

COPY

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

THE STATE OF NEVADA,

Plaintiff,

vs.

KIRSTIN BLAISE LOBATO,

Defendant.

CASE NO. C177394

DEPT. NO. II

Transcripts of  
Proceedings

BEFORE THE HONORABLE VALORIE J. VEGA, DISTRICT COURT JUDGE

"ROUGH DRAFT"

JURY TRIAL - DAY 5  
VOLUME V

FRIDAY, SEPTEMBER 15, 2006

COURT RECORDER:

LISA LIZOTTE  
District Court

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LAS VEGAS, NEVADA

FRIDAY, SEPTEMBER 15, 2006

PROCEEDINGS

PROCEEDINGS BEGAN AT 10:42:41

(Jurors are not present)

THE BAILIFF: All rise,

Department II is now in session, the Honorable

Valorie 3. Vega presiding. Please be seated.

THE COURT: The record shall reflect we're convened outside the presence of the jury at counsels' request in State versus Lobato under Case Number C177394, in the presence of the defendant, her three counsel, and the two prosecuting attorneys.

MS, DIGIACOMO: Your Honor, it was the State's request for this. What we're asking for here is after hearing defense counsel's opening yesterday and reading back through the prior transcripts from the previous trial, there are a lot of conversations that the defendant had with people up in Panaca. Last time, the defense tried to get those conversations in on -- by themselves, when that is clearly hearsay. We would object on the record. You would sustain it. But then they would also try and backdoor it other ways like, well, just tell us when the conversation was that she told you she was attacked, that kind of thing. They had said in their opening statement yesterday that there's gonna be

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INDEX OF WITNESSES

DIRECT CROSS REDIRECT RECROSS

FRIDAY, SEPTEMBER 15, 2006

STATE'S WITNESSES:

Table with 5 columns: Name, 11, 58, 100, 217. Rows: Dixie Tienken, Thomas Wahl.

INDEX OF EXHIBITS

ADMITTED

FRIDAY, SEPTEMBER 15, 2006

STATE'S EXHIBITS:

Table with 2 columns: Description, Page Number. Rows: 109 Photograph of seat covers in vehicle (153), 110 Photo of left seat cover in vehicle (153), 111 Photo Of right seat cover in vehicle (153), 112 Photo of seat covers out of vehicle (155), 113 Photo of left front seat in vehicle (160), 114 Photo of side door panel of vehicle (160), 133 Medical records from Caliente Center (10).

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witnesses that will say what she told them and when. And we just want to make it clear before we begin so we don't have to continuously object in front of the jury that if the State doesn't bring out the conversation, that the defense can't do it. It's hearsay on their side unless they have some sort of exception to the hearsay rule. And we would ask that they not do that in front of the jury or try and backdoor it in, just mentioning conversations in general.

For example, with Stephen Pyszkowski, prior counsel had alluded to this conversation when you said that she was attacked, trying to get in a tow receipt. They can certainly get in the tow receipt without referencing any conversation that was clearly hearsay, and you did sustain the objections. So we just want to make the record clear that, you know, they cannot get into these conversations that the defendant had with our witnesses unless the State brings it out.

THE COURT: I guess this is kind of an anticipatory objection,

MR, KEPHART: Exactly.

THE COURT: And it's premature but it's perhaps prophylactic. So it's food for thought at this point

MS. DIGIACOMO: Okay. And also, Your Honor, our first witness we're calling this morning has, what is it called, degenerative? She has a condition, I forgot what it's called,

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1 where she can't drive at night, She needs to be back on the  
 2 road by 1:00 o'clock p.m. to make it back. And so I just want  
 3 to let the Court know we should be done with her by noon,  
 4 But if it takes a few minutes over, she can't come back after  
 5 the lunch hour. She'd have to come back again next week  
 6 because it takes her several hours to drive because she can  
 7 only drive for twenty minutes and then has to stop and take a  
 8 break and then get back on the road, and she needs to get  
 9 back to Panaca before dark,

10 MR., SCHIECK: That's fine, Your Honor,  
 11 Are you talking about Dixie?

12 MS, DIGIACOMO: Yes.

13 MR. SCHIECK: I think it's macular degeneration.

14 MS. DiGIACOMO: Yeah, that's it\_

15 MR, SCHIECK: Something like that.

16 MS, DiGIACOMO: Yeah.

17 MR, SCHIECK: And I think she said something

18 about cataracts, too, that she couldn't drive at night. We have  
 19 — we'll do everything we can to get her in and out.

20 THE COURT: I have a nonprofit luncheon today,  
 21 and I've made arrangements to be late for it. You know, it's  
 22 like we've got a few things juggling. So is Dixie Tienken gonna  
 23 be your next witness?

24 MS. DiGIACOMO: Yes, Your Honor.

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1 MS. DiGIACOMO: A week from Monday.

2 THE COURT: -- on the stand on Tuesday.

3 MR. SCHIECK: Tuesday.

4 MS. DIGIACOMO: The 25<sup>th</sup> is —

5 MR. SCHIECK: Fly in the 25<sup>th</sup>, testify the 26th.

6 MR. KEPHART: Oh, okay.

7 MS. DIGIACOMO: Which is fine because the State  
 8 anticipates our case will go through until next Tuesday-ish.

9 MR. KEPHART: Tuesday, Wednesday.

10 MS. DiGIACOMO: Possibly into Wednesday.

11 MR, SCHIECK: Maybe Wednesday?

12 MR. KEPHART: Yeah,

13 MS. DIGIACOMO: Yeah,

14 THE COURT: So you —

15 MS. DIGIACOMO: I mean —

16 THE COURT: You are talking about a week from --

17 MR. SCHIECK: Yes.

18 THE COURT: — Monday and Tuesday, Okay,

19 MR. SCHIECK: Because Friday is a short day. We're  
 20 quitting at noon on Friday. And Thursday is a half day. And  
 21 so we didn't anticipate getting too awful much done on our  
 22 case during those two days. So that's sort of factored into the  
 23 experts being able to be available on the week of the 25th,  
 24 Monday, Tuesday,

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1 THE COURT: And she's here and you're ready to  
 2 call her?

3 MS. DiGIACOMO: Yes,

4 MR, KEPHART: Mm-hmm,

5 THE COURT: Okay. And I will step down and we'll  
 6 have the bailiff —

7 MR, SCHIECK: Your Honor, while we're off the  
 8 bench, may I just bring up one other quick thing, hopefully,  
 9 quick thing? We're trying to schedule our experts so that  
 10 they're not sitting around for days and days at a time at public  
 11 payment while we're getting ready to testify because we are  
 12 paying out of our budget for the experts. And they wanted Dr.  
 13 Simms to be available when we had Dr. Laufer testify\_ So  
 14 we've made arrangements for Dr. Laufer to fly in Monday and  
 15 testify on Tuesday so that Dr. Simms could be present and are  
 16 planning our witnesses, our lay witnesses, that would be  
 17 coming down from Panaca or wherever else during the course  
 18 of next week, but that we are certainly looking at finishing with  
 19 our experts the first part of next week, Monday and Tuesday  
 20 of next week, and just wanted to make sure that that was  
 21 okay with the Court and sort of comported with the State's  
 22 idea of the timing that we're looking at on finishing up,

23 THE COURT: Well, you — well, you said he was  
 24 flying in on Monday but you were gonna put him on the —

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1 THE COURT: Okay. Okay.

2 MS. DiGIACOMO: Oh, I'm sorry. Wait.

3 THE BAIUFF: All rise.

4 MS. DiGIACOMO: One other thing. We, just for the  
 5 record, we talked -- the custodian of records from the Caliente  
 6 Center, I believe both sides have agreed that well just  
 7 stipulate to the medical records that were put in the first time  
 8 instead of making the custodian come down.

9 MR, SCHIECK: That's fine.

10 THE COURT: What is that exhibit?

11 MS. DiGIACOMO: 135 or 136. I'm not sure,  
 12 (Pause in the proceedings)

13 MS. DiGIACOMO: It's 133, Your Honor, according to  
 14 the exhibit list from last time,

15 THE COURT: 133, we're showing affidavit of  
 16 custodian of records, and 133A is showing final sample report,  
 17 7/16/01.

18 MR. SCHIECK: Right.

19 MS. DiGIACOMO: Right. 133A, the Court excluded  
 20 as being under the doctor/patient privilege. 133 had the -- the  
 21 affidavit and the medical records attached that were allowed to  
 22 be admitted. 133A was not admitted.

23 THE COURT: Okay. So the parties are at this time  
 24 stipulating for the admission of 133?

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MR, SCHIECK: Yes, Your Honor, That's what was admitted last time,  
 THE COURT: Is that correct, State?  
 MS, DiGIACOMO: That is correct, 133.  
 THE COURT: Okay. 133 is stipulated admitted, (State's Exhibit No. 133 admitted)  
 THE COURT: take us off the record, (Court recessed at 10:50:01 until 10:54:59) (Jurors are present)  
 THE BAILIFF: All rise, Department II is now in session, the Honorable Valorie I Vega presiding. Please be seated,  
 THE COURT: The record shall reflect that we're reconvening in the trial of State versus Kirstin Lobato under Case Number C177394, in the presence of Ms. Lobato, together with her three counsel, the two prosecuting attorneys, the ladies and gentlemen of the jury.  
 Proceeding forward in the State's case in chief, the State may call its next witness.  
 MS. DiGIACOMO: Thank you, Your Honor. Dixie Tienkenr  
 THE CLERK: Please come all the way forward,, Up here, please. Remain standing and raise your right hand.  
 DIXIE TIENKEN, STATE'S WITNESS, SWORN

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FIENKEN - DIRECT

1 MS. DiGIACOMO: Thank you.  
 2 BY MS. DiGIACOMO:  
 3 Q How long have you known Blaise?  
 4 A Oh, Probably ten, twelve years now, could be probably closer to twelve years at this point,  
 5 Q How did you know her?  
 6 A Well, I knew her because originally her father did some work at my home. However, I got to know her when she was both in middle school and in high school. Then she became my student in high school and graduated from my program in, I believe, the year 2000,  
 7 Q So you were her high school teacher?  
 8 A Not only a teacher, I was the director of three programs, alternative high school, English second language and adult high school.  
 9 Q And you said Blaise was a graduate of one of your programs?  
 10 A That's correct.  
 11 Q Which program?  
 12 A She came in originally alternative, but when they graduate they receive an adult high school diploma.  
 13 Q And where did all this —  
 14 A But that's true of all alternative students, by the way.  
 15  
 16  
 17  
 18  
 19  
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 21  
 22  
 23  
 24

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TIENKEN - DIRECT

1 THE CLERK: Thank you. Please be seated. State your name and spell it for the record, please,  
 2 THE WITNESS: Dixie Tienken, T-I-E-N-K-E-N.  
 3 THE COURT: Your first name is spelled D-I-X-I-E?  
 4 THE WITNESS: That's correct.  
 5 THE COURT: Thank you.  
 6 The State may proceed.  
 7 MS. DiGIACOMO: Thank you.  
 8 DIRECT EXAMINATION  
 9 BY MS, DiGIACOMO:  
 10 Q Ms. Tienken, do you know a person by the name of Kirstin Loba to?  
 11 A I do.  
 12 Q And what do you know her as?  
 13 A Blaise,  
 14 Q Do you see her in the courtroom here today?  
 15 A I do,  
 16 Q Would you please point to her and describe what she's wearing?  
 17 A I -- she's -- it looks like a black top and she's got her hair long and she's got a doojie-floppy [sic] on her hair.  
 18 MS, DiGIACOMO: Will the record reflect identification of the defendant?  
 19 THE COURT: The record shall so reflect.  
 20  
 21  
 22  
 23  
 24

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TIENKEN - DIRECT

1 Q Okay. And where did this take place?  
 2 A In Lincoln County, in Panaca, Nevada,  
 3 Q Now, is that where you live, is in Panaca?  
 4 A That's correct.  
 5 Q And how long have you lived in Panaca?  
 6 A I have lived in Panaca since 1979 off and on. I left twice to go get my master's and once when I had to go to California to take care of my father.  
 7 Q Now, are you also familiar with Caliente and Pioche?  
 8 A That's correct. All of those cities, including even as far down as Alamo and Hiko, I traveled to and taught classes there.  
 9 Q Is there only one high school for all of those cities or towns?  
 10 A There's only one alternative and adult high school. But each — Alamo has a high school called Pahrnagat Valley. Lincoln County High School is located in Panaca, and that's for the people usually in Pioche, Caliente and Panaca. And then we have -- at CYC there is Cio [sic] Bastian High School. So there's actually three high schools, plus mine.  
 11 Q How many students do you have in your high schobi or back then in your programs?  
 12 A I probably had about eighty-five.  
 13 Q Now, how would you describe Panaca for the jury?  
 14  
 15  
 16  
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 24

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TIENKEN - DIRECT

A It's a very small farming community, less than a thousand people. The population, as an overall, is a pretty educated area compared to the rest of the county because there's a lot of teachers, policemen and professional people that work at the test site that live in Panaca and travel back and forth to work. But there's also -- the base of the community was originally a farming community.,

Q And so there's a thousand just in Panaca or is that including —

A It's a little, that's -- no, that's just in Panaca. There is about five thousand people in all of Lincoln County.

Q I mean, you describe it as a small town. Do people know each other there?

A Everybody knows everybody.

Q Okay,

A And it's really a strange thing because a lot of people know what they think they know more than what they really know,

Q So there's a lot of talk about people even if they don't know them personally?

A That's correct,

Q Now I want to direct your attention to July, 2001, Was there a time during that month that you saw Blaise?

A Yes

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IENKEN - DIRECT

1 before you went back inside to gather yourself. What was the short conversation you had with her?

3 A She just said, "I really need to talk to you/' And she said that she had some -- a lot of things had happened in her life and that one of the things was a bad thing,

6 Q So she specifically said to you I did something bad and I need to talk to you?

8 A That's correct.

9 Q Now you recall this was on a Wednesday and you said the 11<sup>th</sup> or possibly earlier?

11 A That's correct.

12 Q Do you recall testifying at a prior proceeding that it could have also been the 18<sup>th</sup> or earlier?

14 A I did. But after doing some research I realized that that had to have been wrong.

16 Q And why was it wrong?

17 A Well, what happened is on the 18<sup>th</sup> was when I talked to Laura Johnson, But on that first Wednesday that I went to teach up in Pioche, after I finished teaching, I went back and went over to Laura's office. And at that time, I had indicated to Blaise that I was probably going to talk to Laura because while Blaise was at my home, we tried to research some of the things and we looked in back newspapers and we also looked on the Internet at that time. But then I went to

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TIENKEN DIRECT

1 Q When was that?

2 A I believe that it was about July the 11<sup>th</sup> but it could have been earlier. I just know for a fact that it was on a Wednesday or if you want to consider it Tuesday night because I know that it was after midnight so I'm saying Wednesday early morning. She came to my house, and it was dark when she got there. She woke me up. And so she came to the door, we talked at the door, she came in. And because I had just -- I wasn't dressed. I was in my nightgown. So she went back out to her vehicle, I believe, or someplace outside for a few minutes so I could go to the bathroom and get dressed, and everything, because she really wanted to talk to me. And that is not uncommon for my students. I also have a degree in social work., And so because there's not a lot of social workers around, I sort of take it upon myself to try to counsel these kids. And when I say kids, these kids can be as young as fourteen or fifteen and they can be as old as sixty-five or sixty-six because I've had students of all ages,

19 Q So you make yourself accessible to your students no matter what time of day?

21 A I do because my family's grown up and none of my family lives close by, That's -- that was at that time At this time, I have a grandson that lives with me.

24 Q Now you said that you talked for a few minutes

TIENKEN - DIRECT

1 Laura's office after and she was not there the first time,

2 Q Okay, So is it your testimony now that you did not speak to Laura the same day you spoke to Blaise?

4 A That's correct.

5 Q Okay. Now you gave a statement to the police approximately July 26, 2001, Do you recall that?

7 A I do.

8 Q And you've also testified at a prior proceeding in May of 2002. Do you recall that?

10 A That's correct, If you'd like, you can refer back to my statement and I did say at the very beginning when I was interviewed by the police that it happened approximately July 11<sup>th</sup>, and later I said it could have been earlier than that. And it's on this statement if you look on the voluntary statement.

15 Q And so what do you have in front of you there?

16 A That is correct,

17 Q You have -- you have a copy of your voluntary statement?

19 A I do.

20 Q Do you have anything else in front of you?

21 A I — yes. They told me that I could. I have my voluntary statement, I have the interview from the hearing, and I have my court statement.

24 Q Okay,

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TIENKEN - DIRECT

1 A You're the one that gave it to me.  
 2 Q No, I understand, I'm just trying to make a record  
 3 of what you have in front of you. That's all.  
 4 A Okay.  
 5 Q And you were — you were provided those so that  
 6 you could review them before you came to court?  
 7 A That's correct.  
 8 MS. DiGIACOMO: Okay, Now -- the Court's  
 9 indulgence,  
 10 BY MS DiGIACOMO:  
 11 Q Now you've actually testified at two prior hearings.  
 12 Do you recall testifying on August 7<sup>th</sup>, 2001?  
 13 A That's — yes, I do.  
 14 Q And so you --  
 15 MS. DIGIACOMO: May I approach, Your Honor?  
 16 THE COURT: Yes,  
 17 BY MS. DiGIACOMO:  
 18 Q You can set those aside. I'm gonna show you -- I  
 19 have copies.  
 20 A Okay,  
 21 Q So you don't have to thumb through yours. So  
 22 you've reviewed your testimony from —  
 23 A I did.  
 24 Q -- August 7, 2001? Okay, Okay. If you could read

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IENKEN - DIRECT

1 2002.  
 2 MS. DiGIACOMO: May I approach?  
 3 THE COURT: Yes,  
 4 BY MS, DiGIACOMO:  
 5 Q Okay. Now I'm gonna show you your testimony  
 6 from May, 2002. Okay. I'll show it to you.  
 7 A Okay,  
 8 Q It's quicker, Okay. Lines 12 and 13. Do you see  
 9 that?  
 10 A Yes.  
 11 Q Okay.  
 12 A I do see that.  
 13 Q You also testified on this day that you talked to  
 14 Laura that day after you got done teaching your class at the  
 15 jail?  
 16 A That's right. I taught a class at the jail almost every  
 17 Wednesday until that prisoner was released.  
 18 Q Okay. And so that's how you know that it was a  
 19 Wednesday Blaise came and talked to you?  
 20 A That's correct,  
 21 Q Okay, Now after you gathered yourself up, did you  
 22 go back to the door and let Blaise in that day, the morning?  
 23 A I did,  
 24 Q Okay. Did you ask her anything about how she got

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TIENKEN - DIRECT

1 this to yourself right here.  
 2 MS. GREENBERGER: What line, counsel?  
 3 MS. DiGIACOMO: 9 through 14.  
 4 THE COURT: What page?  
 5 MS. DiGIACOMO: Page 10, Oh, through 17.  
 6 Excuse me. Okay,  
 7 THE WITNESS: I realize that I said —  
 8 BY MS. DiGIACOMO:  
 9 Q Well, wait, Wait, wait. I'm sorry.  
 10 A Okay.  
 11 Q We have to do the procedure. Okay.  
 12 A Okay,  
 13 Q After reviewing this, does it refresh your recollection  
 14 whether or not you testified before that you told -- that you  
 15 stated you told Laura the same day that you talked to Blaise?  
 16 A Yes.  
 17 Q And --  
 18 A It does say that,  
 19 Q Okay. But it's your testimony now that it wasn't the  
 20 same day?  
 21 A That it was not, May I offer an explanation?  
 22 Q Hold on  
 23 A Okay.  
 24 Q Well get to that,, And then page 98 of the May,

TIENKEN - DIRECT

1 to your house?  
 2 A That came up much later when she was leaving  
 3 because I knew from other people and from friends of both  
 4 hers and mine and other students that she had bought her  
 5 own car, and so I asked if I could go see her car. And at that  
 6 time, she said she did not have her car with her,  
 7 Q Do you know what she was driving?  
 8 A Her father's truck. I didn't go out and see her  
 9 father's truck because that was her father's truck.  
 10 Q Now after you let her back into your house that  
 11 morning, approximately how long did you stay and talk with  
 12 her?  
 13 A I would say a good three hours.  
 14 Q How was her demeanor when you were talking to  
 15 her?  
 16 A Sometimes she smiled and laughed and sometimes  
 17 she cried. We talked about an awful lot of things. And she's a  
 18 very emotional person. And perhaps I should say she was a  
 19 very emotional person.  
 20 Q Well, when she was talking to you about something  
 21 bad happening —  
 22 A She cried.  
 23 Q She did cry? Okay.  
 24 A And she wasn't sure what all had happened.

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TIENKEN - DIRECT

TIENKEN - DIRECT

Q Okay.

THE COURT: The record shall reflect that she nodded her head up and down,  
BY MS DiGIACOMO:

Q And specifically when you said she wasn't sure, didn't she state to you, "I did something and I could have hurt somebody but I'm not sure what all I did"?

A That's correct

Q What did she tell you specifically that she did remember about this something bad?

A She said that a man approached her It was very dark. And I think it scared her And she did not say why he approached her but she did say that he eventually knocked her down and tried to rape her

Q And then what did she do in response to this?

A She said that at first she tried to stab up with a knife that she had on her person, and then she couldn't get any leverage but my understanding was that was like one time The man laughed at her, and that's when it sort of irritated her, I'm sure, as well, And then he tried to sit up on her shoulders, and with that she was able to grab his penis and that she slashed at his penis. She did say at that time that she cut his penis off, However, I didn't really feel that she probably had ever cut it off.

V-22

stab up and couldn't?

A That's correct,

Q And you've reviewed your statement to the police that was given on July 26, 2001?

A I have.

Q And you would agree with me that you never told the police that first she tried to stab up and couldn't?

A No, I don't agree because there was a lot of things that came out that — when they asked the questions to me. They came to my home and talked to me for a long time before they decided to tape this statement

Q Okay. So then it would be your testimony that you told them while they were there but it just didn't make it into the taped statement. Is that fair?

A I can't be sure of that but I'm -- I know that that's what she told me. It -- I would say, yes, that I probably mentioned it,

Q Okay. But if I told you that it's not in the taped statement —

A It's not in the taped statement,

Q Okay.

A I don't believe.

Q So you'd agree with that?

A That's correct,

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TIENKEN - DIRECT

TIENKEN - DIRECT

Q But, well, just tell me what she told you, not what you were feeling,

A Okay.

MS, GREENBERGER: Your Honor, she was trying to finish her answer,

MS, DIGIACOMO: Your Honor, it was becoming non-responsive.

MS. GREENBERGER: It was directly responsive.

MS, yGIACOMO: I asked her what Blaise told her, not what this witness felt,

THE COURT: Sustained

BY MS. DiGIACOMO:

Q So now she told you that he tried to force her shoulders. Did he try and sit on her shoulders?

A Well, I think he was on top of her and I think he moved the position of his body up more,

Q Okay,

A You know, I think, you know, I don't know that he was on her shoulders but he was up so that he was straddling over her, but somehow she was able to get her arms free.

Q And then what did she do with her arms?

A That's when she was able to grab his penis and she had to have both arms free to do that and slash,

Q Okay. Now you first mentioned that she first tried to

V-23

Q And then you said that she slashed at his penis?

A That's correct.

Q And you would also agree with me that this -- that the fact that she said she slashed at the penis is not in the taped statement with the police?

A No, because she said that she cut the penis off, However, I just didn't believe that that's probably what really happened,

Q Okay. But I understand your beliefs, but we're just asking you what her —

A That's correct,

Q -- specific words were And her specific words to you were, "I cut it off/"

A That's correct,

Q Okay. Did she also indicate to you what she did with the penis after she cut it off?

A No, she did not,

Q Okay.

A Because she said that, with that, he backed off of her, she was able to get up, she pushed, she was able to get up and she ran back to her car. She also told me that when she got in her car that she saw that he was standing but groping himself,

MS, DiGIACOMO: Okay, May I approach, Your

V-25

TIENKEN - DIRECT

1 Honor?  
 2 Her statement, page 5.  
 3 BY MS, DiGIACOMO:  
 4 Q Now I'm gonna show you page 5 of your taped  
 5 statement with the police, the third answer down,  
 6 A Right  
 7 Q Okay, Does that refresh your recollection as to  
 8 exactly what she --  
 9 A Well --  
 10 Q -- told you?  
 11 A Yeah.  
 12 Q Okay.  
 13 A Well, she said she threw it. But, I mean, when I --  
 14 you know, you said where did she put it, so I thought you  
 15 meant where did she throw it.  
 16 Q No.  
 17 A I don't know where she threw it.  
 18 Q Okay, Well, I'm --  
 19 A She just --  
 20 Q No. I'm just asking you --  
 21 A That's correct,  
 22 Q She told you specifically that a guy tried to rape her,  
 23 she -- and that she -- that he had shoved her down, pushed  
 24 her down, was on top of her. Then she said that she got a

V-26

FIENKEN - DIRECT

1 Q Okay. Did she tell you what -- approximately where  
 2 in Las Vegas it occurred?  
 3 A No, She did not exactly say where it happened.  
 4 What happened is we were talking about a lot of general  
 5 areas, and she did indicate to me. When she said it, I just sort  
 6 of thought that she said one of the hotel streets. And then I  
 7 said, oh, was it near West Sahara, and she said no And she  
 8 said another street, and I knew it was a hotel street but I  
 9 haven't lived in Las Vegas since 1979.  
 10 Q Okay. So it's your --  
 11 A But it was a major hotel street.  
 12 Q It was a major hotel street. But it's your testimony  
 13 that she said it was not on the west side?  
 14 A No, I didn't say that it was not on the west side. I  
 15 said it was on a west street, It was like a west hotel street,  
 16 close to that.  
 17 Q Okay.  
 18 A West hotel street, but not West Sahara,  
 19 Q Okay. So I'm confused. So she told you it was -- do  
 20 you recall in your police statement saying you knew it was like  
 21 West Tropicana, West Flamingo, but you knew --  
 22 A West Desert Inn or West -- any of the names of the  
 23 hotels. I never said which one because I didn't know and I  
 24 still don't know.

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TIENKEN - DIRECT

1 knife out of her pocket, she cut off his penis and threw it, Is  
 2 that what you told the police back in July, 2001?  
 3 A That is  
 4 MS, DiGIACOMO: Okay. 10.3 to '4 of her prior  
 5 hearing in May, 2002.  
 6 MS. GREENBERGER: What page? I'm sorry.  
 7 MS. DIGIACOMO: 103 to 104, bottom to the top.  
 8 BY MS. DIGIACOMO:  
 9 Okay, And if you could read -- oh, do you have it  
 10 there?  
 11 A Well, I was trying --  
 12 Oh, here,  
 13 A -- to find out which one it was,  
 14 Q Here, You can review the bottom here to the top of  
 15 the next page.  
 16 (Pause in the proceedings)  
 17 A Right,  
 18 Q No. In this -- in your testimony before, you also  
 19 stated that, you know, when she said she threw it, she kind of  
 20 made a motion with her hand, is that correct?  
 21 A That's correct.  
 22 Q Now, did she tell you what city that this had  
 23 happened?  
 24 A She said that it happened in Las Vegas.

V-27

TIENKEN - DIRECT

1 Q Correct, But that is the general area where Blaise  
 2 told you this occurred in Las Vegas?  
 3 A That's correct.  
 4 Q Okay. Now, do you recall whether or not she  
 5 described the specific area where it happened?  
 6 A I thought that it was like an alley or someplace  
 7 where it was -- and I do know that it was dark at the time. It  
 8 was not daylight. It was -- so it had to have been either early  
 9 in the morning or late at night, but it was dark,  
 10 Q Okay, And it was --  
 11 A And she sort of indicated that she had her car one  
 12 place and she was going someplace else or coming back from  
 13 someplace else, and maybe she was just going to her car,  
 14 Q Okay. But it was -- you said you got the idea it was  
 15 in an alley, Do you remember telling the police --  
 16 A Yes.  
 17 Q -- an alley or between buildings?  
 18 A Or between buildings or something to that sort.  
 19 Q Okay. Now, did she describe the person who  
 20 attacked her at all?  
 21 A She did,  
 22 Q What did she say?  
 23 A She said that he was old, black, smelly and big. And  
 24 when she said that, we talked about some of my former

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TIENKEN - DIRECT

1 students 'cause I was trying to visualize this. And I said big  
2 like Biggs, who was one my students. And she said, "Oh, no,  
3 taller," Now Biggs is about 5'9", 5'10", something like that  
4 She said, "Bigger. Big." And Biggs is about 350 pounds but  
5 not as heavy as that. So she indicated — we were using points  
6 of reference, people that I knew,,

7 Q Okay.

8 A She did say that he was very smelly.

9 MS. DIGIACOMO: Okay, May I approach again?

10 Page 6 of her statement.

11 BY MS, DIGIACOMO:

12 Q When you did your taped statement with the  
13 police —

14 A Oh, this okay.

15 Q Okay. Do you recall specifically what you told them  
16 she said?

17 A Mm-hmm. "Old and smelly."

18 Q Okay. But not big or black?

19 A Well, I think that came out later because they also  
20 asked me when we were talking, you'll see a reference, they  
21 asked me if she would have called a black man a derogatory  
22 statement

23 Q Okay.

24 A So it does come out in other places.

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IENKEN - DIRECT

1 A Okay.

2 Q — when you described the man on line 12.

3 MS. GREENBERGER: What page are we?

4 MS. DIGIACOMO: 101.

5 THE WITNESS: Okay.

6 MS. DiGIACOMO: Line 12, Okay,

7 THE WITNESS: Okay.

8 MS, DiGIACOMO: 102.

9 BY MS. DiGIACOMO:

10 Q How did --

11 THE COURT: May of '02?

12 MS. DiGIACOMO: Yes,

13 BY MS, DiGIACOMO:

14 And does that -- how did you describe the person  
15 then?

16 A I just said that he was smelly,

17 Okay. Now when you testified before that Blaise

18 was on the bottom and you thought that her attacker was  
19 straddling her,

20 A That's correct,

21 Q Did she ever describe exactly how she was? Was  
22 she laying down, do you recall?

23 A She never said that, I don't believe,

24 Q And did she tell you where she got the knife from?

V-32

TIENKEN - DIRECT

1 Q And but they were asking you about whether or not  
2 he was some sort of ethnicity?

3 A Trying to get an age kind of thing,

4 Q Okay,

5 A And that was when —

6 Q But you agree with me in your statement nowhere  
7 did you describe him as big?

8 A I'm sure that I did state that he was big. Again, you  
9 have to remember that the police stopped and started the tape  
10 when they were doing the questioning. They also talked to me  
11 for, I would say, a good two hours before they ever taped the  
12 conversation. And they would just ask you specifically what  
13 they wanted to know the answers for.

