

EIGHTH JUDICIAL DISTRICT, COUNTY OF CLARK
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 7
VOLUME VII

TUESDAY, SEPTEMBER 19, 2006

COURT RECORDER:

LISA LIZOTTE
District Court

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VII-'

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1 LAS VEGAS, NEVADA TUESDAY, SEPTEMBER 19, 2006

PROCEEDINGS

PROCEEDINGS BEGAN AT 1:11:56)

(Jurors are present)

THE BAILIFF: Please be seated.

THE COURT: Good afternoon.

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

We're proceeding forward in the State's case in
chief, I'm not sure what the status of the —

MS. DiGIACOMO: She's present.

THE COURT: Okay. So at this time the State will be
returning Dixie Tienken to the stand.

MS, DiGIACOMO: That's correct,

THE COURT: Would the bailiff call the hall?

THE BAILIFF: Yes, I would,

THE CLERK: Please come all the way forward.

DIXIE TIENKEN, STATE'S WITNESS, OATH

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

THE WITNESS: Dixie, D-I-X-I-E, Tienken,

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INDEX

NAME DIRECT CROSS REDIRECT RECROSS

STATES WITNESSES

Table with 5 columns: Name, Direct, Cross, Redirect, Recross. Rows include Dixie Tienken, Laura Johnson, and Lary Simms.

EXHIBITS

DESCRIPTION: ADMITTED

STATES'S EXHIBITS

Table with 2 columns: Exhibit Number, Admitted. Rows include 42-43, 45-47, 56-68, 70-97, 122, 199-204, 205-215.

T1ENKEN - REDIRECT

T-I-E-N-K-E-N.

THE COURT: You may resume,

MS. DiGIACOMO: Thank you, Your Honor.

REDIRECT EXAMINATION (Continued)

BY MS, DiGIACOMO:

Q Dixie, on Friday you were asked questions by
defense counsel regarding whether or not Blaise carried a knife
for protection. Do you remember those questions?

A I do.

Q Okay. And in fact, Blaise did carry a knife for
protection?

A That's correct.

Q And was it a butterfly knife?

A I know that she carried a knife. I cannot tell you
whether it was a butterfly knife. I would say most of the time,
yes.

Q Was it a knife that her -- she had told you her father
had given her?

A She never told me who gave it to her.

Q Did she -- well, strike that. You also talk about it's
not uncommon for people to carry baseball bats in their car up
in Panaca?

A Not necessarily a baseball bat, but like a bat, like
truck drivers use or a baseball bat, either one.

VU-5

TIENKEN - REDIRECT

1 Q Okay. And those are also used for protection?
 2 A That's correct.
 3 Q Now after Blaise had told you about this attack, you
 4 stated that you didn't believe that she had been raped?
 5 A I wasn't sure how much of what she was telling me
 6 was completely true and how much was just a figmentation of
 7 her mind,
 8 Q Okay. So at the time you weren't sure whether or
 9 not what she told you was true?
 10 A That's correct,
 11 Q And based upon that, because you wanted to find
 12 out, you went to Laura Johnson, is that correct?
 13 A Yes,
 14 Q In fact, you have a duty to report such things that
 15 you learn from your students, don't you?
 16 A Yes, but it didn't happen in my classroom. She
 17 came to my home and it was after graduation, so she was no
 18 longer a student,,
 19 Q Okay. So you didn't have a duty to report then if
 20 she had told you about a crime?
 21 A Well, I felt sort of that I did,
 22 Q Now if she had told you that she had actually killed
 23 somebody would you have called the police then?
 24 A Yes.

V11-6

IENKEN - REDIRECT

1 A No, because no one ever asked.
 2 Q So you're saying no, but you agree with me that you
 3 never said it before? Is that a yes?
 4 MS. GREENBERGER: Asked and answered twice
 5 now.
 6 THE COURT: Overruled. It's been asked twice, it
 7 hasn't been answered twice.
 8 THE WITNESS: I have not stated previously to
 9 meeting with you the last time.
 0 BY MS. DIGIACOMO:
 1 Q Okay. And that was a week ago?
 2 A That's correct.
 3 Q And you didn't tell the jury — or okay, So before you
 4 testified last Friday, it had never been said before?
 5 A No, I told you when you were at my home.
 6 Q You told us last Friday -- a week ago Friday when
 7 we were at your home?
 8 A I believe so.
 9 Q Okay. Do you recall that there was an investigator
 10 present with Mr. Kephart and I?
 11 A Yes.
 12 Q Now you're saying believe so. Did you tell us or did
 13 you not?
 14 A I don't remember, because if nobody asked me a

V11-6

TIENKEN - REDIRECT

1 Q And if she had told you that she had stabbed
 2 somebody in the neck and killed him would you have called
 3 somebody?
 4 A Yes --
 5 Q Would you report that?
 6 A -- I would have. But she never indicated anything
 7 like that.
 8 Q Okay. When you went to see Laura to find out —
 9 well, strike that. When you went to see Laura you were trying
 10 to find out whether or not anything had happened down in
 11 Vegas to any such victim, correct?
 12 A Yes, because we had already searched on the
 13 internet, we had already looked back through newspaper files
 14 clear back to June 1,
 15 Q June 1. That's right. And that was what you and
 16 Blaise had done?
 17 A Yes.
 18 Q Okay, And as we established on Friday, never have
 19 you mentioned before that you looked all the way back to June
 20 4 -- June 1" when you had previously testified or giving your
 21 taped statement to police?
 22 A Nobody ever asked me before.
 23 Q Okay. But you -- then you agree with me you never
 24 said it before testifying in this hearing?

VII-7

TIENKEN - REDIRECT

1 direct question I wouldn't have answered it.
 2 Q Okay. And so it's possible then you never told us
 3 when you met with you over — about approximately a week
 4 and a half ago?
 5 A It's a possibility.
 6 Q Now at the time that you went to talk to Laura about
 7 finding out whether or not this had occurred, you were trying
 8 to find out whether or not there was ever any incident in Las
 9 Vegas with a guy that had a cut penis, correct?
 10 A That's correct.
 11 Q And at the time that you talked to her about it you
 12 were pretty upset, weren't you?
 13 A When I talked to Laura?
 14 Q Yes,
 15 A I wasn't really upset because I wasn't even use it
 16 had happened because we had been researching it. And I told
 17 Laura that in the beginning, but I said I'm not even sure this
 18 really happened,
 19 Q Now when the police took a taped statement from
 20 you in July 2001, you stated that after they turned the tape on
 21 that they turned it off several times and turned it back on,
 22 correct?
 23 A That's correct.
 24 Q How many times did they do this?

VII-9

TIENKEN REDIREC1

1 A I don't know. I didn't count them.
 2 Q Okay, You've had a chance to review the taped
 3 statement, correct?
 4 A Yes,
 5 Q And on that statement the police indicate one time
 6 that they turned off the tape because they had to switch the
 7 tape over, correct?
 8 A That's correct,
 9 Q But it's your testimony that it happened other times?
 10 A That's correct.
 11 Q And what happened when the police officer stopped
 12 the tape?
 13 A We would talk about a thing that they were asking
 14 me,
 15 Q Okay. Give me an example. What did they talk to
 16 you about after they were recording your conversation and
 17 they turned the tape off?
 18 A I don't remember.
 19 Q Well, on Friday I believe you were testifying that you
 20 thought that the police were trying to influence your
 21 testimony?
 22 A Yes.
 23 Q Okay, And that's why they kept turning this tape off
 24 and talking to you not on tape?

"IENKEN - REDIRECT

1 A But -- and I just said okay because I'm not sure.
 2 But I think -- maybe it's in the hearing,
 3 Q Okay. But you would agree that that segment you
 4 just showed us, they're not trying to influence when you talked
 5 to Blaise or the date, they're just refreshing you of what you
 6 had previously said, correct?
 7 A Well, this is a good example. If they're asking me
 8 that and saying that, then it sounds like they previously talked
 9 to me, doesn't it?
 10 Q Right. But they talked to you off tape before they
 11 put you on tape, correct?
 12 A That's correct.
 13 Q All right. And your answer to them was when they
 14 said can you tell me if you were recently contacted by Blaise,
 15 you stated "I was, mm-hmm. Blaise came to see me either
 16 Tuesday night or Wednesday morning approximately July the
 17 11th • I can't remember the date now 'cause I walked away
 18 from the calendar", correct?
 19 A That's correct,
 20 Q And then they said well, you said the 10th or the 11th
 21 before when you were looking at the calendar and you said
 22 okay. But they're not trying to feed you the date, they were
 23 going by what you had stated to them previously, correct?
 24 A Yes,

V11-12

TIENKEN - REDIRECT

1 A That's correct,
 2 Q Okay. What things were they trying to influence
 3 your testimony or your statement?
 4 A Just — well, first of all, they were trying to indicate
 5 that it was a later date and -- then what I thought that it was,
 6 Q So it's your testimony you told them what date you
 7 thought this was?
 8 A No If you go back to my statement you'll see that I
 9 said that I knew that it happened in early -- the early part of
 10 the month I'm trying to find it. But I do know that it's there.
 11 Q Well, when you get to it please let me know what
 12 page you're referring to.
 13 A Okay. If you go back to page 3 you'll see, it says
 14 "Can you tell me if you recently were contacted by Blaise?"
 15 And I said, "Blaise came to see me either Tuesday night or
 16 Wednesday morning, approximately July the 11th. I can't
 17 remember the date."
 18 Q Correct, And then their next question was, "You
 19 said the 10th or the 11th before when you were looking at the
 20 calendar?"
 21 A And --
 22 Q And you said okay.
 23 A Okay.
 24 Q So they were just trying to refresh you as to what--

TIENKEN - REDIRECT

1 (Pause in the proceedings)
 2 Q Okay. Did you find in your statement where you
 3 had told them that they had the wrong date, other than that
 4 portion we talked about regarding what date you believe she
 5 came to see you?
 6 A You know, I did when I went back over it the other
 7 day, but now I don't remember where I saw it. That's what I
 8 was just looking for again. And I know that I circled it
 9 someplace. But I didn't know that you wanted me to look for
 10 it right now. I was looking for something else.
 11 Q Well, look for that right now.
 12 A Okay.
 13 Q Page?
 14 A This, I believe, is at the hearing on page 9,
 15 Q I don't want to know about the hearing, I want to
 16 know in the taped statement to the police —
 17 A Oh, no. No.
 18 Q Okay. So —
 19 A I thought you meant any time previously,
 20 Q No, no. Because what we're talking about is how
 21 the police tried to influence your testimony —
 22 A Okay. Okay.
 23 Q in your — what you stated in your statement to
 24 them. So is there anywhere else in here where they tried to

V11-13

T1ENKEN REDIRED

1 tell you dates?
 2 A No,
 3 Q Okay. In fact, nowhere in here did they mention
 4 exactly when the murder they were investigating occurred,
 5 correct?
 6 A No, they did not.
 7 Q Okay, And in fact, there's times on tapes where
 8 they tell you we're not trying to put words in your mouth,
 9 we're just asking you what you recall from the conversation?
 10 A That's what they said.
 11 Q Okay. And you're smiling. Tell us why you're
 12 smiling at that?
 13 A Because I don't feel that that's the way that it was.
 14 Q Okay But you agree then on tape you agreed with
 15 that You didn't say no, you are trying to put words in my
 16 mouth on tape, did you?
 17 A No, I did not, because I really still thought that they
 18 were going to do..aminvestigationr
 19 Q So other than the date, what did the police try and
 20 influence your statement? How did they try to influence what
 21 you put on tape?
 22 A On the place where they said that the crime
 23 happened.
 24 Q Okay. How did they influence you there?

V11-14

IENKEN - REDIRECT

1 Q Okay, The question posed to you down, almost the
 2 -- just below the middle, where this happened. And she told —
 3 and that's what the question by them, and your answer is,
 4 "She told me that it -- she did tell me but I don't remember
 5 exactly where she said. I just know that she said it was dark
 6 and I got the idea that it was between buildings or in an alley
 7 or something of that sort. She did not tell me specifically
 8 where it was, but she did say the name of a street, and to be -
 9 completely truthful, I'm not sure. I just it was like West
 10 Tropicana, Flamingo, Sahara. I know it wasn't Sahara, but it
 11 was one of those streets further up." And their response was
 12 "okay". And then you stated, "And I do know it was in that
 13 area". And they asked you, "How did you know it was in that
 14 area?" And you said, "Because I used to live in that area and
 15 we talked about that". Is that exactly what you told the police
 16 on tape?
 17 A That's what I told them on tape. That does not
 18 mean that's what I told them originally.
 19 Q Okay. So —
 20 A We just mentioned hotel streets.
 21 Q But it's your position that the police are the ones
 22 that put in your mind West Tropicana, Flamingo and Sahara?
 23 A Yes. But you also have to know, I lived in Las Vegas
 24 up until 1979. I lived off of Oakey, not very far away from

V11-16

T1ENKEN - REDIRECT

1 A Because when I indicated to them, they asked me if
 2 I knew where it happened and I said no, I didn't. I said I just
 3 know where it didn't happen. And I said that I knew that it did
 4 not happen off of West Sahara, but I did say -- and I did say
 5 off one -- a hotel street, but I could not remember what hotel
 6 street. And then I just named some hotels, just thinking back
 7 to when I used to live here many years ago.
 8 Q Okay, And —
 9 A ^{And}A then they said to me, could it have been this
 10 one or this one? Well, yeah, it could have been any of those.
 11 But I didn't say that it was any of those.
 12 Q So the police actually suggested to you the names of
 13 the streets?
 14 A Yes.
 15 Q Okay, And where is that in your tape statement?
 16 A I don't know, But I do know that when —
 17 Q Well, if I direct --
 18 A You know, they talked to me for a good hour, an
 19 hour and a half before they even taped it. And at that point
 20 I'm not sure that I remember_ You have the paper in front of
 21 you, so do I.
 22 Q Okay, I'm gonna turn -- direct you to page 5. The
 23 question posed to you -- are you at page 5?
 24 A J am.

V11-15

TIENKEN - REDIRECT

1 Sahara, and the only other streets that I could remember that
 2 even went through was like Desert Inn, Flamingo, you know,
 3 Tropicana,
 4 Q So is it -- it's your -- your testimony on Friday
 5 though that you know it was in the area of one of the hotel
 6 streets, correct?
 7 A That's correct.
 8 Q On the west side of 1-15, correct?
 9 A On the west side of 1-15.
 10 Q Okay_ And so it could be either Tropicana,
 11 Flamingo, Desert Inn?
 12 A Could have been any of those. I don't remember.
 13 Q What else did the police try and influence your
 14 testimony or what you said on tape about —
 15 A At this point I cannot remember,
 16 Q Okay, You can't remember what they wanted you to
 17 say, is that fair?
 18 A Right.
 19 Q And you can't remember how many times they
 20 allegedly turned the tape off and back on?
 21 A No.
 22 Q Other than do you remember the one time that's on
 23 the statement where they turned -- they flipped over the tape?
 24 A Well yes, because it's written down on that particular

V11-17

11ENKEN - REDIREC1

1 time.
 2 Q Now you had stated on Friday that the incident that
 3 Blaise was talking about could've occurred any time after she
 4 graduated in 2000 until she came to talk to you in 2001,
 5 correct?
 6 A That's — yes.
 7 Q But you also told the police, page 12 of your
 8 statement, that you had the impression it had just happened a
 9 day or two before? And that's the top of page 12.
 10 A That's exactly what it says,
 11 Q And that is what you told the police on the taped
 12 statement?
 13 A That is correct.
 14 Q Now you talked too about on Friday Blaise and
 15 whether or not she liked things dirty. Do you recall that?
 16 A I da.
 17 Q Okay. And you had said that there is no way that
 18 she could've cleaned out her car if it had feces or urine in it,
 19 correct?
 20 A That's — yes,
 21 Q What about if there was blood or semen in the car.,
 22 Could she clean that?
 23 A No, I don't believe so.
 24 Q And also, when talking about when she had to clean

V11-18

1ENKEN - REDIRECT

1 memorable?
 2 A It was a red car.
 3 Q Okay.
 4 A It also had a personalized plate.
 5 Q Okay. Now you had never seen the car?
 6 A No, I've never seen the car to this day.
 7 Q But the day that you had the conversation, did Blaise
 8 describe her car to you?
 9 A No, All she said was that it was a red car.
 10 Q So she didn't describe what the license plate was?
 11 A No.
 12 Q How did you find out what the license plate was?
 13 A Other kids had asked me if I had ever seen Blaise's
 14 license plate.
 15 Q And do you know —
 16 A No, I had not and I still haven't,
 17 Q Do you know what the -- her license plate said?
 18 A I know that it wasn't very ladylike.
 19 Q Okay, And these other kids that asked you about
 20 her license plate, was it before or after she came to talk to you
 21 about this attack?
 22 A I don't remember. I think it was after, but it
 23 could've been before —
 24 Q Okay. You —

V11-20

TIENKEN - REDIRECT

1 the car after she told you that her ex-boyfriend, Jeremy, had
 2 done these things, defecated and urinated inside the car, she
 3 also told you that she had to clean the car out at that time,
 4 correct?
 5 A It didn't mean that she had to clean it out. She had
 6 to have it cleaned out. I was under the impression that her
 7 father did it for her.
 8 Q Okay. But she did have to have the car cleaned out
 9 after this
 10 A Yes.
 11 Q -- this incident with Jeremy? And she also stated to
 12 you that -- or made to clear to you that the incident with the
 13 car with Jeremy was separate than when she was attacked?
 14 A That's correct.
 15 Q Now Blaise also talked to you about how she wasn't
 16 afraid anyone saw her at the scene of her attack, but she was
 17 afraid somebody saw her car leaving, is that correct?
 18 A Yes
 19 Q And you mentioned on Friday that she was afraid
 20 something about the car could be seen, and it's not something
 21 that she could fix or something that somebody would forget,
 22 do you remember that?
 23 A Yes.
 24 Q What about it -- about her car was it that was so

V11-19

TIENKEN - REDIRECT

1 A -- because I had never seen the car.
 2 Q But you had heard she'd gotten a new car before
 3 she came to see you?
 4 A Yes,
 5 Q And that's why you asked her what car she was
 6 driving?
 7 A That's correct. It's a big deal when kids get a car,
 8 especially their very own first car,
 9 Q Now you also said on Friday that Blaise is a very
 10 sweet girl. Do you recall that?
 11 A Yes.
 12 Q She's also a pretty tough girl though, isn't she?
 13 A I don't know that I would say tough. I think that
 14 sometimes people that are hurting put on protective shells.
 15 Q Have you ever heard of her knocking somebody out
 16 with a punch before?
 17 A Not that I can recall. I've had a lot of students that
 18 have talked a lot about things like that, but I can't remember
 19 Blaise ever telling me things like that.
 20 Q Did these other students tell you about things like
 21 that with Blaise or just totally separate?
 22 A No, totally separate.
 23 Q Okay. Now since Friday, have you spoken to either
 24 myself or Mr, Kephart?

