. Where's the blood?
12 There's no blood in her car. All of the confirmatory testing was
13 negative. You are gonna hear testimony from a number of
14 experts about luminol, about presumptive testing, about
15 confirmatory testing, and you will hear testimony that you
16 cannot clean up blood with ordinary chemicals that are
17 accessible to us in the public. There was no blood found
18 anywhere, no -- and they -- she voluntarily provided her car to
19 them and said take it. She signed a consent,,

20 Fingernail scrapings were done on my client, on the
21 victim, fingerprint examinations were done. And the
22 prosecution says, well, you know, her fingerprints weren't
23 found on her vehicle, leading us to believe maybe there's no
24 fingerprints. But let me tell you, there were plenty of

IV-36

1 other remains unidentified. The other excludes my client. And
2 you will hear testimony on this from a number of experts.

3 When the prosecutor showed you pictures of the
4 crime scene, and you will see plenty of them, I find this very
5 interesting, there were two or at least two, let's say multiple,
6 bloody shoe print impressions at the crime scene, one on the
7 concrete, the other on a piece of cardboard. You'll hear
8 testimony from the lead homicide detective in the case that
9 the shoe print impressions appeared to be different and did
10 not match my client, Men's size 9, ladies size 10 equivalent.
11 My client, Kirstin Blaise Lobato, wears a 7 and a half. And
12 don't think they didn't seize her shoes because when the police
13 did come to talk to my client about what she believed they
14 were coming to talk to her about her attack, she said, "Yeah,
15 these are the shoes I'm wearing. Take them, analyze them."
16 She wasn't holding anything back. And they didn't match.

17 But that's not all, As I indicated, fortunately, I
18 believe the crime scene was rich with evidence. There were
19 tire track impressions at the scene. It appears, and you'll see
20 pictures of them, they're directly outside of the gate, outside of
21 the dumpster where he was found, significant enough that
22 homicide crime scene analysts analyzed them. And they
23 seized my client's car. They compared the tire tracks and,
24 again, they exclude her vehicle. Ask yourself how

1V-35

1 fingerprints in her car, not hers. But you're gonna wipe down
2 the car and keep others but not have yours?

3 And a baseball bat. There's a bat found behind the
4 seat of my client's car, analyzed by professionals, They spend
5 their career trying to collect evidence. No evidence of blood
6 on the baseball bat.

7 Another interesting point to take note of is that my
8 client was attacked around Memorial Day and stabbed the
9 attacker with a knife. You will hear evidence from a leading
10 trauma surgeon from Stanford who has devoted his career to
11 law enforcement in injury reconstruction. For example, when
12 a mother brings her son into the emergency room and says he
13 fell down the steps. Law enforcement comes to him and says
14 check this out. So he began getting interested in forensic
15 pathology, in addition to being a trauma surgeon, because he
16 wanted to understand the nature of injuries, how do they
17 occur. And he has analyzed the evidence in this case very
18 carefully. You will hear testimony that Duran Bailey was not
19 killed with a butterfly knife but scissors. His carotid artery was
20 snipped. There are parallel injuries on his body that match
21 scissor indentions [sic]. And he has measured my client's hand
22 diameter, so he has been able to exclude her from yielding
23 that weapon because the diameter of her hand size is smaller
24 than the minimum width of the injuries on the scissors, so her

IV-37

1 hand could not have been in the scissors that killed Duran
 2 Bailey, And he definitely will testify more eloquently than I
 3 explained it based on the science behind it all and his
 4 expertise.
 5 The state pathologist in this case, Lary Simms, he
 6 examined the body. He will testify he says this crime was
 7 traditionally male-on-male, He has never been involved in a
 8 case involving this injury pattern in a female, Another
 9 important point to note.
 10 Why are we here? My client was the victim of
 11 attempted sexual assault at least thirty days before this crime
 12 was committed She was a victim and she got away. Different
 13 victim, different crime, different location, different incident,
 14 MR. KEPHART: Judge, I'm gonna object, She's
 15 arguing
 16 THE COURT: Sustained,
 17 MS. GREENBERGER: She escaped, unlike Diane
 18 Parker, No question, she was suffering meth addiction at the
 19 time
 20 MR, KEPHART: Judge, she is still arguing.
 21 THE COURT: Sustained.
 22 MS. GREENBERGER: The evidence will show —
 23 MR, KEPHART: Judge, I'm gonna ask that she stop
 24 making argument, that all of this point right here that she has

IV-38

1 she will be honest, you know, with you about what happened.
 2 So the police show up at my client's house. She sees homicide
 3 detectives, and they ask or tell her, you know, we understand
 4 you've been a victim of crime, of assault. She starts to cry,
 5 fearing, fearing when she saw homicide detectives that the
 6 man that attacked her had died. And while she's crying she
 7 does say, "I didn't think someone would miss someone like
 8 that, a homeless rapist, a man that tried to rape me," She
 9 didn't think someone would miss someone that could do that
 10 to her. She did not confess to a crime, and the police never
 11 asked her did you kill the man, tell us details, where did it
 12 happen, when did it happen, And when she told the police —
 13 and the police knew when they came to her. They had been
 14 Duran Bailey's crime scene. They knew exactly where it
 15 happened and they knew exactly when it happened. And she
 16 said to them, and you will hear testimony that was taped out
 17 of my client's mouth, "It was over a month ago," Over a
 18 month ago. Now she made that taped statement to the police
 19 July 20th, 2001,
 20 You will hear evidence that the police never
 21 continued the questioning at that time but turned the tape-
 22 recorder off because she was eighteen years old, her parents
 23 were arriving and they did not pursue further questioning So,
 24 ladies and gentlemen, what we have and what the evidence

IV-40

1 on the board is argument,
 2 MS, GREENBERGER: The evidence will show she
 3 told multiple people —
 4 THE COURT: Overruled.
 5 MS. GREENBERGER: -- inconsistent accounts. The
 6 prosecution told you you're gonna hear different stories. Well,
 7 that's true, because there's a lot of different stories. And I ask
 8 you to factor in meth addiction, how that affects reliability,
 9 dependability, pnsistency.
 10 She was struggling with this attack, and she did
 11 confide in her school counselor. We'll hear from her, Dixie, as
 12 indicated by the prosecutor. She told her what had happened
 13 to her. And her counselor called her friend, who was a
 14 probation officer, who ultimately called the police. My client
 15 told her teacher, "I was the victim of the attack. This is what
 16 happened." She did not tell her I stabbed him in the neck.
 17 You will not hear that testimony. She said, like I explained,
 18 that she was pushed down, she pulled out a knife, she
 19 stabbed, fended off her attacker and left, and the man was
 20 standing, holding himself
 21 When the police came to talk to my client on July
 22 20th, because probation called police and asked are there any
 23 injured people in that area, in Las Vegas, the police came to
 24 talk to my client, And her teacher said if you go talk to her,

IV-39

1 will show is that my client made a voluntary statement
 2 explaining the attack. She told them it occurred at the Budget
 3 Suites on the east side of Vegas. She described the attacker
 4 as over 6 feet and 200 pounds, Duran Bailey, I don't know if I
 5 told you his measurements yet, he was 510", 130 pounds.
 6 Significant contrast in stature and weight, 510", 130 pounds
 7 is what the victim in this case was. Now when my client went
 8 to confide in her teacher she said, and you will hear testimony
 9 maybe today, a big man. A big man. Not 5'10" and 130
 10 pounds, So what has happened, and you will hear evidence
 11 of, is her discussion with the police where she thought they
 12 were actually coming to talk to her about her attack has been
 13 twisted into a confession.
 14 Let's look at what wasn't done. For some unknown
 15 reason, the Coroner's Office was told by homicide to stop the
 16 investigation, they would handle it, stop the investigation for
 17 the next of kin on Duran Bailey, we're doing our own
 18 investigation. You'd think and hope as many agencies as
 19 possible is gonna try to track down what happened. Ask
 20 yourself why was that.
 21 Material evidence. Now this man was found next to
 22 a dumpster so there was a lot of material, but some of the
 23 most important material that was not collected, preserved or
 24 tested includes the plastic wrap that's around the man's body

IV-41

1 in the lower regions, with blood all over it, you'll see pictures
 2 of it, and paper towels that were stuffed into his wound, his
 3 gaping wound from the postmortem dismemberment. You'll
 4 hear testimony from forensic analysts that say it would have
 5 had epithelial cells, would have been very, very helpful. Again,
 6 a crime scene rich in evidence. Why wasn't it tested? Ask
 7 yourself, And then there's some picture you'll see from the
 8 autopsy and testimony you'll hear about some cigarette butts
 9 on the body, again, not tested or preserved, And keep in
 10 mind, again, what was tested and preserved excludes her.
 11 I mentioned this previously, but no followup
 12 investigation on the rape of Diane Parker, The DNA has never
 13 been matched. As we sit here today, five years have gone by
 14 since the commission of this crime, DNA has never been
 15 matched. The weapon, the murder weapon of Duran Bailey,
 16 has never been recovered. The real killer has never been
 17 pursued and remains at large.
 18 Let's look at motive in this case because that's an
 19 important thing to 'examine. Diane Parker, brutally beaten and
 20 raped by Duran Bailey.
 21 MR. KEPHART: Judge, I'm gonna object. She's
 22 going into argument again.
 23 THE COURT: Sustained
 24 MS, GREENBERGER: The evidence will show my

1V-42

1 client never met Duran Bailey, Diane Parker's rape occurred
 2 July 1'. Duran Bailey killed July 8th, one week apart to the
 3 day. Location of rape, inside her apartment, a block from
 4 where the victim in this case, Duran Bailey's, body was found.,
 5 Location of murder, a block from Diane Parker's apartment
 6 where Duran Bailey raped her, The knife used in the rape was
 7 held at Diane's carotid artery, vaginal rape, attempted sodomy.
 8 Bailey's cause of death due to severed carotid artery.
 9 Dismembered postmortem,
 10 In this chart, the prosecution was asking you about
 11 coincidence. This chart, you know, illustrates what we think
 12 are some coincidences, Diane Parker reported being raped to
 13 police, identifies him as the rapist, Diane Parker present at
 14 crime scene, identifies body as her rapist_ And I put others
 15 had motive because I want to remind you that the friends that
 16 saw her getting slapped are the same friends that saw her
 17 after her attack, cannot ignore the injuries on her.
 18 (Pause in the proceedings)
 19 MS. GREENBERGER: This may or may not come to
 20 fruition.
 21 MS. DiGIACOMO: Objection, Your Honor,
 22 MS. GREENBERGER: So I'll skip past it.
 23 The evidence in this case speaks for itself,
 24 THE COURT: The record shall reflect she took it off,

1V-43

1 so the Court will, however, sustain the objection,
 2 MS. DiGIACOMO: Thank you. But I'd just like to
 3 note for the record that her entire slide was up long enough
 4 for the jury to read some of it and it's not, according to her
 5 own statement, showing what the evidence would show,
 6 MS. GREENBERGER: The evidence speaks for itself.
 7 My client has not motive, no opportunity. The evidence will
 8 show she has an alibi, no physical link to this crime.
 9 Another important point, the evidence will show no
 10 physical injuries associated with this crime, The physical
 11 evidence excludes my client. Please look at the science. The
 12 scientific evidence will establish my client, Kirstin Blaise Lobato,
 13 is not guilty of the crime for which she stands charged.
 14 Thank you,
 15 THE COURT: The State may call their first witness,
 16 MR. KEPHART: May we approach the bench first,
 17 Your Honor?
 18 THE COURT: Yes, you may.
 19 (Off-record bench conference at 14:35:14 until 14:37:42)
 20 THE COURT: Ladies and gentlemen, at this time
 21 you'll have a ten-minute stretch break. Please be in the
 22 hallway in ten minutes. The bailiff will meet you there to
 23 return you to your seats in the courtroom.
 24 During this recess, you're admonished not to talk or

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1 converse amongst yourselves, nor with anyone else, on any
 2 subject connected with this trial, and you're not to read, watch
 3 or listen to any report of or commentary on the trial or any
 4 person connected with the trial, by any medium of information,
 5 including, without limitation, newspaper, television, radio and
 6 Internet, and you are not to form or express any opinion on
 7 any subject connected with the trial until the case is finally
 8 submitted to you.
 9 We'll see you in ten minutes. You may exit at this
 10 timer
 11 (Jurors recessed at 14:38:20)
 12 THE COURT: The record shall reflect that the jury
 13 has exited.
 14 From sidebar discussion, counsel wishes to make a
 15 motion on the record outside the presence of the jury at this
 16 time,
 17 MR. KEPHART: Judge, during the defense opening
 18 statement, which we objected to numerous times as
 19 argument, she actually showed a slide that was entitled The
 20 State's Star Witness." And then she used the name -- I think,
 21 actually, it was "Prosecution's Star Witness." And it was on
 22 with regards to Korinda Martin. She paused. It sat up there
 23 for a period of time. Then she put Korinda Martin's name up
 24 there and then put on the rest of her points where -- calling

IV-45

1 her a pathological liar, other issues involving the previous case
 2 that we were -- the previous trial. We didn't mention her in
 3 our opening statement. We didn't present that we intended to
 4 present her to this jury Now we're in a situation where it
 5 appears to this jury that we're trying to hide something from
 6 them, that -- and the problem with this is is the period of time
 7 that this took and the way they started their comments to the
 8 jury was the event that she was wrongly accused in 2001 and
 9 now, here, she's twenty-three years old in 2006, and that's
 10 how they started that. And now we've got a situation where it
 11 appears that there's a period of time that we've taken over this
 12 five years, or whatever, to get her, to prosecute her, and then
 13 they put up this star prosecution witness after they went
 14 through a whole litany of things that the State didn't do, that
 15 the prosecution didn't do, that the cops didn't do, And it sat
 16 up in front of this jury. And I can tell you, sitting here
 17 watching them, every one of them watched that,

18 And I think at this point in time it has polluted this
 19 jury and the State is not gonna be able to get a fair trial here,
 20 And I'm gonna ask the Court to grant a mistrial on the actions
 21 that the defense presented on their own.

22 MR, SCHICK: Your Honor, in this case, as the
 23 Court will recall, we filed a motion long before trial to include
 24 the testimony of Korinda Martin on the basis that she was an

1V-46

1 asked co-counsel did they read Korinda Martin's name, and
 2 because I don't recall hearing it. Ms- Greenberger asked them
 3 here in court whether or not they had read Korinda Martin's
 4 name, and they said yes, oh, yes, we read Korinda Martin's
 5 name to the jury. And then Ms. DiGiacomo made some
 6 comments about how she was their star witness.

7 We had every reason to anticipate, and still don't
 8 know that they're not calling Korinda Martin as a witness, to
 9 put that slide before the jury. As soon as it became clear, Ms
 10 Greenberger panned through the bullet points that you have to
 11 go through in order, and I'm not a PowerPoint expert by any --
 12 by any means, each point, bullet point, slides across the
 13 screen. You have to push the button that number of times to
 14 progress through the screen. And correct me if I'm wrong or
 15 the -- on the dynamics of how that happens, but you can't just
 16 push a button and make them all go away. You have to go
 17 through. And so, yes, it was on, it was on the screen for a
 18 period of time and it did say "Star Witness," but the defense
 19 had every reason to believe and had inquired that she was
 20 going to be a witness in this case and to have that in the
 21 PowerPoint presentation,

22 And just because the State didn't mention a witness
 23 in their opening statement, certainly, I don't believe means
 24 they're not going to call that witness. They did not mention a

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1 incredible witness, an admitted perjurer that has not been
 2 prosecuted and was simply not to be believed. The State
 3 opposed that motion and argued very strongly that they were
 4 going to -- that they could call Korinda Martin, even though
 5 she was a perjurer, that that was up to the jury to decide
 6 whether or not and what -- whether or not to believe her
 7 testimony despite those things. So we had sought to keep her
 8 off the stand long ago,

9 And it was the Supreme Court that referred to
 10 Korinda Martin as the State's "key witness," I believe is their
 11 exact term instead of star witness, but "key witness." And it
 12 was because of her importance and the fact that we were not
 13 allowed to impeach her at the first trial that they reversed the
 14 conviction, But they made a very specific point that without
 15 Korinda Martin the State did not have much of a case and,
 16 thus, any error was found to be harmful and not harmless.
 17 And that's the Supreme Court's language and opinion after
 18 reading the first trial.