14 Q Okay. So your testimony is then you did say that it  
15 was a big man, regardless of whether or not it's in your taped  
16 statement,. Is that fair?

17 A That's correct,

18 Q That you did say it to the police?

19 A That's correct.

20 Q Okay. Now as --

21 A Because we talked about different students in  
22 reference.

23 Q Okay Now your hearing testimony from May of  
24 2001, page 101 —

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TIENKEN - DIRECT

1 A She said she pulled it out. She didn't say where she  
2 got it out. I would assume she either got it from her boot or  
3 her pocket.

4 Q Okay. And why would you make that assumption?

5 A Blaise, like several other women that I know, young  
6 women, carry knives,

7 Q Okay. So you --

8 A As a defense.

9 Q So you knew Blaise to carry a knife?

10 A That's correct.

11 Q How long had you known her to carry a knife?

12 A Before she even became my student,

13 Q Okay, And she normally carried it in either her  
14 pocket or her boot?

15 A I would say so.

16 Q And when you say pocket, which pocket, back  
17 pocket or front pocket, if you recall?

18 A I really don't know.

19 Q Okay. Now after she cut the penis off, you said that  
20 she got up and ran?

21 A That's correct.

22 Q Okay. Did she —

23 A Back to her car.

24 Q Back to her car, Did she indicate to you whether or

V-33

TIENKEN - DIRECT I

1 not she saw what happened to her attacker after she ran?  
 2 A She said that she saw him stand,  
 3 Q Okay. And specifically —  
 4 A And he was groping his genital area.  
 5 Q Okay. So he's holding himself?  
 6 A That's correct.  
 7 Q And, specifically, did she tell you that he was  
 8 stumbling and getting up?  
 9 A He was stumbling when he was getting up. But I  
 10 think you would even if you got kicked there,  
 11 Q Did she describe anything about her person after  
 12 this attack?  
 13 A Yes,  
 14 Q What did she say?  
 15 A She said that all she could think of that she wanted  
 16 to go someplace where she could take a shower because she  
 17 had -- and as I've said before, I am not sure what the  
 18 terminology was. I referred to it as "ick" because I think that's  
 19 what she said, but I'm not positive. But she indicated that it  
 20 was like probably wet and sticky.  
 21 Q Okay. Would that be blood?  
 22 A Could be blood, could be semen.  
 23 Q Okay. But she definitely indicated she just wanted  
 24 to shower and get out of there?

V-34

nENKEN - DIRECT

1 A She wanted to go home,  
 2 Q And what did she mean by home?  
 3 A I'm sure she meant to come back to Panaca.  
 4 Q Why are you sure of that?  
 5 A I'm not sure of that, but I would assume that's  
 6 where she would want to go because I do not think that at  
 7 that point she was living down in Las Vegas  
 8 Q Now, did she tell you what -- I mean, that's what  
 9 she told you she wanted to do, Did she tell you what she  
 10 actually did after the attack? I mean, did she go somewhere  
 11 to clean up?  
 12 A Yes, she did.  
 13 Q What did she tell you?  
 14 A She said she went to a friend's place, and she didn't  
 15 say whether that place was an apartment or a hotel room, but  
 16 she went someplace to take a shower,  
 17 Q Okay. And change her clothes as well?  
 18 A That's correct,  
 19 Q And do you know, was that in Vegas or in Panaca?  
 20 A That was in Vegas,  
 21 Q Now when you were talking to her about this  
 22 incident, did she ever tell you when it happened?  
 23 A She indicated that it happened more than a couple  
 24 days before because when we were looking at the newspaper,

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TIENKEN - DIRECT

1 A She wanted to, And you need to know that Blaise  
 2 was always a very clean person. She couldn't stand to be  
 3 dirty, almost to the point of being obsessive/compulsive about  
 4 cleanliness.  
 5 Q Did she say how much of this, the term we'll use,  
 6 "ick" that she had on her?  
 7 A No. I — from what she said, I would say that it was  
 8 sort of indicated that it would have been, but I'm -- I don't  
 9 know, I'm only guessing, I would say above her waist,  
 10 Q Okay, Now, did you —  
 11 A On her hands maybe.  
 12 Q Do you recall telling the police that she stated that it  
 13 got all over her?  
 14 A Right. But when I say all over her, I would say, you  
 15 know, I think you would think that it was all over you, too, if it  
 16 was all over the top part of you  
 17 Q So like the chest area, where he was possibly  
 18 straddling her?  
 19 A That's correct.  
 20 Q Okay, Did she tell you -- I mean, I know she said  
 21 that all she wanted to do was get washed and get cleaned up,  
 22 A She wanted to take a shower.  
 23 Okay Did she say what else she wanted to do after  
 24 that?

V-35

TIENKEN - DIRECT

1 we went back and looked clear back to July 1,  
 2 Q Okay,  
 3 A In newspapers.  
 4 Q Okay. But do you recall telling the police that it was  
 5 your impression, based on how upset she was, it was within a  
 6 couple of days?  
 7 A Well, I think that I thought at first that she did mean  
 8 that, but then I also believe that -- okay,  
 9 Q Okay, Well, it was kind of a yes or no answer.  
 10 A A time -- a time factor was there. And I think that  
 11 they were trying to get me to say that it happened just a  
 12 couple days before that. And I can't really be sure of that  
 13 because I do know that we looked back in paper clippings  
 14 clear back to July V, So if it had been a couple days before  
 15 that, why wouldn't — why would I be looking clear back to July  
 16 1st.  
 17 MS, DiGIACOMO: Okay. And I'm gonna approach  
 18 again, Your Honor, if I may.  
 19 Page 12 of her statement.  
 20 THE COURT: The taped statement?  
 21 MS. DiGIACOMO: Yes, Your Honor.  
 22 BY MS. DiGIACOMO:  
 23 Q Do you see the question, "Did she say what day it  
 24 happened on?"

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TIENKEN - DIRECT

1 A And it says that I didn't know exactly what day it  
2 happened but I got the impression that it had just happened a  
3 few days before that, and I do know that that's what it says,  
4 But, on the other hand, it also says in that same statement  
5 that we checked newspaper clippings back to July 1',

6 Q It says back to July 1<sup>st</sup> in this statement?

7 A I think so,

8 Q If I direct your attention to page 20, would that  
9 refresh your recollection? So it was -- before we get to that,  
10 you do agree that your statement says it was your impression  
11 that it had happened just a day or two before this that you  
12 talked to her?

13 A That's correct, Is that the answer on page 20?

14 Q Oh, actually, it's the first —

15 A It's the --

16 Q Your first answer and your second answer on page  
17 20, if you can read that and let me know if that refreshes your  
18 recollection whether or not you told the police back to July V.

19 A It just says in here that I had — we were checking  
20 on the Internet and on the -- and we looked on the Internet at  
21 Review Journal and Las Vegas Sun. And it doesn't say when  
22 but it does say what we did,

23 Q Right. And —

24 A But I also stated that we never even thought about

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TIENKEN - DIRECT

1 question or if it's something else but --

2 JUROR ANDERSON: It's a juror question.

3 THE COURT: Okay. And --

4 MS. DIGIACOMO: So we should just wait 'til the end  
5 then?

6 THE COURT: It's the juror in chair Number 2, Tai  
7 Anderson.

8 We have to wait for the attorneys to exhaust all their  
9 questioning, And at that time if you still have a queStion, then  
10 that question may be asked,

11 BY MS. DiGIACOMO:

12 Q Now we talked a little bit — we talked a little bit  
13 before about you'd asked Blaise about her new car,

14 A That's correct,

15 Q Okay. And she was actually driving her dad's truck?

16 A That's -- yes, Uh-huh.

17 Q Okay, Do you recall why she told you she wasn't  
18 driving her car?

19 A Yes, I do.

20 Q Okay, What was that?

21 A She had been engaged to a young man by the name  
22 of Jeremy Davis, and I think at one time she was living with  
23 Jeremy Davis. And I don't know what caused it but I do know  
24 that they broke up, and when they broke up her car at that

V-40

TIENKEN DIRECT

1 looking for anybody that died because she never, ever thought  
2 she killed anybody.

3 Q Okay, But after you had this conversation with her,  
4 the two of you got on the Internet to look to see if anything  
5 had been reported in Vegas regarding --

6 A That's correct,

7 Q -- a man going to the hospital for his penis --

8 A That's correct,

9 Q -- being severed? Okay. Or slashed, Now, did you  
10 have the impression whether or not Blaise had looked on her  
11 own before she came over to your house? Did she tell you  
12 whether or not?

13 A Yes, She did, She said she had looked at the  
14 papers,

15 Q Okay. But didn't find anything?

16 A No, And that's why I think it really scared her even  
17 more.

18 MR. KEPHART: Sandy, Sandy,

19 MS. DiGIACOMO: Oh, bailiff, there's a question.

20 Number 2,

21 We'll wait until we're done but —

22 THE COURT: The only time for jurors to pose  
23 questions is after all of the questioning by counsel has been  
24 exhausted, So I don't know if the note has -- if it's a juror

V-39

TIENKEN - DIRECT

1 time was not running and she left her car there, And then  
2 later, I think, maybe Jeremy was gonna fix it or something.  
3 don't know why she left her car there, I just know that she  
4 had left her car there. And during that time, it was after they  
5 broke up that he was supposed to have taken and urinated on  
6 it and spread feces on it and done a lot of bad things. And —

7 Q And that's why she told you she wasn't driving the  
8 car that morning?

9 A That's right, because she wasn't going to get in that  
10 car,

11 MS. DIGIACOMO: Okay, May I approach, Your  
12 Honor?

13 THE COURT: Yes.

14 MS. DIGIACOMO: I'm gonna go to page 12 of her  
15 statement.

16 BY MS, DiGIACOMO:

17 Q In the middle of the page your answer, Okay. Isn't  
18 it true you told the police that, "When I asked her what she  
19 was driving, she said she was driving her dad's truck. She  
20 said, 'I'm not driving that car. I don't want anybody to see it,'  
21 'cause she was so afraid." Is that what you said to the police?  
22 Yes or no,

23 A I guess I did because it says that, but it also says  
24 someplace on here about the feces and everything else,

V-41

TIENKEN - DIRECT

1 Q We're gonna get to the feces in a minute, We're —  
 2 let's just start with this. She told you she didn't want to drive  
 3 her new car because she was afraid, correct?  
 4 A That's correct.  
 5 Q Okay. And in fact —  
 6 A But I don't think it was because of the feces.  
 7 Q Oh, right, Okay. But I'm talking about this day,  
 8 that's why she told you she was --  
 9 A Right,  
 10 Q -- afraid of the car. Okay. And in fact the feces and  
 11 Jeremy incident, it's pretty clear it had nothing to do with this  
 12 incident with the attacker?  
 13 A No.  
 14 Q Okay. It had nothing to do with the attacker?  
 15 A No,  
 16 Q A totally separate incident?  
 17 A A totally separate incident  
 18 Q And in fact that's what you say in your statement, as  
 19 well as —  
 20 A Yes,  
 21 Q -- your previous testimony. Oh, okay. Now, did she  
 22 also say to you that she was worried, she didn't want to drive  
 23 the car, she was worried because she thought somebody may  
 24 have seen it? Do you recall that?

V-42

IENKEN - DIRECT

1 she wouldn't go right and talk to her father is because there  
 2 had been another incident earlier in her life where she did try  
 3 to talk to her father,  
 4 MS. DiGIACOMO: Your Honor, this is non-  
 5 responsive.  
 6 MS. GREENBERGER: Your Honor, let her explain,  
 7 THE COURT: Sustained.  
 8 MS, DiGIACOMO: I'm gonna go to page 13, counsel.'  
 9 BY MS. DiGIACOMO:  
 10 The first answer on page 13.  
 11 MS, GREENBERGER: From what? Her statement?  
 12 MS. DiGIACOMO: Yes. I'm sorry. Her statement.  
 13 THE WITNESS: Oh, yes.  
 14 BY MS, DIGIACOMO:  
 15 Q Now so you did tell the police after reading your  
 16 statement that she talked to her friends when she got to her  
 17 friends' house about, well, about the incident but she didn't  
 18 say which friend,  
 19 A No. And that was where she went to take her  
 20 shower. She did say she talked to those friends.  
 21 Q Okay. So she talked to the friends where she went  
 22 to take a shower?  
 23 A That's correct.  
 24 Q So where she went to take a shower she said had

V-44

TIENKEN - DIRECT

1 A She said that she was afraid that someone may have  
 2 seen her car when she left,  
 3 Q When -- and when she left where the attacker was?  
 4 A That's correct.  
 5 Q In fact, did you ask her whether or not anyone saw  
 6 the attack or saw her?  
 7 A Yes, I did.  
 8 Q And what did she tell you?  
 9 A She said she didn't think so but she could -- that  
 10 someone may Save seen her when she left.  
 11 Q Okay. When you say may have seen her, seen the  
 12 car leaving?  
 13 A Seen the car leaving,  
 14 Q Now, did you give her any advice that morning  
 15 regarding this?  
 16 A I told her she needed to talk to her father and that  
 17 we needed to find out what really happened if we could,  
 18 Q Did you also tell her she needed to talk to the  
 19 police?  
 20 A Yes, But she was afraid.  
 21 Q Did she ever tell you whether or not she talked to  
 22 anybody else about this attack?  
 23 A She did not tell me whether she talked to other  
 24 people. I think it's important to realize that one of the reasons

V-43

TIENKEN - DIRECT

multiple people there?  
 2 A Well, I was under the impression that it was more  
 3 than one person.  
 4 Q Okay.  
 5 A She never indicated how many people.  
 6 Q Now, did she tell you whether or not that she was  
 7 under the influence of anything at the time of her attack?  
 8 A Yes, she did. That was why she was afraid to go to  
 9 the police.  
 10 Q What did she tell you?  
 11 A She said that she had been using drugs,  
 12 Q What drug?  
 13 A I thought she said meth,  
 14 Q And, in fact, didn't she say that at this time, "I'm  
 15 don't with it, I've got to get clean, I want to get off of it"?  
 16 A That's correct.  
 17 Q After you had this conversation with -- oh, strike  
 18 that.  
 19 Now the incident that she had talked about with regard to  
 20 Jeremy and what had happened to her car, did she tell you  
 21 when that happened?  
 22 A I was under the impression -- she did not really  
 23 actually say when it happened. No, she did not.  
 24 Q Okay.

V-45

TIENKEN - DIRECT

1 A I had an impression but I don't think you want to  
 2 hear what my impression is.  
 3 Q No. I just need to hear her words. But she did tell  
 4 you it was when they were breaking up?  
 5 A That's when she left her car there,  
 6 Q Okay And, again, she did make clear to you that  
 7 the incident with Jeremy's car had nothing to do with the  
 8 incident with regard to the attacker?  
 9 A Yeah.  
 10 Q Okay. I mean, she -- no, she didn't make that clear  
 11 or she did make it clear?  
 12 A She didn't really make it clear, but I don't think that  
 13 she went to Jeremy's house to take the shower so I don't think  
 14 that it had anything to do with it. But she never did tell me  
 15 whose house she went to  
 16 Okay, But what I'm --  
 17 A Or whose apartment or --  
 18 Well, okay,  
 19 A -- hotel, or anything else.  
 20 Q What I'm, yeah, what I'm trying to say is, you know,  
 21 you said that her car was broken down, she left it at Jeremy's  
 22 and these things happened to the car. And then you said she  
 23 went to take a shower at another house with regard to the  
 24 attack and then went home.

V-46

TIENKEN - DIRECT

1 did was the first Wednesday I went to her office and she was  
 2 not there. And I believe I left a card and it just said call me.  
 3 And then she still hadn't called me, so the following  
 4 Wednesday I went back and talked to her.  
 5 Q So if Laura testified or believed that you talked to  
 6 her on the 18<sup>th</sup>, then your conversation with Blaise would have  
 7 been the 11<sup>th</sup>? Is that fair?  
 8 A That's when I believed that it was.  
 9 Q And this jail where you went to teach, where is it in  
 10 relation to Laura's office?  
 11 A All of that has changed now. But at the time, the  
 12 jail is in the basement of Lincoln -- the Lincoln County  
 13 Courthouse, And I would go take a prisoner and they would  
 14 let me take one or two prisoners at a time, and I would take  
 15 them into the County Commissioner's Office because there was  
 16 a blackboard there and everything where I could teach a class.  
 17 And Laura Johnson's office is up on the -- not the basement  
 18 but on the second floor,  
 19 Q So it's in the same building?  
 20 A The same building.  
 21 Q Is that in Pioche?  
 22 A That's in Pioche, Nevada.,  
 23 Q Now when you talked to Laura, did you tell her  
 24 exactly what Blaise had told you?

V-48

TIENKEN - DIRECT

1 A And I never said it was a house. I just --  
 2 Or apartment, wherever she went.  
 3 A Right.  
 4 Okay. But talking to her, those were two separate  
 5 incidents?  
 6 A That's correct.  
 7 Q Now you talked to another friend about what Blaise  
 8 had told you, correct?  
 9 A Yes.  
 10 Q And that was Laura Johnson?  
 11 A Yes.  
 12 Q How do you know Laura?  
 13 A Laura Johnson is the Lincoln County juvenile  
 14 probation/parole officer She's been my friend. We work with  
 15 a lot of the same students because a lot of times the court said  
 16 that they either have to get their GED or a high school  
 17 diploma. So because of that, Laura comes into my classroom  
 18 or came into my classroom on a very regular basis. My  
 19 students were very much aware of Laura. And we have  
 20 worked close together on a lot of different things,  
 21 Q Now, do you remember specifically what day you  
 22 talked to Laura if it wasn't the same day you talked to Blaise?  
 23 A I believe, after reviewing things that I've looked at,  
 24 that it was the following Wednesday because I feel that what I

V-47

TIENKEN - DIRECT

1 A I did, but I also indicated to Laura that I wasn't  
 2 sure. Laura and I both knew that Blaise sometimes  
 3 exaggerated things,, And so it may have just been something  
 4 that she just was doing for attention, for a plea for help. And  
 5 since I knew that Blaise had a drug problem, I was afraid that  
 6 it could have been even induced by the drugs because we had  
 7 not been able to find any evidence of anything like this  
 8 happening,  
 9 Q On -- in the newspapers?  
 10 A In the newspaper or even on the Las Vegas news  
 11 release thing,  
 12 Q Okay. So is it -- is it fair to say that one of the  
 13 reasons you told Laura about it is to try and help, get her help  
 14 to find out if anything really happened?  
 15 A If anything really happened and also that I thought  
 16 that Laura might be able to help in trying to get some help for  
 17 Blaise with her -- with the point that she had a drug problem,  
 18 And she also had asked me for help, but I didn't feel that her  
 19 parents would help pay for something like that and so I was  
 20 hoping that maybe Laura knew of some grant money or  
 21 something that we could have used to help Blaise.  
 22 Q So your main purpose in talking to Laura was to try  
 23 and help Blaise, not to see if something had really happened?  
 24 A I would say that it was equal.

V-49

TIENKEN - DIRECT

1 Q Okay.

2 A Because we still hadn't seen that she had really done

3 anything,

4 Q Now, did you know Blaise's parents?

5 A I did.

6 Q And what are their names?

7 A I know her father's -- her natural father is Larry and

8 her stepmother is Becky.

9 Q And what kind of a relationship did they have with

10 Blaise, if you know?

11 A A strange relationship.

12 Q Okay. Well, would they help out their daughter?

13 MR\_ SCHIECK: Objection, Your Honor, that calls for

14 speculation,

15 MS. DiGIACOMO: Well, she —

16 THE COURT: Sustained,

17 BY MS. DiGIACOMO:

18 Q Okay. You just testified that you didn't know if your

19 -- her parents would help cover the costs of some sort of drug

20 treatment?

21 A That's correct,

22 Q Okay. And why do you think that or what was your

23 — why did you make that statement?

24 A Because I felt that they were drug users as well,

.EWEN - DIRECT

1 A She thought that her father would at least get her

2 car cleaned, you know, never talked about -- and I know that

3 this has come up but I never said anything about painting —

4 Q Okay, So you —

5 A -- or doing mechanical work. I only talked about

6 cleaning the car,

7 Q Okay, So you told Laura Johnson that Blaise's

8 parents were helping her clean the car?

9 A That's correct,,

10 Q But you never told Laura that her parents were

11 helping her either get rid of the car, paint it or hide it out?

12 A No.

13 Q Okay, Did you tell Laura that her parents, Blaise's

14 parents, were helping her hide out in Panaca?

15 A I don't think they were helping her hide out. She

16 was —

17 Q Did

18 A -- out in the open,

19 Q Did you tell Laura Johnson whether or not that

20 Blaise's parents were helping her hide out in Panaca? Yes or

21 no.

22 A I do not believe so.

23 Q And when you told Laura about this incident, isn't it

24 true that you told her that Blaise said she cut off a penis, not

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TIENKEN - DIRECT

1 Q Okay. But it had nothing to do with the fact that

2 -- of their relationship with their daughter?

3 A Well, yes, it did, Because I told you also that

4 previously she had told her father that a man had raped her,

5 and he didn't want to believe her,

6 Q And that's when she was younger?

7 A Yes. Not a lot younger at that point, It was

8 probably when she was about fifteen or sixteen,

9 Q Okay.. Was it your impression that she hadn't talked

10 to her father about this attack?

11 A I think she probably did, but I'm not sure that he

12 believed it at that time.

13 Q Well, just tell me, did she tell you that?

14 A She did not tell me.

15 Q Okay, So you have — you have —

16 A But she had been at her father's house before she

17 came because she was driving her father's truck,,

18 Q Okay. But you have no knowledge whether or not

19 she did tell her father based on what she told you?

20 A No, I do not,

21 Q Now, did you tell Laura anything regarding Blaise's

22 parents helping her out with her car?

23 A Yeah. I think that her —

24 Q Well, just tell me —

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TIENKEN - DIRECT

1 slashed it?

2 A I did say that, but I also told her I — we, Laura and

3 I, talked about it and I said, you know, Laura, she may not

4 have actually cut it off.

5 Q But that is you --

6 A I mean, we talked for a long time, Laura and I.

7 Q No, I understand, But you did tell Laura that Braise

8 said cut it off, is that correct?

9 A That's correct,

10 Q Okay. Did you also tell Laura where Blaise said she

11 was coming from when she was attacked?

12 A I told her that it was -- I knew that it was off of a

13 hotel street, exactly what I've told everybody, and I said I

14 don't know which hotel street because I did not remember and

15 I still don't remember. It didn't even seem that important. It

16 was just sort of a general, And I didn't even mean that it was

17 a specific street We were just talking about neighborhoods

18 when Blaise even told me approximately where. But I don't

19 remember where,

20 Q No. My question was did you tell Laura where Blaise

21 told you she was coming from when she was attacked, not

22 where the attack occurred? Did Blaise tell you where she was

23 coming from when she got attacked?

24 A No. She said she was coming -- I had the

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TIENKEN - DIRECT

1 impression that she was coming -- taking a shortcut, either she  
2 had parked her car and was going someplace else and taking a  
3 shortcut through this alleyway or the other way around, she  
4 was coming from someplace else and going back to her car,

5 Q Okay, So Blaise never told you she was coming  
6 from work when she was attacked?

7 A No, We talked about because Laura asked me if I  
8 knew where she was working,

9 Q Okay. But you never told Laura that Blaise was  
10 coming from work when she was attacked?

11 A No

12 MS. DIGIACOMO: The Court's indulgence.

13 (Pause in the proceedings)

14 BY MS. DIGIACOMO:

15 Q Dixie, when Blaise was explaining the attack to you,  
16 and you said that the gentleman was straddling her, did she  
17 say what he was trying to do?

18 A She indicated that he was trying to put his penis into  
19 her mouth,

20 Q Okay, And when she first saw the attacker when  
21 she was pushed down, did she say whether or not he was  
22 exposing himself?

23 A I don't remember that. I think after he approached  
24 her and then he backed off, then I think he did. But I'm not

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IENKEN - DIRECT

1 Q That's what I'm talking about,

2 A Okay.

3 Q So she did tell you that her --

4 A Yes.

5 Q -- attacker had his penis out?

6 A That's correct.

7 Q Okay. And, again, with regard to the location where  
8 she told you this happened, okay, on page 5, that she did tell  
9 you the name of the street. But at the time you talked to the  
10 police, you just couldn't remember but you knew it was  
11 something like West Tropicana or West Flamingo, is that  
12 correct?

13 A No. She did not say the name of the street. What  
14 she said was it was in -- we were talking about general areas  
15 of Las Vegas. Okay. And she named a hotel street, not  
16 particularly saying that that's where the incident happened but  
17 just as a point of reference.

18 Q A point of reference for what?

19 A Where the thing happened,

20 Q But --

21 A But she didn't say that it was on that street, She  
22 just -- it was like near.

23 Q No, no, no. I understand that. But when you --  
24 when you asked her or when she told you kind of where it

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TIENKEN - DIRECT

1 positive

2 MS DIGIACOMO: Page 7 of her statement.

3 BY MS DIGIACOMO:

4 Q Dixie, I'm gonna show you page 7 of your  
5 statement, see if that will refresh your recollection as to what  
6 Blaise told you in July, 2001,

7 MS. DIGIACOMO: Oh. It's the middle answer,  
8 counsel, in the middle of the page,

9 THE WITNESS: Well, yes, but that doesn't say that  
10 that happened when he first approached her If he already  
11 knew that he was going to try to do something to her, yes, it  
12 does say that he did have his penis out, But you have to  
13 remember that that wasn't when he first tried to get to her.

14 BY MS. DIGIACOMO:

15 Q Okay. Well, your answer was that, "My  
16 understanding, and that's why I think she was able to do what  
17 she did, is that he had knocked her down" --

18 A Right,

19 Q -- "and was on top of her, and it sounded to me like  
20 he was sitting with -- straddling her. I would assume that he  
21 was straddling her because she said that he had his penis out."

22 A Penis out, yes,

23 Q Okay, But --

24 A Out of his pants,

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TIENKEN - DIRECT

1 happened --

2 A Where did it happen, yes.

3 Q -- all she did was name a street with a hotel?

4 A Yeah.

5 Q And you --

6 A Well, we talked --

7 Q And it was on the west. Is that fair to say?

8 A Well, those streets are really not on the west. We  
9 were talking about like the Strip, the hotel Strip.

10 Q Okay.

11 A Okay. And to the right of the Strip is west and to  
12 the left of the Strip is east, not that I'm saying that it was the  
13 west side of town, just that it was a west hotel street,

14 Q Okay. So it was just a west hotel street but you're  
15 not sure which one. It could have been Tropicana, it could  
16 have been Flamingo, could have been DI

17 A Could have been any of them.

18 Q But not Sahara 'cause that's where --

19 A But I knew that it was not Saharar

20 Q Okay. But it was just the west side of the Las Vegas  
21 Strip, Fair?

22 A That's correct.

23 MS. DIGIACOMO: Nothing further.

24 THE COURT: Cross,

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TIENKEN CROSS

1 MS. GREENBERGER: Yeah,. Your Honor, I have a  
2 lot of questions, and it's approaching the noon hour, Should I  
3 get started?

4 THE COURT: We're gonna have to take a late lunch,  
5 MS, GREENBERGER: Okay.

6 CROSS-EXAMINATION

7 BY MS. GREENBERGER:

8 Q Good afternoon.

9 A Hello.

10 MS. GREENBERGER: May we approach for a minute,  
11 Your Honor?

12 THE COURT: Yes, you may.

13 (Off-record bench conference at 11:56:06 until 11:57:10)

14 BY MS. GREENBERGER:

15 Q How long have you been a teacher?

16 A Actually been teacher, I even taught here in Las  
17 Vegas back in the late sixties. I'm retired now from teaching.  
18 So total, I've been a teacher since probably about '68.