V11-21

TIENKEN REDIREO

1 A Since Friday? No, I have not,
 2 Q Have you spoken to any of the attorneys on the
 3 defense side?
 4 A No, I have not
 5 Q Have you spoken to anyone that's related to the
 6 defense side, such as anyone in the front row in the courtroom
 7 here today?
 8 A No --
 9 Q Okay,
 10 A -- I have not,
 11 Q Have you spoken to any other witnesses in this
 12 case?
 13 A I have spoken to them, but nothing to do with this
 14 case,
 15 Q And who is it that you spoke to?
 16 A I spoke to Laura because her brother was getting
 17 married.
 18 Q Okay. When was it that you spoke to Laura?
 19 A I spoke to Laura Friday to ask when she was leaving
 20 to go home. I spoke to Laura to find out if she was coming
 21 down here on Monday because I asked her if she did, even
 22 though we would be traveling in two vehicles, if we could go at
 23 the same time so I wouldn't have to drive alone.
 24 Q Okay. Did you also talk to Laura last Tuesday before

V11-22

1ENKEN - REDIRECT

1 Q And where did you look at that autopsy report?
 2 A I looked at the autopsy report. I asked you and you
 3 also called me and told me later.
 4 Q No, you're not answering my question.
 5 A I did ask.
 6 MS, DiGIACOMO: Objection, Your Honor, it's
 7 nonresponsive.
 8 THE COURT: Sustained.
 9 BY MS. DiGIACOMO:
 10 Q I'm asking you, the autopsy report you looked at,
 11 where did you get it from?
 12 A In the defense lawyer's office.
 13 Q Okay. Did you also look at some photographs of the
 14 decedent as well?
 15 A That's correct.
 16 Q And you told Laura about this on Friday that you had
 17 seen these things, correct?
 18 A I don't remember.
 19 Q Now have you ever looked on the internet since the
 20 last time you had testified in 2002 until the present date,
 21 trying to find information on this case?
 22 A I did only once, and that was after the other trial,
 23 But I have not looked at them, but I do know that Laura has
 24 looked at a lot of them and even indicated she showed my

V11-24

TIENKEN - REDIRECT

1 you had to come down here and testify? Did she come to your
 2 house that Tuesday?
 3 A Laura came to my house.
 4 Q Did you try and tell her that you did tell her that day
 5 in July 2001 that you told her Braise said a big black man?
 6 A Probably, because I think we've always said that,
 7 Q Okay, But -- who's we?
 8 A When Laura and I've talked,
 9 Q Okay. So it's your testimony that Laura agrees that
 10 you told her in July 2001 that it was a big black man?
 11 A I hope that she agrees to that because that's what
 12 we talked about
 13 Q Okay. So you weren't trying to convince her that
 14 you actually told her that?
 15 A No, She also told me a lot of things. Laura and I
 16 are looking at this from two different sides.
 17 Q Okay. Now have you been provided with any
 18 reports in this case?
 19 A Have I been provided with any reports? Yes, You
 20 provided me with all of this
 21 Q Right, I provided you with your two testimonies and
 22 your also prior statement. Have you been provided with
 23 anything else, such as an autopsy report?
 24 A I did look at an autopsy report.

VII-23

TIENKEN - REDIRECT

1 grandson where they were, but I did not look at any of them,
 2 Q Okay. So if Laura came in and testified that you had
 3 printed things off the interne and you wanted her to come
 4 pick 'em up, that's not true?
 5 A To pick up things that I had printed off the internet?
 6 I've never printed anything off the internet that I know of.
 7 The only thing I had was this. And if I did --
 8 Q Okay. So you never printed anything off the internet
 9 regarding this case?
 10 A No, I can't say that.
 11 Q Is there anything that you would've printed off on
 12 the inetemet about this case that you would've asked Laura to
 13 come see or pick up copies of?
 14 A I don't recall ever asking Laura, But I know that she
 15 showed me some things that she had,
 16 Q I'm asking you only what you did. And is that your
 17 answer no, that you didn't?
 18 A I don't recall.
 19 Q Now is it fair to say that your former students and
 20 your current students, that you'd call 'ern your kids?
 21 A That's correct,
 22 Q And you'd actually do anything for your kids that you
 23 could to help them?
 24 A I would do everything I could to help my kids that

V11-25

T1ENKEN - REDIRECT

1 was within the law.
 2 Q Correct And wasn't there a time that you had told
 3 us about where you actually went into a crack house trying to
 4 find out what one of your kids had taken when he O.D.ed?
 5 A Yes.
 6 Q And -- because you will go above and beyond to try
 7 and help them. I'm not saying outside the law, I'm just saying
 8 you'll help them?
 9 A Yes.
 10 Q And you love all your kids?
 11 A I dor
 12 MS_ DiGIACOMO: Court's indulgence,
 13 pass the witness.
 14 THE COURT: Recross.
 15 MS, GREENBERGER: Your Honor, the defense has
 16 nothing further for this witness.
 17 THE COURT: Okay. You may step down from the
 18 stand.
 19 MS. DiGIACOMO: There's a jury question.
 20 THE BAILIFF: I do have a note, Your Honor,
 21 MR, KEPHART: Questions over here.
 22 THE COURT: Oh, we need you to stay on the stand
 23 for a minute.
 24 Would counsel please approach.

V11-26

IENKEN - REDIRECT

1 or newspapers you subscribed to during July of 2001?"
 2 THE WITNESS: I did not subscribe to any
 3 newspaper. We have very little newspaper delivery in Lincoln
 4 County.
 5 THE COURT: The first question, yes or no asked,
 6 will be marked as Court's Number 25, The second yes or no
 7 question will be marked as Court's Number 26, And the most
 8 recent question asked will be marked as Court's Number 27.
 9 "How long do you usually keep old or paSt
 10 newspapers around?"
 11 THE WITNESS: Me? Until I need them. Sometimes
 12 to start a fire with in the winter, sometimes to use in my
 13 garden. Right now I happen to just recently subscribe to the
 14 Cedar City newspaper because that's our paper that we get,
 15 the only one that's delivered. And I probably have about a
 16 month worth of papers sifting there,
 17 THE COURT: This question will be marked as
 18 Court's Number 28,
 19 "Could a newspaper from anytime in early June have
 20 been found in your home when Blaise visited you on July
 21 1 lth?"
 22 THE WITNESS: No,
 23 THE COURT: That will be marked as Court's
 24 Number 29.

VII-28

T1ENKEN - REDIRECT"

1 (Off-record bench conference from 1:44:23-1:54:48 p.m.)
 2 THE COURT: The Court has a juror's note that will
 3 now be marked as Court's Number 23.
 4 The Court has a juror's note that will now be marked
 5 as Court's Number 24,
 6 Ms. Tienken, the ladies and gentlemen of the jury
 7 have sent out some questions for you, which the Court is going
 8 to read to you. Listen to the question and then give your
 9 answer.
 10 The first question asks for just a yes or a no in
 11 response, so please limit your answer to just saying yes or just
 12 saying no.
 13 "Did you ask Blaise why she didn't go to the police
 14 after being assaulted?"
 15 THE WITNESS: Yes,
 16 THE COURT: This second question also calls for just
 17 a yes or a no answer,
 18 If you believed that this attack may have happened
 19 around June 1, 2001, did you ask her why she would wait so
 20 long to confide in someone?"
 21 THE WITNESS: She never —
 22 THE COURT: Yes or no,
 23 THE WITNESS: Na
 24 THE COURT: "Do you remember what newspaper

VII-27

T1ENKEN - REDIRECT

1 Followup questions by the State.
 2 MS, DiGIACOMO: Court's indulgence.
 3 Thank you, Your Honor.
 4 REDIRECT EXAMINATION (Continued)
 5 BY MS,, DiGIACOMO:
 6 Q Dixie, back in July 2001, you said there was little
 7 delivery of a paper in Lincoln County?
 8 A That's correct.
 9 Q And in fact, isn't it true that you had to go down to
 10 the Y if you wanted to buy a paper?
 11 A That's correct,
 12 Q What is the V?
 13 A It's gas station, mini-mart.
 14 Q Okay, And in fact, the day that you told Laura about
 15 this, didn't you also tell her you were going down to the Y to
 16 see if you could get a paper?
 17 A Probably.
 18 Q Do you recall or not?
 19 A I don't recall.
 20 Q Okay, And you said that you did ask Blaise why she
 21 didn't go to the police about the attack?
 22 A Yes.
 23 Q What did she tell you?
 24 A She didn't really answer the question. But —

VII-29

TIENKEN - REDIREC1

1 Q She didn't or not?
 2 A She did not really answer the question,
 3 Q You asked her but she didn't give you a response?
 4 A No, We talked about other things,
 5 Q Now back in July 2001, you weren't getting a paper
 6 to your house delivered, correct?
 7 A I don't believe so.
 8 Q Okay, And in fact, that's why when Blaise came to
 9 talk to you about this that you got on the internet and were
 10 trying to look at the papers?
 11 A That's correct, If I did get a paper it would've been
 12 the Cedar paper, Cedar City, Utah, not —
 13 Q Not a Las Vegas paper?
 14 A -- Las Vegas.
 15 Q And in fact, at that time, which papers from Las
 16 Vegas did you try and look on the internet?
 17 A We looked on the internet under Las Vegas Review
 18 Journal and Las Vegas Sun, And then there's a news — it's like
 19 a news release type of thing that you just go in and I think it
 20 just says -- I don't remember exactly, but I think it just said
 21 Las Vegas News.
 22 Q Okay, And you — you stated that you never asked
 23 her why it took so long for her to confide in somebody about
 24 her attack, correct?

V11-30

TIENKEN RECROSS

1 couple.
 2 RECCROSS EXAMINATION
 3 BY MS. GREENBERGER:
 4 Q Good afternoon,
 5 A Hello.
 6 Q When you were doing your research on the
 7 computer, you were looking back until June 2001 because you
 8 didn't know when it happened, correct?
 9 A That's correct,
 10 Q Were you looking at the Las Vegas Review Journal,
 11 the Las Vegas Sun, and the other Las Vegas News Release?
 12 Were you looking at all three of those papers on the internet
 13 when you were doing your research?
 14 A Yes.
 15 Q And you were looking at all of those papers back
 16 through 2001?
 17 A That's correct.
 18 Q Or June 2001,
 19 A June.
 20 Q What articles did Laura Johnson print off the internet
 21 to give you?
 22 A I don't remember. I'm really sorry,
 23 Q You just remember some articles?
 24 A Yes. Well, she also -- she did —

V11-32

TIENKEN - REDIRECT

1 A I don't recall. When kids come and talk to me, that's
 2 not something that I normally say. I just say, did you try to
 3 find out if anything happened, And I do remember that at that
 4 time she said she had been looking at the papers,
 5 Q Okay, But part of the reason why you didn't ask her
 6 why it took so long was also because you had the impression
 7 that it happened fairly recently? In fact, you told the police
 8 two to three days before -- or a day or two before?
 9 A Yes. But I also am not sure exactly when she came
 10 to see me.
 11 Q Right. I understand that,, But you had the
 12 impression when she did tell you it was a day or two before?
 13 A That it had happened recently, yes.
 14 Q But you told the police a day or two before she
 15 came to see you, correct?
 16 A That's what it says in the statement.
 17 Q Well, you don't dispute what was said in the
 18 statement, do you?
 19 A No,
 20 Q Okay,
 21 MS DIGIACOMO: Hold on. Court's indulgence.
 22 Nothing further,
 23 THE COURT: Followup questions by the defense,,
 24 MS GREENBERGER: Thank you, Your Honor, Just a

V11-31

TIENKEN RECROSS

1 MS, DiGIACOMO: Objection, Your Honor. First of
 2 all, this is beyond the scope of the followup questions. And
 3 also, I'm afraid that she's gonna get into hearsay,
 4 THE COURT: She's already answered the question,
 5 so the Court will sustain the objection. There's no question
 6 pending before her at this time,
 7 MS. GREENBERGER: I have nothing further,
 8 THE WITNESS: Okay,
 9 THE COURT: Anything further by the State?
 10 MS. DiGIACOMO: Just briefly,
 11 FURTHER REDIRECT EXAMINATION
 12 BY MS. DiGIACOMO:
 13 Q When you got on the internet at -- the day that
 14 Blaise came to see you, and you said you looked back at least
 15 six weeks, correct?
 16 A That's right.
 17 Q Did you have to subscribe or do anything like that to
 18 be able to look back that far on the internet?
 19 A **Not**
 20 Q For -- not for the Las Vegas Review Journal?
 21 A Well --
 22 Q Not for the Sun --
 23 A — we just -- what I did was I did a search for Las
 24 Vegas, and then I did a search, and we used different key

V11-33

TIENKEN RECROSS

1 words because they just tell you to use a key word, so I put in
 2 "severed penis",
 3 Q Okay. You put in "severed penis" into the Las Vegas
 4 Review Journal search engine?
 5 A Well, I don't know if it was the Las Vegas Review
 6 Journal search engine. We used a Las Vegas search engine.
 7 Q Okay. And that would pull up anything in the
 8 Review Journal or the Sun?
 9 A I was under that impression that it would.
 10 Q And you specifically noted the dates that you could
 11 search for?
 12 A Yes, because it asks you between what date and
 13 what date do you want to look.
 14 Q And what dates did you pick?
 15 A I believe that I put June 1" to probably July 1' or
 16 July 13th or something like that. I don't know what I put in, but
 17 I know that I put it over a 30 day span,
 18 Q Okay, But you can't remember what the last date
 19 was because you can't remember what date you actually
 20 talked to Blaise?
 21 A That's correct,
 22 Q Okay,
 23 A That's why I almost wish that they could've gotten
 24 my old computer.

VII-34

JOHNSON - DIRECT

1 MR. SCHIECK: Not today, Your Honor, If we need
 2 her we'll call her back.
 3 THE COURT: Then Mr. Kephart can advise her of
 4 that.
 5 MR. KEPHART: Thank you,
 6 **DIRECT EXAMINATION**
 7 BY MS. DiGIACOMO:
 8 Q Ms. Johnson, what is your occupation?
 9 A I'm the juvenile probation officer for LincOIn County.
 10 Q How long have you been so employed?
 11 A Approximately 10 years.
 12 Q And I want to direct your attention to July of 2001.
 13 Where were you living?
 14 A In Pioche, Nevada,
 15 Q Is that where you still reside?
 16 A Yes.
 17 Q And you were the probation officer back then?
 18 A Yes.
 19 Q Is there only one Lincoln County probation officer?
 20 A Yes.
 21 Q And how long have you lived in Pioche?
 22 A Approximately 10 years.
 23 Q Now do you know a person, Dixie Tienken?
 24 A Yes, I do.

VII-36

T1ENKEN - RECROSS

1 MS. DiGIACOMO: Nothing further.
 2 MS, GREENBERGER: Nothing further, Your Honor.
 3 THE COURT: No further questions from the jury.
 4 You may step down from the stand,
 5 THE WITNESS: Thank you.
 6 THE COURT: State may call their next witness.
 7 MS. DiGIACOMO: Thank you. The State calls Laura
 8 Johnson
 9 THE CLERK: Please come all the way forward.
 10 Remain standing and raise your right hand.
 11 **LAURA JOHNSON, STATE'S WITNESS, SWORN**
 12 THE CLERK: Please be seated.
 13 State your name and spell it for the record, please,
 14 THE WITNESS: Laura Lynn Connor Johnson.
 15 THE CLERK: Spell your full name, please.
 16 THE WITNESS: L-A-U-R-A L-Y-N-N C-O-N-N-O-R J-
 17 O-H-N-S-O-N,
 18 THE COURT: State may proceed.
 19 MS, DiGIACOMO: Thank you, Your Honor,
 20 MR, KEPHART: Your Honor, I went out to see if our
 21 next witness was here, it's Dr. Simms, and Dixie had asked me
 22 whether or not she is free to leave. I told her as far as the
 23 State is concerned she is, but I wanted to make sure with the
 24 Court, unless the defense needed her here.

V11-35

JOHNSON - DIRECT

1 Q How do you know her?
 2 A She was a teacher in Panaca.
 3 Q And so did you have a lot of contact with her
 4 through your job?
 5 A Yes, I did.
 6 Q Did you become friends as well?
 7 A Yes, I did.
 8 Q How long would you say you've been friends with
 9 Dixie?
 10 A Probably 9 years.
 11 Q And how would you describe your friendship?
 12 A We're pretty close. We have a very good
 13 relationship.
 14 Q Do you talk outside of work?
 15 A Yes, we do.
 16 Q So Dixie could call you at home?
 17 A Mm-hmm.
 18 Q Is that a yes for the record?
 19 A Yes.
 20 Q And you would call her at home too?
 21 A Yes,
 22 Q Now I want to direct your attention back to July
 23 2001, and specifically, do you recall a time when Dixie came to
 24 talk to you about one of her former students?

V11-37

JOHNSON - DIRECT

1 A Yes, I do,
 2 Q Okay. Do you recall the date of that?
 3 A It was July 18th.
 4 Q Okay, Now how are you sure of the date?
 5 THE COURT: Can I ask you what year, please?
 6 MS. DiGIACOMO: Oh, I'm sorry.
 7 THE WITNESS: 2001.
 8 MS, DiGIACOMO: Okay.
 9 BY MS, DIGIACOMO:
 10 Q Do you -- how are you sure of that date?
 11 A Because I made a statement to it and I —
 12 Q Okay. So you -- let's skip ahead. Back in 2001 did
 13 you also give a taped statement to the police?
 14 A Yes, I did.
 15 Q Okay. And that taped statement, do you recall what
 16 day that was taken on?
 17 A It was -- I believe it was on the 20th,
 18 Q Of July pal.?
 19 A July 2001,
 20 Q And so in relation to when you gave that taped
 21 statement, when did you speak to Dixie?
 22 A A couple days before that.
 23 Q Okay. Do you recall what day of the week it was?
 24 A It was a Wednesday.

V11-38

JOHNSON - DIRECT

1 news?
 2 A Yes, she did.
 3 Q Okay. And did she state — well, strike that. What
 4 did she tell you that this person you both knew had told her?
 5 MR. SCHIECK: Objection, hearsay, Your Honor,
 6 MS, DiGIACOMO: Your Honor, is a prior inconsistent
 7 statement.
 8 THE COURT: Overruled,
 9 MR. SCHIECK: Could we approach, Your Honor?
 10 THE COURT: Yes,
 11 (Off-record bench conference from 2:11:12-2:12:33 pm.)
 12 THE COURT: The question is withdrawn. Ms.
 13 DiGiacomo will be posing a new question. The Court's
 14 received a note, which will be marked as the Court's next in
 15 number, which Court and counsel have reviewed at sidebar.
 16 MS. DiGIACOMO: Thank you.
 17 THE CLERK: Number 30,
 18 BY MS. DiGIACOMO:
 19 Q Did Dixie ever tell you who she was talking about?
 20 A Yes.
 21 Q Who was that?
 22 A Blaise Lobato,
 23 Q Okay. And specifically did she tell you when this
 24 conversation took place between her and Blaise?

V11-40

JOHNSON - DIRECT

1 Q And do you recall approximately what time it was?
 2 A Between 12:30 and 1:00 in the afternoon.
 3 Q And where did this conversation take place?
 4 A In my office at the courthouse in Pioche.
 5 Q Okay. And how did it get started?
 6 A She had come into my office and told me that she
 7 had some information regarding a person that we both knew.
 8 And she asked me -- she told me —
 9 MR. SCHIECK: Objection, hearsay to what she told
 10 her, Your Honor.
 11 THE COURT: Sustained.
 12 BY MS. DiGIACOMO:
 13 Q Okay, Did she — what was — well, strike that. What
 14 was her demeanor when she — when you talked to her?
 15 A She was very nervous,
 16 Q Okay,
 17 A Very upset
 18 Q And how specifically could you tell that she was very
 19 nervous and upset?
 20 A Just because I know her and -- I just knew that
 21 something was bothering her,
 22 Q So she seemed like something was wrong?
 23 A Right.
 24 Q Did she ask you whether or not you'd seen the

V11-39

JOHNSON - DIRECT

1 MR. SCHIECK: Objection, Your Honor. There's been
 2 no foundation that there was a prior conversation.
 3 THE COURT: Sustained.
 4 BY MS. DIGIACOMO:
 5 Q Okay. Did Dixie tell you how she learned this
 6 information she wanted to relay to you?
 7 A Yes,
 8 Q How was that?
 9 A That Blaise had told her.
 10 Q Did she tell you when Blaise had told her?
 11 A It had --
 12 MR. SCHIECK: Objection, hearsay, Your Honor.
 13 THE COURT: Overruled,
 14 BY MS. DiGIACOMO:
 15 Q Did she tell you when?
 16 A She didn't really tell me when. She said that she
 17 had just talked to Blaise, so --
 18 Q Okay. So she said she had just talked to her?
 19 A Right,
 20 Q And you said that Dixie was pretty upset about it?
 21 A Yeah.
 22 Q Did Dixie ever tell you what the defendant had said
 23 about her car?
 24 A Yes.