19 During the reading of witnesses, the State had the
 20 option of not reading the name of Korinda Martin to the jury,
 21 yet they did to both panels. Her name was read to the jury,

22 THE COURT: To both groups,

23 MR, SCHIECK: To both groups. I missed, during
 24 the first group, that they said her name. I questioned and

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1 lot of witnesses that we can anticipate are gonna be called in
 2 this case. And so there was certainly nothing intentional to
 3 cause a mistrial from the defense standpoint. And if the State
 4 feels that somehow the mentioning of Korinda Martin has
 5 somehow prejudiced them in the eyes of the jury, the jury can
 6 simply be instructed to ignore that slide. It's something they
 7 won't hear about for the rest of the case and, I'm sure, by the
 8 time this lengthy trial is over will have long forgotten the name
 9 Korinda Martin unless the State puts it back before them,

10 So we would oppose the motion for a mistrial
 11 MS, DiGIACOMO: And, Your Honor, if I could just
 12 make the record clear with regard to Korinda Martin, First of
 13 all, what the Supreme Court said in their opinion, that's the
 14 Supreme Court's opinion_ They're not the ones trying this
 15 case. Yes, yesterday we read the list of all possible witnesses
 16 and I said that to both panels. These are witnesses we may
 17 call. And they did ask me after the first panel, did you read
 18 that name, and I said, yes, I did. Ms. Greenberger asked me
 19 so are you calling Korinda Martin. And I looked at her and
 20 kind of shrugged my shoulders. And then after a few seconds,
 21 I did, and it was sarcastic, said, well, she's our star witness,
 22 isn't it -- isn't she, we have to, joking. I never indicated to
 23 them we were gonna call her.

24 And with regard to their motion, it's our position with

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1 their motion to exclude Korinda all along was that it's our
 2 position if we call her or not. And at this point, we could call
 3 her, we might not. They don't know. That's true. But what
 4 happened was when the slide was put up, Ms. Greenberger
 5 paused for quite a while looking, almost like a panic, like what
 6 do I do now If they think that we're calling her, she could
 7 have gone right on with her slide. If they think we weren't
 8 calling her, she has the option with the slide show to turn off
 9 the slide or hide it so it doesn't come up, It's the defense
 10 actions in front of the jury that makes it look suspicious., And
 11 if you recall yesterday, we kind of objected and brought up the
 12 fact of her PowerPoint, we didn't get to see it beforehand.

13 And so we'll submit it with that. But, you know, if
 14 they really thought we were calling her because we listed her,
 15 she could have gone right on with her PowerPoint But that's
 16 not what happened, She stopped and stared and kind of
 17 panicked in front of the jury and then flipped through it quickly
 18 and didn't know what to say.

19 MR. KEPHART: Your Honor, the concern that we
 20 have is it has put us at a disadvantage here,, At this point in
 21 time in the time frame, as I had said earlier, from the time
 22 when she was originally arrested, originally tried and now has
 23 been quite a substantial time. We run the risk every time we
 24 have these type of retries that the jury is questioning what has

1 It appears to the Court that the State had not told
 2 the defense that they were definitely not going to call Korinda
 3 Martin, That may have put this situation in a far different
 4 posture than the one that the Court finds itself in at this time,
 5 where the defense has to -- and both sides when they make
 6 their opening statements are trying to anticipate what the
 7 evidence will be. And as we all know, in every trial there are
 8 always surprises, even in retrials, there are surprises when you
 9 get human beings on the witness stand under oath. And in
 10 the middle of the trial, some new evidence may come out that
 11 didn't come out before,

12 The reason why the Court sustained the objection to
 13 the Korinda Martin slide was because of the pathological liar
 14 list or bullet point on it, which the Court felt was a conclusion,
 15 was argument and was invading the providence that the jury is
 16 -- the jury is to determine the weight and the credibility of the
 17 witness. And I felt that that was an inappropriate bullet point.

18 The Court finds that the relief sought is extreme and
 19 not warranted here and, therefore, denies the motion for a
 20 mistrial.

21 And I'm gonna step down and allow the bailiff to
 22 reseal the jury, and then the State --

23 MS. DiGIACOMO: Can we have a bathroom break?
 24 THE COURT: — will be able to call their first witness,

1 happened, what went on before, why has it taken so long to
 2 prosecute Now we have this situation where they sit here and
 3 they watch something that was supposedly called the star
 4 witness and then now, if we don't call her, they're certainly
 5 gonna be wondering what's going on with regards to what was
 6 put up there on the -- up there on the screen and what they
 7 saw. And it's certainly made it an unfair proceeding for the
 8 State here, We're entitled to a fair trial, just like the defense
 9 is, and they have not -- they have not given us that. They
 10 have made a they have caused a problem with this jury that
 11 I'm in a situation where I need to ask for a mistrial and we
 12 need to start with a new jury.

13 THE COURT: Every single person on the jury knows
 14 what today's date is. And the State began their opening
 15 statement by stating the date of the offense as July 8th a
 16 2001. All of the testimony that's gonna come in through the
 17 various witnesses is all going to relate to events that occurred
 18 in 2001, So nothing that the defense did is going to cause the
 19 jury to have concern there. That's just the facts. Those are
 20 just the dates, the way it exists. You know, the jury's told that
 21 they're not to speculate about things as to which there is no
 22 evidence, and I assume that that instruction will be included in
 23 the -- in the standard packet that the parties will be presenting
 24 at the close of evidence.

1 Mr. Bailiff, if you would -- if you would wait about
 2 two minutes before you go get the jury.

3 THE BAILIFF: Yes, I will.

4 THE COURT: Okay. Thank you.

5 We'll go off the record.

6 (Court recessed at 14:51:27 until 15:05:01)

7 (Jurors are present)

8 THE BAILIFF: All rise, please.

9 Department II is back in session. Please be seated

10 THE COURT: The record shall reflect that we're
 11 resuming trial in State versus Kirstin Lobato under Case
 12 Number C177394, in the presence of the defendant, her three
 13 counsel, the two prosecuting attorneys, and the ladies and
 14 gentlemen of the jury panel.

15 We are proceeding forward now with the State's
 16 case in chief. And the State may call the State's first witness,

17 MR. KEPHART: Thank you, Your Honor. At this
 18 time, Your Honor, we're gonna be calling Richard Shott and
 19 we'll be reading his testimony in. A gentleman from my office
 20 is present for that.

21 I'd like the record to reflect that this is his testimony
 22 that he gave back in April of 2002.

23 THE COURT: Very well.

24 MR, KEPHART: In a previous proceeding.

SHOTT - DIRECT

1 THE COURT: Could the reader state his name for
2 the record?

3 MR. STAUDAHER: Michael Staudaher,
4 S-T-A-U-D-A-H-E-R

5 THE COURT: Thank you,

6 MR. KEPHART: Your Honor, it starts out from the
7 transcript, the clerk actually reads the portion of that. So —

8 THE CLERK: "Please state your name, your full
9 name, for the record and spelling your last name, please.

10 THE WITNESS: "Richard Shott, S-H-O-T-T." □

11 **RICHARD SHOTT, STATE'S WITNESS, BY DEPOSITION**
12 **DIRECT EXAMINATION**

13 BY MR. KEPHART:

14 "Q Sir, I want to draw your attention back to July 8th of
15 last year, 2001, ask you if you were here in Las Vegas on that
16 day,

17 "A Yes, I was

18 "Q Okay Specifically around 10:00 o'clock that night
19 on July the 8th did you have an opportunity to be in the area
20 of Flamingo, West Flamingo, near a Nevada State Bank
21 building around that same time?

22 "A Yes, I was.

23 "Q Okay, Can you tell us what you were doing?

24 "A Dumpster diving.

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SHOTT - DIRECT

1 MR. KEPHART: Your Honor, for purpose of the
2 hearing here, Ill just go through and read it,

3 BY MR. KEPHART:

4 "Q I'm showing what's been marked as Proposed
5 Exhibit Number 4 and ask you if you'd seen what we're talking
6 about when you're talking about the dumpster and then a
7 bunch of garbage behind the dumpster.,

8 "A That could have been that. Yes,

9 "Q And I'm going to show you Proposed Exhibit
10 Number 6 and ask you if you can identify that. Take a good
11 look at it, Go ahead, You can hold it.

12 "A Yes,

13 "Q Okay, Have you seen that before?

14 "A No,

15 "Q Okay, You've never seen this photo before?

16 "A No.

17 "Q Okay. This is the area, however, that you described
18 just -- just now about finding a body behind a dumpster. Is
19 that correct?

20 "A Yes,

21 "Q Okay, Did you move anything before you actually
22 saw the body?

23 "A Yes. I believe I moved some papers and a box, a
24 cardboard box, and then that's when I noticed his stomach.

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SHOTT - DIRECT

1 "Q And what is that, so we know?

2 "A Going through the dumpster, looking for
3 merchandise, recyclable aluminum cans, whatever.

4 "Q Okay. And do you specifically remember what
5 dumpster it was that you were looking through on that night
6 when something caused you to be here testifying today?

7 "A Oh, yes, A body, a dead body.

8 "Q Okay, Tell me where you were when you saw a
9 dead body,

10 "A I was behind the dumpster, well, behind in back of
11 it,

12 "Q Behind the dumpster?

13 "A Yes,

14 "Q Okay.

15 "A In back of it.

16 "Q What drew your attention to the body?

17 "A I seen there was -- I'd already rotted through the
18 dumpster inside and I noticed that there was a bunch of
19 garbage behind it, not in the dumpster, so I went behind there
20 and moved a box. And I thought I seen a sneaker, but it
21 wasn't. And as I moved, I seen a black stomach of a body,

22 MR. KEPHART: "Okay, May I approach, Your
23 Honor?

24 THE COURT: "Yes."

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SHOTT - DIRECT

1 "Q Okay. Is this photo, State's Proposed Exhibit
2 Number 6, does that show a photo of a cardboard box and
3 papers, obviously?

4 "A Yes.

5 "Q Okay. And would it be the cardboard box that
6 you're talking about or maybe that you moved?

7 "A Maybe so,

8 "Q Okay, And once you saw that there was a body
9 there, what did you do?

10 "A I say to myself I gotta get out of here,

11 "Q Okay.

12 "A Yeah.

13 "Q Okay. And did you just get out of there or did you
14 do something else?

15 "A I just left.

16 "Q Okay. And what was it — you didn't talk to
17 anybody?

18 "A No. I went up to the gas station and -- to use the
19 phone. But it took me about two and a half hours —

20 "Q Okay,

21 "A -- to make the phone call, 911 call.

22 "Q Okay. And what gas station did you go to?

23 "A Terrible Herbst,

24 "Q Where is that located? Do you know the names of

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SHUTT - DIRECT

1 the streets?

2 "A Arville and Flamingo. It's like maybe a half a block
3 west.

4 "Q Okay. And why did it take you two and a half hours
5 to use the phone?

6 "A 'Cause I didn't know what to do,

7 "Q Okay. Did you talk to anybody else?

8 "A No,

9 "Q Okay. In that area, is there an area that -- that you
10 frequent? Is this an area that you frequent?

11 "A Yes.

12 "Q Okay. Did you see anybody else around there when
13 you --

14 "A No, I didn't.

15 "Q How is it that you got into the dumpster area?

16 "A I noticed that the gate was unlocked and open a
17 little bit, and usually it's locked.

18 "Q Okay. Arid on this particular night that it was open?

19 "A I checked it out

20 "Q Okay. All right. And when you called the police,
21 what did you tell the police?

22 "A Well, I called 911 and told them I think I found a
23 dead body,

"Q Okay.

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SHOTT - DIRECT

1 "Q Uh-huh.

2 "A Yeah, I didn't go all the way back there.,

3 "Q Okay, But you moved. Did you move the box
4 enough to where you could see under it?

5 "A I seen the -- I seen a stomach, yeah,

6 "Q Okay, And what did you do with the box? Just put
7 it back down?

8 "A I -- yeah. I dropped everything,

9 "Q Okay. And got -- got the heck out of there?

10 "A Yes.

11 "Q Okay, And you said that you didn't see anybody
12 else in there?

13 "A Nor

14 "Q Do you know a person by the name of St. Louis or
15 Duran, um, that hung around there?

16 "A Knew him because a couple of days later I went to a
17 couple of different homeless camps and --

18 "Q Okay,

19 "A -- put the word out, And that's how I found out that
20 there was a body. That was the dead body, St. Louis.

21 "Q Okay. But you did -- you didn't know him to see. If
22 you looked at him, wouldn't you have recognized him or
23 anything?

24 "A I might have seen him a couple of times coming

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SHOTT - DIRECT

1 "A And they sent officers to where I was, I told the
2 lady at 911 that I couldn't go nowhere, I'd sit right here and
3 wait for the cops,

4 "Q And they showed up?

5 "A Yes.

6 "Q And you actually walked around in the area where
7 the body was in the -- was, is that right?

8 "A Walked around.

9 "Q Well, you were in the area where the body was?

10 "A Behind the dumpster?

11 "Q Uh-huh,

12 "A No

13 "Q You weren't in there? How did you move the box?

"A Well, I went behind the -- in back of the dumpster,

15 "Q That's what I mean.

16 "A Only right there because there was like a long ways
17 to the end where the box is.

18 "Q Uh-huh.

19 "A Where the dumpster is.

20 "Q Okay.

21 "A I only got to where -- at the end of the dumpster.

22 "Q I got you

23 "A You know, where there was like 4 to 6 feet to the
24 wall.

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SHOTT - CROSS

1 from the Gold Coast Casino,

2 "Q So you've seen him in the area at least?

3 "A Yes.

4 "Q Okay,, When the police got there, did you tell them
5 everything that you just told us here now?

6 "A Yes,

7 "Q Didn't see anybody running from the scene or
8 anything like that?

9 "A No.

10 MR. KEPHART: "We'll pass the witness, Your
11 Honor."

CROSS-EXAMINATION

13 BY MR. SCHIECK:

14 "Q How are you, Mr, Shott?

15 "A Oh, a little nervous,

16 "Q I'm not going to ask you anything hard.

17 "A Okay.

18 "Q Mr. Kephart showed you this picture which is
19 marked Exhibit 6, Is that familiar to you?

20 "A Yes, I've just seen it.

21 "Q And is that what the body looked like to you when
22 you got there?

23 "A All I seen was the stomach,

24 "Q Okay. Now there was a trash can here then, right?

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SHOTT - CROSS

"A Yes,

"Q That's not here in this photo, There's the trash can in State's Number 4. Is that more what it looked like when you got there?

"A No. It was -- this was like this a way, I think, and it was cocked,

"Q It was moved a little bit, to the best of your recollection?

"A Yeah.

"Q Okay. But the scene -- but the -- may I show the jury?"

THE COURT: You want to publish the --

MR. SCHIECK: And at this point, I believe 4 and 6 were admitted into evidence,

MR. KEPHART: Yeah,

MR, SCHIECK: And I can just go to the next question.

BY MR. SCHIECK:

"Q So it looked like that. And the body had some cardboard over it like you've seen, like you described in picture 6?

"A Yes,

Did you at any time go in that back corner, back left corner?

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SHOTT CROSS

"A Yeah, took an imprint.

"Q Okay. But they didn't take your shoes away from you?

"A No, they did not.

"Q Did you look at your shoes?

"A When I took them off,

"Q Specifically, did you look for blood? Did you see blood on them?

"A I don't think so. I don't think so.