19 Q Do you have experience with abused women?

20 A I do, Previously, while I was living in Las Vegas, I  
21 worked with the Women's Crisis Shelter and I also worked with  
22 abused children with a group called We Can,

23 Q Do you have experience with drug use counseling?

24 A I did, although most of my experience was back

TIENKEN - CROSS

1 based on hearsay,

2 THE WITNESS: Well, I don't think it's hearsay when  
3 it's part of her educational records.

4 MR. KEPHART: Judge.

5 THE COURT: Sustained,

6 MS. DiGIACOMO: And move to strike the answer.

7 THE COURT: Motion granted.

8 BY MS. GREENBERGER:

9 Q You testified she had a hard time fitting in. Can you  
10 explain what you know?

11 A The general population at the time Blaise was in  
12 high school that attend the regular high school are pretty  
13 straight-laced Mormon girls that say that they don't use drugs  
14 and they say they're not sexually active. And at times, they  
15 can be very nasty and mean to kids that they think don't fit in  
16 to what they believe is what everybody ought to be

17 Q When did Blaise first become your student, if you  
18 recall?

19 A I believe that her parents talked to me as early as  
20 middle school, and at that time we could not put her into the  
21 program until she turned sixteen because of the way that the  
22 state laws were.

23 Q How long was she your student?

24 A I think what we did was we started to prepare her

TIENKEN - CROSS

1 when I was counseling, plus I was certified with the Bureau of  
2 Alcohol & Drug Abuse. But I have not kept my certification up  
3 on the newer drugs. I just never felt like I — when I was  
4 teaching school, I kept up on it but I didn't really go back to  
5 get my certification,

6 Q Can you tell us how Blaise first became your  
7 student?

8 Blaise had a hard time fitting in in our community,  
9 and I think Blaise felt that she was sort of an outsider. She  
10 had a lot of problems with the — with her peers, They thought  
11 that she was too sophisticated,

12 MS. DiGIACOMO: Objection, hearsay.

13 THE COURT: Sustained,

14 BY MS. GREENBERGER:

15 Q What were the problems, if you know?

16 MS. DiGIACOMO: Objection again, hearsay.

17 BY MS, GREENBERGER:

18 Q If you know,

19 THE COURT: Overruled.

20 BY MS, GREENBERGER:

21 Q You may answer,

22 A Okay. I do know that Blaise had been sexually  
23 abused when she was a young child and —

24 MS, DIGIACOMO: Objection, Your Honor, this is

TIENKEN - CROSS

1 for the GED which we could do before she was sixteen so,  
2 actually, I could have contact with her and work with her  
3 before that. I would say that I actually worked with her as a  
4 student a year and a half to two years,

5 Q How was she as a student?

6 MS, DiGIACOMO: Objection, relevance,

7 THE COURT: Sustained.

8 BY MS. GREENBERGER:

9 Q Did she graduate from your program?

10 A She did.

11 Q Did she graduate early?

12 A She did. Probably a full year early.

13 Q Did she --

14 A Once she decided to go to school, she put her mind  
15 down to it, she did her work and she finished four years of  
16 credit in about two years of time,

17 Q Did she receive a high school diploma?

18 A She did. And it is a standard adult high school  
19 diploma, and she did have to take and pass the proficiency  
20 test and she did without any problems.

21 Q During that time period, did you develop a close  
22 relationship with her?

23 A I did.

24 Q You mentioned on direct examination, but you



## TIENKEN CROSS

1 weren't given an opportunity to explain, you made a statement  
2 Panaca's a small town, everyone knows everybody, they think  
3 they know what they -- but they really don't know, Can you  
4 elaborate on what you meant by that?

5 A In Panaca a young lady is supposed to, by her  
6 parents' standards, is supposed to abstain from sex and drugs  
7 and alcohol so that she prepares herself to go to the Temple  
8 when she goes to get married. It doesn't matter if those girls  
9 do those things as long as their parents are not aware of it.

10 Q You have had a number of students over the years  
11 in your education program?

12 A That's correct.

13 Q And you mentioned that you often get students'  
14 visits at your home, Can you elaborate on that a little bit?

15 A Sometimes on weekends, if kids didn't have anything  
16 to do, we would go rent a video. They'd come to my home.  
17 We'd watch a video, have popcorn. Sometimes kids would  
18 come and help me. Blaise, for one, came and helped me hang  
19 Christmas lights up on the outside of my house. She and  
20 another friend came, you know, and did that. I've had boys  
21 that have come and helped me mow the lawn. I've had older  
22 women that have come and confided with me. You have to  
23 realize that I didn't have the normal classroom setting. Kids  
24 could come into my classroom and they could be sitting next

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## IENKEN - CROSS

1 earlier, is that correct?

2 A Yes.

3 Q When she came to talk with you, you testified she  
4 came to talk to you about a number of different things, is that  
5 correct?

6 A That's correct.

7 Q Was it your opinion that she needed to get a  
8 number of things off her chest?

9 A Yes, We talked about a new program that I was  
10 trying to work out, a counseling program where people could  
11 get together and work on drug problems or even other  
12 problems besides drugs,

13 Q Besides the attack she described, did you also talk  
14 about a number of different subjects?

15 A Oh, we did, We talked about --

16 MS, DiGIACOMO: Objection, hearsay,

17 THE WITNESS: How could it be hearsay?

18 THE COURT: Overruled.

19 BY MS, GREENBERGER:

20 Q You can answer,

21 A We talked about other students that I knew were  
22 down in Las Vegas working, and I asked her in relationship to  
23 them if she had seen any of them and we talked about them.  
24 And also I think I advised her to stay away from certain people

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## TIENKEN - CROSS

1 to a fifteen-year-old that was studying to take a GED, they  
2 could be sitting near a fifty-year-old that was trying to get  
3 ready to take the high school proficiency test. The English  
4 second language students sometimes attended the English  
5 classes because it's good for English second language students  
6 to relate to other people so that they can speak. So we had a  
7 big mixture of students in this classroom all the time, And all  
8 of the students came. I might have a forty-year-old man, a  
9 thirty-five-year-old woman, a seventeen-year-old, a fifteen-  
10 year-old, and they might have even brought a little sister or a  
11 little brother or one of my married students could have  
12 brought their children. It just -- we just all got along.

13 Q And your -- do your relationships with your students  
14 often continue after graduation as well?

15 A 90 percent of them do.,

16 Q Prior to Blaise coming to confide in you about her  
17 attack, had she frequented your home on multiple occasions?

18 A Yes, because of other students that she was friends  
19 with. I'm sort of a safe house.

20 Q People feel comfortable coming to your house, your  
21 students?

22 A Yes,

23 Q With regard to when Blaise first came to talk to you,  
24 you testified you believe it was July 11<sup>th</sup>, it could have been

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## TIENKEN - CROSS

1 that I felt that if she really was being honest and wanted to  
2 get drug free that she needed to sever her relationships with  
3 those people.

4 Q Did you know how long she had been down in Las  
5 Vegas?

6 A I do not know exactly how long she stayed down in  
7 Las Vegas but I knew that she went to Vegas pretty much  
8 right after she graduated from high school.

9 Q When would that have been?

10 A In 2000.

11 Q What month?

12 A May or June, But my impression was that she hasn't  
13 stayed the whole time. She was down there at one time living  
14 with Jeremy. Other times, she went down and just came back,

15 Q So she was traveling back and forth during that  
16 time, from the time she left 'til the time she returned?

17 A I believe so.

18 Q Had you seen her around town?

19 A I don't know that I directly -- well, I hadn't really  
20 talked with her and she hadn't been to my house for a while,  
21 so we just had a lot of catching up to do when she came by, I  
22 can't say for certain that I hadn't talked to her in between that  
23 time but I can't remember that I did,

24 Q You spoke about an attack that had happened on

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TIENKEN - CROSS

1 her. And isn't it true that she never told you exactly when the  
 2 attack happened?  
 3 A That's correct.  
 4 Q Is it fair to say you knew the attack happened  
 5 sometime after her high school graduation and before she got  
 6 to your house? Is that fair?  
 7 A That's correct.  
 8 Q You had the impression when she came to talk to  
 9 you she was very upset about that?  
 10 A About the attack, yes.  
 11 Q However, as you sit here today, you don't know if it  
 12 was -- she was upset because it had been causing her  
 13 nightmares, stewing around for a month, or that it had just  
 14 happened. You don't know?  
 15 A I don't know that,  
 16 Q When she described her attacker, you testified he  
 17 was a big man,  
 18 A That's correct.  
 19 Q You testified you compared his size to that of one of  
 20 your students?  
 21 A Former students, That's correct.  
 22 Q Did you also compare his size to that of your  
 23 grandson?  
 24 A I did,

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FIENKEN - CROSS

1 A Well, when I spoke with the D.A. people, I kept  
 2 asking if they could please tell me the size of the attacker.  
 3 And my understanding is that --  
 4 MS, DIGIACOMO: Objection, hearsay,  
 5 THE COURT: Sustained.  
 6 You may pose your next question.  
 7 BY MS, GREENBERGER:  
 8 Q Did you learn the size of the victim in this case? Are -  
 9 you aware he was 5'10", 130 pounds?  
 10 MS DiGIACOMO: Objection, hearsay, how she  
 11 learned it.  
 12 THE COURT: Sustained,  
 13 THE WITNESS: But you told me. The lady over  
 14 there,  
 15 BY MS. GREENBERGER:  
 16 Q Did you learn from my client the body weight of her  
 17 attacker?  
 18 A He was big. If we compare it to my grandson, I  
 19 would assume that her attacker would have been over 6 foot  
 20 tall, over 200 pounds,  
 21 Q That was the impression you were left with?  
 22 A Yes. And she also said he was old. She did not say  
 23 that he was like the age that her father would be. She  
 24 referred to him as old.

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TLEMCEN - CROSS

1 And what are his dimensions?  
 2 A My grandson is over 6 foot tall and over 200 pounds.  
 3 When you asked Blaise does that comport with the  
 4 size --  
 5 A She said yes. Because my grandson graduated the  
 6 same time, the same year, that Blaise did, but from Cedar, but  
 7 he went on our senior trip with us. So she and Tyler and  
 8 several other students, we had a whole bunch of kids that  
 9 went So I knew that she had seen Tyler in a bathing suit  
 10 because we had been to Lagoon, which is an amusement park  
 11 that also has a water park, and they had swam together so I  
 12 knew that she knew exactly how big Tyler was. And he's not  
 13 thin, but he's not obese,  
 14 Q Do you specifically recall when you talked about one  
 15 of your students, Bigg, who is 510" --  
 16 A That's Biggs-  
 17 Q That she told you -- Biggs, Excuse me. Much taller?  
 18 A Yeah, taller than Biggs. And he's like about 5'9" and  
 19 about 350 pounds. He would also be considered, in my world,  
 20 a big person, So I was just getting a relationship, how big.  
 21 Q And she said taller?  
 22 A That he was taller than but not as -- not as heavy.  
 23 Q And in terms of the heaviness of her attacker, what  
 24 did you learn?

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TIENKEN - CROSS

1 Q And how was --  
 2 A To Blaise, I'm old, To some of you, I may not be as  
 3 old, But --  
 4 Q How old is her father, if you know?  
 5 A I would say in his forties.  
 6 Q And when Blaise told you this man was old --  
 7 A I thought she meant someone closer to my age,  
 8 Q And you interpreted it as that because why?  
 9 A She said he was old, big, smelly,  
 10 Q If he would have been her father's age --  
 11 A She probably would have said like my dad's age,  
 12 MS. DiGIACOMO: Objection, speculation,  
 13 THE COURT: Sustained.  
 14 MS. DiGIACOMO: Move to strike the question and  
 15 answer,  
 16 THE COURT: Granted.  
 17 BY MS. GREENBERGER:  
 18 Q She told you where she was attacked it was dark?  
 19 A That's correct.  
 20 Q Did you -- did she tell you whether she got a clear  
 21 look at her assailant?  
 22 A I don't believe so. Because my understanding was  
 23 that it was -- it was dark. And then I think the only thing that  
 24 she saw was probably the silhouette of him,

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MS. DIGIACOMO: Objection, speculation.

THE COURT: Sustained.

MS. DiGIACOMO: Move to strike the answer,

THE COURT: Granted,

BY MS. GREENBERGER:

Q What did you learn from her that she saw?

A That she saw the person get up and grope at his genital area,

Q Before we get there, you testified that he pushed her down?

A That's correct,

Q That she was able to -- that he was intending to rape her, is that correct?

A I believe so,

Q She was scared?

A Yes,

Q She was able to get a knife out of her pocket that she carried for protection?

MS. DiGIACOMO: Objection, misstates the testimony.

BY MS. GREENBERGER:

Q She was able to get a knife out from somewhere?

A Yes,

THE COURT: You withdrew the question, posed

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IENKEN - CROSS

A No,

Q Did she ever tell you that she beat this man and knocked his teeth out?

A No.

Q Did she ever tell you that she smacked him in the head and caused hemorrhaging?

A No,

Q Did she ever tell you she used a baseball bat in this attack?

A She never even said that she had a baseball bat in her hand.

Q Did she ever tell you after she killed him that she cut his penis off when he was dead?

A No She told me that she saw him stand up. You can't stand up after you're dead.

Q Is it clear in your mind that when she defended herself from her attacker he was alive?

A I'm sorry. Could you repeat that question?

Q When he -- when he attacked her, she told you he was alive, attacking her?

A That's correct.

Q You would remember, wouldn't you, if she told you any of these other things?

A Yes, definitely,

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TIENKEN - CROSS

another question before the Court ruled. I was making a record,

BY MS, GREENBERGER:

Q She fended off her attacker by attempting to stab him one time?

A Yes,

Q Did my client, Blaise Lobato, ever tell you she stabbed her attacker in the neck?

A Never, My understanding was in the abdomen and then she cut his penis. At no time did she ever indicate any other stabs or cuts or slices or anything,

Q As you sit here today, is your memory of this incident vivid?

A As vivid as someone that's had -- I have had several like strokes, and I do get confused sometimes with time, but it's pretty vivid what she said to me and it's pretty vivid how she explained, you know, what she did.

Q Do you have any doubt in your mind whether she ever stabbed him in the neck?

A I have no doubt. She never mentioned stabbing him anywhere other than the abdomen and the penis,

Q Did she ever tell you, did my client ever tell you, she punched this man in both of his eyes and gave him a black eye?

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TIENKEN - CROSS

Q And if she told you these things, you wouldn't have waited to talk to Laura Johnson for a week, would you?

A No, If she had told me any of those things, I would have called the police right away.

Q Why didn't you call the police right away?

A I did not think that it was even as serious as what Blaise thought that it was because she sometimes stretched things. I thought someone probably attempted to rape her. Whether they succeeded or not, I was not sure. I did not believe -- she never did say that he raped her,

MS. DiGIACOMO: Objection, Your Honor. It's speculation and it's getting very non-responsive.

THE COURT: The Court will overrule.

BY MS. GREENBERGER:

Q What was the last part of your answer? You never thought that she even was raped?

A No. She said that he tried to rape her and then he tried to sodomize her, basically, not sodomize but actually put his penis in her mouth,

Q Okay, Just so we're clear on that --

A Yes,

Q -- he tried to orally copulate?

A That's correct.

Q Not sodomize?

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TIENKEN CROSS

1 A **Not** sodomize  
 2 Q Which would be --  
 3 A Not sodomize. Not sodomize.  
 4 Q Did she ever tell you she sliced his rectum?  
 5 A No, She never even mentioned anything in  
 6 reference to rectum at all. There was no reference. And, like  
 7 I said, she was really clear when she talked to me that what  
 8 she did was that she tried to get him off of her when she tried  
 9 to stab up, and then she couldn't. And then when he sat up  
 10 higher on her body, she had her hands free and she was able  
 11 to grab the penis with one hand and slice with the other hand,  
 12 cut, slice, whatever you want to say. And, yes, she did say  
 13 that she cut it off, but I just somehow did not feel that --  
 14 MS. DiGIACOMO: Objection, Your Honor.  
 15 THE COURT: Sustained.  
 16 BY MS. GREENBERGER:  
 17 Q Based on your discussions with my client, you never  
 18 thought she cut a penis off, did you?  
 19 A No, I did not.  
 20 MS. DiGIACOMO: Objection, Your Honor. It's her --  
 21 it's her own feelings, It's not what she was told or what she  
 22 observed.  
 23 BY MS. GREENBERGER:  
 24 Q You

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1 other kids. It's non-responsive,  
 2 THE COURT: Sustained.  
 3 BY MS. GREENBERGER:  
 4 Q In your — in your past knowledge of my client, which  
 5 is lengthy, were there many times that she would exaggerate  
 6 stories to you?  
 7 A Yes,  
 8 Q Do you have any that come to mind?  
 9 A Some of the things that went on between Abe and  
 10 Blaise, both of them were my students and they were very  
 11 involved with each other. And there were times that Blaise  
 12 would tell me something that happened and Abe would tell me  
 13 something that happened, and they didn't -- it didn't match.  
 14 And I can't specifically remember an exact thing right now, but  
 15 I do remember that it happened on more than one occasion,  
 16 Q So that night or early morning when she came to  
 17 talk to you, in your mind, you thought she might be  
 18 exaggerating?  
 19 A I did. I knew she had a problem. I knew she had a  
 20 drug problem and I was really wanting to try to help her with  
 21 that. We talked about some other therapy and different  
 22 things.  
 23 Q Did you think she came to you, it was a cry for help?  
 24 A I did.

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1 MS\_ DIGIACOMO: It's not relevant,  
 2 MS. GREENBERGER: I'll move on.  
 3 THE COURT: Sustained.  
 4 MS. DIGIACOMO: And 191 ask that that be stricken  
 5 from the record,  
 6 THE COURT: Motion granted, so stricken.  
 7 The jury will disregard the last answer,  
 8 BY MS, GREENBERGER:  
 9 Q You testified she told you she went to her car right  
 10 after this happened to escape her attacker?  
 11 A That's correct.  
 12 Q She told you she saw him getting up, is that correct?  
 13 A Yes.  
 14 Q She saw him standing there, groping himself?  
 15 A That's correct,  
 16 Q You testified my client has a tendency to  
 17 exaggerate. Can you give us an example besides this one?  
 18 MS. DIGIACOMO: Objection, relevance.  
 19 THE COURT: Overruled.  
 20 BY MS, GREENBERGER:  
 21 Q You may answer.  
 22 A There were other times when kids talked of drinking  
 23 or  
 24 MS. DiGIACOMO: Objection, Your Honor, this is

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TIENKEN - CROSS

1 Q Do you think she was an attention-seeker?  
 2 A I think that she was because so many people shut  
 3 her out,  
 4 Q The police came to talk to you in July of 2001, in  
 5 July 26, is that correct?  
 6 A Yes.  
 7 Q The day before they came to talk with you, you had  
 8 looked in the paper or looked on the computer and read a  
 9 story about Blaise's arrest. Is that true?  
 10 A There's something that I've never really revealed  
 11 before but I've thought about it, and if I —  
 12 MS. DiGIACOMO: Objection, non-responsive,  
 13 MS. GREENBERGER.: Let her explain her response.  
 14 THE COURT: Overruled,  
 15 BY MS, GREENBERGER:  
 16 Q You may explain it, Dixie.  
 17 A Okay, I was going up to pick up the school van,  
 18 which I drove kids back and forth on. At that time, and I've  
 19 never said this person's name before because I didn't think it  
 20 was relevant but at this point I'd really like to say the name, it  
 21 was Mark Willingham. He was the -- he's the bus -- I don't  
 22 know what he is. The head mechanic for Lincoln County  
 23 School District, At that time, Mark and another gentleman  
 24 were talking and they said to me, oh, did you see --

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MS. DiGIACOMO: Objection, hearsay.

THE WITNESS: — where Blaise got arrested,

THE COURT: Sustained,

BY MS. GREENBERGER:

Q Without saying what anyone else told you, 'cause that's hearsay, you can finish your answer.

A Okay. When they said what they said, I said, no, you're wrong. And he said, well, it's in the front page of the paper.

MS. DiGIACOMO: Objection, hearsay.

THE COURT: Sustained.

MS DiGIACOMO: Move to strike those two responses of what they said,

THE COURT: Granted. So stricken.

BY MS. GREENBERGER:

Q You can continue without describing what someone else told you. You can describe your response,

A Okay. So then I went and got a newspaper because that's what they told me.

Q This was before the police came to talk to you?

A That's correct

Q And there was very specific information in the paper about her arrest and the nature of the crime?

A Yes,

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number of times, haven't you?

A I have.

Q And are there many, many things you told the police that were left out of your statement?

A Well, I think that there were some details that were left out but there were some that were very strong, and I do feel like when they kept trying to pinpoint the street they kept suggesting street names.

Q Did the police suggest to you West Tropicana?

A Yes, they did, Because I said a hotel street, not West Sahara because that's -- I lived off of West Sahara.

Q Did this suggestion occur prior to you being on their tape?

A That's correct.

Q When the police were taping you, isn't it true they turned on and off their tape-recorder multiple times?

A That's correct,

Q Did you ask them why they were doing that?

A To clarify they said.

Q They weren't doing it 'cause the tape ran out on

Side A—

A Well, no.

Q -- and they had to switch to Side B?

A They did have to do that as well.

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T1ENKEN - CROSS

Q Isn't it true that when the police came to talk with you they also shared many of those details with you?

A That's correct.

Q They talked to you for at least two hours you said off tape, is that correct?

A I would say close to that,

Q Did that concern you?

A It did,

Q Why?.,

A Because if they were really trying to get a statement without — why did they tell me the things that they told me, why did they wait so long, why didn't they tape it right from the very beginning?

Q Did you feel right from the beginning the police were trying to influence your testimony?

MS DiGIACOMO: That's fine. Withdrawn

THE WITNESS: Yes And I felt very strong that they needed to investigate further, and I indicated that to them, but it never shows up in here. And I'm sure if you called either of those officers here they would have to say that I even sort of presented a scenario to them, two scenarios, as a matter of fact.

BY MS, GREENBERGER:

Q You've read your Metro statement on July 26 a

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T1ENKEN - CROSS

Q But in addition to that, they were turning the tape-recorder on and off?

A Right. Right.

Q Do you remember that vividly?

A I do.

Q Isn't it true when the police were questioning you and telling you west, west, you said south?

A No, I didn't say that at that time. It wasn't even until later that I realized, But when I looked at it, and there's a place where it refers and he said, well, then you're saying that it happened on the west side, and I said, you know, and I never said that it happened on the west side. In fact when I'm thinking when I was talking to Blaise and when I thought about it even later, I never indicated that it was on the west side. I just meant the west side of the Strip. But that would actually be southwest but not — you know, she didn't say it was out like in the boondocks. And you have to remember I lived in Las Vegas. I moved from here in '79. And although I'm here visiting now, this town has changed a lot since '79.

Q It's your testimony, as you sit here today, that the police told you —

A Whoops.

Q -- West Flamingo Road. Those were not your words?

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T1ENKEN - CROSS

1 A No. I mean, I believe that I said hotel streets and I  
2 may have included Flamingo amongst one of many street  
3 names,

4 Q You never said that specifically, however? You  
5 never said specifically she told me she was attacked —

6 A No.

7 Q on West Flamingo?

8 A No Because I don't know where she was attacked.

9 Q And you -- is it your desire, as you sit here today, to  
10 make sure that none of your statements are taken out of  
11 context?

12 A Correct.

13 You want the truth to come out?

14 A Yes, I do want the truth to come out,

15 When you were doing research on your computer  
16 after my client came to talk with you, isn't it true, and I just  
17 want to clarify this, that you did research all the way back until  
18 June 1, not July 1"?

19 A I think that's right. I'm sorry, And I do think that I  
20 did go all back through June as well.

21 Q 'Cause on your direct examination —

22 A Yes.

23 Q — you said July 1.

24 A But I think —

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1 far, but I did not go back that far. I think I did go back  
2 through June 1", And I think someplace there's a reference to  
3 June 1 in one of my other testimonies, too.

4 Q Did you feel that the police or the prosecution in the  
5 -- in the past was trying to lead your testimony?

6 MS. DiGIACOMO: Compound, Your Honor,  
7 objection,

8 THE COURT: Sustained.

9 BY MS. GREENBERGER:

10 Q Did you feel the police were trying to lead your  
11 testimony?

12 A I felt very strong that they just wanted to get an  
13 answer to a crime and they didn't even care if it was really  
14 even the right crime or the right time or anything else,

15 Q Why did you feel like that?

16 A Because I kept saying different things and I made  
17 reference to several different things. And I believe that Laura  
18 did as well. And nobody would even look at those things or  
19 that, you know, time frame or anything,

20 Q When you say Laura, are you referring to --

21 A To Laura Johnson. And I do feel that -- okay, I do  
22 know that Laura and I are friends, and I also know that Laura  
23 and I at this point are at opposite ends. But I do feel that in  
24 the very beginning that we were both at the same side. And

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1 But I just wanted to clarify it's —

2 A Right.

3 June 1..

4 A It was June <sup>Vt</sup> because we did go back several  
5 months

6 June 1", 2001?

7 A That's correct.

8 Q The reason why you looked that far back was  
9 because you believed the attack could have happened a few  
10 weeks before?

11 A Well, I think that just like when you've had TIAs,  
12 and that, sometimes time is not good for you. I think that  
13 time is also not good for people that are using drugs,

14 Q Can you explain that?

15 A I have worked with other students that have used  
16 other drugs and they can confuse dates and time.

17 Q That's something that you have personally had  
18 experience with?

19 A Yes, it is.

20 Q That's why you looked all the way back to June —

21 A That's correct

22 Q 2001?

23 A I mean, I would have gone back, you know, six□  
24 months except that I felt that it couldn't have been back that

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T1ENKEN - CROSS

1 then I --

2 Q Well, let me stop you there for a minute. Do you  
3 mean the same side -- explain what you mean by that.

4 A Okay. In the beginning, Laura felt the same way  
5 that I did, that we didn't --

6 MS. DiGIACOMO: Objection, hearsay,

7 THE COURT: Sustained.

8 BY MS. GREENBERGER:

9 Q After speaking with Blaise, you didn't believe she  
10 committed this crime?

11 MS. DiGIACOMO: Objection, legal conclusion.

12 THE COURT: Sustained,, That's the province of the  
13 jury.

14 BY MS, GREENBERGER:

15 Q Is it your testimony that Laura Johnson and you  
16 both felt equally that that --

17 THE COURT: I'm gonna ask counsel to approach.

18 (Off-record bench conference at 12:35:47 until 12:36:40)

19 THE BAILIFF: I believe we have a note out from  
20 one of the jurors, Your Honor.

21 (Pause in the proceedings)

22 THE COURT: The note will be marked as the Court's  
23 next in number.

24 We're gonna take a five-minute recess,

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Ladies and gentlemen, in five minutes please be in the hallway. The bailiff will meet you there to reseal you. During the recess you're admonished not to talk or converse among yourselves, nor with anyone else, on any subject connected with the trial, you're not to read, watch or listen to any report of or commentary on the trial or any person connected with the trial, by any medium of information, including, without limitation, newspaper, television, radio and Internet, and you're not to form or express any opinion on any subject connected with the trial until the case is submitted to you.

Five-minute recess, (Court recessed at 12:38:02 until 12:46:28) (Jurors are present)

THE BAILIFF: Court is now in session. You may be Seated.

THE COURT: The record shall reflect we're resuming trial in State versus Lobato under Case Number C177394, in the presence of the defendant, her three counsel, the two prosecuting attorneys, the ladies and gentlemen of the jury,

And Witness Dixie Tienken remains on the witness stand under oath.

And Ms., Greenberger may resume her cross,

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thing. It doesn't even mean the same kind of thing.

Q What about a baseball bat behind the seat in a car?

MS, DiGIACOMO: Objection, speculation,

BY MS. GREENBERGER:

Q If you know.

THE COURT: overrule.

BY MS, GREENBERGER:

Q You may answer.

A Okay, That's not uncommon. You have to remember that we live long distances between cities, and a lot of the world is starting to catch up with us and so it's not uncommon. My daughter, for one, carries one of those, like it's sort of like a baseball bat in her car, like the truck drivers use, because her husband was a truck driver and he gave her one and she kept it right underneath the front seat. If you're a little person, especially if you are a little woman, and you're a little woman, it's not uncommon to have something close by that you could grab,.

Q You mentioned a gentleman named Jeremy Davis.

A Yes.

Q And that was a former boyfriend of Blaise's?

A Yes, And she [sic] had dated Blaise off and on for several years. And I, for one, did not feel that that was a good person for her to even be dating., And I had, I think --

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T1ENKEN - CROSS

MS. GREENBERGER: Thank you, Your Honor,,

BY MS, GREENBERGER:

Q You testified that you knew my client carried a knife?

A That's correct,

Q And also testified that it was common even for your other students. Can you explain that?