V11-41

JOHNSON - DIRECT

1 Q What'd she tell you?
 2 A She told me that they were hiding the vehicle out in
 3 -- that her parents and her were hiding the vehicle out in
 4 Panaca and they were gonna get it painted or possibly sell the
 5 vehicle
 6 Q Okay. And what were her exact words, "sell the
 7 vehicle"?
 8 A "Sell the vehicle or get it painted".
 9 Q Did they mention -- or did she mention whether or
 10 not they were also trying to hide it?
 11 A She told me that they were hiding the vehicle out
 12 and they were possibly gonna sell it or get it painted.,
 13 Q Okay, And did she tell you what Blaise was doing
 after this attack?
 15 MR. SCHIECK: Your Honor, are we asking what
 16 Blaise told to Dixie and Dixie told to Laura, or are we talking
 17 about just what Dixie told to Laura?
 18 MS. DiGIACOMO: We're asking what Dixie told to
 19 Laura that Blaise had said.
 20 MR. SCHIECK: And that's it, not just what -- not
 21 what Dixie said, but what Dixie thought or what Dixie said
 22 Blaise said?
 23 MS. DiGIACOMO: Okay. Well, first of all, anything
 24 the defendant said is admission by a party opponent.

VII-42

JOHNSON - DIRECT

1 A Yes,
 2 Q Now based on the information you learned from
 3 Dixie that the defendant had told her, what did you do?
 4 A I went down to the sheriff's office and told Sergeant
 5 Maribah Cowley.
 6 Q Okay. And what happened from there?
 7 A She then informed me of —
 8 Q Well --
 9 MR. SCHIECK: Objection, hearsay to what she said.
 10 MS. DIGIACOMO: -- don't tell me what she informed
 11 you,
 12 THE COURT: Sustained,
 13 THE WITNESS: Okay. With the information that I
 14 learned, I went to my house and started calling the different —
 15 North Las Vegas, all the different police stations in Las Vegas,
 16 Henderson, North Las Vegas.
 17 Q Okay. Did you also call Metro?
 18 A Metro also, yes.
 19 Q And when you were calling these divisions, what
 20 department were you specifically asking for?
 21 A I believe I was asking for the assault unit.
 22 Q What was your purpose of making all these phone
 23 calls?
 24 A To try to find out if what I was told was true.

VII-44

JOHNSON - DIRECT

1 Anything Dixie told Laura, it's a prior inconsistent statement,
 2 MR SCHIECK: Not all of it is inconsistent, Your
 3 Honor,
 4 MS, DiGIACOMO: Right, I'm specifically asking her
 5 what she said she was doing at her parent's house.
 6 MR. SCHIECK: I just wanted to clarify that this is
 7 what Dixie said Blaise said
 8 MS, DiGIACOMO: That's correct.
 9 THE You can answer the question,
 10 BY MS. DIGIACOMO:
 11 Q Do you recall the question?
 12 A I'm sorry.
 13 Q Okay, What did Dixie tell you that Blaise had told
 14 her about what she was doing in Panaca?
 15 A She was hiding out in Panaca.
 16 Q Did she say where? Or did Dixie indicate to you
 17 where Blaise said she was hiding out?
 18 A With her mother and dad, her step-mother and her
 19 father.
 20 Q Based on the information that you learned — well,
 21 strike that. Did Dixie tell you other things that the defendant
 22 had told her as well?
 23 A Yes, she did,
 24 Q Okay. Told you what specifically the attack was?

JOHNSON - DIRECT

1 Q So you were trying to figure out whether or not the
 2 incident had occurred?
 3 A Really did happen, yes.
 4 Q And you did this fairly quickly after Dixie told you
 5 this. Did you have a time frame of when this might've
 6 happened?
 7 A I believe it was the next day when I went home. I
 8 believe I talked to Maribah the next day and then I went home
 9 Friday morning and started making all the phone calls. When I
 10 got up Friday morning I started making the phone calls down
 11 to Las Vegas.
 12 Q And what were you asking when you made these
 13 calls?
 14 A If there was an incident that occurred, specifically
 15 what Dixie had told me.
 16 Q Well, tell me what you were asking, what specifically
 17 you were asking?
 18 A I was asking them if they had recently had an
 19 incident where a man had had his penis cut off.
 20 Q And at some point were you transferred to a
 21 detective?
 22 A I was. I — when I called Metro I had spoke to a
 23 lady, which I believe was a secretary, and she told me that
 24 they had —

VII-45

JOHNSON - DIRECT

1 MR. SCHIECK: Objection what she told her,
 2 MS. DiGIACOMO: Wait,
 3 THE COURT: Sustained,
 4 BY MS. DiGIACOMO:
 5 Q Just what did she do? Did she --
 6 A She connected me to a homicide detective,
 7 Q And what was his name?
 8 A Thowsen, Detective Thowsen or Thowsen.
 9 Q And did you speak to Detective Thowsen about the
 10 information you had learned?
 11 A Yes, I did,
 12 Q And what happened after you hung up with
 13 Detective Thowsen?
 14 A They came up to my house. They were at my house
 15 within three hours.
 16 Q And did you give a taped statement at that time?
 17 A Yes, I did.
 18 Q So the same day you got connected with the
 19 detective they actually came to Panaca or Pioche?
 20 A They came to Pioche, yes.
 21 Q Did you ask Maribah Cowley, the sergeant, to do
 22 anything else with reference to this?
 23 A Yes, I did. I'd asked her if she could go down to
 24 Panaca and get the plate off of Blaise's car.

VII-46

JOHNSON - DIRECT

1 Q And did she do that for you?
 2 A Yes, she did,
 3 Q Now the day that you talked to Dixie, did she
 4 indicate to you whether or not she was going somewhere after
 5 talking to you?
 6 A She told me she was going to Panaca to the Y
 7 Service to pick up a newspaper,
 8 Q Okay,
 9 A She was going to pick up a newspaper to see if
 10 there was anything in the newspaper about this.
 11 Q And that was when she left your office?
 12 A Yes.
 13 Q Okay, And the Y Service, what is that?
 14 A That's the gas station in Panaca. They're the only
 15 ones in Lincoln County, I believe, that carried the newspaper,
 16 Q For Las Vegas?
 17 A Yeah,
 18 Q Okay,
 19 THE COURT: I'm gonna ask for a clarification, You
 20 said you asked your sergeant to get the plate off the
 21 defendant's car?
 22 THE WITNESS: The license plate,
 23 THE COURT: Did you mean that you wanted her to
 24 physically remove the plate or to copy down the plate number?

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JOHNSON - DIRECT

1 THE WITNESS: I'm sorry, To get the license plate,
 2 copy down the license plate number,
 3 THE COURT: And would you spell the sergeant's
 4 name please, for the record?
 5 THE WITNESS: It's M-A-R-I-B-A-H C-O-W-L-E-Y.
 6 THE COURT: Thank you,
 7 State may proceed,
 8 MS, DiGIACOMO: Thank you
 9 BY MS. DiGIACOMO:
 10 Q You testified at a prior proceeding, May 2002. Do
 11 you recall that?
 12 A Yes, I do.
 13 Q Since that time have you and Dixie ever talked about
 14 this case?
 15 A Yes, we have,
 16 Q Was there a point in time that you ever printed off
 17 anything on the internet and gave it to Dixie?
 18 A Did I print off? No, I didn't,
 19 Q Okay. Regarding this case?
 20 A No,
 21 Q Okay. Was there anything that Dixie did regarding
 22 the Internet?
 23 A She had called me and told me that —
 24 MR, SCHIECK: Objection, hearsay to what she told

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JOHNSON - DIRECT

1 her,
 2 THE COURT: Sustained.
 3 MS. DiGIACOMO: Well, Your Honor, it's also a prior
 4 inconsistent statement. Dixie said that she never printed
 5 anything off or called Laura to come pick it up,
 6 MR. SCHIECK: I don't recall that, Judge. She said
 7 she never printed anything off. I don't recall she was ever
 8 asked about any conversations concerning that
 9 MS. DiGIACOMO: I had asked her whether or not
 10 she asked Laura to come pick it up or if she ever tried to give
 11 it to Laura,
 12 THE COURT: The Court's gonna reconsider and
 13 overrule the objection,
 14 BY MS. DiGIACOMO:
 15 Q Okay. Did you — did you ever talk to Dixie about
 16 whether or not she had looked on the internet regarding this
 17 case?
 18 A Yes, I did.
 19 Q Okay. Did she ever ask you to do anything based on
 20 that?
 21 A Yes, she did.
 22 Q What did she ask you?
 23 A She asked me to come down to Panaca to the
 24 Visitor's Center where she was working and pick up some stuff

VII-49

JOHNSON - DIRECT

1 that she had printed off the internet.
 2 Did you ever do that?
 3 A No, I didn't.
 4 Now I want to direct your attention to last Tuesday,
 5 Did you have any conversation with Dixie regarding this case?
 6 A Yes, I did,
 7 Where did that conversation take place?
 8 A At her home in Panaca.
 9 And specifically, did you ever talk about whether or
 10 not the attacker in Bialse's incident was big and/or black?
 11 A We did talk about that.
 12 Q Okay, What did Dixie tell you?
 13 MR. SCHIECK: Objection, hearsay, Your Honor,
 14 THE COURT: Counsel approach,
 15 (Off-record bench conference from 2:22:30-2:24:40 p.m.)
 16 THE COURT: Ms. DiGiacomo is going to rephrase.
 17 MS. DiGIACOMO: That's correct, Your Honor,
 18 BY MS. DiGIACOMO:
 19 Q Ms. Johnson, when you talked to Dixie back in July
 20 2001 about this before you started contacting the police, did
 21 Dixie ever describe who the person was Blaise had said had
 22 attacked her?
 23 A No, she did not.
 24 Q In talking to her over the years about this case, did

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JOHNSON - DIRECT

1 bringing this up to you?
 2 A She was trying —
 3 MR. SCHIECK: Objection, speculation, Your Honor.
 4 MS. DiGIACOMO: I'll rephrase.
 5 BY MS. DiGIACOMO:
 6 Q She had never told you until just recently the
 7 description of the person that allegedly attacked Blaise?
 8 A No.
 9 Q She never had or she -- that's correct?
 10 A She never -- no —
 11 Q Okay.
 12 A -- she had never told me that,
 13 Q Did she tell you why she was bringing it up last
 14 Tuesday?
 15 A Yes, because she felt that Blaise didn't do this
 16 because of the description that she gave to me of the man
 17 that --
 18 Q Okay. And when she —
 19 A -- this happened to,
 20 Q So did Dixie tell you that she described this person
 21 to you back in 2001?
 22 A Yes, she did.
 23 Q Okay. And what was your response?
 24 A I told her no, she didn't,

V11-52

JOHNSON - DIRECT

1 she ever describe who the person was?
 2 MR. SCHIECK: I'm gonna object, Your Honor,
 3 Talking to her over the years? Do we have some specification
 4 as to what conversation we're now talking about?
 5 THE COURT: Sustained,
 6 BY MS. DiGIACOMO:
 7 Q Okay. Between May 2002 and today, did you ever
 8 talk to Dixie about the description of this person that may have
 9 attacked Blaise?
 10 A Just recently,
 11 Q Okay, When was the first time?
 12 A Last Tuesday.
 13 Q And what was Dixie -- or strike that, Who brought
 14 up the description?
 15 A She did,
 16 Q Okay, And why did she bring this up?
 17 MR. SCHIECK: Objection, speculation, Your Honor.
 18 THE COURT: Sustained.
 19 BY MS, DiGIACOMO:
 20 Q Did she tell you why she was bringing this up?
 21 A Yes, she did,
 22 Q And what was that?
 23 A Because she felt that Blaise did not do this.
 24 Q Okay, And so what was -- what was she doing by

V11-51

JOHNSON - DIRECT

1 Q And what --
 2 A And I asked her if she had been reading the internet
 3 and if that's where she got this from,
 4 Q Okay, And what did she state?
 5 A She said no,
 6 Q Did you get the feeling she was trying to convince
 7 you that she had told you this back in 2001?
 8 A Yes, She was absolutely trying to convince me that
 9 she told me this,
 10 Q Okay. Was she trying to influence your testimony?
 11 MR. SCHIECK: Objection, speculation, Your Honor,
 12 MS. DiGIACOMO: I'll rephrase.
 13 BY MS. DiGIACOMO:
 14 Q Did she tell you -- well, did she say anything during
 15 this trying to convince you about the description, did she
 16 mention your testimony in this case at all?
 17 A I'm not sure what you're -- I'm sorry,
 18 Q Did you — well, that's okay. Strike that. Did you
 19 have any idea before the conversation last week per Dixie
 20 what the alleged attacker was supposed to look like?
 21 A I had no idea.
 22 MS. DiGIACOMO: Court's indulgence,
 23 BY MS. DiGIACOMO:
 24 Q At the time that you had this conversation last

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JOHNSON - CROSS

1 Tuesday, did you know that you were gonna have to come
 2 back and testify?
 3 A Yes, I did,
 4 Q And when I say back, I mean down to Las Vegas?
 5 A Yes.
 6 Q Did Dixie as well?
 7 A Yes.
 8 Q Is that why the conversation came up?
 9 A Yes,
 10 Q Did you feel that Dixie was trying to influence your
 11 testimony?
 12 A She was trying to get me to remember that she told
 13 me this when I know she didn't tell me this.

MS. DiGIACOMO: Pass the witness.

CROSS-EXAMINATION

BY MR. SCHIECK:

17 Q Did you take notes of your conversation with Dixie?
 18 A No.
 19 Q So you're relying on your recollection?
 20 A Yes.
 21 Q And she apparently has a different recollection than
 22 yours, is that fair?
 23 A That's fair,
 24 Q And do you know how long she had talked to Blaise

V11-54

JOHNSON - CROSS

1 Tuesday?
 2 A Yes, I did.
 3 Q Okay. And you already knew you were coming to
 4 court to testify?
 5 A Yes
 6 Q Okay. And she lives in Panaca?
 7 A Yes.
 8 Q And you live in Pioche?
 9 A Mm-hmm.
 10 Q Is that yes?
 11 A Yes.
 12 Q So you drove from Pioche to her house to go to her
 13 house?
 14 A Yes
 15 Q Okay. Was that an evening time visit or —
 16 A No, it was during the day.
 17 Q Part of your work day or --
 18 A Yes.
 19 Q Okay. While you were out and about on your duties
 20 as a probation officer?
 21 A Yes,
 22 Q You just stopped by to chat?
 23 A Yes,
 24 Q Okay, Were you aware that she'd already been

V11-56

JOHNSON - CROSS

1 when Blaise came over and had this conversation with her?
 2 A No, I don't.
 3 Q She didn't tell you that it was three hours long?
 4 A No.
 5 Q Okay. And how long did Dixie talk with you when
 6 she came over?
 7 A For probably half an hour to 45 minutes.
 8 Q Okay. Which is much less than three hours?
 9 A Yes.
 10 So there could've been more information that was
 11 discussed in three hours than in half an hour?
 12 A Yes.
 13 Q And Dixie recalled that she had a description of the
 14 attacker of Blaise, correct?
 15 A That's —
 16 Q That's -- that's her —
 17 A That's what she told me, yes.
 18 Q Okay. That's her recollection --
 19 A Right.
 20 Q or what she told you?
 21 A Right.
 22 Q And you don't have that recollection?
 23 A No, I don't.
 24 Q Okay. And you went over to her house last

V11-55

JOHNSON - CROSS

1 subpoenaed to come to court also?
 2 A Yes.
 3 Q Okay. Okay. Now when -- just so I'm clear on the
 4 time frames on this. You had a conversation with Dixie at your
 5 office there at the Pioche Courthouse, correct?
 6 A Yes,
 7 Q And your recollection is sometime shortly afternoon?
 8 Is that yes?
 9 A Yes.
 10 Q Okay, And at that point in time the first thing you
 11 did or one of the first things you did was contact Sergeant
 12 Cowley?
 13 A Yes,
 14 Q And that would've been on this same day?
 15 A I really don't recall if it was the same day or -
 16 believe it was the next day.
 17 Q Okay. So that would've been Thursday then?
 18 A That would've been Thursday because, based on her
 19 information, is when I started to call.
 20 Q Okay, And you started to call the different law
 21 enforcement agencies on Friday?
 22 A Friday, yes.
 23 Q So actually you had a conversation with Dixie on
 24 Wednesday —

V11-57

JOHNSON - CROSS'

1 A Mm-hmm.
 2 Q -- talked to Sergeant Cowley on Thursday, and then
 3 called the law enforcement on Friday?
 4 A Right_
 5 So two days after your conversation with Dixie?
 6 A Yes.
 7 In this conversation you had with Dixie, she had told
 8 you that Blaise had related the man had tried to attack her?
 9 A Yes,
 10 Q Okay. In a sexual type of attack, was that your
 11 understanding?
 12 A Yes.
 13 Q Because his penis was out of his pants?
 14 A Right, his penis was hanging out of his pants.
 15 Q It's fair to assume that if this individual that wasn't
 16 described to you had attacked someone with his penis hanging
 17 out, it was probably some type of sexual attack?
 18 A Probably,
 19 Q Okay, And you're a law enforcement officer or a
 20 peace officer, correct?
 21 A Yes.
 22 Q Okay, So you have access to records on individuals,
 23 is that correct?
 24 A What kind of records?

V11-513

JOHNSON - CROSS

1 Q Would you have access to records that indicated
 2 Blaise had been the victim of a sexual assault at an early age?
 3 A I was told that, yes.
 4 Q You were aware of that? At what point in time did
 5 you become aware of that?
 6 MS. DIGIACOMO: Objection, relevance.
 7 THE WITNESS: Not until after,
 8 THE COURT: Counsel approach,
 9 (Off-record bench conference from 2:33:22-2:34:33 p.m.)
 10 THE COURT: Mr, Schieck's withdrawing the
 11 question, therefore, the answer cannot stand and is ordered
 12 stricken.
 13 BY MR. SCHIECK:
 14 Q When Dixie talked to you about the car, was she
 15 giving you exactly what Blaise had told her or what Dixie
 16 assumed was going on with the car?
 17 A She told me that Blaise told her that they were
 18 hiding the vehicle out in Panaca and that her parents were
 19 aware of what happened and that they were gonna possibly
 20 get it painted or sell it-
 21 Q Okay. And it was your understanding that was what
 22 Dixie was told as opposed to what Dixie assumed?
 23 A Yes.
 24 Q Okay. Would it -- I mean you've known Dixie for

V11-59

JOHNSON - CROSS

1 nine years?
 2 A Right,
 3 Q You've had a lot of conversations with Dixie?
 4 A Mm-hmm.
 5 Q Is that yes?
 6 A Yes.
 7 Q Dixie makes a lot of assumptions in her
 8 conversations sometimes, is that a fair statement?
 9 A Yes.
 10 Q Dixie is in her position there in Panaca and her years
 11 in Panaca, is privy to a lot of information that gets spread
 12 around town. Is that a fair statement?
 13 A Yes,
 14 Q Okay, And not to be unfair to Dixie in her absence,
 15 but is prone to sometimes perhaps putting her own spin on
 16 things? Would that be a fair statement?
 17 A I don't know about that, I really cannot answer that
 18 because I -- I've never, you know --
 19 Q Well, she definitely had her opinions about this case?
 20 A She definitely had her opinions, yes,
 21 Q Okay, And obviously apparently to you would state
 22 those opinions --
 23 A Yes,
 24 Q -- of how she feels on the case?