"Q So what did -- was it really two and a half hours? I mean, how do you know it was two and a half hours? It just seemed like it, like that, or was it really that long?

"A It seemed like that,

"Q Because you called around 10:30, right?

"A Yes.

"Q I believe the 911 tape came in, and there will be evidence later, 10:36. Does that make sense to you?

"A Yes, It's been a while. It's been almost like a year,

"Q Right. But when you left, so before you found the body you left the Gold Coast, Do you remember, was it dark out yet, was it dusk, was it light? Do you remember?

"A Was sort of a little dark because I was in there for like five or six hours.

"Q Do you know what I mean when I say dusk, you

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SHOP' - CROSS

"A No.

"Q On the other side of the body?

"A No

"Q You didn't go anywhere near there, did you?

No.

"Q What did you do for two and a half hours?

"A Debated whether or not to call it, make the phone call and report it. But then to cover myself, you know, if someone were to put me around that area then you'd be looking for me for questioning, you know what I mean, and gave me the body, or whatever, but then do the right thing because I do have a conscience.

"Q You were interviewed by the police that night?

"A Yes,

"Q Were you wearing the exact, same clothes when the police talked to you as when you found the body?

"A Yes

"Q Did the police look at the bottom of your feet?

"A Yes,

"Q Did they release you?

"A Yes.

"Q They didn't arrest you?

"A No.

"Q Did they take your shoes?

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know, somewhere, you know, in a twilight, sometimes between, you know, when it's light out and the sun goes down? Could it have been around that time?

"A Urn.

"Q If you don't remember, sir.

"A I don't remember.

"Q Did you take anything away from the dumpster area?

"A No, I did not.

"Q Did you leave anything there?

"A If I had anything in my hand, I probably did,

"Q Do you know what it was? What would you have had in your hand?

"A I don't remember,

MR, SCHIECK: "I have no further questions."

MR. KEPHART: Judge, I believe at this time that we had moved to admit 4, 5 and 6, but I haven't got to 5 yet. So I'll move to admit 4 and -- 4 and 6,

Thanks,

MR. SCHIECK: No objection.

THE COURT: 4 and 6 are admitted.

(State's Exhibit Nos, 4 and 6 admitted)

MR, KEPHART: The State would call Leuron Williams, Your Honor.

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WILLIAMS - DIRECT

1 THE COURT: Would counsel approach?

2 MR. KEPHART: Oh, okay,

3 (Off-record bench conference at 15:16:55 until 15:17:55)

4 THE COURT: Ladies and gentlemen of the jury,
5 before Richard Shott gave the testimony that was just read to
6 you, he was sworn and placed under oath in open court.

7 The State may proceed with the State's second
8 witness,

9 MR. KEPHART: Yeah. Lueron Williams, Your Honor.

10 THE COURT: Okay,

11 THE CLERK: Please come all the way forward.

12 Remain standing and raise your right hand,

13 LUERON WILLIAMS, STATE'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: Be seated?

17 THE COURT: Yes, you may be seated.

18 THE WITNESS: Lueron Williams, L-U-E-R-O-N,

19 THE COURT: The State may proceed,

20 DIRECT EXAMINATION

21 BY MR, KEPHART:

22 Q Ms, Williams, do you know an individual by the -- did
23 you know an individual by the name of Duran Bailey?

24 A Yes, I did

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'IMAMS - DIRECT

1 building located on West Flamingo across the street from the
2 Palms?

3 A Yes, I am,

4 Q Okay, And how is it that you're familiar with that
5 building?

6 A Well, because I've taken him over there to the bank
7 several times, quite a few times.

8 Q When you say him, are you talking about Duran?

9 A Duran, Yes,

10 Okay, And so you had -- he had business at that
11 bank?

12 A Yes, he did,

13 Q Okay. And you said that you took him over to that
14 bank. Did he have transportation while he was here in Las
15 Vegas?

16 A No. He had no transportation. He usually rode the
17 city bus, I guess if what you call it,

18 Q Okay, And do you know if Duran worked?

19 A No, he didn't work. He was disabled.

20 Q Okay. And did he collect disability?

21 A Yes, he did. It's SSI,

22 Q And you said that he had business with the bank.
23 What type of business would he conduct with the bank?

24 A Well, he had a check that was going to -- going to

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WILLIAMS - DIRECT

1 Q Okay. What's your relationship, if anything, with
2 him?

3 A He's my cousin,

4 Q Okay. I'm gonna draw your attention back to July of
5 2001 and ask you if you were called upon by the Las Vegas
6 Metropolitan Police Department to identify him, if you could
7 -- were called in to identify him,

8 A Yes, I was,

9 Q And can you tell me how long, if you know, did he
10 live in Las Vegas prior to July 8th of 2001?

11 A He moved here in November, 1997 with his mother,

12 Q Okay, And were you living here in Las Vegas then?

13 A No. I didn't live here at that time,

14 Q When was it that you came to Las Vegas?

15 A I moved here in June, 1999.

16 Q Okay, And did Duran stay here in Las Vegas during
17 the time that he had moved here initially until his death?

18 A Yes, he did.

19 Did he also have a nickname? Was he known as St,
20 Louis?

21 A Not that I knew of,

22 Okay.

23 A But he was from St, Louis.

24 Now, are you familiar with the Nevada State Bank

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WILLIAMS - DIRECT

1 the bank each month, his social security supplement. So,
2 therefore, he had an account with that bank.

3 Q Okay, And did you know if Duran carried his license
4 with him, driver's license? Did he have a driver's license?

5 A No, he had no driver's license but he did have a DMV
6 state I.D. Because when I came in 1999, his mother has
7 asked me to take him down to DMV to get another one. He
8 had one in the past but he was always misplacing it. So,
9 therefore, several things that he had to do when he needed
10 I.D., he didn't have one, so I took him down to DMV one day
11 to get another state 1.D.,

12 Q Did you find out that when he was found, before you
13 had to identify his body, that he did not have any I.D. on him?

14 A Well, I did find out, yes, that he didn't

15 Q Was that surprising to you?

16 A Well, no, because I know that several times I've
17 taken him to the bank, you know, he didn't have 1,D, and kind
18 of wondered how he was gonna withdraw without I.D., but he
19 did.

20 Q He was able to conduct business there without a
21 bank -- without his ID.?

22 A Yes, he was because he went there so often, like two
23 and three times a day, that they were -- all of the clerks who
24 worked in there was familiar with him.

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WILLIAMS - DIRECT

1 Q Do you know or do you remember whether or not he
2 had a stable home where he had a place to stay?

3 A Well, up until his mother passed away in May, 2000
4 he did. And the last time that I seen him because, like I say,
5 he had income and he had told me on that day that he was —

6 MR. SCHIECK: Objection, hearsay, what he said,
7 Your Honor.

8 THE COURT: Sustained,

9 BY MR. KEPHART:

10 Q Without telling us what he had told you, my question
11 is is did he have a place to stay, if you knew, back in July of
12 2001?

13 A 2001. No Not that I knew of.

14 Q Okay. Ma'am, I need to --

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

16 THE COURT: Yes, you may,

17 BY MR KEPHART:

18 Q I need to show you a photograph, and we have it
19 marked as a State's exhibit, Proposed Exhibit Number 40, and
20 ask you if you could take a look at that and tell me if you
21 recognize who that photo was taken of?

22 A Yes. That's Duran Bailey.

23 Q Okay. When was the last time that you saw Duran
24 Bailey prior to July 8th of 2001?

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ILLIAMS - CROSS

1 cousin, right?

2 A Yes.

3 Q And were you close with his mother? Was that —
4 that would your aunt then?

5 A Well, I was close to her but I traveled a lot because
6 we were in the military. So whenever I came back to St.
7 Louis, you know, I got a chance to see her. So we were pretty
8 close,

9 Q And did you ever, when she was still with us and
10 when Duran was with us, did you ever have holidays together
11 with them that you recall in Las Vegas?

12 A Oh, yes, we did. Yes, quite a few. All of the
13 holidays, a matter of fact,

14 Q Had you ever visited either your aunt or your cousin
15 at the Grandview Apartments?

16 A Yes, I did.

17 Q And you're aware that the Grandview Apartments
18 were approximately a block away from the Nevada State Bank
19 that you referred to?

20 A Yes.

21 Q How often would you estimate that you saw Mr,
22 Bailey? Was it weekly, monthly, if you can recall?

23 A Well, after I moved here in '99, matter of fact, I
24 would see them probably about every day because we were

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WILLIAMS - CROSS

1 A I seen him the month before, on June the 12th. And I
2 remember the exact date simply because I had to go to the
3 social security office because I had misplaced my social
4 security card. And when I arrived there, he was sitting in one
5 of the seats there, And I went over and sat beside him and
6 began to talk to him, A matter of fact, I talked to him all the
7 way up until they called me,

8 MR, KEPHART: Okay. The Courts indulgence, Your
9 Honor.

10 (Pause in the proceedings)

11 MR. KEPHART: Pass the witness, Your Honor.

12 THE COURT: Cross.

13 **CROSS-EXAMINATION**

14 BY MS ZALKIN:

15 Q Good afternoon, Ms. Williams. Where were you
16 residing prior to moving to Las Vegas in 1999?

17 A Anchorage, Alaska.

18 Q Did you move here, in part, because you had some
19 family members here?

20 A No. I moved here because my husband was retiring
21 for a second time.

22 Q And what was he retiring from?

23 A From the State of Alaska Department of Corrections.

24 Q Were you close with -- so Duran Bailey was your

IV-71

WILLIAMS - CROSS

1 waiting for them to finish building the house that we were
2 gonna move in. So we had nothing else to do but just drive
3 down to see them, visit.

4 Q So you weren't staying with them at the Grandview
5 Apartments that you were --

6 A No, we weren't staying with them.,

7 Q Did Duran ever stay at your place once the -- once
8 your home was ready?

9 A No.

10 Q Did he ever ask to?

11 A No, because he lived with his mother during that
12 time.

13 And do you recall, do you know why she had to
14 move out of the apartment building, Grandview?

15 MR. KEPHART: Your Honor, I'm gonna object as to
16 relevance.

17 MS. ZALKIN: It's —

18 THE COURT: Counsel, approach,

19 (Off-record bench conference at 15:28:10 until 15:28:46)

20 THE COURT: The objection is sustained,

21 BY MS. ZALKIN:

22 Q Do you know why he would make several trips in one
23 day to the bank?

24 A Yes.

IV-73

WILLIAMS - CROSS

/ILLIAMS - CROSS

1 Q And why is that?

2 A Because he'd only withdraw small amount of monies,

3 Q You testified that you last saw him in June at the

4 social security office, is that correct?

5 A That's correct.

6 Q And that was just a coincidence that you ran into

7 him?

8 A Yes, it's a coincidence. He had an appointment that

9 day, and I just happened to go by there to get an application

10 for a lost social security card.

11 Q Do you recall what, without telling us the substance,

12 do you recall what the nature of your discussion with him was

13 that day?

14 A Yes, We talked about he had recently come back

15 from St. Louis, from his home town where he was born, and

16 we talked about that And then we talked about him getting

17 an application to get on with Section 8 or HUD or whatever the

18 program is.

19 Q Had you ever met a former girlfriend of his named

20 Debra?

21 A I can't recall the girl's name. When I came here in

22 1998, I met a young lady but I don't recall her name,

23 Q Okay. Do you recall a friend of his at one time

24 named Diane Parker?

1 Q And did he and your husband get along? Did they

2 have any relationship?

3 A My husband was sick at the time so, therefore, you

4 know, they talked when we by there.

5 Q You were aware that he had a problem with crack

6 cocaine addiction?

7 A No, I wasn't aware that he had crack cocaine

8 because if he did,, he never used all of his money for that, So

9 I didn't know how he was getting it and I doubt if somebody

10 was giving it to him.

11 Q Did you know a friend of his named Boogie Man?

12 A No, I knew none of his friends,

13 Q You never heard him mention a gentleman who went

14 by the name of Smoke?

15 A No.

16 MS. ZALKIN: Court's indulgence. I'm nearly

17 finished,

18 (Pause in the proceedings)

19 BY MS, ZALKIN:

20 Q Do you know, Ms. Williams, why he ended up

21 homeless?

22 A Well, because the apartment was in his mother's

23 name. It wasn't in his. And it was one of these senior citizen's

24 apartments so, therefore, he wasn't fifty-five so he couldn't live

IV-74

IV-76

WILLIAMS - CROSS

WILLIAMS - REDIRECT

1 A The name doesn't ring a bell.

2 Q And so you testified that he had a place to live until

3 his mother passed away. So as far as you knew, he was in

4 between residences and was homeless on the date of his

5 death. Is that accurate?

6 A Well, I do know that I kind of kept in touch with him

7 through a friend who lived next door to my cousin over there

8 in those apartments. His name was Carl. And every day he

9 would check with Carl. He would come by there. And I would

10 tell Carl to have him to call me. So, you know, he came by

11 ironed his clothes and took a shower, and things like that.

12 Q So was he staying with Carl or just over there during

13 the day, as far as you know?

14 A Yeah, just over there during the day. He would stop

15 by and do various little things like that and then call my aunt in

16 St Louis.

17 Q And so you're aware that he was sleeping in the

18 parking lot area of the bank around the time of his death?

19 A I didn't know about the parking lot of the bank, but I

20 know sometimes up under that Flamingo bridge, I guess,

21 down up under there, I'd never been down there, of course,

22 But I guess up under there people sleeps and stayed. So I

23 thought at times, you know, that that's where he was because

24 I guess he may have told Carl that

1 there.

2 MS. ZALKIN: The Court's indulgence one more time

3 Nothing further. Thank you very much.

4 MR. KEPHART: I do.

5 REDIRECT EXAMINATION

6 BY MR, KEPHART:

7 Q Ms. Williams, the apartment that we're talking about

8 where he was living with his mother, where is that located in

9 reference to the bank that you used to take him to?

10 A Well, it's been a long time since I've been over in that

11 area and I'm not really that familiar with it anymore. I know

12 it's down past Flamingo. Oh, I don't even know the name of

13 those other streets over in there.

14 Q Is it adjacent directly behind the bank?

15 A It's been a long time I can't even place where it is

16 over on that side of town.

17 Q Okay. What was the name of the apartments, do

18 you remember? Do you know the --

19 A The apartments?

20 Q Do you remember the name of the apartments?

21 A Yeah, the Grandview, I think it was.

22 MR, KEPHART: Okay. Nothing further, Your Honor,

23 Okay.

24 THE COURT: Further cross.

IV-75

IV-77

WILLIAMS - RECROSS

MS. ZALKIN: Just one further question. □

RECROSS EXAMINATION

BY MS ZALKIN:

Q You would agree that the bank is approximately one block from the Grandview Apartments. Is that accurate? Maybe two blocks, a block or two?

A Maybe something like that because I would drop him off like on my way back home, you know, so just around the corner or right out of the area of the apartments where they lived, you know, and then over to the bank. And then I would just go on home.

Q So it was walking distance, certainly?

A Yeah, I would say walking distance.

MS. ZALKIN: Thank you. Nothing further.

THE COURT: Anything further by the State?

MR., KEPHART: Not by the State, Your Honor.

THE COURT: You may step down,

THE WITNESS: Thank you.

THE COURT: The State may call their next witness,

MR, KEPHART: Thank you, Your Honor. Iain

Anderson.

THE CLERK: Please come all the way forward.

Remain standing, raise your right hand.

IAIN ANDERSON, STATE'S WITNESS, SWORN

IV-78

1DERSON - DIRECT

A Sorry?

Q Are you familiar with that property there?

A It's the Nevada State Bank, directly across from the Palms Casino.

Q Okay. And I'm showing you State's Proposed Exhibit Number 121 and ask you if you can just look this way, Can you see that as well, in this one? Do you see that?

A Yes, sir.

Q Okay. Does this have the actual bank building, the parking lot, all the adjoining properties?