A I, myself, have also carried a knife for protection.

So I didn't find it that uncommon.

Q What about --

A Other students, other girls, as well, carried knives.

Q Did Panaca — would you describe it as a rural area?

A A very rural area.

Q Does that account for people carrying knives or is it more of a protection thing for women, if you know?

A A little bit of both. I mean, it's not uncommon to like if you wanted to go pick an apple or a pear or anything, you could and you could peel it. But if you see most of the boys, they have like a little case on their belt. It wasn't until just probably the last four years that they said that they could not have them in school. I mean, never have you ever been allowed to carry a gun but, you know, a lot of boys used to even come to school with -- in their pickup trucks they had rifles that were fastened in and nobody thought anything more about it. It's not like in the city. It's not the same kind of

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MS. DiGIACOMO: Objection, Your Honor, relevance as to her thoughts as to why they shouldn't have dated.

THE COURT: Sustained,

BY MS. GREENBERGER:

Q When she came to talk with you on that Wednesday, one of the issues you discussed was her relationship with Jeremy, correct?

A Yes.

Q And she told you that fairly recently they had broken up?

A That's correct.

Q Fairly recently, did you interpret that as after graduation but before she came to your house that Wednesday?

A Yes.

Q You also testified that she had left her vehicle at his house?

A Yes.

Q And you discussed with her how he had vandalized her car, intruded her car with -- she told you about that?

A Yes.

Q Did she tell you that was in retaliation to the breakup?

A It was sort of indicated, but I don't think that she

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T1ENKEN - CROSS

1 specifically said that I think that he was just on -- he had a  
2 drug problem as well,

3 MS. DiGIACOMO: Objection, relevance,

4 THE COURT: Overruled.

5 BY MS GREENBERGER:

6 Q What kind of drug problem?

7 MS, DiGIACOMO: Objection, hearsay,

8 BY MS GREENBERGER:

9 Q If you know

10 A Multiple,

11 Q Based on the condition of the vehicle, it was your  
12 understanding the vehicle needed to be cleaned out because  
13 there was --

14 A There was supposed to be feces and urine on it,  
15 And Blaise is an extra special clean person and she doesn't like  
16 to touch those kind of things. I do not think that it was  
17 anything that she could have -- it was beyond her capacity.  
18 She could not have touched or cleaned something like that  
19 because she couldn't stand to be dirty or icky or anything like  
20 that,

21 Q Was that a character trait you associated with Blaise  
22 from the time you met her?

23 A Yes,

24 Q And how did you learn about that? From her actions

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1 her vehicle. I said that they had her vehicle because they  
2 were going to clean it up for her. And because of some other  
3 things that might have made -- but not that they were ever  
4 going to do -- paint it, not that they were going to paint or do  
5 any repairs or anything, just clean it,

6 Q So it's your testimony, as you sit here today, that  
7 you never on any occasion ever told Laura Johnson that Blaise  
8 told you my parents are trying to paint the car?

9 A No, Not paint the car. I think that Blaise May have  
10 been afraid that someone could have seen her at the time that  
11 this incident happened. They may not remember the car  
12 exactly but there's other things about the car that they would  
13 have remembered. And it's not something her parents would  
14 have really -- they couldn't fix that problem,

15 Q Is it your testimony, as you sit here today, that you  
16 never told Laura Johnson that Blaise told you her parents were  
17 trying to get rid of the vehicle?

18 A No. Clean it, Clean it. Just clean it.

19 Q In addition to Blaise being upset that she had been  
20 the victim of an attack, she also came to you 'cause she feared  
21 maybe she hurt someone. Isn't that true?

22 A That's right, She never at any time ever thought  
23 that the person was dead, but she was afraid that she could  
24 have really hurt someone,

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1 she took or --

2 A Blaise spent a lot of time. It didn't matter to her  
3 whether her hair was curled or not, but she probably  
4 shampooed her hair and took showers more often than  
5 anybody else that I've ever known, almost to the point of  
6 being obsessive/compulsive. She -- if she slept in or  
7 something and you wanted her to come right away, and I can  
8 give this as an example, there was a government test once,  
9 She wasn't in class when the test was supposed to be given. I  
10 got really upset with her. I called her on the phone. Kids can  
11 tell you that I have gone to their homes on many occasions  
12 and pulled them out of bed to come and take a test if I felt  
13 that it had to be done at a certain time. I said you've got to  
14 come and take this test. Oh, I can't, I've got to get a shower  
15 first. I don't care about the shower. You can go back and get  
16 a shower later, No, I have to come -- I have to take a shower.  
17 She came to school dripping wet, basically, but she got her  
18 shower before she came in there. She couldn't stand to be  
19 dirty,

20 Q Did she pass the test?

21 A Yes,

22 Q Did you ever tell Laura Johnson that Blaise told you  
23 her parents were trying to hide her vehicle?

24 A I don't feel that I said that they were trying to hide

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T1ENKEN - CROSS

1 Q Even her attacker, she was compassionate  
2 towards --

3 A Yes.

4 Q -- her attacker?

5 A She was. I don't think she really wanted to have  
6 anything more to do with him,

7 MS. DiGIACOMO: Objection, Your Honor, This is  
8 speculation,

9 THE COURT: Sustained.

10 MS, DiGIACOMO: Move to strike,

11 THE COURT: Granted,

12 BY MS. GREENBERGER:

13 Q She was concerned that her attacker might have  
14 seen her vehicle and might come after her. Isn't that true?

15 MS, DiGIACOMO: Objection, misstates the  
16 testimony,

17 THE COURT: Sustained.

18 BY MS. GREENBERGER:

19 Q Did Blaise tell you why she was concerned about her  
20 car being seen, if you know?

21 A No, She never said why. I just have a feeling that I  
22 knew why.

23 Q Based on what Blaise told you?

24 A No. Based upon what I -- I had never seen her

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1 vehicle, but I had heard that she had an unusual license  
 2 number. Not something that someone would forget,  
 3 Q Were — you testified previously that dates were  
 4 suggested to you in this case, is that correct?  
 5 A Yes  
 6 Q By whom?  
 7 A Well, when I -- originally, I said to the -- even to the  
 8 police and to other people I wasn't sure when the date  
 9 happened, when she first came to talk to me. I wasn't even  
 10 sure when I really went to talk to Laura. But at that time,  
 11 Laura had said that she had done --  
 12 MS. DiGIACOMO: Objection, hearsay.  
 13 THE COURT: Sustained.  
 14 BY MS. GREENBERGER:  
 15 Q Were dates suggested to you by anybody besides  
 16 the police?  
 17 A Just Laura,  
 18 Q What about the prosecution?  
 19 A Well, that was later, though. But, I mean —  
 20 Q Well, that's just the question I'm focusing on. So at  
 21 some point in this case, even up 'til present, there have been  
 22 dates suggested to you?  
 23 A Yes, And one of the things that I specifically have  
 24 said is if we really wanted to get right down to the nitty-gritty,

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1 15<sup>th</sup> I just knew for sure that Blaise had come to me after the  
 2 4<sup>th</sup> of July. I do know it was after the 4<sup>th</sup> of July.  
 3 Q Isn't it true at one time prior to your testimony you  
 4 were isolated in a room for several hours?  
 5 A Yes,  
 6 MS, DIGIACOMO: Objection, relevance,  
 7 THE COURT: Overruled.  
 8 MS. DiGIACOMO: May we —  
 9 MS. GREENBERGER: Well —  
 10 MS. DiGIACOMO: May we approach?  
 11 THE COURT: Yes.  
 12 (Off-record bench conference at 13:02:16 until 13:03:17)  
 13 BY MS. GREENBERGER:  
 14 Prior to your previous testimony —  
 15 MS. DiGIACOMO: Objection, foundation.  
 16 THE COURT: Sustained.  
 17 BY MS. GREENBERGER:  
 18 Q You testified that you were put in a room for several  
 19 hours. When was that?  
 20 A At the last trial.  
 21 Q Where were you?  
 22 A In the courthouse, in a room. And it was really  
 23 funny because in the past at like at the hearing and even  
 24 today, I was able to sit outside with my friend, Laura, But on

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1 we could prove when things happened because the student  
 2 that I was working with got discharged from the jail in Pioche  
 3 sometime in July. I couldn't have gone to visit him or to teach  
 4 him if he wasn't even there at that time. And nobody has  
 5 looked into looking at the court records, which when you go in  
 6 to work with any prisoner it's recorded.  
 7 Q Isn't it true that the prosecution has rehearsed your  
 8 testimony with you previously?  
 9 A I don't think that you can say rehearsed. But I think  
 10 that it has -- that everybody has tried to tell me what, you  
 11 know, the kind of questions that we'll be going over,  
 12 Q Isn't it true that you believed the conduct in  
 13 suggesting dates was inappropriate?  
 14 A Well, I don't quite understand, like I said, why  
 15 everybody has really pushed so much about the date when, to  
 16 me, it could have been very quickly cleared up if somebody  
 17 would have just checked at the jail in Lincoln County.  
 18 Q Isn't it true that you felt like you were being  
 19 badgered when you weren't saying things —  
 20 A Oh, yes.  
 21 Q -- that people wanted to hear?  
 22 A Because people wanted me to say that the first time  
 23 that Laura and I talked was on the 18<sup>th</sup>, And even that date, I  
 24 wasn't sure of. I wasn't sure of the date of the 11<sup>th</sup> or of the

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1 the day of the court hearing, not the hearing but the court  
 2 date, someone from the prosecution that's not here now, when  
 3 I went up to sign my vouchers and things with Mary, they took  
 4 me to a room and they said that I had to stay there and the  
 5 door was closed. Somehow I got the feeling that it was  
 6 locked, but I never did get up to see if it was really locked, but  
 7 I did have to use the restroom and didn't know where -- how I  
 8 could get out of this room or where I could go. And I was  
 9 there for several hours,  
 10 Q And how did that make you feel?  
 11 A I was very upset. I felt like they were like punishing  
 12 me for not doing or not saying what they wanted me to say.  
 13 Q Had you had discussions with the prosecution prior  
 14 to this occurring?  
 15 A Yes, I did,  
 16 Q Did you believe this is in direct retaliation?  
 17 A I did because right prior to that, I had gone to meet  
 18 with —  
 19 Q A prosecutor?  
 20 A A prosecutor,  
 21 Q What had you told them?  
 22 A Basically the same thing that I'm saying now, that I  
 23 still was not sure of the date, basically that I just did not feel  
 24 that Blaise was ever capable of doing anything like this. And I

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1 have said that over and over and over again.  
 2 Q Did you also say you were positive that she never  
 3 told you her parents were trying to hide her car?  
 4 A Right. And I feel that they tried to use Laura and I  
 5 against each other,  
 6 Q Why?  
 7 A In the beginning, Laura felt the same way that I did,  
 8 And then, all of a sudden, she started feeling that —  
 9 MS, DiGIACOMO: Objection, speculation.  
 10 THE COURT: Sustained.  
 11 BY MS, GREENBERGER:  
 12 Q Do you believe in the past that the prosecution has  
 13 tried to control the nature of your testimony?  
 14 A I do feel that things have been taken out of context  
 15 and I do feel that they have tried to manipulate things to look  
 16 differently than what they actually were like.  
 17 Q Did they try to scare you a bit?  
 18 A I don't think that I could say they tried to scare me,  
 19 I think they -- it was like indicated that I should tell the truth  
 20 and that I should be careful of what I said, And it made me  
 21 angry to think that they were questioning that.  
 22 Q Did you feel your testimony was being manipulated  
 23 in the course of questioning in preparation by the prosecution?  
 24 A I believed that both sides want to hear certain things

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ENKEN - REDIRECT

1 MS. DIGIACOMO: May we approach?  
 2 THE COURT: Yes.  
 3 (Off-record bench conference at 13:11:06 until 13:11:38)  
 4 REDIRECT EXAMINATION  
 5 BY MS, DiGIACOMO:  
 6 Q Did you need something?  
 7 A I do.  
 8 Q What would you like?  
 9 A I really have to leave, and I've explained this many  
 10 times. I needed to be on the road by 1:00 o'clock, I can  
 11 come back but I cannot stay much later or I'm not gonna be  
 12 able to get home before it gets dark. And I can't drive after  
 13 dark.  
 14 MS. DiGIACOMO: Well, Your Honor, it's my  
 15 understanding from the defense that when she drove down  
 16 the other day she didn't leave until 330.  
 17 THE WITNESS: No. I left earlier than 3:30. I left  
 18 like 3:00 o'clock.  
 19 MS. DiGIACOMO: 3:00 o'clock, So as long as we  
 20 get you out of here by 3:00, which it shouldn't be much  
 21 longer,  
 22 THE WITNESS: But coming down here is a lot  
 23 different than going back. Going up there, the road -- I'm not  
 24 afraid of bright lights I'm afraid of cows and horses on the

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1 and so they're trying to draw out those particular things that  
 2 they do want to have pointed out to the jury. Yes, I do feel,  
 3 But I do feel that that happens both ways.  
 4 Q Were you told by someone of the prosecution they  
 5 just want a conviction and want to get it over with?  
 6 MS. DiGIACOMO: Objection, hearsay,  
 7 THE COURT: Sustained,  
 8 (Pause in the proceedings)  
 9 BY MS. GREENBERGER:  
 10 Q Did my client ever tell you that she had any  
 11 interactions with a homeless man?  
 12 MS, DiGIACOMO: Objection, foundation. Ever?  
 13 BY MS. GREENBERGER:  
 14 Q Did my client ever tell you —  
 15 MS. GREENBERGER: I'll rephrase it,  
 16 BY MS GREENBERGER:  
 17 Q -- that she had any interaction with a homeless man  
 18 at the time she described her attack to you?  
 19 A No, she didn't mention homeless. No She  
 20 mentioned that the person was smelly, but smelly could be  
 21 somebody that had bad BO.  
 22 MS. GREENBERGER: The Court's indulgence.  
 23 Nothing further,  
 24 THE COURT: Redirect.

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TIENKEN - REDIRECT

1 road, I mean, coming here it's bright when you come down to  
 2 Las Vegas. Going there it's dark. And it gets dark, you know,  
 3 it's getting dark by the time —  
 4 MS. DiGIACOMO: Well, Your Honor, if we have to  
 5 we'll find someone to drive her home. I don't know what to  
 6 say. We have to finish with this witness,  
 7 THE COURT: All right, You may proceed,  
 8 THE WITNESS: I can come back. I just have to be  
 9 there in time to do things.  
 10 BY MS. DiGIACOMO:  
 11 Q Ms. Tienken, now you established on cross-  
 12 examination, it's fair to say, that you're not on the side of the  
 13 State in this case, correct?  
 14 A I want to see the truth come out. But in my  
 15 feelings, I do not feel that Blaise was ever capable of ever  
 16 killing anyone or really hurting anyone to that extent.  
 17 Q And I think you've made that clear.  
 18 A Yes.  
 19 Q So it's not -- it's fair to say that you're not supporting  
 20 the State's side in this case, are you?  
 21 A No  
 22 Q Okay. Now you've made several allegations about  
 23 the State here, that we've tried to control your testimony, that  
 24 we've tried to force dates on you, that you feel like we've

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TIENKEN REDIRECT

1 retaliated against you. But you do admit we just asked you to  
 2 tell the truth?  
 3 A That's correct, But keeping me in a room for several  
 4 hours was uncalled for.  
 5 Q Okay, But you understand, too, it hadn't -- that Mr.  
 6 Kephart and I, we were In court and knew nothing about that?  
 7 A I know that because when you came up to interview  
 8 me, I asked who that man was because I didn't -- and I said,  
 9 you know, at first I thought it was -- I thought it was the  
 10 defense lawyer that had taken me to that room.  
 11 Q Okay, But it was --  
 12 A But it was not.  
 13 Q It was in our Victim Witness Advocate Center,  
 14 correct?  
 15 A It wasn't in the regular room, No I mean, it was  
 16 off of that room,  
 17 Q Right. It's an interview room or a small like a  
 18 conference room that they have in the Victim Witness Center,  
 19 A I don't know,, I haven't seen the other rooms. But it  
 20 was definitely not the open room,,  
 21 Q No, not the waiting area when you first come in?  
 22 A Right,  
 23 Q Okay, And isn't it fair to say that when you were  
 24 down here testifying at the prior proceeding that you were

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NKEN - REDIRECT

1 THE COURT: You get -- you don't get to direct the  
 2 questions. When the questions come to you, you have to take  
 3 the question as it's phrased and do your best to respond to it  
 4 as it is phrased.  
 5 THE WITNESS: Okay, Yes.  
 6 BY MS. DIGIACOMO:  
 7 Q Okay. And so wasn't the reason that you were put  
 8 in this room so that you could collect yourself and have time to  
 9 gather yourself?  
 10 A No.  
 11 Q So your testimony is that the reason you were put  
 12 into a small room or a special room in the Victim Witness  
 13 Center was purely retaliation?  
 14 A I do feel that,  
 15 Q Okay, And up until that time, you had -- you had  
 16 given two prior statements --  
 17 A That's correct.  
 18 Q -- regarding this case? And that's fine, Now you  
 19 talked about how people have tried to force dates on you.  
 20 Isn't it true that we told you, the State told you, that don't  
 21 worry about the dates because we -- you had stressed that  
 22 dates aren't important to you -- or not important, that are hard  
 23 to remember for you?  
 24 A Yes. But that was at this time. That was not the

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TIENKEN - REDIRECT

1 pretty upset about testifying? You had some anxiety about it?  
 2 A Well --  
 3 MS. GREENBERGER: Objection, leading,  
 4 THE WITNESS: I don't know that I would say  
 5 anxiety,  
 6 MS, DIGIACOMO: Your Honor, she's an adverse  
 7 witness,  
 8 THE COURT: Overruled.  
 9 THE WITNESS: Are we ready?  
 10 BY MS. DIGIACOMO:  
 11 Q I'm sorry, Well, I mean, when we talked to you, you  
 12 expressed to us that you were --  
 13 A Well, yeah,  
 14 Q -- had anxiety.  
 15 A But you have to --  
 16 Q Correct?  
 17 A -- remember that --  
 18 Q I'm sorry, Ms. Tienken. It's a yes or no answer.  
 19 You did express to us that you had some anxiety about  
 20 testifying at the prior proceeding, correct?  
 21 MS, GREENBERGER: Your Honor, I would object  
 22 and let her explain her answer,  
 23 THE COURT: Overruled. You --  
 24 THE WITNESS: I --

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TIENKEN REDIRECT

1 way it was the last time.  
 2 Q But your -- the way you've testified today is  
 3 consistent with the last two times regarding the July --  
 4 A Yes.  
 5 Q jth date, correct?  
 6 A Yes.  
 7 Q Now you said today with regard to the dates that  
 8 there was a student that you were counseling in the jail and  
 9 somebody could have checked regarding when he was  
 10 released. Do you recall that?  
 11 A In the jail.  
 12 Q Right. That's what I -- in the jail, Do you recall  
 13 that?  
 14 A Yes.  
 15 Q And you just testified to that?  
 16 A Yes,  
 17 Q And what was the student's name?  
 18 A It's Biggs' brother, Jason. I'm sorry. I can't  
 19 remember his last name.  
 20 Q That's fine.  
 21 A But it's Jason's -- I mean, Jason was his name,  
 22 Q Okay. That's fine. So Jason,  
 23 A But it's Biggs' last -- it's Biggs' brother. And I can't  
 24 think of his last name, but if I had my school records I could

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TIENKEN - REDIRECT

NKEN - REDIRECT

1 tell you.  
 2 Q And this is the —  
 3 A And there was another student as well.  
 4 Q Okay. And this is the person that you were going on  
 5 Wednesdays to counsel?  
 6 A That's correct,  
 7 Q How long were you going on those Wednesdays?  
 8 A As long as he was in jail.  
 9 Q Okay. So how many weeks was that?  
 10 A He had started in my program before he got  
 11 arrested. He was arrested for alcohol. And then I worked  
 12 with him for several weeks after, you know, while he was still  
 13 in jail. And then when he got out of jail, he came in and  
 14 finished his program and did his GED and got his diploma as  
 15 well.  
 16 Q Okay. And now what date did he get out of jail? Is  
 17 that the date that you're saying is important?  
 18 A Well, I felt that if they were trying to say that I  
 19 worked with him after a certain date, all they had to do was  
 20 check with the court records and they could see when he got  
 21 out. I know he was released in July, I have not made any  
 22 effort to go back to find that out, nor has the court.  
 23 Q Okay, Now, would you agree with me that the fact  
 24 of this student being discharged and that would help with a

1 Q But if the police had looked up these records, they  
 2 would have found a series of Wednesdays, correct?  
 3 A Only while that prisoner was in jail.  
 4 Q Did --  
 5 A I didn't go --  
 6 Q Did you --  
 7 A Okay, If I worked with a different prisoner at a  
 8 different jail because there's a — we have a prison as well, and -  
 9 then we also have CYC which is the youth center, and I did not  
 10 go to the same, you know, to the same location on  
 11 Wednesdays. If I didn't have a prisoner at that jail, I would  
 12 have gone to a different location, either to the prison or to CYC  
 13 or one of the other locations,  
 14 Q So is it --  
 15 A So it was important because Laura's office was  
 16 upstairs and I went to see her the same day,  
 17 Q You went to see her the same day that you taught?  
 18 A Okay.  
 19 Q Or you went to the jail downstairs and counseled?  
 20 A I went to the jail downstairs. I did go up to her  
 21 room. And the first time I went up there she was not there. I  
 22 left a card. But I didn't make — you know, I didn't call her or  
 23 really -- because it just didn't seem all that really important.  
 24 And then I knew that I would, if she didn't call me back, I

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TIENKEN - REDIRECT

TIENKEN - REDIRECT

1 certain date, this is the first time that you've notified the State  
 2 of this fact?  
 3 A No,  
 4 Q When did you notify the State of this fact previously?  
 5 A Well, they've known that all along because in the  
 6 very, very first statement that was made to the police in July  
 7 26<sup>th</sup>, or whenever it was, I said that I was visiting a student  
 8 and another student that was in the jail. They knew exactly  
 9 that I was going to the jail,  
 10 Q Right. But when was it that you brought up the fact  
 11 of when this student was released would help with the date?  
 12 A I felt that if they really wanted to do that, since you  
 13 people are supposed to be involved with the law and you know  
 14 how jails run a lot more than I do, you would know that they  
 15 would have to keep records of when someone came in to talk  
 16 with him or to teach him or to visit him.  
 17 Q That's correct, But you also indicated that you had  
 18 been going for several weeks, talking to this individual.  
 19 A Yes.  
 20 Q So isn't it more important the fact that you went on  
 21 Wednesdays to the jail more important than who you saw?  
 22 Because for you, you already testified that you knew it was a  
 23 Wednesday 'cause you went to the jail.  
 24 A That's correct.

1 would stop the following Wednesday, which I did. It was just  
 2 if I happened to be in the same building where a friend is, I  
 3 would stop. Sometimes we'd go to lunch or go get a soda or  
 4 something.  
 5 Q Okay. So my question was did —  
 6 A I didn't always go to that building on a Wednesday.  
 7 No, I did not.  
 8 Q Which building?  
 9 A To the courthouse is what I'm trying to say. But I  
 10 was at the courthouse those two times, one when I left the  
 11 card and one when I went up to see Laura's —  
 12 Q Okay.  
 13 A You know, and actually saw her  
 14 Q But you were in the courthouse those two days  
 15 because that's where the jail was that you were doing your  
 16 classes?  
 17 A That's correct. I just don't know what those dates  
 18 were.  
 19 Q Right. I understand that. And but you just know it  
 20 was a Wednesday?  
 21 A Yes.  
 22 Q And it was a Wednesday in July?  
 23 A That's correct,  
 24 Q And you made that clear to the police?

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TIENKEN - REDIRECT

ENKEN - REDIRECT

1 A Yes.

2 Q Okay. And in fact when you first talked to the police

3 in your statement, you looked at a calendar and you told them

4 you thought it had been July 8 — or July 11th?

5 A That's correct.

6 Q Okay. But you made very clear you weren't sure of

7 the date?

8 A That's right,

9 Q And at that time, how did the detectives force on

10 you the dates?

11 A The date that I went to visit Laura was forced on --

12 upon me because she said that she knew it was the date that

13 she had pulled a urinalysis of somebody else.

14 Q Okay So you're talking about Laura forcing a date

15 on you?

16 A That's correct.

17 Q Okay. But that's not the police,

18 A Well, because they were the ones that said that she

19 could establish the date.

20 Q Okay. So what your testimony really is, the police

21 were not concerned about what date you knew because Laura

22 was aware of what date it was you came and talked to her. Is

23 that fair?

24 A No. I think at first Laura wasn't even sure, And

1 A Okay.

2 Q -- what you answer to this question, correct?

3 MS. GREENBERGER: Your Honor, she's cutting --

4 THE WITNESS: Well, okay,

5 MS. GREENBERGER: -- the witness off. Can the

6 witness answer her question before the next question is

7 posed?

8 THE COURT: If the witness is going to be

9 responsive to the question, she may, The Court overrules\_

10 BY MS, DiGIACOMO:

11 Q Go ahead.

12 A Okay. I was surprised when, you know, a copy of

13 the transcript was provided to me. I mean, I really was.

14 Q Well --

15 A But I've never really testified in a court case like this

16 before and I know that a long period of time has happened.

17 So everybody kept saying now make sure you read what you

18 said before.

19 Q To refresh your recollection. Well, let's take it

20 another way. It has been several years since you've talked to

21 the police and testified?

22 A Oh, yes, it has,

23 Q Okay, And isn't it fair to say that somebody's

24 memory is better closer in time to the event than years later?

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TIENKEN - REDIRECT

TIENKEN - REDIRECT

1 then she tried to stop --

2 Q Okay. I'm —

3 A -- and think about it,

4 Q Okay. So but that's not my question. When the

5 police — you've talked about the State forcing this stuff on you.

6 What I'm asking you is, based on what you just said, it was

7 Laura forcing dates on you, not the police,

8 A I don't think Laura ever meant to force things on

9 me. She just said I know it was this date because I did this

10 urinalysis.

11 Q Okay. So —

12 A Okay\_

13 Q Is it fair to say then that maybe Laura is more sure

14 of what date it was you talked to her than you are?

15 A Yes.

16 Q Okay. Now you were asked a question about the

17 State rehearsing your testimony. Do you recall that question

18 by the defense?

19 A Yes,

20 Q Do you feel the State has rehearsed your testimony?

21 A Not really rehearsed because —

22 Q Well, that --

23 A But --

24 Q That would entail us saying, okay, here's --

1 A All you have to do is look in a classroom. There's a

2 little thing, an exercise, that's given a lot of times, And, you

3 know, when you say things, things can get out of whack. I'm

4 sure that everybody here has played a little game in school at

5 one time or the other, could have been as early as first or

6 second grade, could be all the way in high school. You can

7 start something with one student, and by the time it gets to

8 the thirtieth student it doesn't even sound like what happened

9 to the first student. And I think that happens over and over

10 again.

11 Q Right. But, okay —

12 A But I think that even when I repeat something, I

13 don't want to color anything. I don't want it to be different.

14 But I do feel that when you are exposed to different things

15 you're gonna hear different things and different things are

16 gonna stick in your head, too.

17 Q Right. But I guess my question is would you agree

18 that when you talked to the police in July, 2001 things were

19 more clear in your mind about your conversations with Blaise,

20 the things you knew, before you heard from other people

21 other things, than it is five years later?