V11-60

JOHNSON - CROSS

1 A Yes,
 2 Q Okay. And that's based on a variety of factors?
 3 A Yes.
 4 Q Okay, And she was trying to convey those to you
 5 when she talked to you on Tuesday?
 6 A Yes,
 7 Q Okay,
 8 MR, SCHIECK: Court's indulgence for one second,
 9 Your Honor,
 10 THE COURT: Yes,
 11 BY MR. SCHIECK:
 12 Q Would it be fair for me to say that you never talked
 13 to Blaise about this?
 14 A I've never talked to Blaise,
 15 Q So everything you have would've been secondhand
 16 information, correct?
 17 A Correct,
 18 Q Okay,
 19 MR, SCHIECK: Thank you, I have no further
 20 questions, Your Honor,
 21 THE COURT: I'm gonna ask for a clarification. Is
 22 that you've never talked to Blaise ever, or you've never talked
 23 to Blaise about this incident?
 24 THE WITNESS: I've never talked to her about this

V11-61

JOHNSON - REDIREC

incident.

THE COURT: Redirect,,
MS. DiGIACOMO: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. DiGIACOMO:

Q Now defense counsel asked you about Dixie and that she makes assumptions. When she talked to you that day in your office about what Blaise had told her, did you think she was making any assumptions?

A No.

Q Okay. What did you think?

A I believed what she was telling me.

Q Okay. And did she seem genuinely concerned?

A Absolutely. Yes,

Q Did she seem to believe that maybe this had happened in Las Vegas?

A Yes,

Q And Dixie's opinions, have they changed, or has she been pretty much the same way she's been sine July 2001 until the present?

A She's been pretty much the same,

Q In fact, when you talked to the police, did they — you told them something about whether or not they should see Dixie that same day, didn't you?

V11-62

DENSON - REDIRECT

Q And who brought up when you had -- well, strike that. When you had this conversation as well, did Dixie tell you where Blaise had said she was coming from when the attack occurred?

A She said -- Dixie told me that Blaise was coming out of work.

Q And when you had the conversation with Dixie last Tuesday at her house, which one of you brought up this case and that you were gonna have to come down here?

A I'm not sure. It was --

Q Do you recall who initiated speaking about the facts of the case or your testimony?

A No. I think we just started talking about the case because she made me very angry because I told her she couldn't continue to change her story.

Q Okay. Was it a long conversation?

A Yes.

MS. DIGIACOMO: Court's indulgence,
Pass the witness,

MR. SCHIECK: Nothing further, Your Honor,
THE COURT: You may step down.

State may call the next witness,,

MR. KEPHART: State would call Dr. Simms,

Your Honor, before we do that, could I approach the

V11-64

JOHNSON - REDIRECT

A I'm sorry,

Q Okay. When you talked to the police and they came to your house on that day, July 20th?

A Right.

Q Did you tell them that they shouldn't go see Blaise that same day -- excuse me, shouldn't go see Dixie that same day?

A I don't recall that. I'm sorry,

Q So you don't recall telling the police not to see Dixie before they talked to Blaise because she might tip her off?

A I really don't recall that. I'm sorry.

Q Is it possible you did say that to the police?

A It's possible I did say that —

Q Is it possible that Dixie --

A -- because it's possible that that could happen.

Q It would've been possible that —

A Yes,

Q — Dixie would've tipped Blaise off?

A Yes.

Q Now with regard to the conversation you had with Dixie, you said you don't recall any descriptions given to you?

A No, I don't

Q You do recall that a penis was cut off though?

A Yes.

V11-63

SIMMS - DIRECT

bench? I've got to arrange photos and stuff, so —

THE COURT: You may approach the clerk. Is that what you want?

MR. KEPHART: Yeah, I gotta look through 'ern and make sure I got all the right ones.

THE COURT: You may,

MR. KEPHART: Yeah, if we could,

Could we take a break, Judge? It would be easier,

THE COURT: Why don't you go ahead and get started and then we'll take a break.

MR. KEPHART: Okay.

THE CLERK: Please remain standing and raise your right hand,

DR. LARY SIMMS, STATE'S WITNESS, SWORN

THE CLERK: Please be seated,

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

THE WITNESS: My first name is Lary spelled

L-A-R-Y. My last name is Simms, S-I-M-M-Sr

DIRECT EXAMINATION

BY MR, KEPHART:

Q Sir, how are you employed?

A I'm a forensic pathologist employed by the Clark County Coroner's Office-

Q What is a forensic pathologist?

V11-65

SIMMS DIRECT j

1 A Well, pathology is a general study of disease, and
 2 forensic pathology is a subspecialty of that that deals mainly
 3 with violent injury, which would be like a suicide, accident, or
 4 homicide,
 5 Q And in the course of your employment do you -- are
 6 you called upon to conduct autopsies?
 7 A Yes.
 8 Q Okay. And that's with the coroner's office here in
 9 Las Vegas?
 10 A Correct,
 11 Q How long have you worked as a coroner?
 12 A Here in Las Vegas, it's been a little over eight years,
 13 Q Okay. And when I say coroner, I'm talking about
 14 medical examiner. Is that the same thing? Do you
 15 understand it?
 16 A Probably not strictly. Medical examiner is a
 17 physician,
 18 Q Okay. And with regards to here in Las Vegas, how
 19 long again?
 20 A A little over eight years.
 21 Q Anything prior to that?
 22 A Yes, I worked in Chicago for five years.
 23 Q As a medical examiner — coroner?
 24 A Correct.

V11-66

SIMMS - DIRECT

1 the field of pathology, examination of bodies, coroner, when
 2 you testified?
 3 A So far each time.
 4 Q Okay.
 5 MR. KEPHART: Your Honor, at this time move to
 6 offer Dr. Simms as an expert in the field of pathology,
 7 examination of dead bodies.
 8 MR. SCHIECK: That's fine, Your Honor,
 9 THE COURT: No objection? Motion granted.
 10 MR, KEPHART: Okay,
 11 BY MR. KEPHART:
 12 Q Doctor, I want to draw your attention back to July
 13 9th of 2001, and ask you if you had an occasion to conduct an
 14 autopsy on an individual identified to you as Duran Bailey?
 15 A Yes.
 16 Q Okay. Can you tell the jury what an autopsy is?
 17 A It starts out with an external examination of the
 18 body surfaces from the head to the feet. And then there's
 19 some incisions made in certain areas of the body and in the
 20 head. The internal organs are removed, Those are examined.
 21 And also the internal body surfaces are examined,
 22 Q Okay, When was it that you actually conducted —
 23 what -- do you remember what time it was?
 24 A I recorded it at 1200 hours, so it would be 12:00

V11-68

SIMMS - DIRECT

1 Q Anything prior to that?
 2 A Well, I started doing forensic cases just a few years
 3 before that while I was in Grand Rapids.
 4 Q Okay. Have you ever testified in any court of law,
 5 either in the State of Nevada, Chicago, any other place in the
 6 United States with respect to rendering opinion based on
 7 medical examination of a human body?
 8 A Yes.
 9 Q Okay. How many times would you say?
 10 A Well, in Clark County here, it'd probably be, you
 11 know, 150, 200 times. In Chicago it was probably, and the
 12 surrounding area it was probably about 50 or 60 times,
 13 Q Okay. How many autopsies do you believe you've
 14 performed?
 15 A Probably somewhere between 4,500 and 5,000.
 16 Q Okay. And what type of training do you have to
 17 have in order to enable you to become a medical examiner as
 18 a coroner?
 19 A Well, you have to go through medical school and
 20 become a license physician, and then you undergo some
 21 specialty training in basic pathology, which is a five year
 22 program, And then you specialize in forensic pathology, which
 23 is a one year program,
 24 Q Okay, And have you ever qualified as an expert in

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SIMMS - DIRECT

1 noon.
 2 Q Okay, Do you recall during this examination
 3 whether or not personnel from the Las Vegas Metropolitan
 4 Police Department were there during your autopsy
 5 examination?
 6 A I don't have an independent recollection of anything
 7 about the examination, but I -- I would say, you know, there's
 8 a 99,9 percent probability that that would be the case because
 9 that's their routine,
 10 Okay. And they're there for what reason, do you
 11 know?
 12 A Well, there's an evidence technician, which is there
 13 to take evidence. And then there's usually homicide detectives
 14 there who are, you know, there to get the results of the
 15 autopsy, at least the preliminary results,
 16 Q Okay. And the evidence technicians would include
 17 taking photographs?
 18 A Yes,
 19 Q Also I've had an opportunity to meet with you in the
 20 last couple days prior to your testimony today, is that correct?
 21 A Correct,
 22 Q And the coroner's office also takes photographs as
 23 well, is that correct?
 24 A Yes

V11-69

SIMMS - DIRECT

1 Q And you were given all of the photographs that were
2 taken in this case by the coroner and asked to look through
3 those to see if that would assist your testimony for purposes of
4 identifying the injuries that Duran Bailey received, is that
5 correct?

6 A Correct.

7 Q Do you remember testifying in a previous hearing as
8 well in this case and talking about the injuries to Duran Bailey?

9 A I know I testified a couple of times, yes.

10 Q Okay, Matter of fact, you were provided with your
11 previous testimony in this case, is that correct?

12 A Yes.

13 Q Okay. Now during the course of your examination,
14 did you conduct an internal examination -- I mean an external
15 examination?

16 A Yes.

17 Q Okay, Can you tell us what significant findings that
18 you made with regard to the external examination?

19 A Do you want me to go over them individually or
20 just —

21 Q Yes,

22 A -- synopsisize them?

23 Q Yes.

24 MR. SCHIECK: For the record, Your Honor, I believe

V11-70

SIMMS - DIRECT

1 contusions, and there were scratches, He was bleeding from
2 the nose. There was a stab wound in the right forehead area
3 There was a number of small incised wounds on the left lateral
4 neck.

5 Also on the left neck there was a stab wound on his
6 chin. There was a -- on the left side of his chin there was a
7 stab wound. There was a stab wound in the front of the neck,

8 Q Okay. Doc, let me stop you there. Now I asked you
9 about an incised wound?

10 A Correct.

11 Q And now you're terminology you're using is a stab
12 wound, Can you tell me if you have any opinion as to what
13 would cause a stab wound?

14 A Well, a stab -- a slash wound is longer than it is
15 deep. A stab wound is deeper than it is long. So a stab
16 wound -- in order to cause a stab wound it has to be a sharp
17 instrument like a knife that has a sharp edge that can stab into
18 a depth of tissue.

19 Q Okay, Okay. Go on.

20 A Let's see, on the bridge of the nose there was a
21 small abrasion. There was an abrasion on his right lateral
22 forehead associated with a scratch. There was an incised
23 wound above his right eye. And there were multiple incised
24 wounds that were fairly superficial above his left eye, or in

V11-72

SIMMS - DIRECT

1 he's gonna refer to his report, which we have no objection to,
2 THE COURT: Very well.

3 THE WITNESS: On the back of his head there was a
4 two and a half inch area of what looked like bruising. On the
5 left neck there was a superficial incised wound that was four
6 and a half inches in length

7 BY MR. KEPHART:

8 Q Okay. Let me stop you there. What is an incised
9 wound?

10 A That'd be a slash wound.

11 Q Okay, And do you have any type of opinion as to
12 what would cause a slashed wound?

13 A Not as far as a specific weapon, but obviously it'd be
14 a weapon that has a -- or an object that has a very sharp
15 edge,

16 Q Okay. Go on,,

17 A On the left side of his face there was a broad area of
18 blunt force injury composed of abrasions and contusions.
19 There were also scratches. And then there was a -- one part
20 of it had what appeared to be a patterned abrasion, which
21 would indicate that it came in contact with some kind of
22 pattern surface.

23 On the right side of the face he had a similar
24 findings of blunt force injury with a number of abrasions and

V11-71

SIMMS - DIRECT

1 relation to his left eye, not just above it. There were multiple
2 lacerations of the lips with -- associated with fractures of the
3 teeth. There was an incised wound on the left side of the chin
4 and jaw area. There was a previous scar -- or there was a
5 scar from a previous surgery on the left side of his head.

6 Moving down into the chest and abdomen. There
7 were a number of pressure marks on the body, indicating
8 there was all kinds of edges and objects in contact with his
9 body for a period of time after he died. On the —

10 Q Well, let me talk to you about that real quick. You
11 said that there was a number of pressure marks and different
12 edges and that that we can't — showed that something had
13 came into contact with his body?

14 A A number of -- because they were kind of separate
15 things.

16 Q Okay, And pressure marks, can you -- can you give
17 us an idea with regards to an individual who dies, receives a
18 pressure mark. Do you have an opinion as to how long
19 something like that would have to be on a person in order to
20 cause a pressure mark?

21 A Yes. You know, a pressure mark comes from, say
22 somebody dies and they -- they're on a rocky area, and it's an
23 uneven area. And so a lot of those rock surfaces are gonna
24 cause pressure marks. And it usually takes, you know, a

VII-73

SIMMS - DIRECT

number of hours for those to form and become kind of permanent on the body. If you — you know, if they're just there for a short period of time and you move them off those, then the pressure marks go away. But the more permanent pressure marks take a number of hours,

Q Okay. And you've described just now whether or not the body is laying on a rocky surface. Can you -- can the body receive a pressure mark if something is laying on top of the body?

A Same mechanism, yes.

Q Does it have to be any type of weight or any type of material that has a significant weight to it to cause a pressure mark?

A No. It can be a relatively light piece of plastic, as long as there's something on top of it that's pressing down, you know, there's some kind of weight. You know, you're not gonna get a pressure mark if you just lay a pencil on a deceased person.

Q Okay.,

A There has to be some kind of pressure.

Q So if there's a large amount of debris on an individual you would likely see pressure marks after at least two hours?

A Oh, yes.

V11-74

SIMMS - DIRECT

1 there wasn't any to the palm. But there was an injury —
2 injuries to the palm, a number of -- several injuries to the palm
3 of the left hand.

4 Q Okay. And do you have an opinion as to what those
5 type of injuries are?

6 A Well, those are classic for defense wounds.

7 Q Okay, And when we say defense wounds, meaning
8 that he's fending off whatever instrument is --

9 A Whatever -- it comes in a sharp force attack and you
10 get these injuries to your hands when you're trying to defend
11 yourself. That's why I call them defense wounds,

12 Q Okay, The type of injuries that you saw with
13 regards to his hands, were they consistent with something that
14 was made with a sharp -- by a sharp instrument?

15 A Yes,

16 Q Such as a knife?

17 A Yes.

18 (Off-record colloquy between Mr. Kephart and the Clerk)

19 MR. KEPHART: I'd like to have this marked as
20 State's Proposed Exhibit 122,

21 (Off-record bench conference from 2:5625-2:57:09 p.m.)

22 MR, KEPHART: May I approach the witness, Your
23 Honor?

24 THE COURT: You may.

V11-76

SIMMS - DIRECT

1 Q Okay. Debris including garbage?

2 A Well, as long as it has, again, you know, some kind
3 of edges to it, some kind of surfaces to it. That's what causes
4 a pressure mark

5 Q Okay. Okay, Go ahead.

6 A Let's see. There was a superficial incise wound on
7 his left upper chest. There were a number of abrasions,
8 curvilinear abrasions on the left shoulder. On his left -- his left
9 -- right at the junction between his abdomen and his chest
10 there were four stab wounds. On the back there were a
11 number of superficial abrasions on the upper back.

12 He had a long irregular slash wound in his rectal
13 area. There was a stab wound in the scrotum, and his penis
14 was amputated at the base. There was a scar on his right
15 knee, There was a superficial incised wound on the inner part
16 of his right lower arm. There was another one on the back of
17 his right hand. There was another one -- or there was several
18 on the inner part of his left lower arm. And then there were
19 several of them on the fingers, the palmar surface of the
20 fingers of the left hand.

21 Q Okay, With regards to the injuries that you just
22 described on his arm and on his hand, was there injuries to
23 both hands?

24 A There was an injury to the back of the right hand,

V11-75

SIMMS - DIRECT

1 BY MR. KEPHART:

2 Q Dr. Simms, I'm gonna ask you if you could — you
3 just testified about a number of injuries that Duran Bailey
4 received. I'd ask you if you could come down here and use
5 this diagram as State's Proposed Exhibit 122,

6 MR. KEPHART: And for purposes of the record, Your
7 Honor, it's a clean diagram, move to admit State's
8 Proposed Exhibit 122.

9 MR. SCHIECK: No objection, Your Honor.

10 THE COURT: Granted.

11 (State's Exhibit No. 122, admitted)

12 BY MR. !KEPHART:

13 Q Could you —

14 MR. KEPHART: Do you have a red marker?

15 BY MR, KEPHART:

16 Q Doctor, could you — with the use of this red marker,
17 would you go ahead and go through the injuries again,
18 pointing out on this diagram what injuries that you noted had
19 occurred with regards to Duran Bailey. And just so we know
20 who we're talking about, can you write the name Duran Bailey
21 in the spot that says Duran -- I mean says name?

22 A Okay. Let's see, on the back of his head his had a
23 bruise, On the left neck toward the back there was an incised
24 wound, On the -- kinda all around the left side of his face

V11-77

SIMMS - DIRECT

1 there were a number of abrasions, contusions, and that was
2 similar on the right side of the face., He had blood coming
3 from his nose. There was a stab wound in the right forehead
4 area.

5 Q Okay, Just so we know -- the record's clear, when
6 you are identifying actual stab wounds, can you color those in
7 as a line if it's consistent with what you recall?

8 A Let's see. On the left lateral neck there was a group
9 of incised wounds,

10 Q What did you write on there?

11 A A group.

12 Q A group of incised wounds? Okay.

13 A Superficial incised wounds.

14 Q Okay.

15 A And also on that area here there was a stab wound.

16 Q Okay.

17 A There was a stab wound on the left chin area.

18 There was a stab wound on the front of the neck. There was
19 an abrasion on the ridge of the nose. There was an abrasion
20 on the right forehead. Above the right eye there was an
21 incised wound And there were multiple incised wounds
22 around the left eye. There were multiple lacerations on the
23 lips, along with fractured teeth. There was an incised wound
24 on the left jaw. And there was a scar on his head from an

VII-78

SIMMS - DIRECT

1 -- there were abrasions over the upper back.

2 Q And when you say abrasions you're talking about
3 scratches or —

4 A Right, where the skin was scraped,

5 Q Okay, Would that be maybe consistent with
6 whether or not the body had moved at some point or he struck
7 -- he fell against something?

8 A Could be either -- either one of those.

9 Q Either one of those? Okay. Similar to on his face?

10 A Yes,

11 Q And the side of his head? Is that a yes, Doctor?

12 A Yes.

13 Q Okay. Thank you. Any other injuries?

14 A There was a long incised wound in his rectal area.

15 There was a stab wound in his scrotum, and then the penis
16 had been amputated. And he had a defense wound on the
17 right forearm, on the back of the right hand -- that was the
18 left, sorry, Right. On the back of the right hand,,

19 Q Now you put an X -- in the record you put an X
20 through something that you marked in the left arm?

21 A Yeah. Actually though he's got -- he's got an incised
22 wound over there too, so I'll X out the X --

23 Q Okay.

24 A -- and put it back here,, There's several of these,

WI-80

SIMMS - DIRECT

1 old —

2 Q A scar from an old injury or —

3 A From — well, either that or an old surgery.

4 Q Okay.

5 A Let's see, There were a number of pressure marks
6 then all over the abdominal area,

7 Q And you're saying that would be consistent with
8 something was placed on the body?

9 A A number of objects.

10 Q Okay, Could a pressure mark also be caused by an
11 article of clothing that's on the body and then something's
12 placed on top of that?

13 A If it was -- as long as it was something hard, like
14 buttons or -- it would have to be something -- it wouldn't be
15 just cloth, Well, I take that back,, If the cloth was fairly thick
16 and had a pronounced pattern, like a zipper, something like
17 that it could,

18 Q Okay. What if the cloth is folded?

19 A Given enough time and pressure that could cause a
20 linear pressure mark.

21 Q Okay,

22 A There was a superficial incised wound in the left
23 chest. There were abrasions on the left shoulder. And there
24 were four stab wounds in this area here. There were multiple

VII-79

SIMMS - DIRECT

1 On the fingers of the hand he had incised —

2 Q Okay, Now you've only marked three fingers?

3 A Now I think -- oh, yes. It's the first, second, third —
4 so the first, second, third, I have to mark that one out, and
5 fifth.