A Yes,

Q And does this accurately depict as you recall the property to be —

A At that time, yeah.

Q -- back in July, 2001?

A Yes.

MR, KEPHART: Move to admit 121, Your Honor,

MR. SCHIECK: No objection, Your Honor.

THE COURT: Granted.

(State's Exhibit No. 121 admitted)

BY MR, KEPHART:

Q And on Exhibit Number 1, Proposed Exhibit Number 1 here, that's just basically the front of the bank, is that right?

A Yes,

IV-80

ANDERSON - DIRECT

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

THE WITNESS: Iain Anderson, I-A-I-N A-N-D-E-R-S-O-N

THE COURT: The State may proceed.

MR KEPHART: Thank you, Your Honor,

DIRECT EXAMINATION

BY MR. KEPHART:

Q Mr. Anderson, I'm gonna draw your attention back to July of 2001 and ask you if you recall whether you were here in Las Vegas during that -- during that month,

A I was, sir,

Q Okay, And how were you employed?

A At the Palms Casino Resort —

Q And --

A -- as security,

Q As what?

A Security, I was an assistant security,, Well, I was working for the Human Resources Department at the time.

Q I'm showing what's been marked as State's Proposed Exhibit Number 1,, Can you -- can you see that on the -- well, what happened there? Oh, there it goes. Can you see that?

A Yes, sir.

Q Are you familiar with that property right there?

IV-79

ANDERSON - DIRECT

MR, KEPHART: I'd move to admit —

THE WITNESS: The sign,

MR. KEPHART: — Proposed Exhibit Number 1,

MR. SCHIECK: No objection,

MR. KEPHART: Okay.

THE COURT: Granted.

(State's Exhibit No. 1 admitted)

BY MR, KEPHART:

Q Now, Mr. Anderson, the -- on the bank of the Exhibit 121 there's a yellow marker there. It says "Crime Scene." And it goes down to an area right at the -- I guess it would be the north end of that parking awning there.

A Yes,

Q Do you see where it's pointing to?

A Yes,

Q Are you familiar with that area?

A There was a dumpster located there.

Q Okay, Showing you what's been marked as State's Proposed Exhibit Number 117. Do you see that?

A Yes, sir.

Q Does that look familiar to you?

A Yes.

Q Does that accurately depict the dumpster area of — located at that bank?

IV-81

ANDERSON - DIRECT

1 A Yes.
 2 Okay_ 116. Does that also show it from a different
 3 angle?
 4 A Yes, sir.
 5 Q 119,
 6 A Yes.
 7 Q It actually shows across to the Palms, is that correct?
 8 A Yes
 9 Q 118, I show --
 10 A Yes,
 11 Q Does that accurately depict it as well? Okay. And
 12 then this 120 shows down towards the Gold Coast and the Rio,
 13 is that right?
 14 A Yes.
 15 Q Okay, With regards to Exhibit 117, drawing your
 16 attention back to July 8th of 2001, that's -- that was a Sunday,
 17 Do you recall whether or not the bank or the business that you
 18 were working for security was open on those days, on that
 19 day?
 20 A We were closed on the weekend.
 21 So Saturday and Sunday you would be closed?
 22 A Yes, sir.
 23 Okay, Specifically, did you have anything to do with
 24 the bank itself?

P1-82

IDERSON - DIRECT

1 Q Okay.
 2 A But it had to be -- the lock was removed so that both
 3 the bank and the Palms could use the same dumpster.
 4 Q Do you remember how the lock was removed?
 5 A No, I'm not aware of it,
 6 Q Okay. You weren't involved in doing that yourself?
 7 A No,
 8 Q Okay. But you knew that both the bank and Palms
 9 used that --
 10 A Yes,
 11 Q -- particular dumpster area?
 12 A Yes, sir,
 13 Q Okay. I'm showing you what's been admitted as
 14 State's Exhibit Number 4 and ask you if you recognize what
 15 that photo depicts.
 16 A The inside of the enclosure.
 17 Q Okay, And do you see back behind the dumpster
 18 there appears to be -- well, what does it appear to you?
 19 A Trash,
 20 Q And now I'm showing you State's Exhibit Number 6.
 21 Now, does that also appear to be trash?
 22 A Yes, sir.
 23 Q Okay. Now the -- you said that the particular
 24 dumpster area shared both, I guess, dumping garbage for

IV-84

ANDERSON - DIRECT

1 A No.
 2 Q But you had a business located within the bank
 3 building, is that right?
 4 A Within the building, yeah.
 5 Q And were you ever -- did you ever use this particular
 6 dumpster in that area?
 7 A We shared that with the bank?
 8 Q You shared it with the bank?
 9 A Yes.
 10 Q Okay, And on the photo that's up in front of you, it
 11 shows that there is a gate on the bank, on the -- I mean, on
 12 the dumpster area. Is that -- do you see that?
 13 A Yes,
 14 Q Okay, Do you recall during that particular weekend,
 15 the 7th would be a Saturday, the 8th would be a Sunday, do
 16 you recall whether in July of that period of time there was any
 17 type of locks or anything like that on the bank to -- I mean, on
 18 the -- I keep saying bank, on the gate to the dumpster area?
 19 A Initially, there had been when we first moved into the
 20 building. But when we --
 21 Q And when was that?
 22 A June,
 23 Q Okay. A month previous?
 24 A A month prior.

IV-83

ANDERSON - DIRECT

1 both you and the bank?
 2 A Yes,
 3 Q For the Palms --
 4 A Yes.
 5 Q -- Casino and the bank? So I'm showing you what's
 6 been marked as State's Proposed Exhibit Number 7 or,
 7 actually, it's in this photo right here. Do you see what appears
 8 to be some palms right there?
 9 A Yes.
 10 Q So that would be consistent with something, maybe
 11 garbage being deposited there from the Palms Casino?
 12 A Yes, sir,
 13 Q Okay. And now I'm showing you State's Proposed
 14 Exhibit Number 11. Do you see there appears to be some
 15 paperwork there with some writing on it?
 16 A Yes.
 17 Q There's also some looks -- appears to be some paper
 18 that's been shredded?
 19 A Yes, sir,
 20 Q Does that appear to be consistent with something
 21 that may be deposited there by the bank?
 22 A Most likely,
 23 Q Okay. And you -- had you, yourself, ever deposited
 24 any garbage there?

IV-85

ANDERSON - DIRECT

1 A Yes-

2 Q Okay. Now with regards to Exhibit Number 6, there

3 appears to a cardboard box, boxes, some air filter or air-

4 conditioning up there on the left, my left,

5 A Yes.

6 Q Yeah, the photo's left Plastic bags or, actually, a cup

7 down here.

8 MR. SCHIECK: Your Honor, could we ask the

9 witness what is in the picture instead —

10 MR KEPHART: I'm —

11 MR. SCHIECK: -- of Mr. Kephart?

12 MR. KEPHART: That's fine.

13 BY MR. KEPHART:

14 Q Can you kind of tell —

15 THE COURT: Do you have an objection?

16 MR. SCHIECK: Yes, objection, Your Honor. I'm

17 sorry.

18 THE COURT: Sustained.

19 BY MR. KEPHART:

20 Q What do you -- what do you think? What does it

21 appear to you is in that photo with regards to garbage?

22 A A couple of boxes, plastic bags full of trash, the filters

23 for the air-conditioning.

24 Q Okay Anything else?

IV-86

IDERSON - DIRECT

1 individual by the name of Duran Bailey, an individual that may

2 have been living there, staying in that particular dumpster

3 area?

4 A Not to my recollection_

5 Q Okay. Now you were security for the Palms Hotel, is

6 that right?

7 A Yes, sir. At that time, yes.

8 Q Would it have been your job to keep people from

9 staying in there?

10 A Yes,

11 Q Okay_ Let me ask you this question. When was the

12 last time that you recall having anything to do with that

13 dumpster, the business?

14 A It would be Friday night.

15 Q Okay. So 'cause the -- both the Palms, the Palms

16 division you were working with, and the bank were closed on

17 the weekends?

18 A I know we were_ I don't believe -- I'm not sure if the

19 bank was or not.

20 Q Okay. Well, do you have anything to do with Friday

21 night there? That's what my question —

22 A Friday night, yes,

23 Q What would have been your task?

24 A I was the last one to leave that day, made sure that

IV-88

ANDERSON - DIRECT

1 A Well, the — well, the palm fronds are there.

2 Q Do you see any cups?

3 A There may be one on top of the cardboard.

4 Q That's —

5 A Oh, yeah,

6 Q I'll just move it up.

7 A Okay, Yeah, there's —

8 Q There's one on the cardboard and —

9 A Another one down to the -- to the left corner,

10 Q It's trash?

11 A Yeah, it's trash.

12 Q Okay, And the plastic bags here, the clear plastic

13 bags, do you see -- do you see at the — on the right hand of

14 the corner of the photo there or the right side of the photo?

15 A Yes, sir,

16 Q Does that also appear to be plastic bags?

17 A Yes.

18 Q Was that consistent with what you knew that was

19 thrown -- used to throw garbage away to -- into that garbage?

20 A Yes,

21 Q Okay. And Proposed Exhibit Number 7 shows a

22 closeup of, actually, the bags in that. Is that -- is that right?

23 A Yes.

24 Q Now, did you -- did you ever come to know an

IV-87

ANDERSON - DIRECT

1 the building was secure, took out the trash.

2 Q As of Friday night when you threw trash away, did

3 you see anybody in the dumpster area?

4 A No.

5 Q Okay, The trash you just saw in the photographs,

6 was it in the dumpster, what you saw in the photograph, was

7 it in the dumpster in the photo or was it on the ground in the

8 photo?

9 A There was trash in the dumpster, as well as on the

10 ground.

11 Q Okay. When you threw trash away into that

12 dumpster, do you recall whether or not there was trash out on

13 the ground or was it all in the dumpster?

14 A There was some on the ground.

15 Q Okay, So it would have been both places?

16 A Yes,

17 Q Okay. The photo that we showed you where you

18 kind of described, well, Exhibit Number 6 you were talking

19 about, you know, what you saw there. When you deposited

20 trash on Friday night in that dumpster, do you recall whether

21 or not the extent of the trash like this was outside the

22 dumpster?

23 A I know there was trash behind the dumpster and to

24 the side of it. I'm not -- I couldn't be sure how much.

IV-89

ANDERSON - DIRECT

1 Q Okay. Do you recall whether or not the dumpster
 2 was full?
 3 A I believe it was reasonably full.
 4 Q And I'm showing you Exhibit Number 4, Can you see
 5 this photo here?
 6 A Yes,
 7 You can actually see the top of the dumpster, is that
 8 correct?
 9 A Yes.
 10 Q And you -- can you see any trash inside the dumpster
 11 there?
 12 A No.
 13 Q Okay. When you threw trash away on the Friday
 14 night, though, you said you believed that it was reasonably
 15 full.
 16 A It was --
 17 Q But --
 18 A It was generally full because of both businesses.
 19 Q Okay, S6 on Friday night, do you believe that the
 20 garbage had come to the point where you could see it above
 21 the top of the dumpster?
 22 A I believe so,
 23 Q And what is, Exhibit Number 117, what is -- what is
 24 this here to the -- to the left?

IV-90

IDERSON - DIRECT

1 THE COURT: You may
 BY MR. KEPHART:
 3 Q just show you it this way You want to just look
 4 through those real quick?
 5 (Pause in the proceedings)
 6 A Okay,
 7 Q And in regards to Exhibit Number 4 that you've been
 8 -- we've been beating it to death here, they appear different,
 9 do they not, the photographs that you -- the photogr'aphs you
 10 have there with regards to these photographs?
 11 A These ones are probably daily.
 12 Q You recall them being taken at a later period of time
 13 versus the photographs here, the photograph that's on this?
 14 There's no trash in that one?
 15 A Yeah,
 16 Q The dumpster has been moved?
 17 A Yeah, the dumpster was moved,
 18 MR. KEPHART: Okay. Your Honor, I'll move to
 19 admit Exhibits, I think it is, 117 through 120,
 20 THE COURT: Not 116?
 21 MR. KEPHART: Oh, I'm sorry, Yeah, 116 through
 22 120. Thanks, Judge.
 23 MR. SCHIECK: No objection, Your Honor.
 24 THE COURT: Granted,

IV-92

ANDERSON - DIRECT

1 A It's covered parking,
 2 Q Covered parking?
 3 A Yeah,
 4 Q And what's covering the trash enclosure area?
 5 A Just looked like a fence. They used the chainlink
 6 fence just to cover the top of it.
 7 Q Could you see through it?
 8 A Yes.
 9 Q So if you were standing inside where the dumpster is
 10 in this photograph and you looked up out of there, could you
 11 see the parking structure next to it?
 12 A Yes.
 13 Q Okay. Do you recall on Friday night whether or not
 14 the actual enclosure was locked?
 15 A It -- after the lock was broken off, it was never
 16 locked,
 17 MR. KEPHART: The Court's indulgence, Your Honor,
 18 (Pause in the proceedings)
 19 BY MR. KEPHART:
 20 Q Okay. Just one more thing. With respect to Exhibit
 21 116, 117, 118, 119 and 120, which I had shown you. Do you
 22 want me to show you again?
 23 MR. KEPHART: May I approach the witness, Your
 24 Honor?

11/-91

ANDERSON - CROSS

1 (State's Exhibit Nos, 116 thru 120 admitted)
 2 MR. KEPHART: Pass the witness, Your Honor,
 3 Thank you,
 4 **CROSS-EXAMINATION**
 5 BY MS. ZALKIN:
 6 Q Good afternoon, Mr. Anderson. Do you recall during
 7 the relevant time period what days the garbage was picked
 8 up?
 9 A Not to my recollection,
 10 MS. ZALKIN: And just so we could be clear with
 11 respect to the dates, could we mark this as the next exhibit in
 12 order for the defense, please? And this -- I'm just showing it
 13 to counsel. This is just a printout of a calendar for July, 2001.
 14 MR. KEPHART: Oh, okay. Okay. Yeah, okay.
 15 That's fine,
 16 (Pause in the proceedings)
 17 THE CLERK: It's II.
 18 MS. ZALKIN: II. Thank you.
 19 THE COURT: It's been marked as Defendant's
 20 Proposed IL
 21 MS. ZALKIN: Yes. Thank you, Your Honor. □
 22 (Pause in the proceedings)
 23 MS. ZALKIN: Thank you,
 24

IV-93

ANDERSON - CROSS

1 BY MS, ZALKIN:
 2 Q Mr. Anderson, so the date that you were last in the ---
 3 at work in the Nevada State Bank parking lot, that was Friday,
 4 July 6th?
 5 A Yes, ma'am.,
 6 Q Okay. And did you ever see the lock that previously
 7 had been on the dumpster gate?
 8 A When I first arrived there, yes,
 9 Q And do you have any idea who removed the lock?
 10 A No
 11 Q Do you by what means it was removed?
 12 A No
 13 Q So you don't know whether it was cut or not?
 14 A No.
 15 Q Did you ever see any pieces of the lock on the
 16 ground that you recall?
 17 A Not to my recollection.
 18 Q Okay. And, the last time that you were at this area
 19 before July 6th was July 6th, is that correct?
 20 A Yes, ma'am,
 21 What was the lighting like at night in the dumpster
 22 area?
 23 A It was reasonably well-lit. You could see.
 24 Were there overhead sodium lights or ---

IV-94

VIDERSON - CROSS

1 Q And were you aware of any problem with any
 2 homeless persons that were in the area at that time?
 3 A We had run a few off, but I don't recall any names,
 4 Q Were those persons that you had noticed yourself or
 5 that someone else had brought to your attention?
 6 A That we had noticed.
 7 Q And do you recall having a problem with the same
 8 person or were they different individuals, if you recall?
 9 A They'd be different ones.
 10 Q And were those persons loitering in the parking lot or
 11 coming inside the bank area?
 12 A Loitering.
 13 Q And your job at the time was human resources?
 14 A I worked with the Human Resources Department but
 15 were there as security. We had several hats but --
 16 Q Are you still employed with the Palms?
 17 A No,
 18 Q Would it surprise you to learn that there were broken
 19 pieces of the lock outside of that dumpster area?
 20 A Not really, no.
 21 MS, ZALKIN: The Court's indulgence.
 22 (Pause in the proceedings)
 23 BY MS, ZALKIN:
 24 Q And you testified that the area used to be kept

IV-96

ANDERSON - CROSS

1 A There were overhead lights and there were lights
 2 from the covered parking also.
 3 Q And you testified that you didn't see anybody in that
 4 enclosure area when you left on July 6th, is that correct?
 5 A No, ma'am.
 6 Q Did you see if there were any signs of habitation, for
 7 example, any bed rolls or anyone's belongings that you could
 8 ascertain?
 9 A No.
 10 Q No Okay,
 11 MS, ZALKIN: And the Court's indulgence just one
 12 moment.
 13 (Pause in the proceedings)
 14 BY MS, ZALKIN:
 15 Q What were your hours when you were working for
 16 human resources?
 17 A It varied, anything from 12:00 until we closed.
 18 Sometimes it was 9:00 o'clock.
 19 Q And you'd been working there for approximately?
 20 A I believe we opened there in June,
 21 Q June?
 22 A The exact date, I can't remember.
 23 Q Sure. June of 2001?
 24 A Yes, ma'am.