22 A Yes, That's true,

23 Q So knowing now five years later you have to recall

24 these events, wouldn't you want your prior testimony and your

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TIENKEN - REDIRECT

1 prior statements to read to refresh your recollection as to what  
 2 you had said before?  
 3 A I do think so, but I also think --  
 4 Q So are you saying that you would rather that the  
 5 State had not have provided you with anything and made you  
 6 come up on the stand and recall this on your own?  
 7 A I don't even think that it has to do so much with that  
 8 as the fact that you came to my home just a week ago, a lot of  
 9 different things. You know, it's really been a strange thing for  
 10 me.  
 11 Q So you do kind of feel that by us providing you with  
 12 this stuff that you had testified to or stated before you felt like  
 13 we were forcing upon you what we wanted you to testify to?  
 14 A Okay. It's not just the things that were provided to  
 15 me; it's the other things that have been said. And, as you  
 16 know, I asked you very point blank that I really wanted to --  
 17 Q Well --  
 18 A -- know about the person that was dead because I  
 19 know that at the last hearing that they tried to say it was two  
 20 different incidents\_  
 21 MS. DiGIACOMO: Okay, Your Honor, I think she's  
 22 getting beyond what she should be testifying to. I mean, it's  
 23 starting to get non-responsive,  
 24 THE COURT: Sustained,

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ENKEN - REDIRECT

1 defense?  
 2 A I met with the defense yesterday for a short time,  
 3 not nearly as long as I've talked with you,  
 4 Q Did they ever come to your house?  
 5 A Not this time but last time,  
 6 Q Okay. So and let's include last time. I mean, so  
 7 you've talked to them --  
 8 A But that's different lawyers this time,  
 9 Q Right. So it's your testimony that you've never  
 10 spoken to any of these three lawyers or investigator even for  
 11 these attorneys except for yesterday regarding this case?  
 12 A No, that's not true,  
 13 Q Okay.  
 14 A I've talked with them. I knew that the case was  
 15 coming up. But do you know I didn't even know. I thought  
 16 maybe the thing had been dropped because the last I heard --  
 17 MS, DiGIACOMO: Your Honor, getting non-  
 18 responsive again.  
 19 THE COURT: Sustained,  
 20 BY MS. DIGIACOMO:  
 21 Q Okay, So you've talked to them several times?  
 22 A Well, not directly with them but with other people  
 23 because at one time you were gonna have the court case --  
 24 Q Who's the other people if you're not talking to the

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TIENKEN - REDIRECT

1 BY MS DiGIACOMO:  
 2 Q Is it fair to say since you had to deal with this back  
 3 in 2001, 2002, that you've heard a lot of things about this case  
 4 since that time?  
 5 A I've tried to not listen to a lot of things.  
 6 Q But you have heard it?  
 7 A You do hear it.  
 8 Q Okay, It's a small town, people talk, correct?  
 9 A Actually, I can truthfully say that I really haven't  
 10 heard a lot of people talk about it in Panaca, only because if  
 11 they bring it up, I haven't wanted to talk to them about it,  
 12 Q But you do kind of know what's going on with the  
 13 case more than your small role that you play here, correct? I  
 14 mean, you were just trying to talk about, you know, two  
 15 different incidents just a minute ago. You didn't know that  
 16 when you talked to Blaise in July, 2001\_  
 17 A No, I did not,  
 18 Q Okay. So it's fair to say you have heard some things  
 19 since then?  
 20 A Yes, I have.  
 21 Q And in fact you've talked to the defense in this case,  
 22 haven't you?  
 23 A I have  
 24 Q Okay. How many times have you talked to the

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TIMKEN - REDIRECT

1 attorneys or their investigator?  
 2 A I believe it was Mary from the court's office because  
 3 at one point you were going to have --  
 4 Q Okay. But --  
 5 A -- the trial many -- like almost --  
 6 Q Okay,  
 7 A -- eight months ago.  
 8 Q Okay. But --  
 9 A And I was in a cast\_ I couldn't have come.  
 10 Q So you -- I'm not talking about scheduling and who  
 11 you've talked to about subpoenas. I'm asking you how many  
 12 times you've talked to the defense attorneys or their  
 13 investigators or somebody on their team about this case.  
 14 A I've talked to them several times.  
 15 Q All right.  
 16 A But I have only met in real person with them one  
 17 time,  
 18 Q And that was yesterday?  
 19 A I'm trying to think. I think before the last time when  
 20 we were gonna go to trial, I think I may have met with  
 21 somebody before that,  
 22 Q Okay,  
 23 A At my house,  
 24 Q Okay. From the defense side?

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TIENKEN - REDIRECT

A Yes.

Q Okay. Now, did you learn any new information, not talking to either side, on your own about this case since you've previously been asked about it?

A I've really tried to, without — without really trying to color it,

Q Okay. So have you, for instance, read newspaper articles about this?

A I can truthfully say I have not read any new newspaper articles because I was asked not to,

Q Okay. Have you —

A And so I have not read any since the last trial.

Q Have you seen any programs, television programs, or newscasts regarding this case?

A No.

Have you read anything on the Internet about this case?

A I did read one thing.

Okay.

A It's —

So—

A I did not read the latest things.

Okay,

A Because I was made aware of it and they said did

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ENKEN - REDIRECT

1 When I was asking you questions and about looking on the Internet, you said that you went all the way back to July 1,

3 A But I meant June 1".

4 Q Okay.

5 A I'm sorry,

6 Q In fact it was defense counsel that pointed —

7 A Yes.

8 Q — out your mistake, wasn't it?

9 A Yes,

10 Q And you also said that that was referenced before, that you had stated that before?

12 A Yes.

13 Q Okay.

14 A And I think that it is somewhere **in here because I** think that I read that when I went over this. I didn't make a big study of my past testimony but I did read it through,

17 Q Okay, So in fact you've had three opportunities to talk about this case. Is that fair to say? You gave a statement to the police July, 2001. You were asked to testify August, 2001 and again in May, 2002. Is that fair to say, you've had three opportunities to talk about this?

22 A That's correct.

23 Q Okay. And is it your testimony that somewhere within those three transcripts June 1 is mentioned?

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TIENKEN - REDIRECT

1 you do this, and I said no

2 Q Okay,

3 A But a long time ago, I did.

4 Q A long time. Okay.

5 A It was while --

6 Q Today you mentioned something about an attempted sodomy.

8 A I didn't.

9 Q Do you recall that?

10 A **No**. I didn't mean a sodomy. That was my terminology and that was wrong. And I said, no, that's wrong. I said that she -- that they tried -- that the man tried to put his penis in her mouth.

14 Q Okay,

15 A And that is my mistake. Sodomy is not the correct terminology,

17 Q Okay. So you weren't talking about something else; you were talking about the penis in the throat when you meant -- when you said sodomy?

20 A Yes

21 Q So you haven't heard anyone else in this case discuss anything regarding the term "sodomy"?

23 A **No**

24 Q Okay. Now you had mentioned a few things today.

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TIENKEN - REDIRECT

1 A I believe so,

2 Q Okay, If you could just go ahead and flip through those and let me know when you find it,

4 A Okay.

5 (Pause in the proceedings)

6 A Okay. When -- on page 14.

7 Q Of your statement?

8 A Of the voluntary statement. This is one reference to May or June. And that was when I said about -- they asked me, you know, when I thought that she had been in Las Vegas, And I said -- and he -- I said, "I believe it was in June but it could have been in May."

13 And he said, question, "May or June of this year?"

14 And I said, "Yes,"

15 "Did she tell you what establishment it was or" —

16 Q Okay.

17 A — "anything like that?"

18 Q Okay.

19 A There's that reference. But I know there is --

20 Q But —

21 A — another one --

22 Q No. But what I'm —

23 A where I say about --

24 Q Yes.

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TIMKEN - REDIRECT

1 A -- the Internet use, too.  
 2 Q That's what I'm specifically asking you —  
 3 A Okay. I'm —  
 4 Q -- to find the reference.  
 5 A I'm trying to find that,  
 6 Q Okay.  
 7 A And I don't know where it was. I just thought that I  
 8 had read that back through again.  
 9 (Pause in the proceedings)  
 10 A I've read through the testimony up through 102 and  
 11 I have not found it, and I think that it would have been prior  
 12 to that. So maybe I was just wrong in thinking that I had that.  
 13 Maybe when I read that other date of June, that's when I  
 14 thought it, But I really did feel that I had read it in here,  
 15 Q So, well, you would agree with me you've read  
 16 through the statement you gave to the police on July 26th?  
 17 A I've read through the statement on June 26<sup>th</sup> and I  
 18 did not see it there, and I've read through the hearing, and  
 19 I'm now reading through the —  
 20 Q The second hearing?  
 21 A The trial or whatever you want to call it. There was  
 22 not two hearings. There was only one hearing that I'm aware  
 23 of. One was a —  
 24 Q Well, there's two times you gave testimony at —

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EWEN - REDIRECT

1 recorded?  
 2 A Right.  
 3 Okay.  
 4 A Right.  
 5 And you --  
 6 A And, you know, I can only see what was written  
 7 down, what you gave me a copy of. But there were a lot of  
 8 things that were discussed with the police and —  
 9 Q But not on the tape?  
 10 A Right, And although a copy was given to me at the  
 11 last trial, on the day that I left from, and I think this is  
 12 important, on the day after I testified at the last court trial, I  
 13 destroyed those copies. I didn't even take them back home.  
 14 Q So before the last proceeding, you were allowed to  
 15 see copies of your statement and your prior testimony?  
 16 A That's correct.  
 17 Q Now since you've just kind of looked through your  
 18 statements and all your testimony —  
 19 A Uh-huh.  
 20 Q — did you find anything in there talking about how  
 21 her attacker was a big man?  
 22 A I wasn't looking for that specifically. But I do know  
 23 that she and I really talked about that because we did this  
 24 comparison —

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TIENKEN - REDIRECT

1 A Yes.  
 2 Q -- two prior proceedings?  
 3 A Yes. And I do not see it there. But I did, you know,  
 4 reference to that other thing of June, and so perhaps —  
 5 Q Right. When she — when you thought she had  
 6 moved down to Vegas or gone down to Vegas?  
 7 A Right.  
 8 Q Okay.  
 9 A But I'm -- I am so sure that we did check back that  
 10 far. And, again, if this could have been proven by something  
 11 but now it can't be proven because I don't even have the same  
 12 computer or anything. And if it had been thought that it was  
 13 an important factor at that time, it could have been brought  
 14 out at that time.  
 15 Q Okay, But you agree with me it was never  
 16 mentioned to the police how far back your search was or in  
 17 either -- any time you've testified?  
 18 A I feel confident.  
 19 Q Right.  
 20 A I feel really confident that I did mention to them,  
 21 but maybe they did not ask any question about that,  
 22 Q Okay. So that would have been —  
 23 A In the police statement.  
 24 Q That would have been when it wasn't being tape-

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TIENKEN - REDIRECT

1 Q Well, and I —  
 2 A — with other students.  
 3 Q I understand you and her talked about it. But would  
 4 you agree with me that it's not in the statement to the police,  
 5 nor either time that you testified previously?  
 6 A I don't know that.  
 7 Q Okay, Would you like to go through?  
 8 A No, I don't.  
 9 Q Okay,  
 10 A Because the time is really going fast and I really  
 11 need to leave,  
 12 Okay. So you won't agree with me that it's not in  
 13 there?  
 14 A No, I won't agree with you because I --  
 15 Then I'm gonna need to ask you to go through all  
 16 three again,  
 17 A I don't have time, I'm sorry. I cannot. I do not  
 18 have time to do that at this point.  
 19 THE COURT: As I told you, you do not get to direct  
 20 the questioning. When the question is directed to you, you  
 21 need to respond to the question,  
 22 THE WITNESS: Well, I already responded, No, I  
 23 won't say that,  
 24 THE COURT: You need to go through those three

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TIENKEN - REDIRECT

1 documents and review them for a reference to "big man."  
 2 (Pause in the proceedings)  
 3 THE WITNESS: Okay. Again, I do not see anything  
 4 in here, and I have not read the whole thing through again but  
 5 I've tried to go through it, where it says "big." But I do know  
 6 that Blaise did talk to me and we did compare size and  
 7 description with people, with students that was there, And I  
 8 do know that on more than one occasion, I found it was really  
 9 important to find out if he was a big man,  
 10 BY MS DiGIACOMO:  
 11 Q Okay, So —  
 12 A And you know that as well because I questioned --  
 13 Q Okay.  
 14 A — you about it.  
 15 Q Right. When we spoke last Friday,  
 16 A And I've questioned that before that.  
 17 Q Okay. But you would —  
 18 A That was questioned many times before that,  
 19 Q But you would — you'd agree with me, though, in  
 20 the three recorded testimonies or statements we have from  
 21 you it's not in there?  
 22 A No, at least I don't see it.  
 23 Q Okay, So you agree with me then?  
 24 A I agree that it's not in this, but that doesn't mean I

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ENKEN REDIRECT

1 said to me older, to me.  
 2 Q She said older or old?  
 3 A Old.  
 4 Q Okay. So and when she -- that's all she said was  
 5 "old" and didn't describe it anymore?  
 6 A She also said "smelly."  
 7 Q No, no, no.  
 8 A That doesn't mean homeless,  
 9 Q No, no. I'm sorry, She didn't describe what she  
 10 meant by "old" any more?  
 11 A No,  
 12 Q Okay, But you just interpreted it to be somebody  
 13 such as your age or older?  
 14 A Right.  
 15 Q Okay.  
 16 A Maybe not even my age but well over her father's  
 17 age.  
 18 Q Now you talked about that you have this alternative  
 19 high school program that you ran?  
 20 A That's correct.  
 21 Q What specifically is it? I mean, obviously, instead of  
 22 going to a regular high school you have this program, but  
 23 what kind of kids get into your program?  
 24 A All different kids. I had many students that had

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TIENKEN - REDIRECT

1 didn't state that many —  
 2 Q No.  
 3 A -- times before,  
 4 Q Okay, Now —  
 5 A It also said right from the beginning, and I can give  
 6 reference to that --  
 7 MS. DiGIACOMO: Your Honor, there's no —  
 8 THE COURT: You don't have —  
 9 THE WITNESS: -- that it was an old man.  
 10 MS. DiGIACOMO: Your Honor.  
 11 THE COURT: Ms., Tienken, you don't have a  
 12 question pending Wait for your next question.  
 13 THE WITNESS: Okay,  
 14 BY MS, DiGIACOMO:  
 15 Q Okay, Now you also talked about the fact you did  
 16 say that her attacker was old or she said that her attacker was  
 17 old?  
 18 A Yes.  
 19 Q Okay. Now, wouldn't you agree with me that  
 20 somebody who's eighteen years old, even somebody thirty  
 21 years old seems old to them?  
 22 A Sometimes. But I think she would have made more  
 23 of a reference if he had been like her father's age, if she would  
 24 have -- she would have made a reference to that. But she

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TIENKEN - REDIRECT

1 been home schooled up through middle school that came into  
 2 my program that had never attended regular public school but  
 3 wanted to get a high school diploma. I had students that had  
 4 been suspended from the high school, and Blaise never was  
 5 ever suspended, or that had court. If they have been involved  
 6 with the court, whether they were on probation or parole,  
 7 many times they're not allowed to attend the regular high  
 8 school. But you must realize that there were probably just as  
 9 many kids that never had any bad problems with the law as  
 10 there were kids that did have problems with the law, And I  
 11 think it's really important to realize that  
 12 Q Okay. Thank you. That wasn't my question  
 13 regarding people with the -- that had problems with the law. I  
 14 was just asking you the different types of people 'cause you  
 15 said that there was all different ages,  
 16 A That's correct,  
 17 Q That was my only question.  
 18 A Okay,  
 19 Q Now you had talked about that your house, you  
 20 know, kids would come over. They felt comfortable coming to  
 21 your house. It was a safe house,  
 22 A That's correct  
 23 Q And you said that Braise spent three hours with you  
 24 that morning?

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TIENKEN - REDIRECT

1 A That's correct.

2 Q That you talked to her in July. Is it true to say that

3 when she left your residence that she felt better than when

4 she arrived?

5 A I would hope so,

6 Q Well, you saw her and her demeanor. You said

7 when she first came --

8 A Okay. When she first came to see me, she wasn't

9 crying when she first came there. She just told me that she

10 had done something bad. She did end up crying when she

11 was telling me about the incident but she also laughed about

12 other things

13 Q Okay, Well, you know, isn't it true that when she

14 first came she gave you a hug and she said --

15 A Yes,

16 Q -- "I need to talk to you, I've done some" --

17 A "I need to talk to you "

18 Q You need to let me finish first. We both can't speak

19 over each other. But, yeah, she gave you a hug. She said,

20 "I've done something bad and I need to talk to you."

21 A That's right.

22 Q But when she left, she -- is it your opinion she felt

23 better than when she first arrived and needed to get this off of

24 her chest?

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ENKEN REDIRECT

1 you --

2 A Okay.

3 Q -- said sexually proposition,

4 A Okay.

5 Q It just says "proposition," correct?

6 A That's right,

7 Q Okay. And it's also true that the reason that you

8 had this impression that it might have happened, this attack

9 happened, a couple of days before she came to see You was

10 because she was so upset about it?

11 A She was upset about it.

12 Q Right. But it -- but that's the reason why you

13 thought it might have happened a couple of days before. She

14 never told you. You got that impression 'cause she was so

15 upset?

16 A She never told me,

17 Q Okay. So is that a correct statement that you got

18 that impression because she was so upset about it?

19 MS. GREENBERGER: Objection, asked and

20 answered.

21 MS. DiGIACOMO: It's not been answered, Your

22 Honor,

23 THE COURT: Overruled.

24 THE WITNESS: I felt -- I don't know that I could

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TIENKEN REDIRECT

1 A Yes.

2 Q Now you had talked about different kind of

3 programs with Biaise that morning and you'd mentioned a

4 drug program?

5 A That's correct,

6 Q And then you said some other programs. What

7 other programs?

8 A Anger management,

9 Q In fact, didn't you start an anger management

10 counseling with her that morning?

11 A Basically, we did.

12 Q Isn't it true also that when she was relaying to you

13 what had happened to her with this attack that she told you it

14 started because the gentleman said something to her or

15 propositioned her in some way and she tried to brush him off?

16 A Okay, When I say proposition, I did not mean

17 sexually proposition at first. I feel that he just tried to talk

18 with her. And Blaise at that time in her life, if she didn't want

19 to be bothered with you, she'd brush you off.

20 Q Okay. So it's your testimony then that you did use

21 the term "proposition" when you spoke to the police?

22 A Yes. But I tried to make it quite clear, and I think

23 that you'll see that it says that, too.

24 Q Right. No. I didn't say anywhere in your testimony

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TIENKEN - REDIRECT

say a couple of days but I thought that it had happened not a

2 long time ago. It didn't happen like a year ago.

3 BY MS. DiGIACOMO:

4 Q Okay. Well --

5 A I know that you're gonna turn to something and

6 you're gonna say that I said that, and that probably is there.

7 But I'm also stating that after I've given a lot of thought to it, I

8 don't believe that now,

9 Q Okay. So at the time you talked to the police, you

10 thought it happened and you -- page 12, line 3, "A day or two

11 days before that," because she was so upset?

12 A And I also say many other places --

13 Q Well, wait. Well, let's --

14 A -- throughout the whole testimony --

15 Q I understand that, but can we just -- that is correct

16 what you said to the police?

17 MS. GREENBERGER: Your Honor, can the witness

18 finish her answer?

19 MS. DiGIACOMO: She hasn't answered my question

20 before she's saying her own answer.

21 THE COURT: Overruled.

22 BY MS. DiGIACOMO:

23 Q So it's --

24 A I'm sorry. Say that again.

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TIENKEN REDIRECT

1 Q -- true on page 12 you do say, "I got the impression  
2 that it just happened a day or two days before that" And they  
3 asked you what gave you that feeling. "Because she was so  
4 upset," Is that true that's what you told the police back in July  
5 of 2001?

6 A That's correct what I said to the police at that time.

7 Q Okay. But you just don't believe that now? Yes or  
8 no.

9 A No, I don't believe that now.

10 Q Okay. Now today you said that when Blaise was  
11 first attacked that she tried to stab up first?

12 A That's correct,

13 Q And you said that on direct testimony?

14 A Yes,

15 Q Okay. And I pointed out that it's not in your  
16 previous statement or your prior testimonies, correct?

17 A That's right,

18 Q All right. And then on cross-examination you  
19 expanded a little bit further, that she tried to stab up into the  
20 attacker's abdomen?

21 A Well, yes, because that's where he was positioned  
22 on her.

23 Q Well, what I'm asking you is do you recall her saying  
24 abdomen or not, or are you just assuming that's where she

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

5 The jury may exit at this time.

6 THE WITNESS: Your Honor, I cannot stay.

7 THE COURT: You need to be quiet,

8 (Jurors recessed at 14:11:49)

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

11 Counsel at sidebar brought up to the Court's  
12 attention that Laura is out in the hallway. I don't believe that  
13 anybody has formally invoked the exclusionary ruler

14 MR. KEPHART: We haven't.

15 MS. DiGIACOMO: We haven't. But we're invoking it,  
16 I guess.

17 THE COURT: Okay. During this lunch recess, you're  
18 not permitted to speak about anything about this case with  
19 anyone, not with the attorneys for the State, not with the  
20 attorneys for the defense, not with your friend, Laura. You're  
21 not allowed to talk about what your testimony has been here  
22 today thus far. Somebody from the District Attorney's Office  
23 will be escorting you back to Panaca.

24 We'll be in recess 'til 3:15.

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1 tried to stab up?

2 A I doubt that she would have said abdomen. I think  
3 she said probably "stomach."

4 Q Okay, But you do recall her referencing that area?  
5 And do you recall — is that a yes or no?

6 A I believe so.

7 Q All right. And you do recall her --

8 THE COURT: I'm gonna ask counsel to approach,  
9 (Off-record bench conference at 14:09:27 until 14:10:38)

10 THE COURT: Ladies and gentlemen, we really did  
11 not anticipate that this testimony would be this lengthy and,  
12 obviously, we are having to move to plan B. I'm sure that  
13 everybody is hungry and so we're gonna take our lunch break  
14 at this time. We'll be resuming with this witness at 3:15.

15 The Court's gonna ask that at 3:15 you please be in  
16 the hallway, The bailiff will meet you there to return you to  
17 your seats in the courtroom. And I guess the good news is we  
18 shouldn't have to wait in line too long to get lunch at this  
19 point

20 During the recess you're admonished not to talk or  
21 converse among yourselves, nor with anyone else, on any  
22 subject connected with the trial, and you should not read,  
23 watch or listen to any report of or commentary on the trial or  
24 any person connected with the trial, by any medium of

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1 (Court recessed at 14:13:26 until 15:26:15)

2 (Jurors are present)

3 THE BAILIFF: Department II is back in session.  
4 Please be seated.

5 THE COURT: The record shall reflect that we're  
6 resuming in the trial under Case Number C177394, State  
7 versus Kirstin Lobato. She is present, together with her three  
8 counsel, the prosecuting attorneys are present, the ladies and  
9 gentlemen of the jury are present as well.

10 We are going to be coming back to Dixie Tienken at  
11 a future point.

12 And the State will call its next witness at this time.

13 MR. KEPHART: Thank you, Your Honor.

14 Your Honor, for purpose of the record, I — we are  
15 going to be calling a witness out of order, and it's Tom Wahl,

16 THE CLERK: Please come all the way forward.

17 Remain standing and raise your right hand.

18 THOMAS WAHL, STATE'S WITNESS, SWORN

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

21 THE WITNESS: My name is Thomas Wahl. The last  
22 name is spelled W-A-H-L.

23 THE COURT: The State may proceed.

24 MR. KEPHART: Thank you, Your Honor.

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WAHL - DIRECT

**DIRECT EXAMINATION**

BY MR. KEPHART:

Q Mr. Wahl, I want to draw your attention back to August of 2001 and ask you if you were employed here in Las Vegas at that time.

A Yes, I was,

Q And how were you employed?

A I was employed by the Las Vegas Metropolitan Police Department. I worked in the Biology DNA Analysis Unit.

Q How long had you been employed in that capacity?

A In 2001?

Q Yeah,

A In 2001, I'd been employed there for about six and a half years

Q Okay. And what are you doing currently?

A I am currently the senior forensic analyst with the forensic DNA facility located at North Dakota State University campus in Fargo, North Dakota,

Q Okay, Back in August of 2001, what was your main assignment or main duties as a analyst with the Metropolitan Police Department?

A My primary duties were to examine evidence collected in criminal matters for the presence of biological substances, to conduct -- locate these possible biological

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WAHL - DIRECT

A Yes, I have.

Q Have you ever been qualified as an expert in that field?

A Yes.

MR. KEPHART: Your Honor, at this time I'd offer Mr. Wahl as an expert in the field of, I guess it'd be, detection of biological substances.

BY MR, KEPHART:

Q Would that be --

A Of DNA analysis,

Q Okay.

A Which would include parts of that aspect, yes.

MR, SCHIECK: No objection, Your Honor,

THE COURT: Granted.

BY MR, KEPHART:

Q Mr, Wahl, back in August, August 6<sup>th</sup> of 2001, were you requested by the Las Vegas Metropolitan Police Department to conduct an examination on various items associated with the homicide and the defendant by the name of Kirstin Blaise Lobato?

A Actually, I was -- the request came to the laboratory in July 26<sup>th</sup> and then I started to do the analysis after that time, and I did issue my first report on August 6th,

Q Okay,

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WAHL - DIRECT

substances and then to perform presumptive and confirmatory testing on the substances to determine if they are indeed human blood or if it's semen or if they're hairs, things of this nature, saliva, and then following that analysis to perform what is now referred to as DNA extraction, to extract and purify human DNA from the biological substances and then perform what is known as DNA profiling to ascertain the DNA profile of the biological substance and then, if a DNA profile is obtained, to compare it to known DNA profiles of victims, suspects or any other human individuals involved in the case. Then I would issue a report regarding my findings and conclusions and then testify in courts of law if necessary.

Q Okay, What type of education and background do you have in order to --

A I hold --

Q -- enable you to do that?

A I hold a bachelor's of science degree in medical technology, with a minor in chemistry. I have twenty-six years experience doing forensic genetics, of which the last eighteen or nineteen years have been strictly with doing DNA analysis, and I'm certified by the American Board of Criminalistics in molecular biology, DNA analysis.

Q Okay, Have you ever testified before in a court of law in your field?

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WAHL - DIRECT

A But yes.

Q When you say first report, are you talking that there's multiple reports with regards to -- that you authored?

A Yes. I issued one other report in addition to the first report.

Q Okay. Also, before I get to this, are you familiar with a laboratory by the name of Myriad? Do --

A Myriad.

Q Myriad?

A Yes, I am.

Q Okay. And how is it that you're familiar with that particular laboratory?

A Well, Myriad is a private company located in Salt Lake City, They do -- they're a biotechnology company that does a lot of work with pharmaceuticals, toxicology, things of this nature,, They opened up a forensic division, I'm not sure exactly when, maybe three or four years ago, But as in June of this year, they closed down their forensic division, They no longer do forensics there. But how I'm familiar with that is not only do I know people who work in that laboratory, I've also visited it and toured it. I was also offered a job there at that time, And I do know some people there. And Myriad was chosen by the Las Vegas Metropolitan Laboratory to outsource forensic cases due to our backlog, too, so they received federal

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WAHL - DIRECT

1 -- we received federal grant money and then outsourced cases  
2 to Myriad, so that's how I'm familiar with that company.

3 Q Okay, So you're saying that Myriad also conducted  
4 tested -- or conducted tests on behalf of the Las Vegas  
5 Metropolitan Police Lab or to -- because you were overloaded  
6 or too much backlog?

7 A Yes, And they do it for many other government  
8 laboratories throughout the country as well.

9 Q Okay. Well, let me draw you back then to your first  
10 report that's dated August 6<sup>th</sup> of 2001. And I want to ask you  
11 what items were you asked to examine?

12 A Would you prefer me to state them right from my  
13 report one-by-one?

14 Q August 6<sup>th</sup> of 2001?

15 A Yes.

16 Q Yes. What --

17 A I was asked to examine -- well, there's reference  
18 standards from the victim, Duran Bailey, And by reference  
19 standards I mean known, a known biological sample, either a  
20 blood sample or a scraping of the inside of the mouth, called a  
21 buccal swab, in order to obtain a DNA profile from that person;  
22 a DNA buccal swab kit from the defendant, Kirstin Lobato; a  
23 wad of chewing gum that was stuck or affixed to a piece of  
24 cardboard that had apparent blood, and this was recovered

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WAHL - DIRECT

1 scene, booked by CSA Ford, An apparent blood sample and  
2 control swab swabbed from the sandal at the crime scene,  
3 booked by CSA Ford. And another apparent blood sample,  
4 control swab, swabbed from the sandal at the scene, booked  
5 by CSA Ford, And then there were some small pieces of  
6 apparent plastic with silver-colored paper recovered from the  
7 rectum of the victim, Duran Bailey, at time of autopsy, booked  
8 by CSA Thomas.

9 Q Okay, With regards to that report, what Were you --  
10 do you recall what you were asked to do?

11 A Yes, With respect to -- with respect to the wad of  
12 chewing gum on the cardboard, they requested that I examine  
13 the wad of chewing gum and see if I could ascertain any  
14 genetic identification profiles from the wad of chewing gum, to  
15 ascertain who may have chewed the gum, get some genetic  
16 information from it.

17 Q Were you -- were you able to do that?

18 A Well, I was able to get a DNA profile from the wad  
19 of chewing gum. The wad of chewing gum was heavily  
20 stained with apparent blood. And I -- in order to answer the  
21 question regarding if there was any saliva present in the gum  
22 and whose saliva was it, I had to wash the blood away under  
23 the assumption that the blood was from the victim, Duran  
24 Bailey And there was blood on the cardboard that the

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WAHL - DIRECT

1 from the crime scene,

2 Q Does it -- does it indicate who had booked it?

3 A Yes. Booked by -- my report reflects it was booked  
4 by CSA Ford

5 Q Okay, Anything else?

6 A Yes. A torn condom pack with a piece of Kleenex  
7 recovered from the crime scene, book by GSA Ford,

8 Q Okay, Now that's a torn condom pack. Is that --  
9 does that have the condom in it?

10 A No, it did not have the condom in it. It was just the  
11 package that a condom was in that was torn open,

12 Q Okay, Anything else?

13 A A pair of black high-heeled sandals with apparent  
14 blood that were reportedly collected from Kirstin Lobato. That  
15 was booked by GSA Thomas. A pair of Nike Air shoes, black-  
16 and-white in color, reportedly collected from Kirstin Lobato,  
17 booked by CSA Carr, One aluminum baseball bat reportedly  
18 recovered from a vehicle. This was booked by CSA Renhard,  
19 One vehicle slipcover, red with white-and-black floral print  
20 design, recovered from the vehicle. A seat cover, two-tone  
21 grey, from the front left of the vehicle, recovered from a  
22 vehicle. One interior left door panel recovered from a vehicle.  
23 That was booked by CSA Renhard, An apparent blood sample  
24 and control swab swabbed from below a sandal at the crime

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WAHL - DIRECT

1 chewing gum was affixed to, and I actually did do a DNA  
2 profiling on that and it was Duran Bailey's blood.