6 Q Of the left hand?

7 A Of the left hand,

8 Q Okay, Any of them on the right hand?

9 A The only one on the right hand is the -- the one on
10 the back.

11 Q On the back, Okay. Okay, Would that pretty much
12 then -- is there any additional injuries?

13 A Not external.

14 Q Okay. What about with regards to the defendant's
15 rectum -- I mean the witness' -- victim's rectum?

16 A Well, yeah, he had this long incised wound here,

17 Q Okay. And that was a — was it connected?

18 A No, it was a -- I think it was almost six inches long,
19 extending from kind of the top all the way down to the near
20 the base of his scrotum.

21 Q Okay. Okay, Doc, you can have a seat there. Now
22 you had indicated that -- that you -- this is with reference to
23 your intern -- I mean external examination, is that correct?

24 A Correct,

VII-81

SIMMS - DIRECT

1 Q Do you do an internal examination?
 2 A Yes
 3 Q And were you able to do one in this particular case?
 4 A Correct.
 5 Q Okay. Tell me what significant findings, if anything,
 6 that you got with regards to this individual, Duran Bailey?
 7 A Well, he had a hemorrhage in his tongue. He had
 8 had a previous surgical where his skull, a flap of it was actually
 9 opened up. Some kind of -- he had some previous, some
 10 brain surgery on the left side. There were hemorrhages on
 11 both sides of the head underneath the skin.
 12 Q Okay. Let me stop you. When you said that he had
 13 a previous — what appeared to be previous surgery or
 14 something --
 15 A Correct
 16 Q -- and you said brain surgery, that has -- can you
 17 give us an opinion as to whether or not that had anything to
 18 do with this particular incident here?
 19 A No, it would've happened, you know, like years ago.
 20 Q Okay. So that's just — you just saw evidence of
 21 some previous --
 22 A Of a previous surgery,
 23 Q Okay. All right,
 24 A He had hemorrhages underneath his skin on his

V11-82

SIMMS - DIRECT

1 Q Okay. Were you able to determine from evidence
 2 that showed that there were certain wounds here that was --
 3 this individual received after he was dead?
 4 A Yes,
 5 Q Tell us what those were?
 6 A The stab wound in the front of the neck had hardly
 7 any hemorrhage associated with it, so that would be a
 8 characteristic of a postmortem wound.
 9 Q Which one would that be, as you —
 10 A Right in the front of the neck.
 11 Q Okay.
 12 A The one on the front of the neck,
 13 Q Okay,
 14 A The stab wounds on the left side, one of them went
 15 all the way through and into the liver and there was no blood
 16 associated with it, and there was just some blood in the
 17 subcutaneous tissue underneath the wounds. So I would -- I
 18 would have to say that those occurred, you know,
 19 postmortem. They didn't have the — with four major stabs
 20 wounds, especially one to the liver, you should have a
 21 significant amount of bleeding. There was hardly any,
 22 Q When you say went all the way inside, you're talking
 23 about the depth?
 24 A Yes, it went all the way through -- right -- it actually

V11-84

SIMMS - DIRECT

1 head, He had a large -- large area of hemorrhage very dense
 2 on the back of his head. He had blood over the surface of his
 3 brain, fairly extensive over both surfaces of the brain. There —
 4 on the left side of the skull there was a fracture that went from
 5 the back — or from the side to the back. Like I said, there
 6 were hemorrhages in the tongue.
 7 His internal organs, his lungs and kidneys were very
 8 pale, which is consistent with somebody losing blood, a lot of
 9 blood. There were some hemorrhages in the soft tissue in
 10 relation to the stab wounds on the left side. Down around his
 11 prostate -- internally around is prostate gland and around his
 12 internal pelvic structures there were a number of
 13 hemorrhages, I did recover some silver paper like fragments
 14 from the wound in the -- the opening of the wound in the
 15 rectal area. That's all.
 16 Q Okay, Reference to the wound to Duran's scrotum,
 17 were you able to determine -- well, do you know what -- well,
 18 yeah, you do, but postmortem and antemortem, the
 19 difference, can you tell us what those mean?
 20 A Well, in a -- a postmortem wound indicates that the
 21 person was alive when the wound was given to them, or
 22 injury, A -- I mean a -- sorry, I'm misleading. An antemortem
 23 wound or injury is when the person is alive, it occurs when
 24 they're alive A postmortem wound is after they're dead.

VII-83

SIMMS - DIRECT

1 cut the rib cage right at the edge of it and then went into --
 2 and then went all the way into the liver.
 3 Q Okay. Can you -- did you measure that? Do you
 4 have a -- did you note —
 5 A No, I didn't take it because, you know, the
 6 abdominal wall is so moveable, you know, it — you know, it
 7 doesn't really reflect, you know, how deep -- how long a knife
 8 is or anything, so it's -- it doesn't really help you. But it -- you
 9 know, you'd have to say it had some kind of a significant blade
 10 in order to go all the way into the liver from that -- from that
 11 point,
 12 Q Okay. Would you — were you about to characterize,
 13 at least with those injuries, whether or not this particular
 14 incident was a one sided to two sided instrument?
 15 A Those had a blunt edge and a -- or a blunt edge and
 16 a sharp edge, And I think it was on -- on -- I didn't record
 17 which ones it were [sic], whether it was on all the wounds or
 18 just a few of the wounds, but some of them definitely had
 19 that.
 20 Q And you're able to determine whether it was a one
 21 edge -- one sided or two sided?
 22 A Since there's a blunt edge, that would be a one -- a
 23 single edged knife or a single edged weapon.
 24 Q Okay,

V11-85

SIMMS - DIRECT

1 A So there's only one sharp edge, and then the other
2 side is blunt, kinda like a -- it would be like a kitchen knife, you
3 know, that has a blunt edge on one side and a sharp edge on
4 the other,

5 Q Okay. And -- okay, You've talked about the injury
6 to the neck and the injury to the side were postmortem. Any
7 other injuries?

8 A The wound in the rectum was postmortem,

9 Q Okay.

10 A It didn't have any significant bleeding associated
11 with it. The wound in the scrotum was antemortem, but the
12 wound to the penis was postmortem-

13 Q Okay, So the wound in the scrotum means it
14 happened before he died?

15 A Correct,

16 Q And the wound to the penis meant that it happened
17 after he died?

18 A Correct.

19 Q Okay, With regards to the wound to the scrotum --
20 well, let me back up. With regards to the wound to the penis
21 and the rectum, in reference to the area of where the penis
22 would've been, or it was removed from, is that an area that
23 could or does have a reservoir of semen?

24 A Well, it -- the prostate gland is just inside there,

VII-86

SIMMS - DIRECT

1 together, where the seminal vesicles are about the size of your
2 little finger. So -- and they also have a reservoir.

3 MR. KEPHART: Your Honor, may I approach? The
4 Court, could we approach?

5 THE COURT: Yes.

6 (Off-record bench conference from 3:14:05-3:14:23 p.m.)

7 THE COURT: Ladies and gentlemen, we're gonna
8 take a 15 minute recess. At 3:30 please be in the hallway.
9 The bailiff will meet you there to return you to your seats in
10 the courtroom.

11 During this recess you're admonished not to talk or
12 converse among yourselves nor with anyone else on any
13 subject connected with this trial. You're not to read, watch, or
14 listen to any report of or commentary on the trial or any
15 person connected with the trial by any medium of information,
16 including without limitation, newspaper, television, radio, and
17 Internet. And you're not to form or express any opinion on
18 any subject connected with the trial until the case is finally
19 submitted to you.

20 Court's in recess until 3:30.

21 THE BAILIFF: All rise, please.

22 (Jurors are not present)

23 (Court recessed at 3:15:05 p.m, until 3:35:02 pm)

24 (Jurors are present)

VII-88

SIMMS - DIRECT

1 And it's not uncommon, interestingly enough, after a male dies
2 because the prostate gland has muscle in it, it actually
3 undergoes rigor mortis And it's not uncommon for small
4 amounts of semen to actually be ejaculated,

5 Q Okay,

6 A That's fairly common.

7 Q Well, that's sometime later though after he dies?

8 A Yeah, after rigor mortis has set in.

9 I'm talking about when -- if an individual has his
10 penis severed with a knife and then the knife is placed in the
11 rectum, would it be consistent with possibly seeing semen in
12 both areas?

13 A If it cut anywhere near the prostate gland than it --
14 semen could be deposited.

15 Q In this particular case it did, correct?

16 A It cut down to it. I don't recall actually making an
17 observation where it actually the -- I actually removed the
18 prostate gland and to -- because there was a lot of
19 hemorrhage around it. But it definitely was cut at least near
20 the prostate gland,

21 Q Okay,

22 A And there's also another couple glands that are
23 called the seminal vesicles which are very -- they're much
24 smaller. The prostate is about the size of two walnuts

VU-87

SIMMS - DIRECT

1 THE BAILIFF: All rise, please, Department 2 is back
2 in session. Please be seated.

3 THE COURT: The record shall reflect that we're
4 resuming trial in State versus Kirstin Lobato under case
5 number C177394, in the presence of the defendant, together
6 with her three counsel, the two prosecuting attorneys, and the
7 ladies and gentlemen of the jury panel.

8 Also Dr. Simms is back upon the witness stand, he
9 remains under oath. Mr. Kephart may resume direct
10 examination.

11 MR. KEPHART: Thank you, Your Honor,

12 May I approach the witness?

13 THE COURT: You may.

14 MR. KEPHART: Okay.

15 BY MR. KEPHART:

16 Q Doctor, I'm gonna show you a series of photographs
17 in three separate stacks. The first series is numbered 68 -- oh,
18 I'm sorry, 56 through 68. Could you take a look at those,
19 please? Okay. With regards to photographs 56 through 68,
20 are you familiar with what these are photographs of?

21 A Those show a number of the external injuries

22 Q Okay. With regards to Duran Bailey?

23 A Yes.

24 Q And the individual that you just drew the injuries

VII-89

SIMMS - DIRECT

1 and pointed out on Exhibit 122, I believe it is? 122r
 2 A Yes.
 3 Q Okay, And do these photographs help you to
 4 explain the injuries to the jury more in-depth in reference to
 5 just drawing them on the chart here?
 6 A Yes.
 7 Q Okay,
 8 MR KEPHART: Move to admit Exhibits 56 through
 9 68,
 10 MR, SCHIECK: No objection, Your Honor.
 11 MR, KEPHART: Okay.
 12 THE COURT: Be admitted.
 13 (State's Exhibit Nos., 56-68, admitted)
 14 BY MR. KEPHART:
 15 Q I'm showing you what's been marked as Exhibit No,
 16 70 through 97, and ask you to take a look at those as well,
 17 Okay. Do you recognize what these photos are taken of?
 18 A Those show a lot of the external injuries and some
 19 of the internal injuries,
 20 Q Okay, And like my last question, with regards to the
 21 injuries to Duran Bailey, that would help the jury understand
 22 more in-depth versus just the drawing on the --
 23 A Yes,
 24 Q Okay,

VII-90

SIMMS - DIRECT

1 Exhibit No. 56 -- let me see if I can lighten that up.
 2 MR, KEPHART: Is there something to lighten it up, Your
 3 Honor? Is this over here? Zoom in. Okay.
 4 BY MR, KEPHART:
 5 Q Do you see that there, Doctor?
 6 A Yes,
 7 Q Okay. Now you had testified earlier about an injury
 8 to the back of Duran's head, and actually on Exhibit 122 you
 9 drew a circle with an X in it. Does this help the jury
 10 understand what you're talking about with regards to the
 11 injury?
 12 A Well, the location of it would be in this area there,
 13 Q Okay. Is that actually -- that's not actually the
 14 injury, that's actually some kind of debris or something that's
 15 on his head --
 16 A Correct, Yeah,
 17 Q -- is that right?
 18 A Yes, They would have — you would have to actually
 19 shave the head in order to see that —
 20 Q Okay.
 21 A -- photographically,
 22 Q Now you talked about abrasions on his back. Is
 23 there evidence of that with these photographs as well?
 24 A Well, they're gonna be scattered over, you know,

V11-92

SIMMS - DIRECT

1 MR, KEPHART: Move to admit Exhibits 70 through
 2 97,
 3 MR, SCHIECK: No objection, Your Honor,
 4 THE COURT: Granted.
 5 (State's Exhibit Nos, 70-97, admitted)
 6 BY MR, KEPHART:
 7 Q And once again, Exhibits — Proposed Exhibits 199
 8 through 204. Do you recognize what these are taken of?
 9 A Yes, those are external injuries.
 10 Q Of the same individual?
 11 A Correct,
 12 Q So more consistent with the previous exhibits that
 13 we've just admitted?
 14 A Consistent with it, yes.
 15 Q Okay,
 16 MR. KEPHART: I'll move to admit 199 through 204,
 17 MR. SCHIECK: No objection, Your Honor,
 18 THE COURT: Granted.
 19 (State's Exhibit Nos, 199-204, admitted)
 20 BY MR, KEPHART:
 21 Q Okay. Let's just start with the first stack, Doctor.
 22 Can you -- I'm gonna use the screen so we can show the jury
 23 what we're talking about. And that screen you can actually
 24 touch and it would help to identify certain things. Okay.

V11-91

SIMMS - DIRECT

1 this area here. And then there's a superficial incised wound
 2 right there.
 3 Q Okay. The skin that seems to be gone on a portion
 4 of -- on his left shoulder blade, in that area, can you tell us
 5 what that is or what attributes to that?
 6 A That's early decomposition.
 7 Q Okay. Exhibit No, 57. Can you — you gotta touch
 8 the screen to —
 9 THE COURT: If you touch the lower right corner it
 10 will clear.
 11 THE WITNESS: All right,
 12 BY MR. KEPHART:
 13 Q Can you see that okay?
 14 A I can see it.
 15 Q Am I lined up all right or do I need to zoom out?
 16 There we go,
 17 MR. SCHIECK: Your Honor, would it be okay to
 18 move the chart —
 19 MR. KEPHART: Yeah, I will, Dave.
 20 MR. SCHIECK: -- so that I can see the whole
 21 screen?
 22 THE COURT: Yes. Mr. Kephart can take the chart
 23 down,
 24 MR. KEPHART: Is that better, Mr. Schieck?

SIMMS - DIRECT

1 MR. SCHIECK: Yes. Thank you very much.,
 2 MR, KEPHART: Okay.
 3 BY MR. KEPHART:
 4 Q Do you see that, Doc?
 5 A Mm-hmm, Yes.
 6 Q Can you show us where — what the significance of
 7 this photo is?
 8 A Well, there's a significant stab wound right there,
 9 Q Okay. Do you see down on his -- on his -- I guess it
 10 would be his left shoulder, in the photograph, the right bottom
 11 portion of the photo? And do you see what appears to be
 12 some lines?
 13 A Correct.
 14 Q Can you tell us what that is?
 15 A That's blood flow.
 16 Q Okay. So it appears that maybe some blood had
 17 gotten in a higher area there and flowed away from —
 18 A Correct. Yeah.
 19 Q Okay.
 20 A And flowed down over the shoulder.
 21 Q So it would be from the chest down over the
 22 shoulder?
 23 A Correct.
 24 Q Would that be consistent with him possibly laying

VII-94

SIMMS - DIRECT

1 significantly?
 2 A Yes, The carotid artery is probably about the size of
 3 your little finger, So if that was severed, you'd be -- with each
 4 pump of your -- each pump of the heart you'd be losing a
 5 large amount of blood.
 6 Q Okay. And would it cause any type of — would it do
 7 anything with regards to the blood? Would it spray the blood,
 8 would it ooze the blood or —
 9 A No. That kind of wound would pump that blood out.
 10 So it would have a -- it'd have a -- depending on certain
 11 factors, but it would have a propensity to cause an arterial
 12 spray,
 13 Q Okay. And with regards to this wound, you would
 14 expect blood to possibly get onto his chest area would be
 15 consistent with the blood that flowed down -- flew down from
 16 his -- the side there?
 17 A Yeah, Yes, Blood would flow out onto his chest
 18 area, definitely.
 19 Q Okay. Even if he's laying down?
 20 A Well, it would tend to -- tend to spray out the side
 21 and come out the side, but you know, it could possibly come,
 22 you know, in the front of his chest area
 23 Q Okay. Okay. Exhibit No, 58, Do you see that one,
 24 Doctor?

VII-96

SIMMS - DIRECT

1 down?
 2 A You mean -- oh, if he was down when --
 3 Laying down,
 4 A -- when the bleeding occurred?
 5 Yes.
 6 A Yes, then it would be —
 7 Okay.
 8 A If it bled out then it would go to -- gravity would pull
 9 it down over the areas of the body and that would be one of
 10 them.
 11 Q Okay, You wouldn't expect it to go down over his
 12 chest or up over his chest and down, would you?
 13 A No, that would be a little unusual.
 14 Q Okay, Now with this particular wound here that is
 15 shown in Exhibit 57, you said a significant wound?
 16 A Yes.
 17 Q Okay. And that's in a particular area on his body?
 18 A On the left neck.
 19 Q Okay, And is there a major vessel in that area?
 20 A Yes It went all the way -- it went way into the
 21 neck, It severed the carotid artery and actually -- it went all
 22 the way -- almost to the midline of the neck into the back of
 23 the throat area.
 24 Q Okay. That particular wound would bleed

VII-95

SIMMS - DIRECT

1 A Yes. That's again on the lateral side -- or the left
 2 side of the neck, but it's more toward the back and there's a —
 3 an incised wound, Actually there's actually two of them there.
 4 Q Okay. And when you say incised wound, you're
 5 talking about a —
 6 A A slash wound.
 7 Q -- a slash wound?
 8 A Yeah. These are fairly shallow.
 9 Q As if a sharp instrument was drug across the neck:
 10 A Correct.
 11 Q A knife?
 12 A Definitely a possibility, yes,
 13 Q Exhibit No. 59,
 14 A And this is the eye here, and this is the mouth here.
 15 So this -- all these are on the left side of the face. We talked
 16 about all the bruising and abrasions and everything on the left
 17 side of the face.
 18 Q Okay. Now when you say bruising and abrasions,
 19 what type of instrument would cause a bruise or an abrasion?
 20 A Any kind of blunt force type of instrument.
 21 Q And so with respect to this photo here, Exhibit No.
 22 59, we're talking about evidence of blunt force?
 23 A Definitely.
 24 Q Okay. Exhibit No, 60,

VII-97

SIMMS - DIRECT

1 A Here's the mouth and the nose, and this is the chin
2 area And there's a stab wound there on the left side of the
3 chin.
4 MR, SCHIECK: Zoom in, it'll brighten,
5 THE WITNESS: So here's the mouth and then this is
6 the -- on the left side of the chin.
7 BY MR, KEPHART:
8 Q Okay. And that's over at -- this photograph is 4.
9 And what do you call this?
10 A That was a stab wound, I believe. Let me look and
11 see here, Yes
12 Q Okay.
13 A So this is the chin, and we just got through seeing
14 this wound on that previous photo. This is a mouth up here.
15 So this is on the -- kinda the just to the left of that there is a
16 incised wound that actually has a -- kind of a drag mark, a
17 very -- it goes from a deeper wound to this very shallow drag
18 mark.
19 Q And back here in the back --
20 THE COURT: That one has not been identified by
21 number,
22 MR. KEPHART: Oh, I'm sorry, Judge. It's 61,
23 THE COURT: Thank you.
24 MR KEPHART: Okay.