IV-95

ANDERSON - REDIRECT

1 locked, as far as you know, until access was needed by both?
 2 A Prior. I believe it was -- the lock was removed
 3 sometime in July or end of June,
 4 Q And so do you know if it was -- any idea if it was the
 5 same lock on the ground that had previously been there?
 6 A I haven't seen the lock and I don't recall what it
 7 looked like. So --
 8 MS ZALKIN: Nothing further. Thank you.
 9 THE COURT: Redirect.
 10 MR. !KEPHART: I do, Your Honor,
 11 **REDIRECT EXAMINATION**
 12 BY MR, KEPHART:
 13 Q Are you familiar with the Terrible Herbst up on Arville
 14 and Flamingo?
 15 A Yes, sir,
 16 Q Could you walk from there to where you ---
 17 A Yes,
 18 Q Okay. And at that point in time, there was a desert
 19 area that separated the two, is that right?
 20 A Yes.
 21 MR. KEPHART: Can I have these marked, Your
 22 Honor?
 23 (Pause in the proceedings)
 24 ///

IV-97

ANDERSON - REDIRECT,

ANDERSON - REDIRECT

1 BY MR. KEPHART:
 2 Q While she's marking those, I'm gonna ask you if you
 3 can identify what 136 shows, Does that look familiar to you?
 4 A It looks like the view of the dumpster, possibly, from
 5 the street,
 6 Q Would it be from Flamingo or from Wynn?
 7 A Flamingo
 8 Q Okay, That looks like from Flamingo?
 9 A Off of Wynn.
 10 Q Okay, So it's looking east to west?
 11 A Yes,
 12 Q And you have the dumpster in the background?
 13 A Yes,
 14 Q Okay. Can you see this area on the -- on 121,
 15 Exhibit 121?
 16 A I think it's probably about right here somewhere,
 17 COURT RECORDER: I'm not picking that up, Sorry.
 18 BY MR. KEPHART:
 19 Q Probably around where?
 20 A Oh, Right here,
 21 Q Okay. Does it have in the photograph like the
 22 planter area surrounded by a curb?
 23 THE COURT: He said probably about right here
 24 when he pointed to —

1 THE COURT: 137? I thought it was 136.
 2 SCHIECK: I thought so. It is 137, Your Honor.
 3 THE COURT: Okay, So it's 137 that -- that was
 4 placed before the witness,
 5 MR. KEPHART: Okay.
 6 THE COURT: Any objection?
 7 MR. SCHIECK: No, No objection, Your Honor,
 8 (State's Exhibit No, 137 admitted)
 9 BY MR. KEPHART:
 10 Q And I want to -- I want to show you what's marked
 11 as State's Proposed Exhibit 139 and ask you to look at 137 and
 12 139 together, tell me if you can recognize if they're the same
 13 area,
 14 A I believe so,
 15 Q Okay, And 139 is taken from the west to the east, as
 16 if you're standing near the dumpster. Would that be correct?
 17 A Yes,
 18 MR. KEPHART: Move to admit State's Exhibit 139,
 19 MR. SCHIECK: No objection, Your Honor.
 20 THE COURT: Granted.
 21 (State's Exhibit No. 139 admitted)
 22 BY MR. KEPHART:
 23 Q This is the parking lot area just around the back by
 24 the dumpster, is that correct?

IV-98

IV-100

ANDERSON - REDIRECT

ANDERSON - REDIRECT

1 MR. KEPHART: I'll get to that, Judge, when —
 2 THE COURT: The problem he's got his back to the
 3 microphone
 4 MR KEPHART: Oh, okay.
 5 THE COURT: And so she was drawing your
 6 attention to the fact that she's not picking him up.
 7 MR. KEPHART: Okay, Thank you, Judge,
 8 BY MR. KEPHART:
 9 Q Okay. , On 121 you pointed in what area?
 10 A Here, There was a -- the curb and there was a
 11 planter area right there.
 12 So would you agree it's just east of the dumpster
 13 area?
 14 A Yes
 15 And it's in a curb and planter area?
 16 A Yes.
 17 And then that's what is shown in Proposed Exhibit
 18 137?
 19 A I believe so,
 20 Q Okay, This is taken at night?
 21 A Yes,
 22 Q Does that accurately depict that you recall that area?
 23 A Yes.
 24 MR KEPHART: Okay, Move to admit 137.

1 A Yes.
 2 Okay, Is this -- is that a corner in the parking lot as
 3 well?
 4 A Yes.
 5 So you would have to go around the end of that
 6 planter area, is that right?
 7 A Yes.
 8 Q Exhibit 137, is this -- it's kind of dark. Is this one —
 9 is this the planter area that we're talking about, and that's
 10 139?
 11 A Yes, sir,
 12 Q Okay.
 13 A Yes, sir,
 14 Q What is this right at the bottom? Can you tell, from
 15 this photo, can you tell what this is right here where my
 16 fingers are?
 17 A Looks like tire tracks.
 18 Q Okay. There's multiple tire tracks there, is that
 19 correct?
 20 A Yes.
 21 Q And along the curb itself, can you see where it
 22 appears there's tire scuffs as well?
 23 A Yes
 24 Q And then up here there's a tire track?

IV-99

IV-101

ANDERSON - REDIRECT(

PERSON - REDIRECT

1 A Yeah,
 2 Q And then there's this one here as well?
 3 A Yes.
 4 Q Okay, And that — and do all these tire tracks seem
 5 to track this —
 6 THE COURT: Now you've said this one here as well,
 7 MR. KEPHART: Oh, I'm sorry, I'm sorry, Judge.
 8 THE COURT: And you've switched to -- you said
 9 this.
 10 MR. KEPHART: 137,
 11 THE COURT: Thank you
 12 BY MR. KEPHART:
 13 Q On 137, I said this one here and I'm pointing to the
 14 photo and there's a tire track there as well?
 15 A Yes.
 16 Q Do all these tire tracks seem to track around that, the
 17 corner there?
 18 A Yes, sir,
 19 Q Okay, And, as a matter of fact, in 139 that's the end
 20 of this planter, is that correct?
 21 A Yes,
 22 Q And what is this right here where I'm pointing in the
 23 middle of the -- can you tell?
 24 A Gravel.

1 Q Okay, You never saw anybody do that?
 2 A No,
 3 Q Do you see here at the end of the curb, does it
 4 appear that people cut this curb short there?
 5 A Yeah,
 6 Q Okay. Do you have any independent recollection of
 7 the night on the Friday that you were there whether or not you
 8 saw the -- saw tire tracks in that area?
 9 A I don't recall, sir,
 10 Q Okay. Nothing that raised your attention or anything
 11 like that?
 12 A Nothing out of the ordinary, no.
 13 Q Okay. What -- is this something out of the ordinary
 14 you think that would raise your attention?
 15 A Um,
 16 Q No? Yes, no?
 17 A Some -- not really. Some of the ones that were a
 18 little thicker maybe, where somebody had laid down some
 19 rubber, but —
 20 Q Okay. Would you have done anything with that as a
 21 security guard or anything?
 22 A No,
 23 MR. KEPHART: Okay. Pass the witness, Your
 24 Honor,

IV-102

IV-104

ANDERSON - REDIRECT

ANDERSON - RE-CROSS

1 Q It's all gravel. Is it darker in part of that area?
 2 A Yes, sir.
 3 Q And what's up here where I'm pointing now?
 4 A That --
 5 Q Can you see that?
 6 A That would be a bush.
 7 Q Okay. Do you recall whether or not there was a bush
 8 here where it'd be -- this darker area? Do you remember?
 9 A Not to my recollection at this time.
 10 Q Do you -- do you know whether or not one was ever
 11 removed from there?
 12 A No
 13 Q Okay,
 14 THE COURT: Is that no —
 15 THE WITNESS: No, I --
 16 THE COURT: -- one was never removed or, no, I
 17 don't know?
 18 THE WITNESS: I don't recollect, I don't recollect.
 19 THE COURT: Thank you.
 20 BY MR. KEPHART:
 21 Q Okay, Do you know of any individuals that ever cut
 22 or did you ever see anybody cut the curb a little short and go
 23 right across that curb there?
 24 A I don't recall,

1 THE COURT: Recross,
 2 MS. ZALKIN: Yes. Thank you, Your Honor. □
 3 **RE-CROSS EXAMINATION**
 4 BY MS. ZALKIN:
 5 Q Mr. Anderson, were you aware of any crimes that
 6 were occurring in the vicinity that you were responsible for?
 7 A We were aware of some but nothing in particular.
 8 Q Can you elaborate to the best of your ability what
 9 crimes were brought to your attention?
 10 A We were aware of some robberies in the area that —
 11 Q Robberies of residences?
 12 A No, there had been some at the local bar, some at
 13 that place,
 14 Q And were there any measures taken to try to guard
 15 against such occurrences?
 16 MR. KEPHART: Your Honor, I'm gonna object as to
 17 foundation, what day is she talking about, when was he
 18 aware, when he — you know. I mean, I don't --
 19 THE COURT: Sustained,
 20 BY MS. ZALKIN:
 21 Q In June of 2001, were there any steps taken to try to
 22 mitigate against any crime in the area?
 23 A Not as far as we were concerned.
 24 Q And the same question for July of 2001,

IV-103

IV-105

1 A Not as far as we were concerned.
 2 MS. ZALKIN: May I approach, Your Honor? I have
 3 a quick question about the aerial,
 4 THE COURT: All right,
 5 BY MS, ZALKIN:
 6 Q Drawing your attention again to State's Proposed
 7 Exhibit 121, this -- the top of this blowup, those appear to be
 8 apartment buildings?
 9 A Yes, ma'am.
 10 And those are the Grandview Apartments?
 11 A I don't recall the name.
 12 Does the address 48255 West Viking sound accurate
 13 to you?
 14 A I don't even recall the address there.
 15 MS. ZALKIN: The Court's indulgence.
 16 THE COURT: Yes.
 17 (Pause in the proceedings)
 18 MS, ZALKIN: Thank you. Nothing further.
 19 THE COURT: Redirect.
 20 MR, KEPHART: We have nothing further, Your
 21 Honor, Thank you.
 22 Thank you, Mr, Anderson.
 23 THE COURT: You may step down,
 24 THE WITNESS: Thank you,

IV 106

TESTA-DIRECT
 1 MS. DiGIACOMO: I just don't want to get confused
 2 on what's been admitted. Thank you,
 3 **DIRECT EXAMINATION**
 4 BY MS,, DIGIACOMO:
 5 Q Would you please state your occupation and
 6 assignment?
 7 A I'm a field training officer at Southwest Area
 8 Command at this time
 9 Q How long have you been with Metro overall?
 10 A A little over seven and a half years now,
 11 Q I want to direct your attention back to July 1', 2 --
 12 excuse me, July 8th of 2001. Were you still employed and
 13 working?
 14 A Yes,
 15 Q What shift were you working at that time?
 16 A I was working graveyard shift at Southwest Area
 17 Commandr
 18 Q So graveyard shift. What time would you have come
 19 on on July 8th?
 20 A We start briefing at 10:00 o'clock p.m. and we get
 21 done at 8:00 o'clock a.m.
 22 Q So you would have started the night of July 8th and
 23 finished the morning of July 9th?
 24 A Yes, ma'am.

IV-108

1 THE COURT: I'm gonna ask that counsel please
 2 approach.
 3 (Off-record bench conference at 16:09:47 until 16:15:39)
 4 THE COURT: The Court is marking a calendar for
 5 the year 2001 as Court's exhibit next in number.
 6 THE CLERK: 6.
 7 THE COURT: Which will be 6.
 8 (Off-record bench conference at 16:15:56 until 16:16:57)
 9 MS, DiGIACOMO: Your Honor, the State calls James
 10 Testa,
 11 THE COURT: Very well.
 12 THE CLERK: Please come all the way forwardr
 13 Remain standing and raise your right hand,
 14 JAMES TESTA, STATE'S WITNESS, SWORN
 15 THE CLERK: Thank your Please be seated. State
 16 your name and spell it for the record, please,
 17 THE WITNESS: James Testa, T-E-S-T-A.
 18 THE COURT: The State may proceed.
 19 MS, DiGIACOMO: Thank you, Your Honor.
 20 May I approach?
 21 THE COURT: Yes.
 22 MS. DiGIACOMO: I'm just gonna -- if I may
 23 approach the witness,
 24 THE COURT: Yes,

IV-107

TESTA - DIRECT
 1 Q Now when you -- after you finish briefing, what do
 2 you do then?
 3 A At that point in time we go ahead and log on to our
 4 car, into the service, and then we begin patrolling the area or
 5 handling calls for service.
 6 Q When you got into your car that night, was there any
 7 call that you were dispatched to?
 8 A Shortly after logging on, I got dispatched to a sick or
 9 injured person call near the area of Flamingo and Arville.
 10 Q Do you recall what time that was?
 11 A Approximately 10:45 p.m.
 12 Q And what did you do when you got that call?
 13 A I responded to the area to meet up with the person
 14 who was reporting the call at the Chevron station on the
 15 corner of Flamingo and Arville,
 16 Q Then what happened?
 17 A I made contact with the P.R. and asked him what
 18 was going on. He stated that there was a subject who was in
 19 a dumpster around the corner, on the same side of the street,
 20 and he didn't know if he was back there, he was injured, sick
 21 or dead, or what.
 22 THE COURT: Would you please tell the jury what
 23 PR. stands for?
 24 THE WITNESS: Oh, P.R. stands for person

IV-109

TESTA - DIRECT

1 reporting
 2 BY MS. DiGIACOMO:
 3 Q Thank you And how long did it take you to get from
 4 the station when you left to this call?
 A Three, four minutes, roughly.
 6 Q I'm gonna show you what's sitting right behind you
 7 This is State's Exhibit 121. Do you recognize that?
 8 A Yes, ma'am,
 9 Q And how do you recognize that?
 10 A That is part of the area which I patrol and the area in
 11 which the call came out on that night,
 12 MS. DiGIACOMO: Your Honor, if I put it here, can
 13 you still hear? Okay,
 14 THE COURT: Yes.
 15 BY MS, DiGIACOMO:
 16 Q On State's Exhibit 121, can you see the Chevron
 17 station you were referring to at Arville and West Flamingo?
 18 A No, ma'am,,,
 19 Q Okay, Can you see the area that you responded to?
 20 A It is still just a little bit off of the side of the picture,
 21 ma'am.
 22 All right. So after you made contact with the person
 23 reporting, where did you go?
 24 A We then walked -- or we took our patrol vehicles over

IV-110

TESTA DIRECT

A It was the Nevada State Bank that's still there now,
 2 ma'am.
 3 Q Now, what happened to the person who reported,
 4 Richard?
 5 A We had him stay outside of the crime scene and keep
 6 the distance away from us, That way, in case there was any
 7 type of ambush or anything like that or if there was a crime
 8 scene, he would not be inside the crime scene destroying any
 9 more of the possible evidence that would be inside,
 10 Q Okay, And you hadn't — you didn't know anything
 11 other than somebody possibly behind the dumpster at this
 12 time?
 13 A Correct, ma'am,
 14 Q You can go ahead and sit down. Thank you,
 15 Now when you arrived, what did the area look like?
 16 A It was an empty parking lot. It was very low-lit.
 17 There wasn't much light,, And the dumpster area was -- the
 18 two doors to the dumpster area was closed.
 19 Q Can you describe what the dumpster area looked
 20 like?
 21 A The dumpster area was basically a type of a square,
 22 On the three sides were brick cement that enclosed it and the
 23 front would have been two large doors,
 24 Q All right, And you -- is the two doors you're referring

IV-112

TESTA - DIRECT

1 to the bank area in which he stated the subject was behind in
 2 a dumpster area,
 3 Q Okay. You're saying we. Did you respond with
 4 another officer?
 5 A Yes Myself and Officer Chavez,
 6 Q Were you in separate cars?
 7 A Yes, ma'am,
 8 Q And when you were working on that date, were you
 9 dressed as you are in the courtroom today?
 10 A Yes.
 11 Were you also in a marked black-and-white patrol
 12 car?
 13 A Yes, ma'am
 14 Q Do you recall the name of the person that reported?
 15 A I believe his first name was Richard but I do not
 16 remember what his last name was at all.
 17 Q Is it on the map, the location of the dumpster you
 18 went to?
 19 A Yes, ma'am.
 20 Would you please point it out for the jury?
 21 A It would be approximately right about here,
 22 Okay. And is that in a parking lot?
 23 A Yes, ma'am.
 24 And do you know what parking lot it was?