3 Q Okay. Did you --

4 A And --

5 Q Were you able to obtain any type of a mixture of  
6 DNA with the -- with the wad of gum?

7 A Well, I ascertained that there was a mixture of DNA.  
8 My results determined that there was a mixture of DNA, and  
9 the mixture was a major component/minor component  
10 mixture. And what I mean by that is one of the sources of the  
11 DNA was in a very predominant, large quantity relative to the  
12 other source of DNA. The major component DNA was  
13 identified as coming from Duran Bailey, And it's unclear  
14 whether that DNA profile came from residual blood that was  
15 on the chewing gum or from the saliva itself, But there was  
16 also several DNA markers that were detected that were foreign  
17 to Duran Bailey and could not have originated from him, And  
18 those mark -- some of those markers were compared to the  
19 DNA profile of Kirstin Lobato and she was excluded as a source  
20 of that foreign DNA.

21 Q Okay, Can you explain to the jury what it means to  
22 exclude an individual from a source of DNA?

23 A It's when you detect a genetic DNA type that an  
24 individual does not possess, they do not have, that it's

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WAHL - DIRECT

1 genetically impossible for them to have contributed the  
2 biological material to a piece of evidence because they simply  
3 don't have that DNA profile. And that would be referred to as  
4 an exclusion,

5 Q Okay. With respect to at least the chewing gum, I  
6 know we've got quite a bit to go through but at least with  
7 respect to the chewing gum, does that exclusion mean then  
8 that Kirstin Lobato never came into contact with that gum?

9 A I would -- I would just say that there is no evidence  
10 of her DNA on the gum.

11 Q Okay, So you can't say whether or not she ever  
12 came into contact with that piece of gum or not?

13 A No, I cannot because there was no genetic material  
14 that's consistent with her.

15 Q Okay. Were you also aware of -- were you provided  
16 with any information with regards to where the chewing gum  
17 was found?

18 MR SCHIECK: Objection, that's hearsay, Your  
19 Honor.

20 MR. KEPHART: Judge, I think with respect to this  
21 individual and he is an expert giving his opinions as to what --  
22 whether or not he can exclude certain individuals, I think he  
23 has a -- has a right to understand maybe the source of where  
24 it came from,

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WAHL - DIRECT

1 Q Okay. What'd you find?

2 A There was no indications of any semen on the  
3 Kleenex.

4 Q Okay. Did you --

5 A Or the torn condom pack, for that matter.

6 Q Did you get any type of evidentiary information from  
7 that then?

8 A No.

9 Q Okay. You were asked to look at some high-heeled  
10 sandals with apparent blood reportedly collected from Kirstin  
11 Lobato, is that correct?

12 A That is correct

13 Q And what was your finding with regards to that?

14 A When I examined the sandals, I did detect a human  
15 bloodstain in the big toe area of the right high-heeled sandal.  
16 I did perform DNA analysis on that and I did obtain a partial  
17 DNA profile. What I mean by a partial DNA profile is that in  
18 our battery of DNA profiling tests, we have the ability to detect  
19 thirteen different types of -- thirteen DNA types, plus the  
20 gender region of human DNA. I was only able to obtain, I do  
21 believe, three conclusive DNA types out of the thirteen  
22 possible. But that information was sufficient enough to  
23 exclude Duran Bailey as a source of that blood. It did not  
24 originate from him. And of the DNA types, I was able to

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WAHL - DIRECT

1 MR. SCHIECK: Your Honor, he's a DNA expert. He  
2 can testify to the DNA results and anything that he knows from  
3 the -- about the crime scene is gonna come from other  
4 individuals, who I assume the State's gonna call to lay a  
5 foundation. I understand this witness is out of order and the  
6 other individuals that impounded the items will be called as  
7 witnesses by the State and they can say where the gum and  
8 the other items were found, but Mr. Wahl has no knowledge,  
9 no personal knowledge, of that.

10 MR\_ KEPHART: I never asked with regards to his  
11 personal knowledge. I asked if he had any -- an idea with  
12 regards to where it'd come from in reference to my question, a  
13 foliowup question, about whether or not somebody can be  
14 excluded from having certain DNA on items.

15 THE COURT: The Court sustains the objection,  
16 BY MR KEPHART:

17 Q Okay. Mr- Wahl, you also looked at -- looked at a  
18 torn condom pack with a piece of Kleenex recovered from the  
19 scene?

20 A That is correct. Yes,

21 Q Okay, Were you able to discover or were you able  
22 to get any type of evidentiary value out of that?

23 A I was asked to determine if there was any semen on  
24 the Kleenex\_

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WAHL - DIRECT

1 conclusively derive they were consistent with the DNA types of  
2 Kirstin Lobato and she could be the -- could be the source of  
3 that blood.

4 Q Okay. Did you also look at -- and I'm just following  
5 your report, Mr. Wahl. Is that all right?

6 A That's fine, That's easier for me as well.

7 Q Okay. Were you also provided or asked to look at  
8 an aluminum baseball bat that was recovered from a vehicle?

9 A Yes,

10 Okay. And did you do that?

11 A Yes, I did.

12 And tell me what findings, if anything, did you have  
13 with regards to the aluminum baseball bat.

14 A I did not detect the presence of any blood on the  
15 aluminum baseball bat.

16 Q Okay, Since we're talking about you were looking  
17 for blood with regards to this baseball bat, can you tell us what  
18 type of tests that you would conduct to see whether or not you  
19 could find blood on a baseball bat?

20 A The first thing I do is I do a visual examination with  
21 the naked eye, And then I -- if I do not see anything that  
22 appears to me to be consistent in appearance with blood, I  
23 then take the baseball bat and I place it under a microscope  
24 called a stereo microscope which allows me to get a closer

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WAHL - DIRECT

1 look at the surface of the baseball bat, to make sure that I  
2 don't miss something with the naked eye. The stereo  
3 microscope allows me to zoom in very close, It's not as  
4 powerful as a microscope which can actually observe individual  
5 cells, things as small as a cell, but it allows me to get in and  
6 look at the surface of items to see if there might be residual  
7 amounts of possible blood that I didn't see with the naked eye,

8 Q Okay. With regards to the baseball bat, the type of  
9 material that it's made up of, obviously, you wrote "aluminum  
10 baseball bat," is the aluminum baseball bat that you looked at,  
11 is it a type of material that would be absorbent, that would  
12 maintain or hold blood, for instance?

13 A The metal portion of the blood -- is basically  
14 nonporous. Assuming there's no cracks in it, through the  
15 baseball bat, it's nonporous. Something like blood would dry  
16 and stay on the surface. It wouldn't soak in.

17 Q Okay. And would you -- with regards that it's not  
18 soaking in, would it be easily cleaned away, more so than  
19 something that would soak it in?

20 A Yeah. Object that are nonporous, such as metal,  
21 are easier to clean substances off it than something that is  
22 porous or absorbent, where something fluid would absorb into  
23 the material and be absorbed,

24 Q And in your profession, you're familiar with the fact

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WAHL - DIRECT

A They should be, yes. They have the strict procedure  
that they should follow to keep things sterile and clean.

Q Okay, Now, were you asked to also look at a vehicle  
slip cover you described as a red with white-and-black floral  
print?

A Yes.

Okay, And also you were asked to look at a seat  
cover you described as a two-tone grey from the front left  
vehicle, recovered from the vehicle?

A Yes.

Q And what were you doing with regards to looking at  
these two items? What was your purpose of looking at those  
items?

A I was asked to examine these items for the presence  
of blood and specifically to focus on areas that yielded a  
positive chemiluminescent result with a screening chemical for  
blood referred to as luminol. And it had been reported to me  
by the CSAs that there were areas on some of these items  
where they yielded a positive result. And the CSA had actually  
circled it with a black Magic Marker. I did look at the entire  
slip cover but I did focus on those areas that were circled,  
encircled.

Q Okay, When we talk about the slip cover, are we  
talking about something that you would put over a seat?

V-152

WAHL - DIRECT

1 that you can clean substances like blood away from different  
2 items?

A Sure. Yes.

A matter fact, when you -- you indicated that you do  
DNA in your lab?

A Yes.

Q Okay. What do you do to ensure that you have a  
sterile lab so then you would not be picking up somebody  
else's or some other foreign DNA when you test your DNA?

A The workbench area that I use to examine items, I  
clean the area down with a solution of bleach and ethanol, and  
then I work on top of clean butcher paper, white clean butcher  
paper, and then I wear latex gloves. Sometimes I wear a  
mask, depending upon what the evidence is, sometimes safety  
goggles.. But we try to handle the evidence such that we don't  
introduce some other biological material on to the back.

Q Okay, And is it safe to say with regards to blood at  
least, I mean, hospitals deal with blood every day?

A Yes.

Q And you don't walk into hospitals and see blood  
laying all over the floor all the time, do you?

A Well, with the exception maybe at an emergency  
room or something like that or a surgery, but no.

Q So they, obviously, they clean it up?

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WAHL - DIRECT

A Yes, That's my understanding, yes.

MR. KEPHART: If I could approach the witness,  
Your Honor.

THE COURT: You may.

BY MR. KEPHART:

Q Tom, we're showing you what's been marked as  
State's Proposed Exhibits 109, 110 and 111 and ask you if you  
recognize what these items are,

A They appear to be accurate representations,  
photographs, of the floral print red with black -- white-and-  
black floral print slip cover reportedly recovered from the  
vehicle.

MR. !KEPHART: Okay. Your Honor, I'd move to  
admit State's Proposed Exhibits 109, 110 and 111.

MR. SCHIECK: No objection, Your Honor.

THE COURT: Granted.

(State's Exhibit Nos, 109, 110 and 111 admitted)

BY MR. KEPHART:

Q Now with respect to these -- with 109, this is  
actually a photo of them on the seat, is that correct?

A That appears so, yes.

Q Okay. And then you have 110. It actually says  
that's with them off the seat and it actually has it labeled "Left"  
on the bottom, is that correct?

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WAHL - DIRECT

1 A It appears so. Yes,  
 2 Q And 111 has it off the seat and it has it labeled  
 3 "Right" on the bottom. Can you see that?  
 4 A Yes.  
 5 Q Now you indicated that you were asked to look at  
 6 the vehicle slip cover, red with white floral cover, recovered  
 7 from the vehicle, And then you were asked to look at the left  
 8 vehicle seat cover. Is that right?  
 9 A I'd have to check my notes. I don't know if I looked  
 10 at just one or both This -- you're talking about the slip cover?  
 11 Q Yes.  
 12 A Which is item -- 8, Item 4. I only looked at one slip  
 13 cover with that floral design, according to my notes and my  
 14 report.  
 15 Q Okay,  
 16 A But I do not know whether it's the right or left one.  
 17 MR. KEPHART: May I approach, Your Honor?  
 18 THE COURT: You may.  
 19 BY MR. KEPHART:  
 20 Q Showing you what's been marked as State's  
 21 Proposed Exhibit 112 and ask you to tell us what that is,  
 22 A It appears to be a photograph of a -- of a pair of  
 23 positive chemiluminescent reaction from lumina It appears  
 24 consistent with that.

V-154

WAHL - DIRECT

1 cross-react with luminol that are not blood,  
 2 Q Okay. Let me show you Exhibit 112 up here on the  
 3 screen. Can you see on there what we're talking about, how it  
 4 -- what you're describing as a chemiluminescence?  
 5 A I see it,, It's a little easier on the -- on the  
 6 photograph, though --  
 7 Q Okay.  
 8 A -- to see than here, But --  
 9 Q Well, okay. Can you just touch the screen and show  
 10 us where you're --  
 11 A May I use a laser pointer?  
 12 Well, actually, if you touch the screen in front of  
 13 you.  
 14 A Oh. Will it?  
 15 Q It will --  
 16 A Oh, okay.  
 17 Q It will come up on the screen. Maybe circle it.  
 18 A Well, actually, I'd prefer to use a laser point, I think,  
 19 would be easier,  
 20 Q Okay, That's fine.  
 21 A From my recollection in looking at the photograph,  
 22 we're looking at that area right there and that area right there,  
 23 at least those two for sure. I'm not sure about that one, but  
 24 my recollection from looking at the photograph was that spot

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WAHL - DIRECT

1 Q On one of the slip covers?  
 2 A Yes, on one of the slip covers. I see two areas  
 3 specifically there,  
 4 MR. KEPHART: Okay. Move to admit Exhibit 112.  
 5 MR. SCHIECK: No objection, Your Honor.  
 6 THE COURT: Granted,  
 7 (State's Exhibit No, 112 admitted)  
 8 BY MR. KEPHART:  
 9 Q Now you indicated a positive luminol reaction, Can  
 10 you tell the jury what luminol is?  
 11 A Lumina' is a chemical solution that crime scene  
 12 investigators utilize to try to detect possible blood at a crime  
 13 scene or on any piece of evidence, blood that cannot be seen  
 14 with the naked eye. It's a visual aid and a visual tool, And if -  
 15 - when blood reacts with the luminol chemical, there's a  
 16 catalytic reaction that occurs and light is emitted, luminescent  
 17 light, In order to detect a luminescent light, you do have to  
 18 spray the area of interest and then have the lights out or lights  
 19 very subdued to be able to see the chemiluminescence, And  
 20 then if there are any areas that yield a reaction that -- a  
 21 chemiluminescent reaction, then confirmatory testing needs to  
 22 be done on those areas to confirm whether it indeed is --  
 23 indeed is blood. Luminol is a presumptive test only, It is not a  
 24 confirmatory test for blood. There are other things that do

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WAHL - DIRECT

1 there and that spot there,  
 2 Q Okay, And that -- what you talked about a  
 3 chemiluminescence, that's some type of chemical that reacts  
 4 with blood?  
 5 A Actually reacts with the iron that's in blood,  
 6 Q Okay, And --  
 7 A In the hemoglobin in the blood, which is a protein In  
 8 blood that gives the -- imparts the red color.  
 9 Q Tell us how it is that you -- that you go about  
 10 performing a luminol test.  
 11 A I have limited experience actually doing luminol from  
 12 years -- in my early years of forensics, and I'm talking over  
 13 twenty years ago. But, generally, there are two dry  
 14 compounds that you --  
 15 MR. SCHIECK: Your Honor, could -- I'm sorry. Did  
 16 he say he hasn't done luminol for twenty years? I would  
 17 question whether he's qualified then to give an opinion  
 18 concerning lumina!,  
 19 BY MR. KEPHART:  
 20 Q Is that -- is that what you said?  
 21 MR. SCHIECK: Perhaps he could lay a better  
 22 foundation.  
 23 THE WITNESS: I have experience in it. And if the  
 24 definition of an expert is having knowledge that a layperson

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WAHL - DIRECT

1 doesn't have, I do believe I qualify.  
 2 THE COURT: It goes p weight rather than  
 3 admissibility. The Court overrules.  
 4 BY MR KEPHART:  
 5 Q Well, before we get any further, these particular  
 6 tests that you're talking about with your testimony is tests that  
 7 are conducted by the crime lab?  
 8 A The Crime Scene Investigation Unit actually —  
 9 Q Okay.  
 10 A -- performs the luminol, And I have performed it on  
 11 evidence myself. I haven't -- but I will admit that I haven't  
 12 done it for quite a while.  
 13 Q Okay. But —  
 14 A I leave it up to the crime scene people to do that.  
 15 Q Okay. And you're familiar with this case, that you  
 16 know that the crime lab conducted these tests. You didn't do  
 17 these tests?  
 18 A I did not perform the luminol testing. No.  
 19 Q You were asked to conduct a further test beyond the  
 20 luminol, is that correct?  
 21 A I was requested to conduct confirmatory tests to  
 22 confirm that the areas that gave a positive chemiluminescent  
 23 reaction are blood and could they be -- could it be human  
 24 blood and, if it was, then to do a DNA analysis and to see if I

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WAHL - DIRECT

1 Q Okay. And what is it on?  
 2 A It is on a side panel of a door. It appears to be on  
 3 like a carpet-type surface.  
 4 Q Can you tell from that photo what door it would be,  
 5 the left or the right?  
 6 A It appears, looking at the orientation, it appears to  
 7 be a left —  
 8 Q Okay.  
 9 A -- orientation.  
 10 Q Now, were you asked to actually look at an actual  
 11 door panel?  
 12 A Yes. It was actually removed and brought to or  
 13 booked in the evidence vault,  
 14 MR., KEPHART: I'd move to admit 113 and 114.  
 15 MR, SCHIECK: No objection, Your Honor.  
 16 THE COURT: Granted.  
 17 (State's Exhibit Nos. 113 and 114 admitted)  
 18 BY MR. KEPHART:  
 19 Q So the jury knows what we're talking about, I'm  
 20 showing you 113. And this is what you described as a  
 21 luminescent reaction to what appears to be the seat?  
 22 A Yes. It's consistent with what you would — you  
 23 would see in a positive chemiluminescent reaction with  
 24 luminol.

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WAHL - DIRECT

1 could determine any genetic information from the item,,  
 2 Q Okay, Now you were asked to look at a seat cover,  
 3 two-tone grey, from the left front seat recovered from the  
 4 vehicle, is that correct?  
 5 A Yes.  
 6 Q And did you actually -- did they actually then take it  
 7 off the seat so when you got it it was off the seat?  
 8 A Yes.  
 9 Q Okay. You didn't have the actual seat itself?  
 10 A No, I did not.  
 11 Q Okay, Let me show you what's been marked as  
 12 State's Proposed Exhibit 113 and ask you if you can tell me  
 13 what that appears to be.  
 14 A It appears to be a positive chemiluminescent  
 15 reaction from luminol,  
 16 Q Okay,, Does that appear to be on a seat?  
 17 A Yeah, it appears to be,,  
 18 Q Okay.  
 19 A I can see the outline of the conformity of the seat,  
 20 Q Okay. And I'm showing you State's Proposed Exhibit  
 21 114 and ask you if you recognize what that is.  
 22 A Again, this appears to be a positive  
 23 chemiluminescent reaction consistent with luminol, a positive  
 24 lumina

V-159

WAHL - DIRECT

1 Q Okay, And Exhibit 114, a luminol reaction that  
 2 appears to be on a door panel?  
 3 A Yes. Similar, yes.  
 4 Q Okay. And that -- and what we're talking about the  
 5 reaction is the lighter area, is that correct, where I'm pointing  
 6 right — well, you go ahead and point,  
 7 A This area here and these areas right up in here.  
 8 Q Okay. Now when you examined — when you  
 9 examined the seat cover, which is 113, can you tell us what  
 10 that material was made of?  
 11 A I have to refer to my notes, please. Well, it's made  
 12 out of some type of a cloth material, That's all I can tell you.  
 13 Q Okay. It's not leather?  
 14 A It's not leather, no.  
 15 Q It's not vinyl?  
 16 A No, it was not vinyl.  
 17 Q It's a cloth?  
 18 A It's some type of a cloth.  
 19 Q Okay, Cloth.  
 20 A Synthetic cloth maybe.  
 21 Q Is it porous?  
 22 A Yes, it can be depending on how tight the weave is.  
 23 But, sure, things absorb into it,,  
 24 Q Okay, And the door panel, when you examined

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WAHL - DIRECT

1 that, can you tell me if there's two types of substances there  
2 on the door panel itself?

3 A If I understand your question, I do believe this was  
4 some -- this would be some type of plastic, and this was kind  
5 of like a synthetic carpet material,

6 Q Okay. Of the two, what are -- which are the more  
7 porous?

8 A This does have some absorbent qualities but it -- my  
9 recollection was it was synthetic and kind of a plastic synthetic,  
10 plasticized or synthetic type of fibers. And it's not as porous as  
11 a seat cover but it's certainly -- I would not consider it totally  
12 nonporous.

13 Q Okay. And what about the plastic on the door,  
14 upper portion of the door itself?

15 A Again, assuming there is no cracks there, I can -- I  
16 would classify that as a nonporous surface.

17 Q Okay. Of the -- of the two on the door itself, could  
18 you tell me if someone wanted to clean those items, say they  
19 got something on them, say they got blood on them, what of  
20 the two -- which of the two items would be easier to clean?

21 A In my opinion, it would be anything that's nonporous  
22 because if we're talking about blood now, it's a fluid that  
23 contains some cellular matter as well. And if it's a nonporous  
24 surface, it would not soak through, it would stay on the top,

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WAHL - DIRECT"

1 Q Okay.

2 A So the reason why they circle that area is so that I  
3 know when I look at it visibly that this is the areas that they  
4 observed a positive chemiluminescent reaction,

5 Q Okay. So luminol is a presumptive test for the  
6 detection of blood?

7 A It's used as a presumptive test for the presence of  
8 blood. Yes,

9 Q Okay. And in -- with regards to what you've just  
10 testified to, there was a positive reaction to the luminol test  
11 and you call that chemiluminescence?

12 A Yes. The luminescent qualities of that test is  
13 referred to as chemiluminescence.

14 Q Okay. And you conducted another presumptive test,  
15 is that correct?

16 A Yes, There are other, are a number of different  
17 presumptive tests for blood. Luminol is usually primarily used  
18 only in -- for the crime scene investigators but, on occasion, it  
19 can be used in the laboratory as well. But in our laboratory  
20 when we -- the presumptive test that we use for blood is  
21 referred to as phenolphthalein.

22 Q Okay, of the two tests, is -- can you characterize  
23 one or the other one as more sensitive than the other?

24 A Yes, There are literature that cites the sensitivity of

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WAHL - DIRECT

1 Q So it'd be similar to the bat?

2 A Yes,

3 Q Nonporous. Different materials, obviously, but  
4 nonporous?

5 A Yes,

6 Q Okay, And so you would expect to see the harder  
7 portion to clean would be on the bottom on the -- on the door  
8 here Would that be correct?

9 A Surfaces that have absorbent properties, I think,  
10 would be harder to clean just because you would have to --  
11 you'd have to assume that if there was blood present it would  
12 -- some of it would soak in further into the material and it'd be  
13 harder to get out

14 Q Okay. Now you said that when you were asked to  
15 examine this that you were aware that there were certain  
16 items that had a reaction to the luminol test, and the actual  
17 crime scene analysts had circled the areas and asked you to  
18 check them further, is that correct?

19 A Yes, 'cause you have to understand that the -- as I  
20 stated earlier, the chemiluminescent, the luminescence, is only  
21 visible in the dark and then it will fade after a while. So when  
22 I received the evidence, I can't -- I couldn't visibly see  
23 anything that appeared to be consistent with the appearance  
24 of blood.

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WAHL - DIRECT

1 the various presumptive tests.

2 Q Okay. And of these two, which one would be the  
3 more sensitive?

4 A The literature cites the luminol as being more  
5 sensitive than phenolphthalein.

6 Q Okay. And when you -- when you conducted the  
7 phenolphthalein test, were you able to get any type of reaction  
8 to that test?

9 A I was only able to get a weak positive result with  
10 phenolphthalein on one area of the seat cover and one area of  
11 the side door panel, and it was a weak positive,

12 Q Okay. And what we're talking about is this seat  
13 cover here and this door panel?

14 A Yes,

15 Q Okay. And when you say a weak positive, what do  
16 you mean by that?

17 A In the phenolphthalein reaction, you take a sterile  
18 cotton tip swab, you moisten it with sterile water and then you  
19 swab the surface that you want to test or the stain, if there's a  
20 visible stain there, and then you add some drops of reagent  
21 and you can get an instant pink color that forms. This is a  
22 positive result with using phenolphthalein, When I'm referring  
23 to a weak result, the intensity of the color was very weak and  
24 it formed a little slower than you would normally get on a

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WAHL - DIRECT

1 strong reaction.

2 THE COURT: The record shall reflect that Mr,  
3 Kephart before that last question had put two different  
4 photographs on the viewer with —

5 MR. KEPHART: I'm sorry, Judge. It was 113. It  
6 was the —

7 THE COURT: And it's the grey seat cover rather  
8 than the floral one.

9 MR. KEPHART: Right. And 114 was the door panel,

10 THE COURT: Thank you.

11 BY MR, KEPHART:

12 Q Okay. And getting back to where I was, the — when  
13 you -- when you got that reaction in conjunction with the --  
14 what you knew from the luminol, the positive luminol test, can  
15 you say then you actually got a positive test on the  
16 phenolphthalein?

17 A Yes. There was a color change and, based on my  
18 many years of experience, I recorded it as a weak positive  
19 result.

20 Q Okay. And did you do anything then, anything  
21 further, to determine whether or not it was blood? Did you do  
22 any type of confirmatory tests?

23 A The areas that gave me a weak positive result with  
24 phenolphthalein, I then focused on those areas and performed

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WAHL - DIRECT

1 door, and the key works and it'll unlock a door. But if you  
2 then took the key out of the doorknob and took a screwdriver  
3 and jammed it into the doorknob and kind of destroyed the  
4 tumblers, destroyed the keys inside the knob, and then you  
5 put the key in and then the doorknob won't open, it's a similar  
6 analogy. The blood proteins could be degraded such that the  
7 antibody can't recognize it anymore and so you would get a  
8 negative result. That's also a possibility. But which of those  
9 three it is, I do not know,

10 Q Okay. And you're indicating that, certainly, certain  
11 cleaning agents could affect the presence of blood, could  
12 affect your ability to do a — to do a confirmatory test?

13 A There -- if the cleaning reagents had chemicals in  
14 the reagents that were harsh enough to cause degradation of  
15 proteins and things of that nature, it's possible, yes.

16 Q And you testified earlier that in your own lab, to  
17 sterilize your lab, you use bleach. Would you consider bleach  
18 some —

19 MR. SCHIECK: I'm gonna object, Your Honor. He  
20 said bleach and another substance,

21 THE COURT: Sustained.

22 BY MR, KEPHART:

23 Q Is that correct, bleach and another substance?

24 A I don't know what he's referring to. Bleach? Are

V-168

WAHL - DIRECT

1 some very vigorous swabbing in those areas to see if I could  
2 transfer whatever may have been on the material to the swab  
3 and then performed a confirmatory test for the presence of  
4 human blood,

5 Q Okay, And what do you do with that? What type of  
6 test is that?

7 A It's a test where we have an antibody that's been  
8 developed by a biotechnology company that reacts specifically  
9 with an antigenic site on the hemoglobin. In other words, the  
10 antibody is looking for a biochemical structure and attaches to  
11 it if it is human. And then you get a positive result that's  
12 actually visible. You get a visible result.

13 Okay. And what -- did you have any result with  
14 this?

15 A I got a negative result,

16 Okay. Does that mean then that that -- these items  
17 here are not blood?

18 A It could mean that it's not blood, it could mean that  
19 the substance could be blood but it's animal blood, or it could  
20 be human blood but the blood has been altered somehow,  
21 been degraded somehow. Cleaning solutions, harsh cleaning  
22 solutions, could degrade the proteins in the blood such that  
23 the antibody cannot react with the antigen. An analogy I  
24 could use is suppose you have a key that opens up a lock in a

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WAHL - DIRECT

1 you referring to cleaning the -- sir, are you referring to when I  
2 clean the counter tops in the laboratory?

3 MR. SCHIECK: I think that's what he was referring  
4 to,

5 THE WITNESS: Yes, Following the bleach we would  
6 use ethanol.

7 MR. KEPHART: Okay.

8 THE WITNESS: Which is alcohol, basically, what you  
9 drink. Alcohol. Ethanol is what's in booze.

10 BY MR. KEPHART:

11 Q Like rubbing alcohol maybe?

12 A It's not rubbing alcohol. Its actually absolute  
13 alcohol,

14 Q Okay. So that's what you use to sterilize, but you  
15 use bleach?

16 A Well, it's used to sterilize but it's also used just to  
17 remove any possible contaminations that may be on the  
18 counter top and we want to remove those before we examine  
19 evidence on there to minimize cross-transfer of contaminants,

20 Q Okay, Are you also aware that there's many  
21 detergents out there that claim that they clean blood, just  
22 household detergents?

23 A Yes,

24 Q Okay, And to the degree of which they clean them,

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WAHL - DIRECT

1 you don't know?

2 A I'm not an expert in that, but I do know that they  
3 can be fairly effective. Sure,

4 Q Okay. And so with regards to this particular car,  
5 with the items that we'd shown you that you -- that you've  
6 actually examined, is it your testimony today that you just --  
7 you can't say it's blood but you can't say it's not blood?

8 A That'd be -- that would be an accurate statement\_ I  
9 can't confirm that what gave a positive chemiluminescent  
10 reaction with luminol and a weak positive with phenolphthalein  
11 is blood to any absolute certainty. It's one of the possibilities.