V11-98

SIMMS - DIRECT

1 BY MR. KEPHART:
2 Q Back here in the back of the photo on the lower
3 portion, what is this consistent with here? See my finger?
4 A This stuff -- that's decomposition change.
5 Q Okay. Exhibit 62,
6 A This is kind of the whole face, so you see -- this is
7 obviously the nose here and there's blood in the nose. There's
8 multiple blunt force injuries there, there's blunt force injuries in
9 this area, blunt force injuries in that area. His eyes are
10 swollen.
11 Okay, And 63. Is this --
12 A Looks like the same kind of --
13 Just has the marker in there?
14 A -- photograph, yeah.
15 Okay. 64?
16 A This is kind of just from a different view, but it
17 shows the blunt force injury to the mouth a little bit better,
18 shows the swelling in the mouth, and then all the lacerations.
19 Q Okay. In this particular case were you also provided
20 with a number of teeth?
21 A Yes, there were -- that had been knocked out of his
22 jaw, yes,
23 Q Okay. And that would be consistent with some type
24 of blunt force instrument?

V11-99

SIMMS - DIRECT

1 A Correct
2 Q Number 65?
3 A I think this -- everything here is covered in the
4 previous photos.
5 Q Okay. Number 66?
6 A So this -- this is more kinda from the forehead down
7 so that you can see a lot of blunt force injury in that area. And
8 then there's also a sharp force injury right there in the
9 eyebrow area.
10 Q And so the sharp force would be consistent with a
11 sharp instrument, such as a knife?
12 A Correct,
13 Q Okay, Exhibit No. 67?
14 A This is the left lateral neck again, and this is that
15 wound that went all the way to the carotid artery.
16 Q Okay. What's above it? Can you see that?
17 A It looks like there's -- I don't know whether that's a
18 shallow wound or not. And there's some discolorations around
19 there, but --
20 Q You had described certain wounds as like shallow
21 incised wounds?
22 A Correct.
23 Q Like a slicing?
24 A Right. But they were very superficial

V11-100

SIMMS - DIRECT

1 Q Okay. And what do you mean by superficial?
2 A They just barely, you know, cut the skin, They
3 didn't get down into the deeper fatty areas underneath the
4 skin,
5 Q And Exhibit No. 68?
6 A This is the one that's -- this is right on the front of
7 the neck, the one that was on the front of the neck. This is
8 the chin area up here. And this in the one that didn't have any
9 significant hemorrhages associated with it, so I think it was
10 postmortem.
11 Q Okay. So it'd be your testimony that obviously this
12 wound could not have occurred at the same time the wound in
13 No 67?
14 A Well, if you mean by the same time, you know,
15 minutes, I don't think I can differentiate those to --
16 Q Well, I mean by the same blow, so to speak?
17 A Oh, no, definitely not by the same blow.
18 Q Because obviously, one, he was alive, and the other
19 one he was dead?
20 A Right. So at some point after he had expired was
21 when the wound in the front of the neck was made.
22 Q Okay. And you know, how do you make that
23 determination about how you can tell that one wound occurred
24 prior to an individual dying and one occurring after an

VII-101

SIMMS - DIRECT

1 individual dies?
 2 A You look at the hemorrhage associated with the
 3 wound. If there's very little or no hemorrhage associated with
 4 the wound where there should be a lot, a substantial amount
 5 of hemorrhage, then you know it's probably postmortem. The
 6 wound in the carotid artery, for instance, was antemortem and
 7 there was a large amount of hemorrhage in the soft -- in the
 8 tissues underneath the skin, so that's indicative of
 9 antemortem. The one in the front of the neck had no
 10 hemorrhage underneath the skin, that's indicative of
 11 postmortem

12 Q Okay, Thanks, Doctor, I'm gonna skip over a
 13 couple photos and go to Exhibit No. 72. And tell me if you can
 14 see this thing -- what that is?

15 A These are the stab wounds on the left side of the
 16 abdomen, and then this is a large kind of overlapping pressure
 17 mark.

18 Q Okay, .And you described a pressure mark as
 19 something that occurs when a certain object or an object is
 20 placed on the body and stays there for a period of time?

21 A Along with pressure,

22 Q Okay. And you -- do you have an opinion as to how
 23 long an object would have to be there on a body in order to
 24 leave a mark?

VU-102

SIMMS - DIRECT

1 A Correct.
 2 Q Does it appear that he had blood on his body there?
 3 A Correct.
 4 Q Does it also show what appears to be blood that had
 5 maybe run off --

6 A Correct.
 7 Q -- down off of his chest?
 8 A Yes.

9 Q And that would be consistent with him laying down
 10 and the blood running from his chest?

11 A Right. And it ran this way, which is toward the
 12 shoulder. It looks like it ran this way. And also it looks like it
 13 ran that way, so --

14 Q Okay. Was there any wounds in that area right
 15 there that would cause blood to come up out and then, you
 16 know, like a fountain type of thing and then run away from his
 17 chest?

18 A No.
 19 Q Okay. And your testimony is that the wounds down
 20 here in his abdomen, where I'm pointing with my finger, were
 21 postmortem?

22 A Yes. There was hardly -- there wasn't anywhere
 23 near the amount of hemorrhage I would've expected --
 24 especially with it going into the liver --that I would expect it if

V11-104

SIMMS - DIRECT

1 A Like this with -- that's essentially a permanent mark
 2 where there's discoloration and everything, it'd be a number of
 3 hours.

4 Q Okay, Could you tell if that mark is a mark that has
 5 -- that occurred at the same time that the injuries occurred to
 6 this man, or is that something that could've been there
 7 previously?

8 A It wouldn't have been there if he was alive.

9 Q Okay, Okay. So it had to have occurred while he
 10 was going through this and was killed?

11 A Correct,

12 Q Okay, And so this isn't a stain or something --

13 A No,

14 Q -- blood stain or something like that?

15 A No,

16 Q Okay.

17 MR. KEPHART: That's 72, Your Honor,

18 BY MR. !KEPHART:

19 Q 73? Does that ruin it when I zoom out?

20 A Well, this is his umbilicus his, his bellybutton. And
 21 here's this pressure mark and here's four stab wounds and
 22 here's the area where the penis was previously present.

23 Q Okay, Now on his chest area, you see that up here
 24 in the left portion of the photo?

V11-103

SIMMS - DIRECT

1 they were antemortem,
 2 Q Okay, And the wound, the significant wound that
 3 you testified about that you said would be a type of wound
 4 that would spew blood or spray blood --

5 A In the neck.
 6 Q -- would've been from the neck, the carotid artery?
 7 A Correct,

8 Q And No, 74 is a close up photograph of the wounds
 9 to the abdomen, is that correct?

10 A Yes. These are the group four -- group of four stab
 11 wounds.

12 Q Okay. Now there's also some lines that appear to
 13 come -- that appear on there besides the four wounds, is that
 14 correct?

15 A Yeah. There's one there and there's one there.

16 Q Okay, And what do you -- what type -- what are
 17 those?

18 A Those are drag marks from the end of the sharp
 19 force instrument.

20 Q Okay,

21 A So these are stab wounds and then these are very
 22 superficial kind of incised wounds as the tip is dragged off,

23 Q Out of the wound?

24 A Out of the wound.

V11-105

SIMMS - [MED]

1 Q Okay. Exhibit No. 76. Can you tell what this is a
2 photo of?
3 A This is the one on the left upper chest that's a
4 superficial -- a very superficial incised wound.
5 Q Okay. Do you have an opinion as to what would've
6 made that?
7 A It'd be a sharp force instrument,
8 Q Similar to a knife?
9 A Yes_
10 Q No. 77? What's this photo show?
11 A This is of his buttocks and back, and there's some
12 silver material that's adherent to the skin, I don't think there's
13 any injuries that you could see on this picture.
14 Q Okay_ And that shows actually some personnel —
15 A Yes,
16 Q -- consistent with the coroner's office there?
17 A Right,
18 Q And that's No. 77. This is 78_ Is that a similar
19 photo?
20 A Yes.
21 Q But in this photo he actually has a shirt on, is that
22 correct?
23 A Yes.
24 Q Okay_ Now when you actually start your autopsy,

V11-106

SIMMS - DIRECT

1 of an instrument would've caused that?
2 A A sharp force instrument-
3 Q Okay. Now up here on the top where your line
4 starts back here in the back, there appears to be multiple lines
5 there?
6 A Right. Looks like there's one kinda long one over
7 here and then there's a shorter one kinda right there.
8 Q Okay. Does that -- could you say whether or not
9 that's from the one stroke or from multiple —
10 A No, it would have to be from at least two strokes at
11 the minimum, and there might've been three.
12 Q Okay. Now I'm showing you what's been admitted
13 as Exhibit No. 80. Can you tell us what this photo was taken
14 of?
15 A This is the scrotum and there's a stab wound here,
16 and then this is where the penis used to be.
17 Q Okay, With regards to the cut to the penis, it
18 appears to be in like a teardrop?
19 A Correct,
20 Q And which way would it be pointing, the actual —
21 A Well, there's a rounded area up toward the head
22 and then there's kind of a pointed area toward the feet.
23 Q Okay. In the medical profession is there terms that
24 you use with regards to the feet or the head?

V11-108

SIMMS DIRECT

1 when you personally start your autopsy, are the individuals, do
2 they have their clothes still on?
3 A No, they've been processed completely by the
4 police, so there's no -- there's nothing on the body.
5 Q Okay, And so this photo here, No. 78, would be a
6 photo that was taken by the police prior to you actually
7 starting to work on —
8 A Correct.
9 Q Mr. Bailey? Okay. Now you testified in regards to
10 injuries that he received to the rectum. I'm showing you
11 Exhibit No. 79. Is that what we're seeing here?
12 A Yes. There's -- it kinda starts with a superficial
13 wound and then it gets very deep and goes all the way down
14 to -- this is the scrotum right -- kinda of the base of the
15 scrotum here.
16 Q Okay. With respect to this wound, do you -- did you
17 document whether or not there was actually a penetration into
18 the rectum?
19 A This was a deep slash wound, so there -- it wasn't a
20 stab wound.
21 Q Okay, Would it have penetrated the rectum though?
22 A Oh, it definitely went into the structures underneath
23 there, yes,
24 Q Okay. And do you have an opinion as to what type

V11-107

SIMMS - DIRECT

1 A The head is called cephalad —
2 Q Okay,
3 A -- and toward the feet is called caudad,
4 Q Okay. So if -- if someone was referring to this
5 particular injury as pointing towards the cephalad, that would
6 be incorrect?
7 A Yeah, that would -- I would have a -- if they just told
8 me that I would have a different idea of -- I would have it
9 reversed,
10 Q Okay. Now this also show — you actually circled the
11 injury to the scrotum?
12 A Yes.
13 Q And do you have an opinion as to what caused that
14 injury?
15 A It was a stab wound.
16 Q And by what type of instrument?
17 A A sharp force, you know, knifelike instrument.
18 Q Okay. Could -- now you testified that the injury to
19 the severance of the penis was after he had died,
20 postmortem?
21 A Yes.
22 Q And the injury to his scrotum was antemortem?
23 A Correct-
24 Q Okay. Now you also testified about the injury to the

V11409

SIMMS - DIRECT

1 carotid artery that would cause a type of a spraying type of
2 thing where he'd possibly get blood on his chest. The injury to
3 the scrotum, if he'd received that before he died, would that
4 be a type of injury that would also spray and —

5 A No, no, it wouldn't — it wouldn't spray. There's not
6 an artery there big enough. But it would immediately start,
7 you know, oozing blood,

8 Q Okay. Oozing in the sense, would it bleed, would
9 it --

10 A Yes.

11 Q if the individual's standing or kneeling to the point
12 where his scrotum is down and he receives that, would he
13 bleed downwards?

14 A Yes.

15 Q Just force of gravity?

16 A Yes.

17 Q And 81 actually shows a -- is a better view of that
18 actual cut to the scrotum, is that correct?

19 A Yes. It's a closeup of that, correct.

20 It's down further?

21 A Yes.

22 I mean it -- coming up from below, it shows how
23 low it is?

24 A Right,

VII-110

SIMMS - DIRECT

1 A If it was conceivably from a handheld set of scissors,
2 then yeah, you would tend to see a much more irregularity, I
3 would expect, at the wound edges.

4 Q Okay, But it is conceivable, however, that if
5 somebody grabbed the penis with one hand and took a knife
6 to the other, this wound would be consistent with that type of
7 action?

8 A Definitely.

9 Q Now Exhibit No, 83, Do you see that, Doc? God,
10 I'm so sorry.

11 A I don't exactly know -- I think that's on the hand, I
12 think,

13 MR. KEPHART: Can I approach, Judge?

14 THE COURT: Yes.,

15 BY MR, KEPHART:

16 Q I want to show this to you.

17 A Oh no, this is -- I think this is on the knee area.

18 Q And what type of injury is that'?

19 A It looks like it's just the -- the skin is kind of
20 sloughed off there., I don't know whether that's decomposition
21 change or -- it doesn't actually look like an antemortem injury,
22 it looks more like just the skin is sloughed off.

23 Q Okay. So you can't say whether it was an abrasion
24 or anything like that?

VII-112

SIMMS - DIRECT

1 Q Okay. Is that a type of injury that, assuming his
2 standing or he's kneeling, that someone could make by cutting
3 up if they're using a knife?

4 A Well, yeah, it would probably — yeah, it would have
5 to be an upward -- an upward thrust, yes,

6 Q Okay. Now in respect to Exhibit No. 80, the cut
7 there on the — where the gentleman's penis was, that would
8 be Exhibit No 82, Okay., Do you have an opinion as to what
9 type of instrument would've made the cut on the penis?

10 A A knifelike instrument, you know, with the penis held
11 and then it cut off.

12 Q Okay. Do you have an opinion as to whether or not
13 scissors would make that type of a cut?

14 A It would be possible, but the edges are almost
15 completely uniform And it's also, based on the size of it, the
16 only thing that I could conceive, based on my knowledge of
17 injury, would be something along the line of a head shear.
18 You know, it would have to be something that a tremendous
19 amount of force could be generated. If you're talking about,
20 you know, a handheld set of scissors, I almost -- it's just very
21 improbable for me to concede that they could render a wound
22 like that.

23 Q Okay. Would you expect to see more of a jagged
24 type of cut?

VH-111

SIMMS - DIRECT

1 A No.

2 Q All right. Now you testified with regards to
3 defensive injuries, do you remember that?

4 A Yes.

5 Q And you described the multiple ones on the
6 gentleman's hand -- hands and arm. I'm gonna go through
7 those now and ask you if you can tell me what — what the
8 purpose of these photos are, if you know, Exhibit No, 84. Can
9 you tell me what the purpose of that photo would be?

10 A You can't really see any defense wounds because it's
11 too far away. It just shows a lot of decomposition change.

12 Q Okay.

13 A I think that's the right hand, and there's only one
14 injury there on the back of the right hand somewhere. I don't
15 really -- I don't see it right offhand,

16 Q Okay. You see the manila envelope there?

17 A Yes,

18 Q Were you aware that this man's hands actually came
19 in wrapped in manila envelope?

20 A No, I wasn't aware of that.

21 Q Okay. Is that something that they do, though?
22 Have you seen that?

23 A Oh, yes. They frequently -- that's called bagging the
24 hands to preserve trace evidence. Yeah, they do that

V11-113

SIMMS - DIRECT

1 frequently.
 2 Q That's for like checking under fingernails and seeing
 3 if whether or not he scratched the assailant and that type of
 4 thing?
 5 A That's one of the things, yes.
 6 Okay. Let's see if Exhibit No. 85 will help you there.
 7 Let me zoom in on that. Okay. Can you tell on that, Doc?
 8 A I don't see a specific wound right offhand, no.
 9 Q Okay.
 10 A I think there's some other pictures, you know, where
 11 they actually take close ups of --
 12 Q Okay. Let's see, Exhibit No. 86?
 13 A There's so much blood there. You know, 'cause this
 14 was taken before they cleaned it up, so I don't -- I really can't
 15 tell where they're gonna be at,
 16 Q Okay. We'll move on Let's go to Exhibit No. 87,
 17 A This is a wound right here on the back of the finger,,
 18 Q Can you tell which hand that is?
 19 A No,
 20 Q Let's see if we do this. Let me hand it to you,
 21 MR. KEPHART: May I approach, Your Honor?
 22 THE COURT: You may.
 23 THE WITNESS: I think this is the right hand.
 24 HI

VII-114

SIMMS - DIRECT

1 described as injuries to Mr. Bailey on his arms as defensive
 2 wounds --
 3 A Yes.
 4 Q -- other than the one that you --
 5 MR, SCHIECK: Your Honor, I'm gonna object. He
 6 indicated that there were several pictures that he can't see
 7 anything in. Can we specify which pictures he's referring to to
 8 demonstrate these wounds?
 9 THE COURT: Sustained.
 10 MR. KEPHART: Court's indulgence, Your Honor.
 11 MR. SCHIECK: For the record, Your Honor, my
 12 notes say 91, 92, 93, 94 were the pictures he couldn't see
 13 THE COURT: My notes indicate that it was 91, 92,
 14 and 94.
 15 MR. KEPHART: Can I have these marked?
 16 BY MR, KEPHART:
 17 Q Now Dr. Simms --
 18 THE COURT: I'm gonna ask him for a clarification,
 19 93 was the two photos with the paperclip. Was that
 20 one at a distance or not?
 21 THE WITNESS: Yes, that was at a distance,
 22 THE COURT: Mr. Schieck was correct,
 23 MR. SCHIECK: Thank you, Your Honor.
 24 III

VII-116

SIMMS - DIRECT

1 BY MR., KEPHART:
 2 Q Okay,, Doc, what I'm gonna do is I'm just gonna
 3 give you Exhibits 87 through 97 and ask you to go ahead and
 4 for the record describe what the photos are taken of
 5 A Individual --
 6 Q And then tell us what number you're talking about
 7 when you do that.
 8 A 87 shows a wound on the back of the -- what
 9 appears to be the -- the right hand. Although I'm not
 10 specifically sure about that, 88 is some of the wounds on the
 11 palmar surface of the fingers. 89, I believe, is just a -- is a
 12 picture -- or it's a picture of the back of the thumb of the left
 13 hand. 90 is wounds on the palm, 91 is -- from a distance you
 14 can't really see anything. And 92 -- or 93 is from a distance,
 15 you can't really see anything. Actually I correct that, 92 is
 16 from a distance, you can't really see anything.
 17 93 is a picture -- actually two pictures with a
 18 paperclip, and one of them is from a distance, you can't really
 19 see anything. And I can't really make out the other one. 94 is
 20 from a distance, you can't see anything. 95 is on the palmar
 21 surface of the hand, 96 is on the side of the finger, And 97,
 22 that looks like is a -- actually an older wound that was healing,
 23 it wasn't a new wound, on the side of one of his fingers.
 24 Q Okay, Are those photos consistent with what you

VH-115

SIMMS DIRECT

1 BY MR, KEPHART:
 2 Q Dr, Simms, you're aware that the -- that the crime
 3 scene analysts from the Metropolitan Police Department was
 4 present and took photographs and that's what we've been
 5 talking about?
 6 A Correct.
 7 Q Coroner's office also takes photographs?
 8 A Correct.
 9 Q And you were asked to look at those photos as well
 10 prior to coming here to determine whether or not you would
 11 use those?
 12 A I think those were the only ones I actually looked at,
 13 yes.
 14 Q Okay,
 15 MR. KEPHART: I'm having some of them marked.
 16 (Pause in the proceedings)
 17 MR. KEPHART: I'm showing you what's been
 18 marked State's Proposed Exhibits 205 through 215 to defense,
 19 THE COURT: The record shall so reflect,
 20 MR. SCHIECK: Can we approach, Your Honor?
 21 THE COURT: Yes,
 22 (Off-record bench conference from 4:12:41-4:14:26 p.m.)
 23 MR. KEPHART: May I approach?
 24 THE COURT: You may.