IV-111

TESTA - DIRECT

1 to when you got there?
 2 A Yes,
 3 Q Okay. And you said they were partially open?
 4 A They were partially open, closed up. I'm not sure
 5 exactly if they're locked in place. I can't remember at this
 6 time.
 7 Q All right, But could you see through into the
 8 dumpster?
 9 A No, ma'am.
 10 Q All right. So what did you do?
 11 A At that time, I had opened up the dumpster area, the
 12 two doors, to open it fully wide to see if we could see inside
 13 the dumpster area.
 14 Q Now you said it wasn't that well-lit in the area,
 15 A No
 16 Q Were you able to see very well into the dumpster?
 17 A What we did is or, actually, what I did is I pulled my
 18 patrol car right in front of it, faced it towards the dumpster
 19 area, turning on my headlights and my side spotlights to help
 20 lighten up the area so I could see better,
 21 Q Okay. And then at that time after you — well, did
 22 you do that before or after you --
 23 A Before I approached.
 24 Q Okay, And then what did you do after you

IV-113

TESTA - DIRECT

1 approached?

2 A Once we approached, I opened up the doors, at

3 which time the dumpster was in full length open -- or, I'm

4 sorry, closed as well of the area to where you could not see

5 around the back side of the dumpster.

6 Q Okay, Now I'm gonna show you what's been marked

7 and admitted as State's Exhibit Number 4 or -- wrong exhibit

8 There's a screen in front of you Okay. Can you see State's

9 Exhibit Number 4 on your screen?

10 A Yes.

11 Q Amazing. Does this look familiar to you?

12 A Yes, it does.

13 Q Okay, What is this?

14 A This is the crime scene area,

15 Q Okay, And is this the way it looked when you first

16 arrived?

17 A No, ma'am.

18 Q Okay. How did it look when you first arrived?

19 A When I first arrived both the doors were closed and

20 the dumpster was not sideways like that. It was facing the

21 opposite direction where each side would be south and north,

22 covering the whole front of the -- of the dumpster area so you

23 could not see behind it.

24 Q Okay, So when you first opened the door, the

IV-114

TESTA - DIRECT

1 had to move that dumpster?

2 A Yes, ma'am,

3 Q What happened when you moved the dumpster?

4 A I moved the dumpster and I could immediately see

5 several blood spots on the ground.

6 MS. DiGIACOMO: Now, Your Honor, may I

7 approach?

8 THE COURT: Yes,

9 BY MS. DiGIACOMO:

10 Q Okay. I'm gonna show you what's been marked as

11 State's Proposed Exhibits 2, 3, 5 and 7 through 37. Can you

12 just flip through these and let me know if you recognize them?

13 (Pause in the proceedings)

14 A Yes, ma'am, I recognize it.

15 Q Okay. Are these all photographs of the scene from

16 that night, on July 8th, 2001?

17 A Yes, ma'am.

18 Q Do they fairly and accurately depict the scene that

19 you saw at the trash dumpster that night?

20 A Yes, ma'am,

21 MS. DIGIACOMO: Your Honor, at this time the State

22 would move for admission of State's Proposed Exhibits 2, 3, 5,

23 and 7 through 37.

24 MR. SCHIECK: No objection, Your Honor.

IV-116

TESTA - DIRECT

1 dumpster was in front of you?

2 A Correct,

3 Q You're not looking at the side of it as in State's

4 Exhibit Number 4?

5 A Correct.

6 Q How did it get to this position?

7 A In order to see behind it, to see what was behind it,

8 at that time I had to use my baton on the side openings of the

9 dumpster and tried to wheel it off to the side just so that we

10 had more of a clearance, we were able to get back there and

11 see back there without putting ourselves in danger.

12 Q Okay. Now, did both you and Officer Chavez go into

13 the dumpster area?

14 A I went inside and I believe Officer Chavez stayed

15 outside of it,

16 Q When the dumpster, before you had moved it, could

17 you get by on either side?

18 A It was very thin, that I can remember, to get through

19 it and to be able to try to squeeze myself through it with all

20 the equipment that I was wearing would have been very

21 difficult and it would have put us, what we call, a fatal funnel,

22 which if there was ambush back there it would have been a

23 very dangerous situation to be -- for us to be in.

24 Q Okay. So for officer safety pretty much is why you

IV-115

TESTA - DIRECT

1 THE COURT: Granted.

2 (State's Exhibit Nos. 2, 3, 5, and 7 thru 37 admitted)

3 BY MS, DiGIACOMO:

4 Q Now you -- I'm sorry, You stated when you first

5 went into the dumpster you noticed some blood?

6 A Yes, ma'am,

7 Q What specifically did you notice?

8 A There were a couple of splattered-looking blood spots

9 on the ground and some shoe prints.

10 Q Did you notice anything else at that time?

11 A As I approached in further, being very careful where

12 I stepped, I noticed a pair of sandals that were sitting up on

13 the side that were next to each other. And as I looked

14 around, underneath a bunch of garbage I could see what

15 appeared to be a foot sticking out,

16 Q All right, And what did you do at that point?

17 A At that time, I made several attempts and calls out

18 very loudly to see if I'd get the individual to answer me, if he

19 happened to be asleep or injured or anything of that effect.

20 Q And what did you yell out?

21 A I yelled out that police officer, are you all right, are

22 you okay, wake up, several times.

23 Q Now you said all you could see was a foot. What --

24 A At that time, yes.

IV-117

TESTA - DIRECT

1 Q What else did you see around the foot?
 2 A Around the foot it looked like the pants may be down
 3 a little bit, there was more blood, and there was a lot of looked
 4 like miscellaneous trash on top of the rest of the person.
 5 Q So at this point, what did you do? Well, strike that.
 6 Did the person respond that you were yelling out to?
 7 A No
 8 Q What did you do at that point?
 9 A At that time, I asked for medical to be en route,
 10 Q So you, over your radio, called for medical?
 11 A That I can remember, yes, ma'am.
 12 Q And what happened? Did medical arrive?
 13 A An AMR unit and a fire department unit arrived.
 14 Q How long did it take?
 15 A A few minutes. I couldn't tell you for sure.
 16 Q What happened when they arrived?
 17 A When they arrived, I had one of the -- I believe it
 18 was the fire department, just one of the gentlemen, come into
 19 the crime scene, telling him to be extremely careful where he
 20 stepped, light up the areas so that he did not step in any of
 21 the blood or try to contaminate any of the scene, to attempt to
 22 check on the welfare of the subject,
 23 Q Did you see -- could you see what he was doing?
 24 A Yes.

IV-118

TESTA DIRECT

1 sure that we had recontacted the person reporting and that he
 2 stood by 'cause the detectives would more than likely want to
 3 talk to him and basically tried to keep everybody at the scene
 4 until the detectives responded and I,D. -- or the crime scene
 5 analysts personnel responded to start processing the scene.
 6 Q Were you -- so you didn't just leave when people,
 7 other people, started to arrive?
 8 A No, ma'am. I stayed there the entire shift.
 9 Q Okay. So what time did you leave?
 10 A A little after 7:00 a.m.
 11 Q On July 9th?
 12 A Correct.
 13 MS. DiGIACOMO: Okay. May I approach, Your
 14 Honor?
 15 THE COURT: Yes.
 16 BY MS. DiGIACOMO:
 17 Q Officer, I'm gonna show you what's been marked for
 18 identification as State's Proposed Exhibits 142, 143 and 144.
 19 Would you look at those and let me know if you recognize
 20 them?
 21 A Yes, The first two are the -- is the camera that the
 22 crime scene analysts would have brought in with them to take
 23 their pictures, and the last one is the pictures of the foot prints
 24 that we found that were in blood when I first arrived,

IV-120

TESTA - DIRECT

1 Q What did he do?
 2 A He stepped in, went over towards the front of the
 3 cardboard box that was over the top of the -- of the subject.
 4 He lifted the cardboard box approximately 6, 8 inches up to
 5 look underneath, and at that time he lowered the box, came
 6 back out and told me that he would be dead,
 7 Q Okay. What did you do at that point?
 8 A At that time, I moved everybody out, myself and
 9 Officer Chavez would have started to put up crime scene tape
 10 to keep everybody out that didn't need to be in there and
 11 started making notifications to our supervisor and detectives,
 12 Q What do you mean your supervisors and detectives?
 13 A Oh, we would notify our supervisor, our sergeant, of
 14 what we had and then we would notify our violent crimes
 15 detectives or general assignment detectives, in turn, which
 16 homicide would also be notified.
 17 Q All right. So a situation with a body behind a
 18 dumpster is not something you would handle as patrol?
 19 A No.
 20 Okay. After you did that, did the other detectives
 21 arrive?
 22 A They started arriving, yes.
 23 Q All right. What did you do?
 24 A At that time, I kept my distance outside and made

IV-119

TESTA - DIRECT

1 Q And so these fairly and accurately depict what you
 2 saw that night at the dumpster on July 8th, 2001?
 3 A Yes.
 4 MS, DiGIACOMO: Your Honor, at this time the State
 5 would move for admission of State's Proposed Exhibits 142,
 6 143 and 144.
 7 MR, SCHIECK: No objection.,
 8 THE COURT: Granted.
 9 (State's Exhibit Nos, 142, 143 and 144 admitted)
 0 BY MS, DIGIACOMO:
 1 Q Now I'm gonna show you State's Exhibit 144. Do
 2 you see that?
 3 A Yes, ma'am.
 4 Q Okay. Can you describe for the jury what's depicted
 5 here? And if you actually touch the screen in front of you, it'll
 6 make a line.
 7 A Okay. In between here and here and these areas
 8 were the separate blood splats that we had seen. And from
 9 this area here, along here and back through this area would be
 10 the foot prints that I saw.
 11 Q And what's located in the back of this photograph?
 12 A The back of the photograph would be the garbage
 13 and over here somewhere would be, roughly, the -- I believe
 14 the -- or the subject was back there, roughly.

IV-121

TESTA -

1 Q I'm showing you State's Exhibit Number 2, Do you
 2 recognize what's depicted here?
 3 A Yes, sir,
 4 Q What's depicted there?
 5 A That would be my patrol vehicle and it was facing the
 6 dumpster area in which we opened, and the patrol vehicle
 7 lights would be on lighting up that area, and that would be
 8 some of the detectives and the crime scene analysts_
 9 Q Now, is your car in the same spot it was at this —
 10 during this photograph as it was when you first arrived and
 11 you said you put on your lights?
 12 A Yes, sir,
 13 Q I'm showing you State's Exhibit Number 6. What's
 14 depicted here?
 15 A What is here is when I walked in the back, I could
 16 see the foot on the upper right side which was sticking out,
 17 and to include the garbage that was covering the body of the
 18 person.
 19 Q Now, can you point to where the foot is that you're
 20 referring to?
 21 A Roughly, the foot is right there and that's what it
 22 looked -- at that time.
 23 Q Okay. So is this the way it looked when you first saw
 24 the body?

IV-122

TESTA - DIRECT

1 A As they were taking out the trash, you could begin to
 2 see parts of the body where the subject's pants were removed
 3 down towards his ankle area, his genital region appeared to be
 4 missing, cut off, and his face and upper body areas appeared
 5 to be swollen up and blood-covered.
 6 Q Okay. Now I'm showing you State's Exhibit Number
 7 16, What's depicted there?
 8 A That would be the upper portion of the subject where'
 9 his face, again, to me appeared to be swollen and it is blood-
 10 covered up on his shirt and his face area,
 11 MS. DiGIACOMO: The Court's indulgence,
 12 THE COURT: Was that 116?
 13 MS, DiGIACOMO: That was -- thank you, Your
 14 Honor, That was 16.
 15 THE COURT: I don't think 16 has been admitted
 16 MS. DiGIACOMO: We just admitted 7 through 37.
 17 THE COURT: Yes, Thank you,
 18 MS. DIGIACOMO: Okay.
 19 BY MS. DIGIACOMO:
 20 Q Now I'm gonna show you State's Exhibit Number 12-
 21 What's depicted here?
 22 A That would be the lower portion of the subject where
 23 his pants are down and his genital area missing.
 24 MR. !KEPHART: What number is that?

IV-124

TESTA - DIRECT

1 A Yes.
 2 Q Now you said that the medical personnel that arrived
 3 went in there and lifted a cardboard box approximately 6 to 8
 4 inches?
 5 A Yes,
 6 Q Do you see the box that you saw them lift here?
 7 A Yes, I do,
 8 Q Where is that?
 9 A It is tip main cardboard box right there,
 10 Q Okay. And which end of that cardboard box was
 11 lifted up?
 12 A He would have lifted roughly right around here near
 13 the head area,
 14 Q Now, were you there -- excuse me. While you were
 15 there, could you see what the technicians were doing inside
 16 the dumpster area?
 17 A At a point, I tried to keep myself outside so that I did
 18 not step inside to contaminate the scene.
 19 Q Okay So do you -- do you know whether or not the
 20 trash was ever removed?
 21 A The trash was slowly removed piece-by-piece by the
 22 crime scene analysis person,
 23 Q Did you see anything unusual as they were taking
 24 out the trash?

IV-123

TESTA - CROSS

1 MS. DiGIACOMO: That was State's Exhibit Number
 2 12.
 3 BY MS_ DiGIACOMO:
 4 Q I'm showing you State's Exhibit Number 28. What's
 5 depicted here?
 6 A I believe that would be his genital area that was cut
 7 off.
 8 And can you point in there 'cause it's kind of dark?
 9 A Right along here.
 10 Did you see any other things unusual from the body
 11 after the trash was taken out?
 12 A I believe that there were also teeth found in the area,
 13 but I can't remember exactly for sure,
 14 MS, DiGIACOMO: Okay. Pass the witness.
 15 THE COURT: Cross.
 16 MR. SCHIECK: Thank you, Your Honor.
 17 CROSS-EXAMINATION
 18 BY MR. SCHIECK:
 19 Q Officer Testa, as of 2001, how long had you been a
 20 police officer?
 21 A A little over seven and a half years now, sir,
 22 Q Now. So back then you'd been a couple of years?
 23 A Two and a half, three years, roughly, sir.
 24 Q And now you're a training officer?