12 Q Okay. Were you also asked to conduct various tests  
13 with regards to -- let me turn you, go forward now to -- well,  
14 let me back up. I'm sorry. I'll stay where we were. Just so  
15 we know, the type of tests that you're talking about, the  
16 luminol test and the phenolphthalein test, they also may cause  
17 a -- happen from a false positive, is that correct?

18 A Yes. A false positive would be any substances that  
19 would give a positive result but are not blood, not due to  
20 blood.

21 Q Okay, And do the -- each test, is there any □  
22 significance between the two tests, the effect they may have  
23 on each other or the effect they may have on their result if you  
24 do them together? Do you understand my question?

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WAHL - DIRECT

1 A I was requested to examine the left and right  
2 fingernail clippings of the victim, Duran Bailey, and the left and  
3 right hand swabbings of Duran Bailey, and these items were  
4 collected at time of autopsy by the Medical Examiner's Office,  
5 and the purpose was to determine if there was any foreign  
6 DNA on the clippings or the swabbings,

7 Q Okay, And were you able to -- did you come to a  
8 conclusion with that?

9 A I did not detect any foreign DNA. The DNA profile I  
10 obtained was consistent with Duran Bailey and he, Duran  
11 Bailey, was identified as the source of the DNA in those items.

12 Q Okay, So he didn't have anything under his  
13 fingernails like he scratched somebody or something that got  
14 in his fingernails?

15 A There was blood there but it was Duran Bailey's  
16 blood.

17 Now I asked you earlier about a lab by the name of  
18 Myriad.

19 A Yes

20 Q Okay. And were you able to -- did you have an  
21 opportunity to look over Myriad's report and what was  
22 conducted and what they were asked to do?

23 A Yes, I was requested -- I was requested to look at  
24 the report last night in my hotel room.

V-172

WAHL - DIRECT

1 A I think I understand what you're saying- There are  
2 certain substances that are known to give false positive results  
3 with luminol and they also can give false positive presumptive  
4 with phenolphthalein testing. There are some substances that  
5 give false positives with one and not the other. So when you  
6 use them in conjunction, you may eliminate some -- when you  
7 use the phenolphthalein and lumina' in conjunction with each  
8 other as a presumptive test, you may eliminate some things as  
9 being false positives but still include others,

10 Q Okay. And what's the general literature that you're  
11 aware of that talks about false positives with both substances?

12 A What is it?

13 Q Mm-hmm,

14 A Copper salts, metallic salts are, like bronze, copper,  
15 are known to give false positives with both luminat and  
16 phenolphthalein. And some plants that contain peroxidase,  
17 plant peroxidase, enzymes, have been known to give false  
18 positives, both.

19 Q Okay Now I'm gonna jump ahead now October  
20 15<sup>th</sup> 2001, did you do a -- perform a test on certain items on  
21 that day as well or draft a report at least as of October 15<sup>th</sup>  
22 2001?

23 A Yes, I did,

24 Q And what were you asked to do there?

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WAHL - DIRECT

1 Q Okay, And what were they doing?

2 A I don't have the actual request that was submitted  
3 to Myriad, but looking at the evidence I could surmise that  
4 they were -- Myriad was asked to examine the penile swabs,  
5 and these are swabbings of the penis of Duran Bailey and  
6 swabbings of the rectal or rectum of Duran Bailey at the time  
7 of autopsy to determine if any evidence of semen was present,

8 Q Okay, And this would have been part of the sexual  
9 assault kit?

10 A The medical examiner's kit, which the medical  
11 examiner usually or may collect these swabs. I don't know  
12 what their policies are on all deceased individuals but --

13 Q Okay, And this is something that you have done  
14 before yourself in your lab?

15 A Examined medical examiner's kits?

16 Q Yes.

17 A Hundreds and hundreds of times, yes.

18 Q Okay. So you're familiar with what they're talking  
19 about here, And the lab actually sent these out to Myriad?

20 A That's correct. I'm very familiar with this. This is a  
21 typical analysis that crime labs all over the country and the  
22 world would do on medical examiner's kits.

23 Q Okay. Can you tell me what the results and  
24 conclusions are of what they did?

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WAHL - DIRECT

1 A Ill just read verbatim from their report. "On the  
 2 results and" --  
 3 MR, SCHIECK: Can we identify the date of the  
 4 report, Your Honor, to make sure I have the same one?  
 5 THE COURT: Yes.  
 6 THE WITNESS: Okay, The report is dated February  
 7 13<sup>th</sup>, 2006,  
 8 MR, SCHIECK: Thank you.  
 9 THE WITNESS: On the second page of the report  
 10 under "Results and Conclusions," the first statement is,  
 11 "Semen was detected on Items 1B," which were penile swabs,  
 12 "and Item 2A," rectal swabs, "as evidenced by the detection of  
 13 protein P30."  
 14 BY MR, KEPHART:  
 15 Q Okay, Did it go further as to identifying whose  
 16 semen it is?  
 17 A Well, in order to do a DNA analysis, the next step  
 18 would be to determine if any sperm cells were identified on the  
 19 smears that are prepared by the medical examiner from the  
 20 swabs. The medical examiner or an assistant would swab the  
 21 surface of the penis or swab the anal cavity or the rectum of  
 22 the victim, and then they will take the swab and roll it over a  
 23 clean microscope slide, and then the swab is air dried, the  
 24 slide is air dried, and then you can stain the slide and look at it

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WAHL - DIRECT

1 reservoirs of semen in the testicles, I do believe, and that  
 2 that's about all I know. That might be better offer of  
 3 pathologist. But, yes, there are reservoirs of semen in every  
 4 male here and it stays there until ejaculation occurs.  
 5 Q Was there also a request you know of that they -- in  
 6 the sexual assault kit they did pubic hair combings and pulled  
 7 pubic hairs?  
 8 A Yes, Those were apparently collected by the  
 9 medical examiner at time of autopsy.  
 10 Q Okay. And were you aware that those weren't  
 11 analyzed by Myriad but analyzed by another portion of your  
 12 lab?  
 13 A I'm reading from Myriad's report, and it appears that  
 14 they opened up the packaging from a debris -- an envelope  
 15 labeled "Debris Collection." They state that, "Four apparent  
 16 hairs were collected from the debris collection envelope. All  
 17 apparent hairs were mounted on a hair collection card and  
 18 repackaged with the evidence." My understanding is that  
 19 Myriad does not do hair comparisons and they may not have  
 20 been requested to do DNA in any hairs if they were found,  
 21 Q Okay. Do you have any independent knowledge of  
 22 whether or not the lab that you used to work with -- what's  
 23 her name? Kristina Paulette, do you know her?  
 24 A Yes, I do.

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WAHL - DIRECT

1 for the presence of sperm cells. And so Myriad, it appears that  
 2 they had examined the slides made from the penile swabs and  
 3 the rectal swabs and the oral swabs, There were oral swabs  
 4 collected as well.  
 5 Q Were they able to come to any conclusion with  
 6 regards to that?  
 7 A No semen was detected on one of -- there was more  
 8 than one penile swab. And it says here, "No semen was  
 9 detected on penile swab A." But they did detect semen on  
 10 penile swab B. And there was no semen detected on the oral  
 11 swabs, And it appears that there was only one -- I can't tell  
 12 from the report whether there was more than one rectal swab,  
 13 They do cite "rectal swabs" in the plural so --  
 14 Q Okay\_ Were they able to determine the source of  
 15 the semen?  
 16 A They then examined the penile smears and the  
 17 rectal smears and they did not identify sperm, so they went no  
 18 further. There was no sperm to identify. There's no sperm  
 19 cells to get a DNA profile from so they didn't proceed any  
 20 further at that point,  
 21 Q Okay. And you wouldn't be the one to talk to with  
 22 regards to the presence or lack of presence of semen in a  
 23 man's penis, would you? Would that be the medical examiner?  
 24 A Well, I do know that there was -- there are

V-175

WAHL - DIRECT

1 Q Were you aware that she had actually done testing  
 2 with regards to that, what you just talked about?  
 3 A Yes. I was aware when they contacted me  
 4 regarding the upcoming trial and then they happened to  
 5 mention that, In fact I talked to Kristina and she was  
 6 mentioning that she was in the middle of DNA analysis of, I do  
 7 believe, a pubic hair, apparent pubic hair.  
 8 Q And you were also asked and you gave a report on  
 9 the August 6, 2001 in reference to a small piece of apparent  
 0 plastic with silver-colored paper recovered from the rectum of  
 1 Duran Bailey at autopsy.  
 2 A Yes.  
 3 Q Did you look at that?  
 4 A I did examine it both with the naked eye and under  
 5 a stereo microscope.  
 6 Q Were you able to determine what it was?  
 7 A All I could say, that it appeared to be composed of  
 8 wax. And I say appear to be composed of wax, not plastic,  
 9 And I do believe in my, sorry, in my report I did say that on  
 10 one side of each piece there is a silver-colored coating which  
 11 may, and I stress the word "may," be paint, vinyl or foil of  
 12 some kind and no further examinations were performed by  
 13 myself,  
 14 Q So you couldn't determine what that was?

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WAHL - DIRECT

1 A No.

2 Q You hadn't seen it before?

3 A No.

4 Q You weren't familiar with it?

5 A No.

6 Q Okay\_ Now I want to go back to the — your

7 testimony with regards to the luminol and the phenolphthalein.

8 And you said that you did a confirmatory test. And have you

9 heard of the term "hemoTracen?"

10 A Yes.

11 Q Did I say that right?

12 A Yes,

13 Q What is that?

14 A It is a diagnostic test used to confirm the presence

15 of blood and human blood\_

16 Q Okay. What's the sensitivity with regards to that in

17 comparison to the luminol or the phenolphthalein presumptive

18 tests?

19 A Hemotrace is a fairly sensitive test but it is not

20 nearly as sensitive as the presumption tests of luminol or

21 phenolphthalein.

22 Q Okay. Can you give me some numbers with that?□

23 A Well, I don't know what the numbers are, but the□

24 order of sensitivity would be luminal that is the most sensitive,

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WAHL - DIRECT

1 A It's a database. CODIS is a database that contains

2 databases of convicted felons in different state jurisdictions. It

3 contains DNA profiles from unsolved crimes\_ And the purpose

4 for the database is to aid in solving unsolved crimes or non-

5 suspect crimes where DNA laboratories in the country may

6 have a non-suspect case, and Ill use a rape case as the most

7 common example, where they've identified sperm on a case

8 and they have a DNA profile from the sperm donor but they —

9 it doesn't match any suspects or they have no suspects so they

10 upload this profile into the DNA database system and then this

11 profile is searched on a constant basis, day-to-day, against

12 local DNA databases, state DNA databases and then eventually

13 national databases. And at times, unsolved cases, you get

14 what's referred to as a database hit where an unsolved case, a

15 rape, let's say for example, the sperm DNA profile all of a

16 sudden will match somebody in the database and it may be

17 somebody who is already in prison, it may be somebody who

18 has been released from prison or it may match against another

19 unsolved case in another jurisdiction. So —

20 Q Kind of like fingerprints?

21 A Yes. The AFIS system. Yes. It's a database to

22 compare forensic evidence to other forensic evidence or to

23 other individuals to try to solve unsolved crimes or non-suspect

24 crimes-

V-180

WAHL - DIRECT

1 followed by phenolphthalein, then hemotrace.

2 Q Of those three?

3 A Of those three, hemotrace is the least sensitive of

4 those three.

5 Q Okay. And you indicated that — well, what are you

6 testing in the hemotrace? Is it the hemoglobin?

7 A You're testing for the hemoglobin protein in humans

8 or higher primates.

9 Q Okay. you're aware that there are certain

10 cleaning agents that break down the hemoglobin?

11 A Yes, Biological substances can be altered by

12 environmental insult, and it could be harsh chemicals, it could

13 be extreme heat and humidity. There are -- it's a well-known

14 fact and it has been for years in dealing in forensic biological

15 sciences

16 MR. KEPHART: The Court's indulgence, Your Honor.

17 (Pause in the proceedings)

18 BY MR, KEPHART:

19 Q Are you familiar with CODIS?

20 A Yes.

21 Q What is that so we know what that is?

22 A CODIS is an acronym that stands for Combined DNA

23 Index System.

24 Q Okay. And what do you do with it?

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WAHL - DIRECT

1 Q And you were telling us that when you look at DNA

2 there's certain -- there's quite a few aspects to DNA?

3 A In the DNA profiling systems that are used in the

4 United States and, basically, worldwide they generally

5 comprise anywhere from thirteen to sixteen different DNA

6 typing systems. In other words, individuals have a DNA type

7 in thirteen to sixteen different regions of their human DNA.

8 And so you can actually derive anywhere from thirteen to

9 sixteen DNA types and the combination of DNA types is what's

10 referred to as your DNA profile.

11 Q Is there any number that you have to meet in order

12 to be able to upload it into the CODIS?

13 A My recollection was you have to have a minimum of,

14 I do believe, ten DNA types to upload into the national

15 database.

16 Q Okay, In this particular case with regards to the

17 chewing gum, were you able to upload the foreign DNA in the

18 database?

19 A No. There was not a sufficient number of -- or on

20 the chewing gum you're referring to?

21 Q Yes,

22 A The chewing gum, the major component DNA profile

23 was consistent with the victim so there was no reason to

24 upload that. We identified the victim. The foreign DNA, I only

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## WAHL - DIRECT

1 detected foreign DNA in three of the -- three or four of the  
2 DNA types. And it's minor component DNA, and that still  
3 would not — you still would not be allowed to upload that in  
4 CODS. It's very -- there is very limited genetic information  
5 from the minor component on the chewing gum to be able to  
6 upload into COD'S.

7 Q Okay. A couple more questions and then I'll pass,  
8 Luminol has been around for over twenty years now, is that  
9 correct? How long has it been around?

10 A I don't know offhand, but it's been around awhile, I  
11 started out in forensics in 1980 and luminol was around then  
12 and for some years prior to that. So it's at least, I would say  
13 it's probably around thirty years, give or take a few years, at  
14 least.

15 Q Are you familiar with whether or not there's been  
16 improvements over those thirty, give or take, years?

17 A Yes, Before I came here to testify, I did some web  
18 searches just to see what came up on the web searches, and  
19 there are certain companies that have developed reagents that  
20 — to be used for screening blood similar to luminol. And the  
21 purpose of this was to develop reagents that may not have as  
22 many false positive reactions or may not have false positive  
23 reactions. I think that's -- and they may be easier to use,  
24 things of this nature.

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## WAHL - CROSS

1 gum. Let me talk about the gum for a minute. And correct  
2 me if I'm wrong in my understanding of DNA and the tests you  
3 performed and correct me if I make any misstatements, okay?  
4 You tested this piece of chewing gum which had blood on it  
5 that you could visibly see, correct?

6 A Yes,

7 Q And that blood, there was also blood on the  
8 cardboard where the gum was adhering to?

9 A Yes.

10 Q You tested the blood that was on the cardboard and  
11 it came back as belonging to Mr. Bailey?

12 A That's correct, Yes.

13 Q Did you extract some of the blood from the actual  
14 chewing gum and test it to see if that was also Mr. Bailey's?

15 A No, I did not.

16 Q Would it be fair to say you assumed because it was  
17 sitting in the blood of Mr. Bailey that the blood on the gum  
18 was Mr. Bailey's also?

19 A Yes. That's a strong assumption,

20 Q And then you attempted to clean the blood off of the  
21 gum in order to check for other DNA?

22 A Yes, because chewing gum is placed in the oral  
23 cavity usually, and I was trying to determine if I could  
24 ascertain any generic information from saliva on the gum, who

V-184

## WAHL - CROSS

1 Q Okay, And what —

2 A And they are out there. There's one referred to as  
3 HemoGlow [phonetic] I saw, but I know very little about it  
4 other than that,

5 Q Okay. What about the phenolphthalein?

6 A Phenolphthalein has been around for a very long  
7 time. It's also commonly used in chemistry labs in colleges as  
8 a titration end point indicator. Phenolphthalein has been  
9 around a long time,

10 Q Okay. And both of those are accepted practices to  
11 use for presumptive tests for detection of blood —

12 A Yes. I would --

13 Q -- at least in a crime?

14 A It's safe to say that they are used routinely in many,  
15 many laboratories and have been for many years,

16 MR. KEPHART: I'll pass the witness, Your Honor.

17 Thank you.

18 THE COURT: Cross,

19 MR. SCHIECK: Thank you, Your Honor,

**CROSS-EXAMINATION**

20 BY MR SCHIECK:

21 Q Good afternoon, Mr, Wahl,

22 A Good afternoon.

23 Q And we sort of ended with you talking about the

V-183

## WAHL - CROSS

1 chewed the gum.

2 Q And after you had cleaned the blood off of the gum  
3 to the best of your ability, you then performed some further  
4 DNA testing on the gum itself?

5 A Yes, I did.

6 Q And it came back as a major hit for Mr. Bailey and a  
7 minor on an unknown person, is that correct?

8 A I referred to — yes. I referred to it as major/minor  
9 component, in other words, there is DNA, there's a mixture of  
10 DNA, DNA from more than one person, and the predominant  
11 source of DNA was attributed to Mr. Bailey, and the minor  
12 component DNA was foreign to Mr. Bailey but it was also  
13 foreign to the defendant, Kirstin Lobato.

14 Q And there were only three areas of DNA that you  
15 were able to extract —

16 A If --

17 Q -- from the minor component?

18 A If I may refer to my notes. I was only able to detect  
19 three genetic loci or genetic regions where I detected minor  
20 component DNA.

21 Q But those three loci were not Mr. Bailey and not Ms.  
22 Lobato?

23 A On two of the loci, there was a DNA marking that is  
24 foreign to both Kirstin Lobato and Duran Bailey, Therefore,

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WAHL - CROSS

1 both of those individuals are excluded as being the source of  
2 the minor component DNA,

3 Q Does that mean then there's another source for that  
4 DNA component?

5 A In addition to Mr. Bailey, yes,

6 Q And it's not Ms. Lobato?

7 A It's not Ms, Lobator

8 Q Now, when did you stop working here for the crime  
9 lab here in Las Vegas and go to North Dakota?

10 A I retired from Las Vegas Metropolitan Police  
11 Department on December -- or January 1 of 2006.

12 Q 2000?

13 A '06. This year,

14 Q '06, Okay. And during the period of time until you  
15 retired, you continued to do the same type of work you were  
16 doing in 2001?

17 A I did not do any bench work. I was doing I was  
18 actually working for ome friends here in Las Vegas in their  
19 business, which is not forensic science-related, but I also was  
20 doing some consulting for a friend of mine who has a private  
21 DNA lab in Florida,

22 Q And during the period of time that you were working  
23 for the Metro crime lab, you would get items to test how?  
24 How would they come into your possession to be tested?

V-186

WAHL - CROSS

1 would enter the computer and request that the evidence be  
2 provided to you so you could test it?

3 A Yes. It would be -- it would be sent to the DNA lab  
4 and then whoever was next, whatever analyst was next up to  
5 accept a case, if that happened to be the next request up on  
6 line, I would -- it would be assigned to me. It would be  
7 assigned to me,

8 Q And you would test the items that you're requested  
9 to test, correct?

10 A In the vast majority of the times, yes. Sometimes I  
11 may have a discussion with a detective and we decided not to  
12 examine something, but that would be in consultation with the  
13 detective,

14 Q Would you ever have consultation with the detective  
15 and say is there any other evidence that I can test or suggest  
16 that you might want to test other evidence?

17 A At times, there may be if it's -- if I'm made aware of  
18 certain things about the case or if the detective takes the time  
19 to come and meet with me and sit down and go over what's  
20 been collected, then we may decide mutually what to test and  
21 what not to test at least initially.

22 Q Do you recall in this case if the detective ever met  
23 with you or consulted with you over what items to test?

24 A The -- I never -- my recollection was I did not

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WAHL - CROSS

1 A What happens is the investigator or, at times, the  
2 District Attorney's Office will issue a request for DNA analysis  
3 or an analysis of evidence. And then I take the request and I  
4 go to a computer that's our evidence computer, and then I  
5 create a list using the computer and submit the list to the  
6 evidence vault, and then they go find the evidence in storage  
7 and then they bring it up to me, bring it to me usually the next  
8 day. And then I sign for the evidence and then the evidence  
9 gets put into a temporary storage locker until which time I'm  
10 ready to start analyzing it,

11 Q I'm gonna show you two documents in just a  
12 second, just to have you identify if we're on the same page.

13 MR KEPHART: May I approach, Your Honor?

14 THE COURT: You may.

15 BY MR. SCHIECK:

16 Q If you could just look at these, tell me if these are  
17 the forms you would generate or would have generated there  
18 at the crime lab,

19 A I would not generate these. These would be  
20 generated by the requester, whoever that may be. But, yes, it  
21 appears to be a representative example of a laboratory  
22 request,

23 Q Okay. So the detective or whoever is making the  
24 request would prepare one of these and send it to you. You

V-187

WAHL - CROSS

1 consult with anybody in person. I did have a phone  
2 conversation with Detective Thowsen on July 30<sup>th</sup> of 2001, and  
3 it was just a cursory, a discussion of the initial request, and I  
4 got some information about where it was recovered and  
5 whether anything needs to be tested or not tested based on  
6 the request, written request.

7 Q And then you would perform your testing and  
8 prepare a report as to the results of your tests, correct?

9 A Yes,

10 Q Okay. And that report then would typically include  
11 the items that were provided for you to test and the results of  
12 your testing, correct?

13 A Typically, yes,

14 Q And in this case you have a report dated August 6,  
15 2001 that reports those results?

16 A Yes.

17 Q Other than those results, did you request to test any  
18 other items?

19 A Did I request?

20 Q Yes.

21 A No, I did not,

22 Q So you only tested those items that the homicide  
23 detectives asked you to test?

24 A Yes,

V-189



WAHL - CROSS

1 Q And you're not involved at the crime scene or in the  
 2 collection of the evidence during a particular case, correct?  
 3 A No, I'm not,  
 4 Q And you certainly weren't involved in this case in the  
 5 collection of evidence?  
 6 A No, I was not.  
 7 Q Okay. And you really don't know what other  
 8 evidence was available to be tested in this case?  
 9 A At that time, I wasn't. No.  
 10 Q Later you received another request to perform some  
 11 additional testing?  
 12 A Yes.  
 13 Q But until that request was forwarded to you, you  
 14 didn't know that there was other evidence?  
 15 A Oh, I knew there was other evidence that was  
 16 collected but --  
 17 Q You just --  
 18 A There wapot -- nothing was -- that evidence was  
 19 not requested to be analyzed by the detective or the D,A.'s  
 20 officer  
 21 Q Okay, So unless you're requested to do it, basically,  
 22 for the most part, you're not testing anything?  
 23 A For the most part, unless I'm made aware of   
 24 something that I think might need to be tested. But I'd have

V-190

WAHL - CROSS

1 Q Would hemotrace give you a confirmatory result if  
 2 it's blood but not human blood?  
 3 A It would, There are two citations, there are  
 4 literature citations that I'm aware of, higher primates will give  
 5 a positive result with hemotrace. And by higher primates, I'm  
 6 talking about gorillas, apes, chimpanzees. And there has been  
 7 reported in the literature that ferret blood has given false  
 8 positives. However, I have tested seven or eight different  
 9 ferret bloods and have not ever seen a positive result, but  
 10 that's not to say that someone else may have. So but it has  
 11 been reported in the literature,  
 12 THE COURT: I'm gonna request a clarification  
 13 because there was more than one pair of shoes within the --  
 14 MR. SCHIECK: --  
 15 THE COURT: -- items to be tested.  
 16 THE WITNESS: Yes,  
 17 THE COURT: I want the record to be clear as to --  
 18 as to which shoes.  
 19 THE WITNESS: Defense counsel, are you referring  
 20 to the -- what I have listed at 5, Item 1, it's a pair of black,  
 21 high-heeled sandals reportedly collected from Kirstin Lobato?  
 22 That's what you're referring to, correct?  
 23 BY MR. SCHIECK:  
 24 Q Correct.

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WAHL - CROSS

1 to be made aware of it.  
 2 Q Now the -- in your conclusions you talk about  
 3 finding, and this is from the August 6<sup>th</sup>, 2001 report, that you  
 4 tested a shoe and found a stain in the big toe area of the right  
 5 high-heel sandal, is that correct?  
 6 A That is correct, yeah.  
 7 Q Would it be fair to say that you had both shoes and  
 8 would have tested both shoes so, therefore, the left shoe  
 9 would have ben negative?  
 10 A I'm not sure I understand your question. I did  
 11 examine both shoes,  
 12 Q Okay,  
 13 A And I only detected one stain that gave me a  
 14 positive presumptive test for blood, and then I proceeded to  
 15 do confirmatory testing, that was positive, and then I went  
 16 ahead and did DNA testing.  
 17 And what type of confirmative testing did you do?  
 18 A I do believe I did hemotrace.  
 19 Q So hemotrace is a confirmatory test?  
 20 A For blood, yes.  
 21 Q For blood in --  
 22 A In conjunction with DNA extraction, If I extract DNA  
 23 and I get human DNA recovered, that is also considered a  
 24 confirmatory test for blood in combination with the hemotrace.

V-191

WAHL - CROSS

1 A Okay, But getting back, yes, there are things that  
 2 can give positive results with hemotrace that are not human  
 3 blood.  
 4 Q And while we're talking about the -- was there  
 5 another pair of shoes that you did test also?  
 6 A A pair of Nike Air shoes, black-and-white color,  
 7 reportedly collected from Kirstin Lobato. And I did not detect  
 8 any blood on those shoes,  
 9 Q Did you perform any testing or did you just visually  
 10 inspect those shoes?  
 11 A I visually inspected the shoe and I may have tested  
 12 a couple areas that -- just to ensure that I didn't miss anything  
 13 if it was on if it wasn't a --  
 14 Q The request report on both pair of shoes requests  
 15 that the photographs be taken of the tread of the shoe. Is  
 16 that something you would do or someone else would do?  
 17 A No, that would go to another area of the laboratory.  
 18 But if a request has been made to examine a pair of shoes, for  
 19 example, for the presence of blood, it would go to my section  
 20 first for my examination. And if blood was detected, I would  
 21 proceed with the analysis before I would send it over to the  
 22 individual who does the shoe print,  
 23 Q With respect to the condom pack, you had indicated  
 24 that you had checked for semen, is that correct, on the

V-193

WAHL - CROSS

1 Kleenex that was found with the condom pack?  
 2 A Yes.  
 3 And did you check for blood with respect to that  
 4 item?  
 5 A May I refer to my notes? When I -- if I'm asked to  
 6 request -- if I'm requested to look for -- look at something for  
 7 semen, if I do see blood on there, I will note it in my report  
 8 and may do a presumptive. And if I deem it necessary, I will  
 9 go ahead and perform DNA profiling. But there was no  
 10 apparent bloodstains observed according to my notes, so I  
 11 didn't --  
 12 Q Okay,  
 13 A -- do any further testing,  
 14 Q So that it was negative on that item also then?  
 15 A There was no -- there's no apparent appearance of  
 16 blood there so I didn't do any presumptive testing.  
 17 Q Okay. Now when you examined the baseball bat, it  
 18 was an aluminum bat, is that correct?  
 19 A Yes.  
 20 Q Do you recall what --  
 21 A I'm assuming it's aluminum. The only metal bats I  
 22 know of are aluminum.  
 23 Q Do you recall whether or not it had a rubber handle  
 24 on it where the batter would grip the bat?

V-194

WAHL - CROSS

1 Q So when you got -- when you got the door, I mean,  
 2 they actually took the whole door and brought it to you, is that  
 3 correct?  
 4 A I think my recollection was they removed the door  
 5 panel and the door panel came to me or was submitted to the  
 6 evidence vault,  
 7 Q But when you got it, the illumination wasn't there  
 8 because it fades with time?  
 9 A It fades relatively quicker from my -- from what I  
 10 understand, sir.  
 11 Q But, however, the crime scene analysts or whoever  
 12 had done the luminol testing had circled it with a black ink  
 13 pen, is that correct?  
 14 A Yes.  
 15 Q Okay, So you were able to determine the areas they  
 16 wanted you to look at?  
 17 A Yes, without having to respray it myself or take it  
 18 back to be resprayed,  
 19 Q And with respect to the door panel that you -- that  
 20 you saw and tested, you attempted a confirmatory test on  
 21 that?  
 22 A There was only one area. I took phenolphthalein, I  
 23 took numerous swabs and swabbed areas within the black  
 24 encircled area, and there was only one area that gave me a

V-196

WAHL - CROSS

1 A Yes, it did.  
 2 Q And that is -- that is not a smooth metal surface.  
 3 That's more of a porous-type surface so that you can get a  
 4 grip on the bat, is that --  
 5 A My recollection was it was a relatively nonporous  
 6 surface. It's a smooth surface is my recollection. I'd have to  
 7 look at the bat again but --  
 8 Q It wasn't -- it wasn't metal. It was some --  
 9 A It was not metal, no. It was some type of a rubber.  
 10 Q Did you check the grip area for the presence of  
 11 blood also?  
 12 A Oh, most definitely, yes,  
 13 Q You would have checked the entire bat?  
 14 A Exactly, Definitely,  
 15 Q Now with respect to the items from the car, you  
 16 indicated that on the left interior door panel of the vehicle  
 17 luminol testing had been done and had a presumptive result, is  
 18 that correct?  
 19 MR, KEPHART: Here, It's right here,  
 20 THE WITNESS: It was reported to me that it was a  
 21 positive presumptive result, yes,  
 22 BY MR, SCHIECK:  
 23 Q Were you provided with photographs at the time?  
 24 A At the time, no.