VU-117

SIMMS - DIRECT

1 BY MR, KEPHART:

2 Q Doctor, I'm gonna show you what's been marked as
3 State's Proposed Exhibits 205 through 215 and ask you to take
4 a look at those and tell me if you recognize them.

5 A They are pictures of a number of the hand wounds,

6 Q Okay, So we were talking —

7 MR, KEPHART: Your Honor, I'll move to admit 205
8 through 215,

9 MR, SCHIECK: No objection,

10 MR. KEPHART: Okay.

11 THE COURT: Granted.

12 (State's Exhibit Nos. 205-215, admitted)

13 BY MR, KEPHART:

14 Q We were talking about the specific injuries and you
15 were having trouble seeing them with the photos taken by the
16 crime lab, is that correct?

17 A Yes,

18 Q And these photos are all taken after the — Duran's
19 body is cleaned up?

20 A Correct.

21 Q Inconsistent with the photos that you were looking
22 at earlier, is that — would that be correct?

23 A Mm-hmm

24 Q Okay,

V11-118

SIMMS - DIRECT

1 A Yes.

2 Q 208 and 209?

3 A Yes,

4 Q Okay, And any of these injuries here that you've
5 described in 210, 207, 206, and 205, do any of those injuries -
6 - are they consistent with a sharp force type of instrument?

7 A Yes.

8 Q Is there any evidence that supports that they were -
9 made in a snipping type?

10 A No, they're very -- they look — most of those look
11 relatively uniform. There's one of them that has a flap of skin
12 coming off that is -- it looks like it was made from an edge of
13 something though rather than a snipping wound,

14 Q Okay, The wounds that are found in Mr. Bailey's
15 rectum, would you describe any of those wounds to be
16 consistent with snipping?

17 A No, that was one long incised, very deep wound.

18 Q Okay. And the wound to Mr. Bailey's carotid artery,
19 could you ever characterize that as a snipping wound?

20 A No, that was a stab wound. It went into the neck
21 and went deep into the tissues and went all the way across —
22 you know, almost across the midline, so that was a stab
23 wound,

24 Q Okay, The wounds that are found in Mr, Bailey's

V11-120

SIMMS - DIRECT

1 A Yes,

2 Q And can you then go through these and tell us if you
3 can identify injuries to -- and tell us -- if you could tell us what
4 hand they're on? And then give us the numbers and stuff that
5 you're looking at.

6 A 211, 212, 213, 214, and 215 are duplicates.

7 Q Okay. Of what — of what I've already provided you?

8 A Yes,

9 Q Okay;

10 A 208 and 209 are photographs of apparent healing,
11 older wounds that were in the process of healing that weren't
12 made at the time of the death. And 210 shows some wounds
13 on the palmar surface, and I can't tell what exactly hand it is.

14 Q You had documented in your autopsy report that
15 there were no injuries to the right palm?

16 A Right. So my process of elimination say it would be
17 the left, but I can't tell from the photo. And the same thing
18 with 207, that's the palmar surface, but I can't really tell it
19 from the photo 'cause these are very close up photos. 206 is
20 the back of the first finger, And 205 is the back of the thumb.

21 Q Okay, And all of these injuries would -- as we've
22 asked earlier, are consistent with defensive wounds, except for
23 what you described as in Exhibit 208 and 209, is that right,
24 these are healing injuries?

V11-119

SIMMS - DIRECT

1 abdomen, could you characterize those as a snipping type
2 wound?

3 A Each individual wound?

4 Q Yes,

5 A No, Those are stab wounds,

6 Q Okay. Now you — Exhibit No. 200, you testified
7 about blood that had come -- evidence of blood had come
8 down his shoulder, over off of the right side of his chest in a
9 photo, Exhibit No, 200, does that show a better photo of it
10 coming down off the left side of his chest?

11 A Yes. There's a number -- a number of rivulets of
12 blood that are flowing down the left side of the chest and
13 abdomen.

14 Q And that would be consistent with the possible blood
15 collecting on the chest area and then flowing off?

16 A Right, and then running off the chest to the side,

17 Q Okay. And in this photograph you actually see that
18 he had a -- apparently has a shirt on, at least on the left
19 portion of his arm there, is that correct?

20 A Yes,

21 Q Okay. And now what does Exhibit No. 202 show?

22 A Not too much, just his legs, and it shows some areas
23 of decomposition,

24 Q Okay. From his knees down, or from where the

V11-121

SIMMS - DIRECT

1 picture's taken down, do you see any evidence of blood spatter
 2 or blood or anything on there —
 3 A Well, it looks like —
 4 Q -- except for maybe his toe?
 5 A Well, it looks like there's some discolorations there
 6 that are consistent with blood,
 7 Q Okay,
 8 THE COURT: Record shall reflect he's circled below
 the knee area —
 10 MR KEPHART: Okay.
 11 THE COURT: -- on the left side,
 12 THE WITNESS: And maybe some right there, But —
 13 THE COURT: Record shall reflect he's circled the left
 side —
 15 THE WITNESS: I think it's the right side, Judge.
 16 MR. KEPHART: That's his right toe.
 17 THE COURT: — the left side of the right foot —
 18 THE WITNESS: Oh, sorry.
 19 THE ca^gif: — toward the big toe area.
 20 THE WITNESS: Correct.
 21 MR, KEPHART: Court's indulgence, Your Honor.
 22 THE COURT: Y es.
 23 (Off-record colloquy)
 24 I/I

V11-122

SIMMS - DIRECT

1 State's Proposed Exhibit No. 43 and ask you if you can
 2 recognize that as well?
 3 A That's of a similar area, it's a little bit wider shot so
 4 you can see more of the pants that are -- it looks like they're
 5 crumpled up and right -- they're right at the knee and down,
 6 and there's a lot of kind of blood smear on them.
 7 Q Okay.
 8 MR. KEPHART: Your Honor, move to admit
 State's Proposed Exhibits -- I think it's 43 -- 42 and 43,
 10 MR. SCHIECK: Can I see them quickly?
 11 THE COURT: Yes.
 12 MR. SCHIECK: No objection, Your Honor.
 13 THE COURT: 42 and 43 are admitted,
 14 (State's Exhibit Nos. 42 and 43, admitted)
 15 MR. KEPHART: Your Honor, I have previously also
 16 shown defense 45, 46, and 47. I'm gonna move to admit
 17 those as well,
 18 MR. SCHIECK: No objection,
 19 THE COURT: Granted,
 20 (State's Exhibit Nos, 45, 46, and 47, admitted)
 21 MR. KEPHART: Okay,
 22 BY MR, KEPHART:
 23 Q Doctor, now you had testified with regards to Exhibit
 24 No, 202, and you circled the right toe, right big toe on that, is

V11-124

SIMMS - DIRECT

1 BY MR, KEPHART:
 2 Q Now Dr, Sims —
 3 MR KEPHART: May I approach, Your Honor, the
 4 doctor?
 5 THE COURT: With —
 6 MR. KEPHART: Yeah, I've got 42, 43, 45, 46, and
 7 47,
 8 THE COURT: Were they previously admitted?
 9 MR, KEPHART: No, that's why I want to approach
 10 the doctor.
 11 THE COURT: You may approach the witness.
 12 MR. KEPHART: Okay,
 13 BY MR. KEPHART:
 14 Q Doctor, I'm showing you what's been marked as
 15 State's Proposed Exhibit No, 42, and ask you if you can tell me
 16 if you recognize what that photo's taken of?
 17 A This is of the -- just the feet and ankle area where
 18 there's some tan pants on. It looks like a white sock that's
 19 soaked in blood.
 20 Q Okay. Does it appear to be taken in the coroner's
 21 office? Do you see personnel in the background?
 22 A Yes, this is right at the early part of the police
 23 processing.
 24 Q Okay, And I'm showing you what's been marked as

V11-123

SIMMS - DIRECT

1 that correct?
 2 A Correct.
 3 Q And you said you believed that there was possibly
 4 blood on there as well?
 5 A Yeah, it looks like it from the photo.
 6 Q Okay. You didn't see or note any injury to the right
 7 toe --
 8 A No.
 9 Q is that correct? Okay. I'm showing you what's
 10 been admitted as No. 43, and this is what you had testified to
 11 earlier as what appeared to be some tan pants down around
 12 the -- the lower portion of the legs below the knee, and then
 13 the right -- does it have the right toe in there?
 14 A Yes, right here there's blood and then there's also
 15 some kind of patterned impression right there also,
 16 Q Okay. And the pants, do they show evidence of
 17 blood as well?
 18 A Yes, there's blood that, you know, in kind of an
 19 irregular distribution all over the surface,
 20 Q Okay. I'm showing you what's been admitted as
 21 Exhibit No. 45, Do you see that photo as well?
 22 A Yes.
 23 Q Do those pants appear to be consistent with the
 24 pants that you've described on Duran as No. 43?

V11-125

SIMMS - DIRECT

SIMMS - DIRECT

1 A Yes.
 2 Q Okay. And there's other objects there as well that —
 3 are you familiar with Metropolitan Police Department
 4 documenting what they are -- what the coroner's office gives
 5 to them?
 6 A Yes.
 7 Q Okay. In this particular photo here -- now let me
 8 get one step further. 46, does that appear to be his pants as
 well?
 10 A Yes, after they're taken off of him and stretched out.
 11 Okay. And back to 40 — well, I'll show 47 as well
 12 That's the back of his pants?
 13 A Yes,
 14 Q Okay, 45 is the top portion of his pants?
 15 A Yes.
 16 Q Does there appear to be voids in where blood has
 17 collected?
 18 A Well, yes, there's -- you can see there's blood that's
 19 kinda soaked in at the waistband and then there's -- it just
 20 irregular -- an irregular distribution of blood over the surface of
 21 it.
 22 Q Does there also appear to be voids of where blood
 23 was?
 24 A Yes, there's -- you can see there's areas that don't

1 A Well, yeah, it would be running down. So that
 2 would be consistent with the soaking the waistband and
 3 everything, yes.
 4 Q Okay, And dripping onto his pants there?
 5 A Yes.
 6 Q And you wouldn't expect to see any on the back,
 7 other than maybe in his waistband or someplace down where
 8 it's bunched together?
 A From the wound to the scrotum, no It would be
 10 more of chance it would be on the front.
 11 Q Okay, So could you say based on that that it's
 12 consistent with his pants being down around his knees when
 13 he got stabbed in the scrotum area?
 14 A Yes, it would be consistent with that, yes.
 15 Q Okay. Now I skipped these. Ill go back to 'em,
 16 Exhibit No. 71. Can you tell me what this photo was taken of?
 17 A Well, this -- this is the top of a head after the — we
 18 made an incision across the top of the head, and then we push
 19 the skin forward and backward so you can expose -- this is
 20 actually the skull now. And you can see this large amount of
 21 hemorrhage here, there's also hemorrhage here, and you can't
 22 really see the other side very well.
 23 Q Okay. Which would be his face?
 24 A This would be his face up here —

V11-126

V11-128

SIMMS - DIRECT

SIMMS - DIRECT

have any blood in it, correct.
 2 Is that consistent with his pants being crumpled?
 3 A In my opinion, yeah, that would be consistent with
 4 it, yeah.
 5 Q Okay, Now looking at the pants here in Exhibit No.,
 6 46 -- can you see that okay or is it too -- I'll zoom in on the
 7 upper part. Is there any -- do you see any evidence of any
 8 type of -- for lack of better words -- injury to the pants?
 9 A No.
 10 Q Specifically in the groin area where a man's scrotum
 11 would be?
 12 A No.,
 13 Q You don't see any cuts or anything like that?
 14 A No.
 15 Q Okay, Now you testified with respect to the injury to
 16 Duran's scrotum, that when he would bleed, he would bleed
 17 from that -- it wouldn't be spewing but it would be oozing out,
 18 is that right?
 19 A Briskly oozing would probably be right.
 20 Q Okay, The manner in which the pants are found on
 21 Duran Bailey in No. 43 down around his lower portion of his
 22 legs, if he was standing or kneeling -- standing, would it be
 23 consistent with the blood pattern that you see here as it was
 24 coming out of his scrotum?

1 Q Okay,,
 2 A — and this is the back of his head here,
 3 Q Okay. Now you testified about an injury to the back
 4 of the head and we started out with the photograph and it had
 5 some leaves on it. Is this what you're talking about right here?
 6 A Right,
 7 Q Okay. And hemorrhaging would mean what?
 8 A Blunt force injury.
 9 Q Okay,, Would it mean that he obviously bled there,
 10 was alive when he —
 11 A Definitely.
 12 Q -- received that?
 13 A Definitely. That's -- now that's the kind of dense
 14 hemorrhage you see when it's an antemortem wound.
 15 Q Okay. And the Exhibit No. 70, can you tell me what
 16 that is of? Can you tell from what, Doc?
 17 A You might -- can you — you might —
 18 THE COURT: Was the last one 69?
 19 MR. KEPHART: 71, Judge.
 20 THE COURT: Thank you.,
 21 MR. KEPHART: And this is 70. I'm not offering 69,
 22 THE WITNESS: So this -- this is the back of the
 23 head and this -- now this -- this particular one is -- a saw has
 24 been used to open the skull and take the skull cap off. So the

V11-127

V11-129

SIMMS - DIRECT

1 brain used to be in this area here but it's been removed. This
2 is the back of the head, and this is the left side and this is the
3 right side. And there's a skull fracture, it goes right along
4 here

5 BY MR, KEPHART:

6 Q Okay. Now with respect to the skull fracture, what
7 type of injury would that be called?

8 A That's a blunt force injury,

9 Q Okay. And so you wouldn't expect to see that from
10 a knife?

11 A No.

12 All right, Could an individual receive that type of
13 injury from a bat?

14 A Yes,

15 Q Okay. Could an individual also receive that type of
16 injury if he was stuck, let's say in the face and he fell back and
17 struck his head on a curb?

18 A Yes.

19 Q Okay, Which one more likely, or can you tell? Do
20 you have an opinion?

21 A Well --

22 Q Do you have an opinion of that, which one would be
23 more likely?

24 A Well, a bat usually leaves a much more severe injury

V11-130

SIMMS - DIRECT

1 A Yes,

2 Q Okay. Now the type of injuries that he received to
3 his face, could that be consistent with being struck in the face
4 with a bat?

5 A He didn't have — again, if we're talking about swung
6 with lethal force, I would expect a little bit more injuries than
7 that —

8 Q Okay.

9 A — but it's conceivable.

10 Q Okay, Now when you say swung with lethal force, is
11 that dependant on the strength of the individual swinging the
12 bat?

13 A Oh, definitely,

14 Q Okay. And the reason you say that is you would
15 expect to see some type of indentation from the bat?

16 A Well, are we talking about the face now or the skull?

17 Q The face,

18 A The face, you'd -- the facial bones are a little bit
19 more delicate than the skull. You'd expect, you know, literally
20 a crush kind of injury —

21 Q Okay.

22 A -- that may actually be in the pattern of a bat,

23 Q Okay.

24 A So you know, so that would be along the lines of

V11-132

SIMMS - DIRECT

1 if it's, you know, swung with —

2 Q Okay.

3 A -- lethal force, you know, And I didn't -- there's -- it
4 usually leaves a depressed skull fracture, and I didn't -- there's
5 not a depressed skull fracture there. So of those two
6 possibilities it would be more possible -- or the more possible
7 one would be that he struck it on the way down,

8 Q Fell down and hit his head?

9 A Correct,

10 Q Okay, Now --

11 A But the head would've had to been kinda turned —

12 Q Okay.

13 A -- because this skull fracture goes from the back of
14 the head to the side on the left side.

15 Q Okay. Let me ask you this. With regards to the
16 injuries that you have described, multiple injuries to Duran's
17 face, that you drew on Exhibit 122, You talked about
18 abrasions as well as blunt force trauma, is that correct?

19 A Yes

20 Q And you pointed them out in the photographs, you
21 showed which were stab wounds and which were blunt force
22 trauma. Did -- and he -- his teeth were busted out?

23 A Correct.

24 Q Did he receive some blunt force trauma to his face?

V11-131

SIMMS - DIRECT

1 what you'd expect.

2 Q But you don't necessarily have to see that?

3 A No. If it's -- it is, as you said, it is based on the
4 amount of force, so —

5 Q Okay,

6 A — you could have less but —

7 Q And that could be by the strength of the individual?

8 A Yes.

9 Q Or maybe in an area which you couldn't get a full
10 swing from a bat, a confined area?

11 A Definitely another possibility,

12 Q Okay, This type of injury to his face consistent with
13 a weaker person, maybe a female, swinging a baseball bat?

14 A Definitely possible.

15 Q Okay. And is it possible he received a blow to his
16 face, fell back, struck his head on the curb?

17 A Definitely possible.

18 Injuries are consistent with that?

19 A Yes.

20 Okay, Now can you tell us from the type of injuries
21 that you see, could you tell us what injuries that he received
22 first, other than the postmortem and the antemortem? Could
23 you tell us if he received a stab wound first and then a hit in
24 the head, or a hit in the head first or a stab — you know, blunt

V11-133

SIMMS - DIRECT

1 force and a stab wound, vice versa?

2 A Not just -- not just from the wounds in the body, no.

3 Q Okay, Is it a possibility that this man could've
4 received a stab wound to his scrotum before any of the other
5 wounds that he received?

6 A Definitely possible,

7 Q Would that put him in a position where it would
8 cause him to be in severe pain?

9 A I would expect that would be the case, yes.

10 Q Did you do an actual internal examination of his
11 scrotum?

12 A Yes.

13 Q Okay. Can you tell me if you noted any place in
14 your examination from the internal portion of his scrotum
15 whether he had a swelling of his spermatic cord?

16 A Well, his spermatic cord courses from the top of the
17 testicle up into the pelvic area, and we don't usually, you
18 know, do a detailed dissection of that particular structure. But
19 there was a significant amount of hemorrhage around the
20 testicle, along with injury from the stab wound. That was --
21 mainly I think I was doing the dissection to make -- to discern
22 whether it was an antemortem versus a postmortem injury --

23 Q Okay.

24 A -- because it wasn't gonna be lethal, you know,

V11-134

SIMMS - DIRECT

1 you know, stuporous or comatose.

2 Q Okay, Let me get back to the stab wound to the
3 scrotum. Would you expect an individual that receives that
4 type of wound to cause him to maybe bend over, hunker over?

5 A Yes, I would expect that from a medical point of
6 view, yes.

7 Q How about even crying?

8 A It might actually hurt so much it's gone past that --
9 that ability to cry.

10 Q Okay. In regards to this particular individual, your
11 examination of him, you've examined -- you said what, 4,500
12 or 4,600 autopsies --

13 A Right,

14 Q or something like that?

15 A Mm-hmm,

16 Q What was the most significant -- most
17 rememberable portion of this autopsy?

18 MR. SCHIECK: Objection, relevance on what's
19 memorable, Your Honor.

20 THE COURT: Sustained,

21 BY MR. KEPHART:

22 Q Well, significant in the sense of injury, and you've
23 described some pretty bad injuries here. But if you were
24 describing Duran Bailey to your colleagues and the injuries that

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SIMMS - DIRECT

1 Q Uh-huh Could you tell, Doc, by just the photograph
2 that we've showed here in reference to his scrotum, whether
3 or not the spermatic cord was swollen?

4 A You can't see the spermatic cord externally. So you
5 couldn't --

6 Q You would actually have to cut into it and look that
7 way?

8 A Correct. Yeah It's a structure that's about half the
9 side of your little finger,

10 Q Okay, The force that Mr. Bailey received to his
11 head, the blunt force, is there any particular -- any particular
12 one of those that you could characterize would be something
13 that would put him down, I mean knocking him out?

14 A Oh, the skull fracture indicates, you know, that there
15 was a lateral impact that -- I mean that -- to cause a skull
16 fracture of that size, that's a significant skull fracture. And I
17 think that -- I mean it's a high probability he would be
18 unconscious from that and remain unconscious for awhile.