TESTA - CROSS

1 A Yes, sir.

2 Q Which means you teach other officers how to do the

3 job of a patrol officer?

4 A Yes, sir.

5 Q And included in that training would be teaching those

6 officers how to preserve crime scenes that you come upon?

7 A Yes, sir.

8 Q That's an important component of your job as a

9 patrol officer, is to preserve crime scenes that you come

10 across, correct?

11 A Yes, sir.

12 Q And you were trained in that before you became a

13 patrol officer?

14 A Yes, sir.

15 Q And you must be doing it pretty good. They made

16 you a training officer to teach others, correct?

17 A Yes, sir,

18 Q Okay. And, when you got this call and talked to

19 Richard, and he indicated there was a body behind the

20 dumpster?

21 A Yes, sir

22 Q That was sufficient enough information that you felt

23 it necessary to pull your vehicle up and turn on all your lights

24 to light the area before you even approached the area where

IV-126

TESTA - CROSS

1 A Yes, sir.

2 Q Okay. At this point in time, had you determined

3 whether there was or was not a body behind the dumpster?

4 A No, sir. We could not see.

5 Q Did you attempt to go around the sides and look over

6 the top to see if you could see anything back there?

7 A I was not able to do it. I can't, I'm pretty short,

8 couldn't see the high anyway, sir.

9 Q Okay So you determined it would be necessary to

10 move the dumpster at that point in time?

11 A Yes, sir.

12 Q Even though you're taught not to move things at a

13 crime scene, sometimes you just have to in order to see what

14 you're looking for, correct?

15 A Yes, sir,

16 Q So there was nothing out of your normal procedure

17 that you would have to slightly move that dumpster to gain

18 access to the back?

19 A No, sir.

20 Q Okay. And you were very careful and used your

21 baton so as not to leave behind any fingerprints on the

22 dumpster?

23 A Correct, sir,

24 Q So that later someone could come along and perhaps

IV-128

TESTA - CROSS

1 the body might be?

2 A Yes, sir,

3 Q And you wanted to do that so you had sufficient light

4 to make sure you didn't disturb, if indeed this was a crime

5 scene, disturb anything?

6 A Correct, sir,

7 Q And also for officer safety?

8 A Officer safety, Yes, sir,

9 Q And when you approached, first approached, the

10 dumpster after you pulled your car up, the doors were shut,

11 the gate were shut?

12 A Yes, sir.

13 Q Were they completely shut so that they touched or

14 were they gapped a little or do you recall?

15 A I honestly don't remember completely for sure, sir.

16 But you were able to open those, the swinging

17 doors?

18 A Outwards, Yes, sir.

19 Okay. Was there one door or two?

20 A I can remember there were two doors, sir.

21 So you swung the doors open. And now you're

22 confronted with this large green dumpster?

23 A Yes, sir.

24 Q And it's a little tight on both ends for you to slide by?

IV-127

TESTA - CROSS

1 dust for prints and determine if someone else had touched the

2 dumpster?

3 A Yes, sir.

4 Q Now you said you swung the dumpster. Were you

5 able to manipulate it within the confines of the enclosure or

6 did you have to pull it out in order to turn it a little bit?

7 A I just used the one side, sir, of the dumpster and

8 basically just swung it open so where the back side basically

9 would have pivoted on it.

10 Q Okay. So you were able to rotate it so that you could

11 get by?

12 A Yes, sir,,

13 Q And you were the only officer that went back into the

14 back at that point in time?

15 A Yes, sir,

16 Q Officer Chavez did not go with you?

17 A No, sir. He was standing just on the outside, sir.

18 Q And once you were back there, you were able to see

19 blood and what you perceived to be a human foot?

20 A Yes, sir.

21 Q You didn't touch the body in any way at that point?

22 A No, sir.

23 Q You called out loudly to the -- to the individual,

24 hoping to get a response and got none?

1V-129

TESTA - CROSS

1 A Correct, sir,
 2 Q At that point in time you hadn't done anything to
 3 determine whether or not the person was deceased but,
 4 clearly, he was not responding?
 5 A Correct, sir,
 6 Q And so at that point the correct thing to do was call
 7 for medical?
 8 A Yes, sir.
 9 Q Which you did?
 10 A Yes, sir.
 11 Q And both AMR and the fire department responded?
 12 A That I can remember, yes, sir.
 13 Q You had to wait a few minutes for them to get there?
 14 A Yes, sir.
 15 Q And I would assume that you stayed right there at
 16 the dumpster and made sure nobody got back there until
 17 medical arrived?
 18 A Yes, sir,
 19 Q Okay. And would it be fair to say no one went back
 20 there?
 21 A No, sir.
 22 Q Okay. You didn't leave for any period of time so
 23 someone could have got back there —
 24 A No, sir.

1V-130

TESTA - CROSS

1 A Yes, sir.
 2 Q When medical, the fire department and AMR arrived,
 3 did they pull into the parking area also?
 4 A They pulled in the parking area but we kept them a
 5 distance away from the scene, sir.
 6 Q Now we've got State's Exhibit 2, which shows your
 7 patrol car and what appears to be probably the detectives and
 8 crime scene analysts?
 9 A Yes, sir.
 10 Q Okay, Where did the fire department pull up when --
 11 and AMR pull up when they got there? Is it depicted on there?
 12 A They would have been roughly back around here
 13 somewhere, sir. We tried -- I tried to keep them back farther
 14 away from the scene so that they didn't have to travel in and
 15 out,
 16 Q So you were controlling pretty much the whole
 17 parking lot at that point in time?
 18 A Yes, sir.
 19 Q And stopped them before they could come any
 20 further?
 21 A Yes, sir,
 22 Q And that's because there could have been evidence
 23 or things to be collected within the parking lot area itself, such
 24 as tire —

1V-132

TESTA - CROSS

1 Q -- and disturbed things? And when you went back
 2 and called out to the individual, you were careful not to step in
 3 any blood?
 4 A Correct, sir,
 5 Because you don't want to leave your foot prints
 6 behind?
 7 A Correct, sir,
 8 Q But you were able to see there were other foot prints
 9 there?
 10 A Yes, sir_
 11 Q That appeared to have been made in blood?
 12 A Yes, sir.
 13 Q So you worked your way around so you wouldn't
 14 touch anything to leave any evidence of your being there and
 15 then backed out just as carefully?
 16 A Yes, sir.
 17 Q And stood watch, along with Officer Chavez, until
 18 medical arrived?
 19 A Yes, sir.
 20 Q Were there any people accumulated in the area as a
 21 result of your presence?
 22 A At that time, no, sir.
 23 Q Mr, Shaft was there but you had stationed him some
 24 distance away and said just hold right here?

1V-131

TESTA - CROSS

1 A Possibly, yes, sir.
 2 Q Such as tire tracks, things of that nature?
 3 A Yes, sir.
 4 Q Where was Officer Chavez's car?
 5 A I believe, if I can remember correctly, he parked back
 6 over in this area, sir,
 7 Q Okay. Behind your car sort of?
 8 A Behind my car. The parking lot squared around the
 9 building so that you can approach from two different sides --
 10 Q Okay,
 11 A -- of that area.
 12 Q And so the medical personnel exited their vehicles
 13 and approached the dumpster area?
 14 A Only one, sir. I had only one come in.
 15 Q Okay. And that was from the fire department?
 16 A Yes, sir,
 17 Q But AMR, the ambulance company, was on scene?
 18 A That I can remember, yes, sir.
 19 Q But you didn't ask them to come back?
 20 A No, sir, just one at that time.
 21 Q At that point in time, did you have a pretty good idea
 22 that the individual was probably deceased?
 23 A Possibly, yes, sir.
 24 Q An so you had one individual from the fire

IV-133

TESTA - CROSS

1 department come back. Do you recall who that was?
 2 A No, sir, I do not
 3 Q Do you recall what station he responded from?
 4 A I don't remember if it's 15, 21, 22, I'm not exactly
 5 sure which one there, sir.
 6 Q And did you follow him up to the dumpster area?
 7 A Yes, sir.
 8 Q Did you give him any instructions as you were
 9 approaching the dumpster area?
 10 A Yes, sir,
 11 Q An what did you tell him?
 12 A I told him be extremely careful where he steps,
 13 watch where he steps, make sure he doesn't step in any of the
 14 blood or anything like that, just do the bare minimum that you
 15 would need to do to check on the subject's welfare.
 16 Q And did he acknowledge that he understood those
 17 directions?
 18 A Yes, sir,
 19 Q Is it fair to say that the Clark County Fire Department
 20 trains their fire officers not to disturb crime scenes also?
 21 A I do not know for sure, sir, but I think so,
 22 Q Did you watch as he entered into the dumpster area?
 23 A Yes, sir,
 24 Q You indicated that he touched the cardboard and

1V-134

TESTA - CROSS

1 the crime scene tape put when you marked off the area?
 2 A There would have been two major areas of the crime
 3 scene tape we put up, sir. One would have been off in this
 4 direction, over here, and that would be that way no individuals
 5 could drive that way or come up that way, and it would have
 6 been further down south from that area towards the end of
 7 the building to keep yourself a larger crime scene and keep
 8 everybody out of that area.
 9 Q So you basically roped off the whole parking lot area
 10 or
 11 A Pretty much, sir, Yes, sir,
 12 Q Now behind in this photograph, looking past where
 13 the individuals were positioned, what is beyond? Is there a
 14 wall back there?
 15 A Yes, sir .
 16 Q And what's over the wall, do you know?
 17 A It is an apartment complex.
 18 Q Were steps taken to make sure nobody came over
 19 the wall from the apartment complex and got into that crime
 20 scene area?
 21 A Standing there, sir, basically making sure that nobody
 22 did climb over there. Yes, sir.
 23 Q Okay, And you indicated that once you had the
 24 pronouncement of a dead body that you started making phone

IV-136

TESTA - CROSS

1 lifted it approximately 6 to 8 inches?
 2 A Yes, sir,
 3 Q Besides that, did he touch anything else in that area?
 4 A No, sir,
 5 Q He didn't touch the dumpster?
 6 A No, sir.
 7 Q And he had on his rubber gloves, I assume?
 8 A Yes, sir.
 9 Q And he pronounced death based on being able to
 10 look upon lifting the cardboard?
 11 A Yes, sir.
 12 Q He did not touch the body at any point in time?
 13 A No, sir
 14 Q And you watched to make sure he didn't step and
 15 leave his foot prints behind?
 16 A Correct, sir,
 17 Q Okay. And I assume he did not?
 18 A Correct. He did not, sir.
 19 Q At that point in time you knew you had a dead body
 20 and, therefore, had probably a homicide scene and took action
 21 to tape the scene off, is that correct?
 22 A Yes, sir
 23 Q Now in photograph Number 2 that we have on the
 24 screen, I don't see any crime scene tape, What -- where was

IV-135

TESTA - CROSS

1 calls to the appropriate other officers, correct?
 2 A Yes, sir.
 3 Q And one of those would have been to your sergeant?
 4 A Yes, sir.
 5 Q And can you recall who that was?
 6 A No, sir, I do not.
 7 Q Did he respond to the scene also?
 8 A I cannot remember, sir.
 9 Q Would it be normal procedure that he would also
 10 respond?
 11 A At times, depending on what was going on at that
 12 night, whether he was already on another call or was not able
 13 to get out at that point in time,
 14 Q Do you recall who the first group of responding other
 15 individuals were?
 16 A No, sir, I do not remember, sir,
 17 Q But it would have been — you would have called your
 18 sergeant. Do you recall if you called homicide or if he called?
 19 A I don't believe I called homicide. I made sure we
 20 called what -- at that time we had general assignment units
 21 who would have been on, on graveyard. And if I remember
 22 correctly, they would have responded along with I.D, and then
 23 they would go ahead and make the notification to homicide,
 24 sir,

IV-137

TESTA - CROSS

1 Q And so the I.D, or the crime scene analysts would
 2 respond with the general assignment detectives?
 3 A Wherever they were coming from, sir, they would
 4 eventually respond, Yes, sir,
 5 Q And during this period of time while you're waiting
 6 for the others to respond, you stayed there by the dumpster?
 7 A Yes, sir.
 8 Q And once they responded you were still there by the
 9 dumpster when they came up?
 10 A Yes, sir.
 11 Q Are you in this photograph, by any chance?
 12 A I do not remember, sir,
 13 Q Did you watch as they, these other officers that
 14 responded, entered into the dumpster area?
 15 A I believe they would have waited for the crime scene
 16 analysis person to get there as well,
 17 Q Do you have any recollection how long that was?
 18 A No, sir, I do,not.
 19 Q But at some point they arrived and you -- they began
 20 what would be the task of removing item-by-item of the trash
 21 from the top of the body, is that correct?
 22 A Yes, sir, That would have been done by the crime
 23 scene analysts, sir.
 24 Q And they were pretty meticulous in doing that one

IV-138

TESTA - CROSS

1 THE COURT: Thank you,,
 2 MR, SCHIECK: All of these are the admitted, the 7
 3 through 37,
 4 BY MR. SCHIECK:
 5 Q And you would have been there when the crime
 6 scene analysts reached this point, is that correct?
 7 A Yes, sir.
 8 Q And there appears to be some saran wrap around
 9 the leg area of the body?
 10 A Yes, sir,,
 11 Q And when I say saran wrap, plastic-type wrapping
 12 material?
 13 A Yes, sir.
 14 Q And that was there as they removed the items that
 15 were on top of it?
 16 A Yes, sir.
 17 Q I'm showing you what's been admitted as State's
 18 Exhibit 16, You would have been there to observe when they
 19 reached that point?
 20 A Yes, sir,
 21 Q There appears to be a number of white towel-like
 22 items over the abdomen area of the body, is that correct?
 23 A Yes, sir,
 24 Q And you would have been there when they removed

IV-140

TESTA - CROSS

1 piece at a time. Is that a fair statement?
 2 A Yes, sir,
 3 I mean, they just didn't go in there and brush it off
 4 and —
 5 A Correct, sir,
 6 Q And you observed them as they would bag things as
 7 they removed items from on top of the body?
 8 A Yes, sir,
 9 Q Put them into evidence bags, I mean?
 10 A Correct, sir,
 11 Q And at some point they got down where you could
 12 start seeing more of the body, is that correct?
 13 A Yes, sir.
 14 Q And you were still there in the area to watch as the
 15 body slowly became revealed?
 16 A Yes, sir,
 17 Q And were able to observe the various items that were
 18 on the body?
 19 A Yes, sir.
 20 Q I'm gonna show you what's been marked as —
 21 THE COURT: Has it been —
 22 MR, SCHIECK: Excuse me.
 23 THE COURT: -- marked or has it been admitted?
 24 MR. SCHIECK: Admitted, Your Honor, I'm sorry,

IV-139

TESTA - CROSS

1 those items?
 2 A Yes, sir,
 3 Q Did you notice if they bagged those items or marked
 4 them or did anything with those items?
 5 A I do not remember for sure, sir.
 6 Q Were you still there when the body was removed?
 7 A No, sir.
 8 Q Okay, So you stayed until about 7:00 o'clock, is that
 9 correct?
 10 A Yes, sir.
 11 Q Which was close to the end of your shift?
 12 A Yes, sir.
 13 Q And as part of your responsibility you have to go
 14 back and write up a report and log out and all of that stuff at
 15 the end of your shift?
 16 A Yes, sir,
 17 Q Okay. So you would have left about 7:00 o'clock to
 18 go be
 19 A Well, after 7:00 o'clock, once we were — we were
 20 relieved, sir.
 21 Q By the oncoming shift?
 22 A Yes, sir, Day shift units. Yes, sir.
 23 Q And, again, I'm gonna show you State's Exhibit 12.
 24 Does that also again show the saran wrap that appears to be

1V-141

TESTA CROSS

1 wrapped around the body?
 2 A Yes, sir,
 3 Q And that's around the leg area?
 A Yes, sir.
 5 Q Okay, But above where the pants are pulled down?
 6 A Oh, yes, sir.
 7 Q Did you notice anything else that was on the body
 8 while you were there other than the saran wrap or the plastic
 9 wrap that appeared to be wrapped around the body?
 10 A Not that I can remember, sir,
 11 Q Nothing specific that stands out?
 12 A Not that I can remember at this time, no, sir.
 13 Q And there was a lot of trash, various items from —
 14 that were on the body?
 15 A Yes, sir.
 16 Q But you do recall specifically the cardboard?
 17 A Yes, sir.
 18 Q And the -- and the plastic wrap?
 19 A Yes, sir,
 20 Q Had they completely uncovered the body by 7:00
 21 o'clock when you left or was it still partially covered?
 22 A Roughly, that I can remember, yes, sir, it was pretty
 23 much all uncovered, most of the items off the top of the body,
 24 sir,

IV-142

TESTA - CROSS

1 BY MR. SCHIECK:
 2 Q Let me show you three exhibits that have been
 3 marked as Defendant's Exhibit A, Defendant's Exhibit B and
 4 Defendant's Exhibit E.
 5 MR. SCHIECK: If I may approach, Your Honor.
 6 THE COURT: A, B and E?
 7 MR. SCHIECK: Yes, Your Honor,
 8 THE COURT: Yes, you may.
 9 BY MR. SCHIECK:
 10 Q Ask you to take a look at those and ask if you
 11 recognize those from the crime scene.
 12 A Yes, sir. The first one would be a —
 13 Q Don't describe them yet.
 14 A Okay, sir.
 15 Q We have to put them in. Do you recognize those
 16 photographs?
 17 A Yes, sir,
 18 Q Do they fairly and accurately depict items that were
 19 there at the area when you were there?
 20 A Yes, sir.
 21 MR. SCHIECK: I'd move for the admission of A, B
 22 and E.
 23 MS. DIGIACOMO: No objection.
 24 THE COURT: Granted.