V-195

WAHL - CROSS

1 weak positive result. The other areas that I tested were  
 2 negative.  
 3 But phenolphthalein is a presumptive test, correct?  
 4 A Yes, it is.  
 5 It's not a confirmatory test?  
 6 A That's correct.  
 7 Did you do any confirmatory testing on the door  
 8 panel?  
 9 A The only area that I did a confirmatory test would  
 10 be on the area that gave me a positive, a weak positive  
 11 presumptive test for blood using phenolphthalein.  
 12 Q Okay, And the confirmatory test you did was the  
 13 hemotrace?  
 14 A It was the hemotrace. And I also extracted the  
 15 swab for DNA to determine if I could get any human DNA from  
 16 the swabbing as well,  
 17 Q Okay. Well, on the confirmatory test it was  
 18 negative?  
 19 A The hemotrace was negative, yes.  
 20 Q So you weren't able to confirm through scientific  
 21 testing that that was in fact blood?  
 22 A That's correct,  
 23 Q And you attempted, and I think your words were,  
 24 "vigorously swabbed" the area to try to just to extract DNA

V-197

WAHL - CROSS

1 from the area?

2 A The purpose for swabbing it vigorously is to try to  
3 increase the efficiency of transfer. When I'm swabbing the  
4 area, I'm trying to transfer whatever is there that is giving the  
5 positive results onto the swab, and then I extract the swab  
6 and test the swab.

7 And on the door panel you were unable to find any  
8 DNA?

9 A There's no detectable human DNA with the swab.  
10 Even with the vigorous swabbing that you had done?

11 A That is correct,

12 Okay, So we have a presumptive test that says it's  
13 positive but no confirmatory tests and no finding of DNA?

14 A That is correct. Human DNA,

15 Q And we talked about false positives, and you  
16 indicated that there were a number of things that could give  
17 false positives on the luminol testing, correct?

18 A Yes,

19 Q Okay. What are some of those?

20 A Copper salts, some metal salts, some plants that  
21 contain what's referred to as plant peroxidase, which are -- it's  
22 an enzyme. Those substances have been cited in the literature  
23 as giving false positive results with both luminol and  
24 phenolphthalein,

V-198

WAHL - CROSS

1 there were -- the presumptive tests came back positive on the  
2 left one, is that correct?

3 A If I may refer to my notes. The seat cover,  
4 according to my report, the seat cover was reportedly  
5 recovered from the front left of the vehicle. That's what was  
6 written on the evidence package.

7 Q And that's the one where the presumptive test came  
8 back positive, the same as on the door of the car?

9 A Yes. Again, I did a vigorous swabbing of the  
10 encircled areas and only one area yielded a weak positive  
11 result with phenolphthalein, and then I did vigorous swabbing  
12 and treated that area just like I did with the other item  
13 evidence. And there was -- it was negative, negative  
14 hemotraces result, and no human DNA was detected from the  
15 extract.

16 Q And with respect to the -- to the grey car seat that  
17 we've been talking about, did you have even any type of a hit  
18 on it when you -- there at the lab?

19 A Which item are we talking about? Is this on my  
20 report, 8, Item 5? I only --

21 Q Yeah,

22 A According to my notes, I only examined one seat  
23 cover. So if this is 8, Item 4 -- or Item 5, excuse me.

24 Q All right.

V-200

WAHL - CROSS

1 Q Are you familiar at all with the Pioche/Panaca area of  
2 Nevada?

3 A I have been through Panaca and Pioche years ago.  
4 I've driven through that, but that's as familiar as I have with  
5 that area,

6 Q Are you familiar with the fact that it was a mining  
7 area?

8 A I'm aware that Pioche was an old mining town at  
9 one time.

10 Q Rich in chemicals in the soil?

11 A Well, rich in some type of elements that warranted  
12 mining, yeah. That'd be an assumption, good assumption,

13 Q That could include copper?

14 A Yes. I don't know for sure, but I wouldn't be  
15 surprised if copper was mined there,

16 Q And a variety of salts also?

17 A Sure. Possible. Sure.

18 Q And those things could provide false positives?

19 A Sure,

20 Q And, again, a confirmatory test on those items would  
21 come back negative because it's not human blood?

22 A Assuming there was no blood in with those items,  
23 yes, it would come back negative.

24 Q And with respect to the car seat, you indicated that

V-199

WAHL - CROSS

1 A Yes.

2 Q Item 5,

3 A Yes.

4 Q Okay, Which is a two-tone grey?

5 A Yes.

6 Q Okay, Which is separate and distinct from the slip  
7 cover which is red-and-white?

8 A That's correct. Yes.

9 Q Okay. But they both came from the front left of the  
0 vehicle?

1 A Yes,

2 Q Okay. And the results of that testing was what?

3 A I think we just discussed that, didn't we?

4 Q We talked about the red-and-white one.

5 A Oh, we did? Oh, I'm sorry.

6 Q Let's talk about Item 5,

7 A The -- well, I thought you were talking -- the red-  
8 and-white one, I don't think -- that was not detected on the  
9 vehicle slip cover, red with white-and-black floral print, so I  
0 want to clarify that.

1 Q Okay.

2 A And when I was talking about the weak positive  
3 phenolphthalein and the positive luminol, that was the two-  
4 tone grey seat cover I did that test on. I did test the vehicle

V-201

WAHL - CROSS

1 slip cover, red with white-and-black floral print, and I tested  
2 those areas that supposedly gave a positive luminol result but  
3 I got a negative phenolphthalein. I swabbed that area very  
4 vigorously and did not obtain any positive results with the  
5 phenolphthalein test, Therefore, I didn't go any further.

6 Q Mm-hmm. Now the photograph that's in front of  
7 you, and for the record it's State's Exhibit 113 which has been  
8 admitted, that shows the luminol while it's still luminescing, is  
9 that correct?

10 A Yes. Because it does fade following spraying a  
11 surface with luminol, the area is made dark, and then they had  
12 their photography equipment ready to go to take a photograph  
13 because if something does chemiluminescent, it eventually will  
14 fade. And my understanding is it fades, you know, fairly  
15 quickly. So they want to be able to take it when it's  
16 luminescing at its most intense.

17 Q So they take it as soon as they can, as soon as it  
18 fully luminesces, to preserve what they've found?

19 A That is my understanding.

20 Q And just so that I'm correct on this, this car seat,  
21 this would be the top of the car seat, to your understanding?

22 A I assume so, yes, The conformity of it and when Mr.  
23 Kephart showed me the photograph, it appears that that's the  
24 top, the top of the photograph is the top headrest area and

V-202

WAHL - CROSS

1 the interior of the car but I haven't actually seen what the car  
2 looks like on the outside. I actually know very little about the  
3 car,

4 Q So you don't know if there's a sunroof on that car?

5 A I do not know.

6 Q And whether something could be poured through  
7 the sunroof inside the car, hitting on the car seat?

8 A I do not know.

9 Q When you do a presumptive test using luminol, does  
10 it tell you how old the substance is that it's reacting with?

11 A No.

12 Q How old could it be in your experience?

13 A Well, literature does cite that older bloodstains  
14 actually chemiluminesce more intensely than fresher  
15 bloodstains. So I have read about bloodstains being as old as  
16 fifteen to twenty years old that will still chemiluminesce, will  
17 yield a positive reaction with chemiluminescence, a strong  
18 reaction,

19 Q A strong reaction to the -- to the luminol as much as  
20 fifteen to twenty years after the fact?

21 A Well, if something is fifteen to twenty years old,  
22 that's an old bloodstain and the literature does cite that old  
23 bloodstains tend to luminesce more intense than fresher  
24 bloodstains.

V-204

WAHL - CROSS

1 then going down.

2 Q So your lumina' -- the luminal testing actually comes  
3 back with a presumptive positive for clean up on top of the --  
4 of the car seat itself?

5 A Clean up? I'm just --

6 Q Well, I mean, as far as we can see on the  
7 photograph anyway,

8 A Well, if your -- if I understand your question, you're  
9 pointing to that area, that's the top of the car seat. And then  
10 it appears that there is chemiluminescence from the top down  
11 to the -- to the bottom.

12 Q Okay. And all along the -- what would be the left  
13 hand side of that car seat there appears to be like splotchy  
14 areas of that appear a little bit darker than the others, is that  
15 correct?

16 A It appears so, yes,

17 Q Any explanation for that in your experience with  
18 luminol?

19 A I don't know if that's something to do with the way  
20 the photograph was taken or whether those areas actually  
21 chemiluminesced or not I don't know,

22 Q You're not familiar at all with the car where the seat  
23 was removed from?

24 A I have never seen any -- I have seen photographs of

V-203

WAHL - CROSS

1 Q What about on the confirmatory tests; can you age  
2 things based on results you get from confirmative tests?

3 A Not with any absolute certainty, no

4 Q And with -- we talked about the age of the item that  
5 the luminol is reacting with. The luminol test doesn't tell us  
6 anything about how that, whatever it's reacting with, got on  
7 the seat either or on the -- on the surface, correct?

8 A How it got on there?

9 Q Yes,,

10 A No.

11 Q So we don't know when and we don't know how and  
12 it could be quite a long time ago as far as the lumina' testing is  
13 concerned?

14 A Yes, that's possible.

15 Q And without a confirmative test we don't even know  
16 it's human blood?

17 A We can't confirm it as so, no.

18 Q Okay, And without the DNA tests we can't confirm,  
19 if it is blood, whose blood it is?

20 A That's correct,

21 Q And that's basically what the results of your testing  
22 were in this case?

23 A Yes,

24 Q The testing that you did perform?

V-205

WAHL - CROSS

1 A Yes,  
 2 Q Now, apparently, later there was some additional  
 3 testing requested in this case?  
 4 A While I was still employed at Metro you mean?  
 5 Q No. Yes. Yes, while you were still employed at  
 6 Metro  
 7 A Yes,  
 8 And that was the testing that you performed on the  
 9 scrapings, is that correct?  
 10 A On the report I issued October 15<sup>th</sup> of 2001, and I  
 11 was requested to examine the left and right fingernail clippings  
 12 of Duran Bailey and the left and right hand swabbings of  
 13 Duran Bailey.  
 14 Okay. Now you're familiar with sexual assault kits,  
 15 correct?  
 16 A Yes.  
 17 Okay, I mean, you test those a lot in your line of  
 18 work?  
 19 A Yes,  
 20 Okay, The various items that are collected from a  
 21 sexual assault kit? □  
 22 A Yes.  
 23 Q Okay, There are a number of items that can be  
 24 tested that are collected from a sexual assault kit?

V-206

WAHL - CROSS

1 material adhering to it, fibers, things of that nature. □  
 2 Q Did you find anything in this case?  
 3 A Nothing apparent to me, no,  
 4 Q So all you tested was the apparent blood that was  
 5 under the fingernails?  
 6 A That's correct.  
 7 Q And on the hand swabs?  
 8 A Yes.  
 9 Q Okay. In a sexual assault case, where are the hand  
 10 swabs collected from? It's kind of a vague term.  
 11 A Sometimes on the out -- I don't know if they actually  
 12 swab the entire hand, both the top or bottom. Sometimes  
 13 they may designate on the envelope where they exactly  
 14 swabbed them. I could check my notes. I can see what they  
 15 — my notes said if you want to hold on a second.  
 16 Q If you could, please. Thank you.  
 17 A Thank you. The containers contain the swabs, my  
 18 notes reflect that two plastic vials marked L and R, each  
 19 containing one swabbing of the left and right hands of the  
 20 victim, Duran Bailey. So there is no information provided to  
 21 me exactly how those swabbings were performed. You'd have  
 22 to ask the person who collected them.  
 23 Q All we know is somewhere on the hands?  
 24 A Yes.

V-208

WAHL - CROSS

1 A Yes,  
 2 Q Okay, But in this case, from the sexual assault kit,  
 3 you were -- the request form that you received from the  
 4 homicide detective was for fingernail clippings and hand swabs  
 5 and that's all?  
 6 A That's all, yes.  
 7 Q You weren't requested to check the combings from  
 8 the pubic hair, the debris collected from the pubic hair, you  
 9 weren't asked to check the penile swabs or the rectal swabs,  
 10 correct?  
 11 A That is correct.  
 12 Q But those were in the same sexual assault kit that  
 13 the scrapings were in and the clippings?  
 14 A Yes, they were  
 15 Q And, again, those testings came back with just DNA  
 16 of Mr. Bailey?  
 17 A Human blood was identified in those items and the  
 18 human blood was identified as being Duran Bailey's blood.  
 19 Q Did you actually attempt to determine if there were  
 20 foreign substances besides the DNA, dirt or things of that  
 21 nature?  
 22 A Yes When I — when I have fingernail clippings, the  
 23 first thing I do is I look at the fingernail clippings under the  
 24 stereo microscope to see if there is any apparent tissue

V-207

WAHL - CROSS

1 Q There was additional testing done after your  
 2 involvement with the case, is that correct, the testing by  
 3 Myriad?  
 4 A To my knowledge, yes, I just recently found out  
 5 about that. So --  
 6 Q And all you've done is review the Myriad report?  
 7 A Yes. I -- that's the only report of additional testing  
 8 that I have reviewed.  
 9 Q And that report was dated when, do you recall?  
 10 A February 13<sup>th</sup>, 2006.  
 11 Q And so your last testing was done in October of  
 12 2001, and then four and a half years later some additional  
 13 testing was done in February of 2006, is that —  
 14 A Yes,  
 15 Q And that testing, it appears that on the first page of  
 16 that report there's a complete description of everything that  
 17 was in the sexual assault kit, is that correct?  
 18 A Yes.  
 19 Q And that would have been the same sexual assault  
 20 kit that was available to you back in 2001?  
 21 A That's correct,,  
 22 Q When you were requested just to test the scrapings  
 23 and the hand swabs?  
 24 A That's correct.

V-209

WAHL - CROSS

1 Q What was tested, of all the items that are included in  
 2 this list that was given to Myriad, what was tested by Myriad?  
 3 A They analyzed the penile swabs and the rectal  
 4 swabs. No DNA was performed on those items because no  
 5 sperm were found. They collected or they examined the  
 6 debris collection container and found four apparent hairs.  
 7 They simply mounted the hairs on a collection card and  
 8 repackaged the evidence. My understanding was they were  
 9 informed not to do anything with the hairs by the Metro DNA  
 10 lab, for reasons to keep costs down, The -- there has to be  
 11 some limitations on what is sent out to the private labs to  
 12 analyze based on how much money we have, how much  
 13 money they have in the grant, the grant fund, They -- and as  
 14 it says here, "As per client request the Items 5, left hand  
 15 swab, 6, right hand swab, 7, left hand fingernails and right  
 16 hand fingernails, pubic hair combings, and pulled pubic hairs  
 17 and pulled head hairs were not analyzed." I had already  
 18 analyzed the hand sobs and the fingernail clippings. But the  
 19 pubic hair combings, the pulled pubic hairs, the pulled head  
 20 hairs were not — were requested not to be analyzed by the  
 21 client, which is Metro. Metro lab.  
 22 Q Okay. When you do DNA testing, does information  
 23 from the -- from the blood samples or the samples of DNA that  
 24 you have give you an idea of the sex of the person that's

V-210

/ANL REDIRECT

1 And by that, I'm talking about things such as vomit or feces.  
 2 A They will give a positive result if there is blood in  
 3 those, in the feces and in vomit, and blood can occur in those  
 4 body fluids.  
 5 Q So those body fluids could give a positive reaction to  
 6 the -- to the presumptive tests?  
 7 A If there's blood in those body fluids, yes.  
 8 And were you provided with any vomit to test in this  
 9 case?  
 10 A No, not -- no, not to my knowledge.  
 11 Do you see any reports where any was collected?  
 12 A Where vomit was collected? No.  
 13 MR, SCHIECK: Thank you, That's all I have, Your  
 14 Honor,  
 15 THE COURT: Redirect,  
 16 REDIRECT EXAMINATION  
 17 BY MR, KEPHART:  
 18 Q Mr. Wahl, can you -- can you tell me in reference to  
 19 parts per million how sensitive the luminol test is? Are you  
 20 familiar with the literature on that?  
 21 A I have seen literature cited that it's 1 in, I do  
 22 believe, 10 million,  
 23 Q Okay. So what does that mean, like --  
 24 A Some of you may be familiar with parts per million

V-212

WAHL - CROSS

1 involved?  
 2 A Yes The DNA profiling system does examine the  
 3 region of the sex chromosomes to determine gender, so we  
 4 can determine the sex or the gender of a biological sourcer  
 5 Q What about ethnicity?  
 6 A There -- our laboratory, Metro laboratory, cannot do  
 7 that. There are some laboratories that are doing forensic  
 8 application DNA testing to try to put some type of high  
 9 probability on wliat the ethnic or the race or ethnicity of  
 10 someone is I'm aware of these labs. I don't know much  
 11 more than that,  
 12 Q And on the -- back to the chewing gum just for a  
 13 second on that area Were any of the indications you had on  
 14 the two unidentified sufficient to tell you the sex of the  
 15 person's DNA or the ethnicity?  
 16 A May I refer to my notes?  
 17 Q Sure,  
 18 A I need to look at the actual data to answer that  
 19 question No, because the major component DNA was from  
 20 Duran Bailey so there was no way to know, there's no way to  
 21 know with any certainty whether the gender of the minor  
 22 component DNA is male or female.  
 23 Q Okay. And one last area. Are there other bodily  
 24 fluids that will give a positive reaction to the luminol tests?

V-211

WAHL - REDIRECT

1 where, for example, if something is sensitive to 1 in 1 million.  
 2 For example, let's say you had 1 drop of blood and then you  
 3 dropped it in a big vat with 1 million drops of water and you  
 4 stirred it up, you should be able to get a positive presumptive  
 5 test for blood, if you dilute the blood 1 in a million. 1 in 10  
 6 million would mean that it would be more sensitive, the test  
 7 would be more sensitive. They can detect a more dilute  
 8 substance.  
 9 Q What about phenolphthalein?  
 10 A Phenolphthalein, I've seen literature cited at 1 in 1  
 11 million.  
 12 Q So with regards to the seat covers that we have  
 13 here, and that's the left seat cover. See down here it says  
 14 "Left"?  
 15 A Mm-hmm,  
 16 Q On the bottom. And then you identified this.  
 17 MR, KEPHART: That was Exhibit Number 110, Your  
 18 Honor, for the record,  
 19 BY MR. KEPHART:  
 20 Q 112, you actually would testify as to being able to  
 21 identify the luminescence on this seat cover here?  
 22 A Yes, I recall that. Yes,  
 23 Q And that's on the left, came from the left seat. That  
 24 is actually Exhibit 113. You see that?

V-213

WAHL - REDIRECT

1 A Mm-hmm.

2 Q Okay. Now these seat covers are, obviously,

3 removable, You could simply take it off the seat, Would you

4 agree with me there?

5 A Yes.

6 Q And the seat covers are of a nature that they are

7 cloth. You could simply throw them in the washing machine.

8 A Yes, you could do that.

9 Q Would you agree with me there?

10 A Yes, I agree.

11 Q Now, on the other hand, the seat itself, you couldn't

12 throw that in the washing machine.

13 A Unless it was a big washing machine, but no

14 Q Nor could you throw the door panel in a washing

15 machine?

16 A No I would say no.

17 Q So is it surprising to you to see that little of what

18 reacts to luminol on the seat cover versus the reaction to the

19 seat, assuming that the seat cover was on the seat when

20 anything, substance, got on it?

21 A I'm not sure I understand your question. Could you

22 rephrase it?

23 Q What I'm saying, is it surprising to you to see the

24 small amount of luminescence on the seat cover from

V-214

/AHL - REDIRECT

that could give false positives as well?

2 A With luminal?!

3 Q Yes.

4 A Yes, those have been cited in the literature as well,

5 Q Okay,, What about with phenolphthalein?

6 A I'm not -- I don't recall cleaning reagents causing

7 false positives with phenolphthalein. It's -- I imagine it's

8 possible, but I have done a lot of tests myself using

9 phenolphthalein on cleaning solutions. I have yet to see a

10 positive result. It doesn't mean there couldn't be some type of

11 a cleaning solution out there. It's an oxidation reaction, a

12 chemical oxidation reaction with phenolphthalein. So if there

13 is a cleaning solution out there that has a strong oxidation

14 capability, it's possible it could yield a false positive with

15 phenolphthalein as well.

16 Q Okay, And now you said that the tests, obviously,

17 you weren't able to positively identify what was on the seats as

18 blood. Are you then saying that it is not blood that caused

19 that?

20 A I can't, using the tests I used, I cannot confirm it's

21 blood. That doesn't necessarily mean it's not blood but I can't

22 say it is blood on there,

23 MR. KEPHART: Okay, Thank you. I have nothing

24 further, Your Honor,

V-216

WAHL - REDIRECT

1 something that appears to have that large amount of

2 luminescence on the seat?

3 A Assuming that the seat cover was on that seat?

4 Q When the — when anything was deposited on it.

5 A Well, the seat cover just had a couple small spots, if

6 I recall, with chemiluminescence, at least what I could see in

7 the photograph.

8 Q Mm-hmm,

9 A And there's quite a bit there, So --

10 THE COURT: On the seat?

11 THE WITNESS: On the seat, So I guess I wouldn't

12 be that surprised if assuming, you know, particularly if the seat

13 cover could be washed,

14 MR, KEPHART: Okay,

15 THE WITNESS: And what was on -- if the seat cover

16 was on that seat, and whatever is causing the

17 chemiluminescence on the seat could possibly be on the seat

18 cover, but you could wash the seat cover. I wouldn't be

19 surprised to see a smaller amount of the chemiluminescence

20 on the seat cover.

21 MR. KEPHART: Okay.

22 THE WITNESS: Whatever is causing it.

23 BY MR, KEPHART:

24 Q Are there certain types of cleaning agents, though,

V-215

WAHL - RE-CROSS

1 MR. SCHIECK: Just a couple, Your Honor.

2 THE COURT: You may

3 RE-CROSS EXAMINATION

4 BY MR, SCHIECK:

5 Q Mr. Wahl, what cleaning solutions give you the false

6 positives with luminol?

7 A I've read literature that cites some bleaches and

8 some cleaning solutions, but I can't cite a particular brand off

9 the top of my head,

10 Q What component of bleach would cause a false

11 positive?

12 A I do believe it's sodium hypochlorite, which is —

13 which is basically bleach, and it's a very strong oxidizing

14 reagent,

15 Q You indicated, though, that you use bleach in your

16 lab to clean off the lab top?

17 A Yes, I do,

18 Q Aren't you worried you're gonna get false positives

19 from the bleach that you use in your lab when you clean?

20 A That's why we wipe it off with ethanol and that's

21 why I work on top of a piece of butcher paper that covers the

22 counter top.

23 Q So but it's only certain bleach product. Is that what

24 you're saying? It's not -- if I went down and got Clorox, am I

V-217

1 gonna get a positive reaction?  
 2 A Well, bleach is bleach, sodium hypochlorite.  
 3 Q So if bleach is used, any place I use bleach, is gonna  
 4 give a false positive with luminol?  
 5 A It may or may not. It might.  
 6 Q I don't understand. Why might it and why might it  
 7 not?  
 8 A Maybe there's certain other chemicals in with the  
 9 bleach that might cause the positive reaction. I don't know,  
 10 I'm not a chemist,  
 11 MR. SCHIECK: No further questions, Your Honor.  
 12 MR. KEPHART: Nothing further.  
 13 THE COURT: You may step down from the stand.  
 14 Ladies and gentlemen, we'll be taking our evening  
 15 recess and resuming on Monday at 10:30. At 10:30 Monday  
 16 morning, please be in the hallway. The bailiff will meet you  
 17 there to return you to your seats in the courtroom.  
 18 During this recess you're admonished not to talk or  
 19 converse among yourselves, nor with anyone else, on any  
 20 subject connected with the trial, and you're not to read, watch  
 21 or listen to any report of or commentary on the trial or any  
 22 person connected with the trial, by any medium of information,  
 23 including, without limitation, newspaper, television, radio and  
 24 Internet, and you're not to form or express any opinion on any

V-218

1 THE COURT: And this particular witness, Mr. Wahl,  
 2 had the plane to catch tonight to go back to North Dakota.  
 3 And so --  
 4 MS. DiGIACOMO: Right. And he's flying out to go  
 5 to Columbia tomorrow, I believe.  
 6 THE COURT: Is Ms. Tienken in the hallway?  
 7 MS, DiGIACOMO: She should be, yes.  
 8 THE COURT: Would you ask her to step into the  
 9 courtroom?  
 10 Ms. Tienken, would you please return to the witness  
 11 stand? The Court reminds you that you remain under oath,  
 12 DIXIE TIENKEN, STATE'S WITNESS,  
 13 REMAINS UNDER OATH  
 14 THE COURT: You had been instructed to respond  
 15 back at 3:15 and, apparently, got back about 3:30. Something  
 16 held you up and just got you running a little bit late?  
 17 THE WITNESS: It was about 3:25. Yes, Trying to  
 18 get all the way to the hotel after I met with this lady in the  
 19 purple. She can tell you. And the other lady. And then I had  
 20 to go to my hotel room and then I came right back.  
 21 THE COURT: Okay. Unfortunately, because you  
 22 were late and we didn't know where you — where you were or  
 23 when you'd be arriving, we proceeded forward with the next  
 24 witness out of order. So we're gonna need to come back to

V-220

1 subject connected with the trial until the case is finally  
 2 submitted to you.  
 3 You all have a good weekend and we'll see you at  
 4 10:30 Monday,  
 5 The jury may exit,  
 6 The Court will ask that counsel remain,  
 7 (Jurors recessed at 17:07:20)  
 8 THE COURT: The record shall reflect that the jury  
 9 has exited.  
 10 When we came back from lunch, the State advised  
 11 that Dixie Tienken was not returned here at 3:15, that she had  
 12 gone to a hotel room, and it was unknown why she was not  
 13 back at 3:15. About 3:30, I saw a gentleman wearing a  
 14 county badge around his neck come in and clear his throat to  
 15 catch Ms. DiGiacomo's attention and leaned over and  
 16 whispered something to her, And I thought that perhaps that  
 17 was your investigator with some information about the  
 18 witness.  
 19 MS. DiGIACOMO: That's correct. That was the  
 20 investigator letting us know that Dixie was back, Ms. Tienken  
 21 was back at that time, just about -- it was about 128, I  
 22 believe, by my watch  
 23 THE COURT: Okay,  
 24 MS DiGIACOMO: So she was just late.

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1 you next week now. Are you able to be back here on Monday  
 2 at 10:30?  
 3 THE WITNESS: No, I cannot. I can be back  
 4 Monday afternoon but I cannot possibly be back before late  
 5 afternoon 'cause I'm working.  
 6 THE COURT: Okay.  
 7 THE WITNESS: I also -- since I have retired from  
 8 teaching, I work for Nevada State Parks as a guide.  
 9 THE COURT: Okay. I'm not sure what the State's  
 10 anticipated lineup for witnesses was for the beginning of next  
 11 week.  
 12 THE WITNESS: I would say I could be here,  
 13 depending on traffic, I could be here by maybe 3:00 o'clock,  
 14 2:30, 3:00 o'clock.  
 15 MS. DiGIACOMO: That's fine.  
 16 THE COURT: Okay. So just as soon as you can on  
 17 Monday, come in.  
 18 And should she report to Victim Witness?  
 19 MS, DiGIACOMO: Yes. She's working with the out-  
 20 of-state desk there,  
 21 THE COURT: Oh, okay. And the lady in purple is —  
 22 MS. DiGIACOMO: She's here.  
 23 THE COURT: -- from Victim Witness. And so when  
 24 you get back on Monday check in with them and then,

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1 depending where we are with the other witnesses, well fit you  
 2 in . Okay?  
 3 THE WITNESS: Okay.  
 4 THE COURT: Thank you  
 5 Is there anything further that we need to make of  
 6 record at this time?  
 7 MR. SCHIECK: No, Your Honor.  
 8 MR. !KEPHART: Not by the State, Your Honor.  
 9 THE COURT: The Court had admonished her not to  
 10 talk to anybody about her testimony, including counsel for  
 11 both sides, The Court's gonna have that admonishment  
 12 remain in effect until she returns to the witness stand on  
 13 Monday,  
 14 THE WITNESS: I won't be available anyways.  
 15 THE COURT: That will make it easy.  
 16 You may step down.  
 17 THE WITNESS: Thank you  
 18 THE COOT: We'll be in recess 'til Monday at 10:30.  
 19 MS, GREENBERGER: Thank you  
 20 COURT ADJOURNED AT 17:12:44, UNTIL MONDAY,  
 21 SEPTEMBER 18, 2006  
 22 \*\*\*\*\*  
 23  
 24

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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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4/29/07  
DATE

\* \* \*

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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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