19 Q Okay. To a point where maybe he couldn't -- he
20 wouldn't fight?

21 A Well, the next step was is that he had blood on the
22 surface of his brain and his brain was starting to swell. So you
23 know, obviously that sequence was happening and that
24 indicates he was not gonna be able to move, that he would,

VII-135

SIMMS - DIRECT

1 he received, what injury comes to mind in this particular case?

2 A Well, this is what I would classify as a sexual
3 homicide, you know, that you don't the only time you start
4 seeing the sexual organs mutilated is when it's a sexually
5 motivated homicide. Obviously the other -- if you took that
6 away, this would be a lot like, you know, any other kind of
7 homicide, but that moves it into kinda that category.

8 Q Okay, So the -- so correct me if I'm wrong, with the
9 slashing of the penis, the dismembering of the penis is
10 something that would be -- is most remarkable in this case?

11 A Yes. It's uncommon as far as homicides go, but it's
12 not uncommon as far as sexually motivated homicide.

13 Q Okay, And you would consider this a sexually
14 motivated homicide?

15 A With the injuries that he has, definitively, yes,

16 Q Is it possible, maybe even highly likely, that the first
17 injury that he did receive was to his scrotum?

18 A Well, I can't put a probability to it, but I can -- I
19 can't rule it out. It definitely could be, but I -- as I think we've
20 talked about before, is that I can't really tell which injury came
21 first as far as just from the wounds themselves go.

22 Q Okay, And if an individual receives this type of an
23 injury, let's just say to the scrotum, what you saw here, or go
24 one step further, just a cutting of a penis. Do you have an

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SIMMS - DIRECT

1 opinion as to whether or not that individual would require
2 medical attention?

3 A Well, the scrotal injury would definitely require
4 medical attention There could be a lot of bad complications.
5 And then you mean penial amputation or you said cutting of
6 the penis or --

7 Q Yeah, Well, I -- penial amputation I think is a given,
8 you'd have to go to the doctor, wouldn't you?

9 A I would think that you would.

10 Q Okay, Just cutting of the penis?

11 A Well, again, it depends on the length of the cut But
12 I would think, you know, most people would want -- would
13 seek medical attention because they don't want anything, you
14 know, untoward to happen over a period of time with that kind
15 of a wound.

16 Q Okay. And would an individual that is say homeless,
17 would he be more apt to --

18 MR. SCHIECK: Objection, Your Honor, That's pure
19 speculation.

20 MR. KEPHART: I think the doctor could testify as to
21 a medical -- medical information with regards to a homeless
22 person versus a non-homeless person in this type of a wound,
23 what it could cause.

24 MR. SCHIECK: Could we qualify him as to his

VII-138

SIMMS - DIRECT

1 Person that probably doesn't have very many
2 clothing?

3 A Probably --

4 Homeless person?

5 A Probably a homeless person, yeah,
6 Doesn't get proper nutrition?

7 A Yes.

8 Homeless person?

9 A Probably.

10 Would you have an opinion as to whether or not an
11 individual that was characterized as a homeless person, as we
12 just described, would be more likely than not to be -- catch an
13 infection from an injury to his scrotum or to his penis if he was
14 cut?

15 A I think yeah, it would definitely be a possibility. That
16 would probably be what would cause that person to seek
17 medical care.

18 Q Now you testified earlier with regards to the injuries
19 to his abdomen that you checked to see about his -- his liver.
20 And you talked about that his organs were pale?

21 A Yes,

22 Q Is that correct, are those your words?

23 A Yes.

24 Q And what's that an indication of?

VII-140

SIMMS - DIRECT

1 knowledge of homeless people and living environments and
2 things of that nature?

3 THE COURT: Sustained.

4 BY MR. KEPHART:

5 Q Do you know what a homeless person is?

6 A Yes,

7 Q What do you characterize a homeless person?

8 MR. SCHIECK: Objection, relevance, Your Honor.

9 MR. KEPHART: He just asked me to qualify him at

10 it

11 THE COURT: You wanted him to lay foundation,
12 now you're gonna object to him laying it?

13 MR. SCHIECK: As an expert in homeless people,
14 yes Go ahead,

15 MR. KEPHART: I don't think we --

16 MR. SCHIECK: No objection, Your Honor,

17 BY MR. KEPHART:

18 Q What's your -- what's your understanding of what a
19 homeless person is?

20 A Someone that doesn't have a home.

21 Q Okay, And a person living out on the street?

22 A Would be a homeless person, yes.

23 Q Person sleeping in a garbage bin?

24 A Would be a homeless person, yeah.

VII-139

SIMMS - DIRECT

1 A Blood loss,

2 Q Okay. That he lost a lot of blood?

3 A Correct,

4 Q And that would be a possibility because of the injury
5 to his carotid artery?

6 A Definitely.

7 Q Okay, Now did this man die as a result of loss of
8 blood or is there a conjunction?

9 A No, there would be --

10 Q Can you -- do you have an opinion as to what
11 caused him -- I mean what -- do you have an opinion as to his
12 cause of death?

13 A Well, he had several lethal injuries, the head injuries
14 with the severe bleeding on the brain, which I don't think we
15 ever -- we never saw a picture of, but that is by itself enough
16 to kill you. And then the severing the carotid artery is also
17 enough to kill you, so it was a combination of the two.

18 Q Okay. So it's a combination of blood force trauma
19 as well as stab wounds or sharp force stab wounds?

20 A In my opinion, yes.

21 Q Two mechanisms of injury here then?

22 A Correct.

23 Q In this type of homicide -- do you characterize it as a
24 homicide?

VII-141

SIMMS - DIRECT

1 A Definitely.

2 Q In this type of a homicide would you expect the
3 assailant to have gotten blood on her?

4 A I think it would be a very high probability, yes.

5 MR, KEPHART: Court's indulgence, Your Honor.

6 (Pause in the proceedings)

7 BY MR. KEPHART:

8 Q Doctor, just a few more things. You did characterize
9 this as a sexually motivated homicide, is that correct?

10 A Yes,

11 Q And we were talking, discussing -- I was asking
12 questions in regards to the stab wound to the scrotum and the
13 amputation of Mr Bailey's penis, Anything else in reference to
14 his injuries that would give you a belief that it was a sexually
15 motivated homicide?

16 A The incised wound on the rectum is another —

17 Q Okay.

18 A -- another supportive wound for that,

19 Q Okay. Now you testified earlier that the autopsy
20 was done on July 9th of 2001, is that correct?

21 A Yes.

22 Q Do you recall about what time it was that you
23 conducted the autopsy?

24 A 12:00 noon.

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SIMMS - DIRECT

1 Q 12:00 noon?

2 A Right.

3 Q And before you conduct an autopsy, are you
4 provided with information from -- from the coroner's
5 investigator?

6 A Correct

7 Q Okay. And that information would be what? What
8 type of information would you expect that you'd get from a
9 coroner investigator?

10 A That'd be a report of the circumstances of death and
11 the examination on a body at the scene.

12 Q Okay, In this particular case, do you recall the
13 coroner investigator talking about rigor mortis?

14 A Yes, I believe -- I have the report here. I believe he
15 did say his body was in rigor.

16 Q Okay. Now you also talked about sloughing off of
17 the skin. Do you remember — you showed —

18 A Correct.

19 Q — there was some photos in there?

20 A Yes,

21 Q And you also talked about decomposition?

22 A Correct,

23 We used those words, we didn't talk about them.

24 Does the sloughing off of the skin have anything to do with

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SIMMS - DIRECT

1 decomposition?

2 A Yes,

3 Q Does sloughing off of the skin and decomposition
4 have anything to do with rigor mortis?

5 A No, they're two different processes.

6 Okay. Now with regards to rigor mortis, what type
7 of information does that assist you with in reference to when
8 you're investigating or looking at a dead human body?

9 A Well, it can give you a little bit of an idea about
10 when they died.

11 Q Okay. Now you examined Duran Bailey noon on the
12 9th of 2001 of July, is that correct?

13 A Correct

14 Q All right, When you started your examination, was
15 rigor mortis present?

16 A No.

17 Q Okay. Tell us about how -- tell us how rigor mortis
18 works, what it does?

19 A Well, rigor mortis is a stiffening of the muscles after
20 death. It's due to a biochemical. It starts in the small muscles
21 after just a few hours and then it kind of continuously starts
22 involving the larger muscles, so at about 24 hours your body is
23 stiff. And then over the next 12 or 18 hours, as your muscles
24 deteriorate, they lose the stiffness and then you become

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SIMMS - DIRECT

1 flaccid again.

2 Q Okay. So by the time you looked at Duran Bailey he
3 was flaccid?

4 A Yes.

5 Q And do you have in your report at the point in time
6 when the coroner's investigator declared Duran Bailey dead?

7 A It was 3:50 am,

8 Q The time of death is 3:50 a.m, on what day?

9 A 7/9, July 9th.

10 Q July 9th?

11 A That's what it says here.

12 Q Okay, And —

13 THE COURT: Of what year?

14 THE WITNESS: Of '01.

15 BY MR. KEPHART:

16 Q Okay. And then you conducted an autopsy —

17 A About 8 hours later,

18 Q -- noon -- 8 hours later?

19 A Correct.

20 Q Would you expect to see somebody that's in full
21 rigor mortis to be flaccid within that 8 hours?

22 A It's definitely possible, yeah. At about 24 hours
23 you're about in full rigor mortis, and then it starts going away,
24 so it's definitely possible.

V11-145

SIMMS - DIRECT

1 Q Okay. Could you give us a -- can you calculate or
2 give us a time of when you believe that Duran Bailey was
3 killed?

4 A Well, just based on the rigor mortis that was present
5 at the scene and the level of decomposition that I saw, I
6 thought a good interval where I would have a good chance of
7 being right would be anywhere from 8 to 24 hours prior to
8 when they did the examination on him.

9 Q When you say they?

10 A The coroner investigator.

11 Q Okay. So that would be 3:50, the time —

12 A Somewhere in that area —

13 Q Okay.

14 A -- you know, because he -- he -- I don't know when
15 he declared the time of death versus when the examination
16 was done, that'd be something you'd have to get from him —

17 Q Okay.

18 A -- but just assuming, it would be somewhere around
19 that area. It'd be anywhere from 8 to 24 hours prior to that
20 time —

21 Q Okay,

22 A -- that he had passed away,

23 Q Okay, And that -- you can base that on any type of
24 degree of medical certainty?

V11-146

SIMMS - DIRECT

1 A Well, it would make it warmer, you know, so that
2 would accelerate the phases of it to some extent,

3 Q If you're out in the open?

4 A Then where it would be -- if it was cooler out in the
5 open, by being out in the open if it was cooler, then it would
6 retard it. If being out in the open means you're actually hotter
7 'cause you're in the sun or something, then that would
8 accelerate it.

9 Q Okay, That's what I was getting at. If you're — you
10 know, here in Las Vegas, you've been here how long, how
11 many years?

12 A 8 years,

13 Q July is usually one of our hotter months, I mean it's
14 in the summer. We don't know, it could be hot — it could be,
15 you know, different temperatures. But the -- if you're laying in
16 the sun, that could accelerate rigor mortis?

17 A Oh, it would accelerate it,

18 Q Okay. And you didn't have any evidence of that,
19 that he was sunburnt or anything like that?

20 A No, they didn't have any specific thermal injuries like
21 that, no.

22 Q Okay. But if he's covered, partially in clothes,
23 partially with objects around him, that could decelerate or slow
24 it down?

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SIMMS - DIRECT

1 A I thought that that was more likely than not It's a
2 probabilistic statement. I could be too short or too long. And
3 I think I had talked before at the — you know, that my lower
4 confidence interval was probably about 10 to 18 hours prior to
5 the examination, And I would have lower confidence in that
6 interval —

7 Q Okay.

8 A -- but I still feel it's reasonable,

9 Q Okay, So the more — you're more confident 8 to 24,
10 less confident 10 to 18?

11 A Yes.

12 Okay. What type of things would effect rigor
13 mortis?

14 A One of the most important things is the ambient
15 temperature, the temperature outside. If you have a very cold
16 area, like if it happens in the winter, then rigor mortis, it's
17 gonna take a long time to form, it's gonna stay a long time,
18 and it's gonna take a long time to go away, so it's really drawn
19 out. If you have a very, very warm environment, it can go
20 through those phases very, very rapidly.

21 Q Okay, Would the manner in which the body is
22 found, let's say out in the open, versus being covered with
23 something, would that effect -- could that effect the rigor
24 mortis?

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SIMMS - DIRECT

1 A Well, it would maintain heat —

2 Q Okay.

3 A — you know, in the areas, in the area of the body.

4 Q Okay.

5 A So that would tend to keep the rigor mortis going,
6 you know, rather than slowing it down,

7 Q Okay. Now in reference to plastics, like trash bags,
8 plastic trash bags, did you -- do you remember in this
9 particular case you were -- talked about with respect to Mr.
10 Bailey coming in with plastic across his midsection?

11 A Oh, I remember that they talked about a lot of
12 objects, a lot of, you know, things but —

13 Q Okay,

14 A — that would tend to retain moisture and heat,

15 Q Okay. And would blood also transfer to plastic?

16 A Yes.

17 Q Okay, Okay, We talked about the injury, the carotid
18 artery injury, the stab wound there. Do you have an opinion
19 as to what would've come first, the blunt force injury here or
20 the carotid stab wound?

21 A Well, the injury to the carotid would've caused him
22 to bleed out very, very rapidly, so that was probably the very
23 last thing.

24 Q Okay, So the blunt force injury that you've talked

VII-149

SIMMS - DIRECT

1 about early, is that -- that would be something that would've
 2 knocked him out?
 3 A Oh, definitely.
 4 Q Okay. So if he was hit and fell and struck his head
 5 on the curb, that would've knocked him of -
 6 A Well --
 7 Q -- if he received that type of injury, the skull
 8 fracture?
 9 A Well, the thing that would've knocked him out the
 10 most would be all the blood on the surface of his brain and the
 11 fact his brain was swelling. Those are things that indicate he
 12 had a significant brain injury in addition to the skull fracture,
 13 and that would not allow him to remain conscious,
 14 Q Okay. Doctor, there was also a toxology report done
 15 with regards to Mr. Bailey, is that correct?
 16 A Yes.
 17 Q Mr. Bailey had a level of alcohol or ethanol?
 18 A Yes.
 19 Q It's a .11?
 20 A Correct.
 21 Q Okay. Are you familiar with the level -- legal level
 22 for driving under the influence?
 23 A Yes.
 24 Q Okay. And did this meet that, it was above it?

SIMMS - DIRECT

1 A It was above it, yes.
 2 Okay. Did he have anything else in his system as
 3 well?
 4 A He had a breakdown product of cocaine, He didn't
 5 actually have cocaine, it was a breakdown product of it.
 6 Q And that's what they call Benzylecgonine?
 7 A Correct,
 8 Q Did I say it right?
 9 A Benzylecgonine,,
 10 Q Okay: And that's a metabolite of cocaine?
 11 A A breakdown product, correct, metabolite.
 12 Q In regards to the level of alcohol that he had in his
 13 system and this breakdown metabolite of cocaine, would you
 14 expect that he would react any differently than a person that's
 15 not under the influence of alcohol or cocaine and receiving
 16 these type of injuries, like -- I mean the injury to his head that
 17 you talked about breaking his skull, would a person that's
 18 under the influence of alcohol be able to not stay -- I mean not
 19 going unconscious?
 20 A Well, it's a central nervous system depressant, so --
 21 depressant, so it probably -- if you got hit in the head it would
 22 probably aid you going into unconsciousness. The
 23 Benzylecgonine is at such a small level that it probably wasn't
 24 having any pharmacologic effect at all.

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SIMMS - DIRECT

1 Q Okay. The alcohol level you said is a depressant,
 2 causes -- it effects your reaction to certain things?
 3 A Yes, it would -- it makes you drunk. It slows your
 4 reaction down, changes your perceptions.
 5 Q Possibly not allow you to fight?
 6 A He would be impaired.
 7 Q Okay. Doctor, you've told us about you've been a
 8 coroner for quite a few years in here Las Vegas and in
 9 Chicago. You talked about conducting multiple autopsies in
 10 the past and told us the number here. Are you, -- as a forensic
 11 medical examiner, at least here with Clark County, are you a
 12 member of any type of associations that are associated with
 13 medical examiners?
 14 A The National Association of Medical Examiners,
 15 Q Okay.
 16 A There's -- really that's the only one that's related to
 17 medical examiners directly. There's some other forensic
 18 organizations, but that's the medical examiner -- that's the
 19 National Association for Medical Examiner,,
 20 Q Okay, Are you certified at all?
 21 A Yes, I'm board certified by the American Board of
 22 Pathology in anatomic pathology, clinical pathology, and
 23 forensic pathology,
 24 Q Okay. Have you ever heard of a -- I guess it's an

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SIMMS - DIRECT

1 association called the American College for Forensic Medical
 2 Examiners, you ever heard of that?
 3 A Yes, I believe so, yes.
 4 Q And what is that?
 5 A I think I got a solicitation from them several years
 6 ago just to become part of their organization, and it's mostly
 7 just kinda pay a fee and become part of their organization.
 8 Q Okay. So there's no real requirement that you
 9 know, other than maybe being from the medical profession?
 10 A That's a good question. As I recall, the
 11 requirements were very, very minimal. It wouldn't be an
 12 organization that I would even take the time to belong to
 13 'cause it -- it doesn't have what I would consider any
 14 professional credibility.
 15 Q Okay. With regards to Mr. Bailey's injuries here, do
 16 you see any evidence in his injuries that were -- are consistent
 17 with a scissors types of injury?
 18 A No, I would -- all the injuries that I saw on the body
 19 and that I interpreted, that would've not been on my mind as
 20 a possibility, no.
 21 Q Okay. And you told us that with regards at least to
 22 his penis, maybe some sheers?
 23 A In order to do that much damage through that much
 24 tissue, it would have to be along those lines in my opinion,

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yes.
 2 MR, KEPHART: Court's indulgence, Your Honor.
 3 THE COURT: Yes.
 4 We have come to the 5 o'clock hour.
 5 MR, KEPHART: Okay. Well, I'm — yeah, I'm passing
 6 the witness.
 7 THE COURT: We're resuming tomorrow morning at
 8 10:30.
 9 Dr. Simms, are you available to return at that time?
 10 THE WITNESS: be in autopsy, but I can stop and
 11 come over here, sure.
 12 THE COURT: Okay. You may step down from the
 13 stand and we'll see you at 10:30 tomorrow morning.
 14 Ladies and gentlemen of the jury, we'll be taking our
 15 evening recess at this time, As the Court advised you, we will
 16 resume tomorrow at 10:30. Please be in the hallway at that
 17 time. The bailiff will meet you there to return you to your
 18 seats in the courtroom.
 19 During this recess you're admonished not to talk or
 20 converse among yourselves nor with anyone else on any
 21 subject connected with the trial. And you're not to read,
 22 watch, or listen to any report of or commentary on the trial or
 23 any person connected with the trial by any medium of
 24 information, included without limitation, newspaper, television,

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AFFIRMATION
 Pursuant to C177894

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

Kari Riley _____
 Transcriber

4/29/07 _____
 Date

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1 radio, and internet. And you're not to form or express any
 2 opinion on any subject connected with the trial until the case is
 3 finally submitted to you.
 4 You all have a good evening and we'll see you at
 5 10:30 tomorrow. The jury may exit at this time,
 6 (Jurors are not present)
 7 THE COURT: Is there anything that we need to
 8 make a record on before we recess?
 9 MR. SCHIECK: No, Your Honor.
 10 THE COURT: No?
 11 THE COURT: We'll see everybody at 10:30 and we'll
 12 go off the record at this time,
 13 MR.. KEPHART: Thanks, Judge.
 14 COURT ADJOURNED AT 5:01:43 P.M. UNTIL THE
 15 FOLLOWING DAY SEPTEMBER 20, 2006
 16 * * * * *

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CERTIFICATION

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

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