IV-144

TESTA - CROSS

1 Q So you don't know actually what time the body was
 2 transported?
 3 A No, I do not remember, sir,
 4 Q At any point in time did you have contact with the
 5 Coroner's Office?
 6 A I remember them coming out, sir, but I did not speak
 7 with them that I can remember. No, sir.
 8 Q You didn't, you — you didn't call them out?
 9 A No, sir, not that I remember,
 10 Q That would have been someone else's responsibility?
 11 A Yes, sir.
 12 Q Did you see anyone, while you were there watching,
 13 step in blood and leave bloody foot prints?
 14 A Not that I know. No, sir.
 15 Q And there's no doubt in your mind when you first
 16 arrived, the first arriving officer on the scene that gained
 17 access, that the bloody foot print was there on concrete?
 18 A Yes, sir,
 19 Q Okay. And those are depicted in photographs that
 20 were shown to you?
 21 A Yes, sir.
 22 MR. SCHIECK: The Court's indulgence, please.
 23 THE COURT: Yes.
 24 (Off-record colloquy between Mr. Schieck and Mr. Kephart)

IV-143

TESTA - CROSS

1 (Defendant's Exhibits A, B, and E admitted)
 2 BY MR. SCHIECK:
 3 Q I'm gonna show you or put up Defendant's A. And
 4 can you tell us what's depicted there?
 5 A That would be a foot print, sir,
 6 Q Does it appear to be in blood?
 7 A Yes, sir,
 8 Q And just so we're clear on what we're looking at, I'm
 9 gonna show you next what's been marked as State's 144 and
 10 have you take a look at that. And you've already identified
 11 that as being bloody foot prints from the -- from the scene,
 12 correct?
 13 A Yes, sir.
 14 Q Would it appear then that the main photograph or
 15 the main print on Exhibit A is just a closer photograph of this
 16 print on 144?
 17 A Yes, sir.
 18 Q And that clearly -- in your opinion, does that show a
 19 shoe print?
 20 A Yes, sir.
 21 Q And, again, no one made that print while you were
 22 there. It was there when you arrived?
 23 A Yes, sir,
 24 MR. SCHIECK: For the record, Your Honor, it

IV-145

TESTA - CROSS

1 appears that Defendant's B is a duplicate of State's 142 just
 2 admitted so there is some duplication there,
 3 BY MR, SCHIECK:
 4 Q And I'm gonna show you what's been admitted as
 5 Defendant's Exhibit E. You recognize what's depicted on E?
 6 A Yes, sir.
 7 Q And what is that?
 8 A That would be foot prints as well, sir, on the
 9 cardboard box,
 10 Q Okay. So there were also foot prints on the
 11 cardboard box?
 12 A Yes, sir
 13 Q Did you see those when you arrived?
 14 A Not when I first arrived, no, sir.
 15 Q Did you see them at some point?
 16 A Yes, sir,
 17 Q And when did you see them?
 18 A When the crime scene analysts would have been
 19 removing the cardboard and checking the box for further
 20 evidence and laying it out,
 21 Q Was that under some other debris then when you
 22 first arrived?
 23 A I do not remember for sure, sir,
 24 Q But it didn't come to your attention until the crime

IV-146

TESTA - CROSS

1 were there at the scene?
 2 A Not that I can remember, sir,
 3 Q Do you recall whether there was any garbage inside
 4 of the dumpster itself, the one that you moved?
 5 A I do not remember. No, sir,
 6 Q It wasn't overflowing, was it?
 7 A No, sir,
 8 Q You would have remembered if it was overflowing
 9 garbage in there?
 10 A Yes, sir.
 11 Q Okay. But you have no recollection of how full or
 12 empty it may have been?
 13 A No, I do not, sir.
 14 THE COURT: We've hit the 5:00 o'clock hour,
 15 MR. SCHIECK: I have no further questions, Your
 16 Honor,
 17 THE COURT: Okay.
 18 MR, SCHIECK: Thank you very much, officer.
 19 THE WITNESS: Yes, sir_
 20 MS. DiGIACOMO: Your Honor, I just have a couple,
 21 THE COURT: All right.
 22 MS_ DiGIACOMO: Thank you,
 23 ///
 24 ///

IV-148

TESTA - CROSS

1 scene analysts were removing the cardboard?
 2 A Correct, sir,
 3 Q And I'm -- this is a silly question I know, but you
 4 didn't leave this foot print on the cardboard?
 5 A No, sir,
 6 Q And nobody did while you were there?
 7 A No, sir,
 8 Q So it must have been there when you arrived?
 9 A Yes, sir,
 10 Q Okay. You said that the lighting in that area you
 11 described as low light?
 12 A Yes, sir.
 13 What type of lighting was there in addition to your
 14 car?
 15 A If there would have been any other light, I believe
 16 there was some from a light pole that was in the parking lot
 17 area, sir,
 18 Q Just the light pole, no other lighting that you recall?
 19 A Not that I can remember, sir,
 20 Q Did you notice any skid marks on the ground when
 21 you were there?
 22 A Not that I can remember, no, sir,
 23 Q Do you recall seeing any crime scene analysts taking
 24 photographs or other methods to preserve tire tracks that

IV-147

TESTA - REDIRECT

1 REDIRECT EXAMINATION
 2 BY MS, DiGIACOMO:
 3 Q Now you said that you weren't tall enough to see
 4 over the dumpster?
 5 A No,
 6 Q Okay, And you said it was almost touching either
 7 side of the wall. Is it fair to say from where you were by the
 8 doors you couldn't see what was going on in the back behind
 9 the dumpster?
 10 A Correct, ma'am,
 11 Q When you first got there and opened the doors, did
 12 you notice any blood or foot prints?
 13 A Not that I can remember at that time.
 14 Q Okay. It wasn't until you actually moved the
 15 dumpster?
 16 A Correct.
 17 Q So if you hadn't have moved the dumpster and tried
 18 to make it through the side, would you have known if you
 19 were stepping on anything, blood foot prints or anything?
 20 A By squeezing through the side?
 21 Q Right,
 22 A I probably wouldn't have noticed, no_
 23 Q Now, how long have you been -- excuse me. Strike
 24 that. At the time back in July of 2001, how long had you been

IV-149

TESTA - REDIRECT

1 patrolling that area, West Flamingo and Arville?
 2 A Approximately two years.
 3 So you were familiar with the area pretty well back
 4 then?
 5 A Yes.
 6 Were you aware of any homeless camps or anyone
 7 dumpster-diving?
 8 A That occurs generally throughout that area, yes.
 9 Q Where -- are there any homeless camps close to the
 10 area of Wynn Road and West Flamingo?
 11 A There is one in a wash area just off Flamingo and
 12 Valley View north, correction, I'm sorry, south of there.
 13 There's a wash area where there are homeless camps
 14 throughout that area,
 15 Q How long do you — if you recall, how long did it take
 16 the crime scene analysts to actually get the trash out and
 17 actually uncover the body?
 18 A Through most the shift, that I can remember, ma'am.,
 19 Q So hours?
 20 A Yes.
 21 MS. DiGIACOMO: The Court's indulgence,
 22 (Pause in the proceedings)
 23 BY MS. DiGIACOMO:
 24 Q Okay. I'm gonna show you State's Exhibit Number

TESTA RECROSS

1 THE COURT: Recross,
 2 MR. SCHIECK: Thank you, Your Honor.
 3 RECROSS EXAMINATION
 4 BY MR. SCHIECK:
 5 Q You were asked some questions about this plastic,
 6 whatever it is, could have been garbage bags or something of
 7 that nature. Do you recall that they had to unwrap the plastic
 8 wrap from around the body?
 9 A I do not remember, sir,
 10 Q Do you recall testifying at a previous proceeding?
 11 A Yes, sir.
 12 Q Do you recall —
 13 MR. SCHIECK: It's page 91, counsel,
 14 MS, DiGIACOMO: Thank you.
 15 BY MR. SCHIECK:
 16 Q Testifying that Exhibit 14 was an elongated shot of
 17 the body as they unwrapped it?
 18 A Yes, sir.
 19 Q Is that a fair description, that they had to unwrap
 20 that plastic from around the body?
 21 A Possibly, sir. I really don't remember, sir.
 22 Q Would you like to see your transcript on -- from that?
 23 MS, DiGIACOMO: Do you have a line, counsel?
 24 MR. SCHIECK: It's on line 2,

IV-150

TESTA - REDIRECT

1 12. Counsel pointed out some plastic wrap here,
 2 A Yes,
 3 Q Now, do you -- could you tell what that was? He was
 4 calling it saran wrap. But can you tell what it is?
 5 A A type of plastic, That's all I really know, ma'am.
 6 Q Is it — was it consistent with the plastic that the bags
 7 were made of that were around the dumpster area?
 8 A Possibly. I couldn't say for sure,
 9 Q The medic that went in there from the fire
 10 department, you mentioned the box that he had touched. Did
 11 he touch that with his bare hands?
 12 A No, with gloves.
 13 Q All right What did he do with the gloves that he had
 14 on after he was leaving the area?
 15 A He would have disposed them into their biohazard.
 16 MS DiGIACOMO: The Court's indulgence.
 17 BY MS. DiGIACOMO:
 18 Q Okay. And you had said that you gave the medic
 19 personnel directions not -- of where not to step?
 20 A Yes.
 21 Q Would it have been easy if somebody wasn't paying
 22 attention to step in those areas they shouldn't have?
 23 A It is possible, yes
 24 MS, DiGIACOMO: Nothing further,

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TESTA - RECROSS

1 MS. DiGIACOMO: Thank you.
 2 BY MR. SCHIECK:
 3 Q This would be Exhibit 14, If I showed you your
 4 testimony at a previous proceeding, would that refresh your
 5 recollection?
 6 A Possibly, sir,
 7 MR, SCHIECK: May I approach, Your Honor?
 8 THE COURT: Yes.
 9 (Pause in the proceedings)
 10 THE WITNESS: Yes, sir,
 11 BY MR, SCHIECK:
 12 Q You did say they unwrapped it?
 13 A Yes, sir.
 14 Q And while you were there, did anyone come up and
 15 identify the body, to your recollection?
 16 A Not that I remember. No, sir,
 17 Q Did you have any contact with a lady by the name of
 18 Diane Parker?
 19 A Not that I remember. No, sir.
 20 Q Was there any civilians at all that you recall coming
 21 over to the area concerning the dead body? □
 22 A Not that I know of,, No, sir.
 23 MR. SCHIECK: Thank you. No further questions.
 24 MS, DIGIACOMO: Nothing further.

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1 THE COURT: You may step down from the stand.
 2 THE WITNESS: Yes, ma'am.
 3 THE COURT: Ladies and gentlemen, well be taking
 4 our evening recess and resuming tomorrow morning at 10:30
 5 a.m. At 10:30, please be in the hallway. The bailiff will meet
 6 you there to 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, watch
 10 or listen to any report of or commentary on the trial or any
 11 person connected with the trial, by any medium of information,
 12 including, without limitation, newspaper, television, radio and
 13 Internet, and you're not to form or express any opinion on any
 14 subject connected with the trial until the case is finally
 15 submitted to you.
 16 You all have a good evening and we'll see you at
 17 10:30 tomorrow,
 18 The jury may exit,
 19 (Jurors recessed at 17:07:26)
 20 THE COURT: The record shall reflect that the jury
 21 has exited and that counsel at sidebar agreed that they would
 22 have no objection to any of the evidence that's been admitted
 23 in this trial being placed upon the ELMO for viewing by the jury
 24 without having to do a motion for publication to the jury, and

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1 tomorrow?
 2 THE COURT: 10:30.
 3 MS. GREENBERGER: Okay. Thank you.
 4 THE COURT: You're welcome.
 5 We'll go off the record at this time
 6 COURT ADJOURNED AT 17:10:04 UNTIL THE
 7 FOLLOWING DAY, SEPTEMBER 15, 2006
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1 the Court is accepting that stipulation.
 2 I believe also the parties had stipulated not to use
 3 juror notebooks for the purposes of this trial.
 4 MS, DiGIACOMO: I believe we did, Your Honor
 5 MS. GREENBERGER: What does that mean?
 6 THE COURT: The Nevada Supreme Court in the
 7 year 2004 issued an order that the attorneys prepared juror
 8 notebooks with all of the exhibits that are going to be admitted
 9 into evidence for each member of the jury to have one of
 10 those notebooks. It's become somewhat archaic in light of
 11 having the ELMO which is a much faster presentation mode.
 12 But the order is still out there. So since nobody showed up
 13 with juror notebooks, I assumed that that was the case here,
 14 Is that right, Mr. Schieck?
 15 MR, SCHIECK: That's correct, Your Honor.
 16 THE COURT: Very well,
 17 Is there anything that we need to make of record
 18 before I take us off?
 19 MR. SCHIECK: No, Your Honor,
 20 THE COURT: No.
 21 MR, !KEPHART: Not by the State,
 22 THE COURT: We'll see you tomorrow morning.
 23 MS DiGIACOMO: Thank you, Your Honor,
 24 MS. GREENBERGER: What time are we starting

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AFFIRMATION
 Pursuant to NRS 239B.030

The undersigned does hereby affirm that the
 preceding Transcript filed in District Court, Case No C177394
 does not contain the social security number of any person,

Lin Dunbar
 Transcriber

4/29/07
 Date

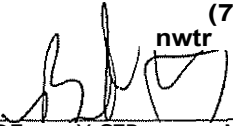
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CERTIFICATION

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

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FEDERAL JURY TRIAL MANAGER/OWNER

Lin Dunbar

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4/29/07

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