

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

[Handwritten Signature]
COURT CLERK

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 8
VOLUME VIII**

WEDNESDAY, SEPTEMBER 20, 2006

COURT RECORDER:

**LISA LIZOTTE
District Court**

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1 LAS VEGAS, NEVADA WEDNESDAY, SEPTEMBER 20, 2006 □

2 **PROCEEDINGS**

3 PROCEEDINGS BEGAN AT 10:45:06 A.M.

4 (Jurors are present)

5 THE BAILIFF: All rise, please. Department 2 is now
 6 in session, the Honorable Valorie 1 Vega presiding. Please be
 7 seated.

8 THE COURT: Record shall reflect that we're
 9 resuming trial in State versus Kirstin Lobato under ease
 10 number C177394. The defendant, Ms. Lobato, is present
 11 together with her three counsel, the two prosecuting attorneys
 12 are present, and the ladies and gentlemen of the jury have
 13 been returned to their seats in the jury box by the bailiff.

14 The Court notes that Dr. Simms has returned to the
 15 witness stand, and we will shortly be resuming with his
 16 examination, The Court reminds him that he remains under
 17 oath from yesterday,

18 **DR. LARY SIMMS, STATE'S WITNESS,**
 19 **REMAINS UNDER OATH**

20 THE COURT: The Court will ask that counsel and
 21 the recorder approach,
 22 (Off-record bench conference from 10:48:48-10:50:19 a.ri)

23 THE CLERK: On the record,

24 THE COURT: Okay,

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SIMMS - CROSS

1 THE CLERK: Counsel may resume.

2 MR. SCHIECK: I believe the State had concluded
 3 their direct, Your Honor.

4 THE COURT: I think Mr. Kephart was wrapping up
 5 and indicated he was about to pass the witness,

6 MR. KEPHART: Mm-hmm.

7 THE COURT: Is that correct?

8 MR, KEPHART: That's correct, Your Honor.

9 THE COURT: Very well,

10 MR, SCHIECK: Thank you, Your Honor,

11 THE COURT: And Mr, Schieck may cross. □

CROSS-EXAMINATION

12 BY MR. SCHIECK:

13 Q Good morning, Doctor,

14 A Good morning,

15 Q Well try to get you out of here and back to your
 16 autopsies that you had scheduled this morning as quickly as
 17 we can

18 A Thank you,

19 Q Yesterday you testified and referred to this as being,
 20 and correct me if I'm wrong, a sexually motivated homicide?

21 A That would be how I would characterize it, yes,

22 Q Okay. And what is your definition of a sexually
 23 motivated homicide when you use it in connection with this
 24

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SIMMS - CROSS

1 case?
 2 A That there was a significant aggressive component
 3 that was a manifestation of sexual urges I guess would be one
 4 way to do it, and as best as I could do it. You know, there
 5 would be homicides that would be directed at killing a person,
 6 and there would be -- other homicides would be directed at
 7 also, you know, sexually mutilating a person. So that's what
 8 I'm trying to get at, there was a motive of sexual damage or
 9 sexual aggression, at least as part of the component of it.
 10 Q Is that due to the mutilation of the sexual organs of
 11 Mr. Bailey?
 12 A Definitely,
 13 Q Okay. That's the factor that keys into you opinion?
 14 A Yes, because obviously I wouldn't have any, you
 15 know, knowledge of the actual person, the perpetrator's state
 16 of mind, it's a matter of just looking at the injuries,
 17 Q And you've been a coroner here in Las Vegas for
 18 how long?
 19 A Eight years.
 20 Okay. And this is not what you would call a usual
 21 case?
 22 A Not for Las Vegas. In Chicago it was a little bit more
 23 common, but definitely in Las Vegas it's uncommon.
 24 Q Are cases like this typically male on male cases?

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SIMMS - CROSS

1 A Definitely.
 2 Q And the fact pattern or the injury pattern in your
 3 experience is always male on male?
 4 A In my experience, yes. I've never seen a female on
 5 male with this kind of sexual mutilation, no.
 6 Q Okay. With some type apparently of homosexual
 7 connotations then?
 8 A Definitely.
 9 Q And in your experience, you've never handled a case
 10 where it was a female inflicting these type of injuries?
 11 A Not in my personal experience, no.
 12 Q And not in anything you've read in the literature?
 13 A Well, I haven't reviewed it recently, but you know,
 14 based on everything I've reviewed previously, again, I would
 15 kind of go back to the same answer I had is that I can't rule
 16 -- I'm sure there may be some rare cases other than --
 17 reported cases of it, but I think the weight of historical
 18 evidence is mostly -- is a male on male.
 19 Q And in your position as a medical examiner, it's not
 20 your job to go out to the crime scene, is that a fair statement?
 21 A Yes, that's a fair statement.
 22 Q Okay. It's not like Quincy on TV where you're out
 23 there, you know, helping collect evidence from the body and
 24 things of that nature?

V111-8

SIMMS - CROSS

1 A Definitely,
 2 Q Okay. In your experience have you ever had a case
 3 where it was not male on male?
 4 A In my personal experience, I haven't.
 5 Q Okay. And in fact, when you testified previously you
 6 indicated that you had looked at some literature and you've
 7 never -- at that point in time had never read or been involved
 8 in a case where this kind of injury pattern was done by a
 9 female?
 10 A To my knowledge still I haven't come across a case,
 11 And I'm certainly not trying to say that it couldn't happen, but
 12 I'm just saying as far as the weight of history or historical
 13 weight, it's by far away male on male kind of crime.
 14 Q Okay, And in this case you were asked a number of
 15 questions where is it possible that the two individuals were
 16 positioned in a certain fashion, and whether or not the
 17 stabbing occurred in an upward motion. Do you recall those
 18 questions?
 19 A Most of them, yeah.
 20 Q Certainly all of your answers would be the same
 21 whether was a male or a female, correct?
 22 A Yes, because it was just based on the victim's
 23 position, yes,
 24 Q And certainly two males could be in that position?

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SIMMS - CROSS

1 A No, it doesn't work that way,
 2 Q Okay. You're based there at the medical examiner's
 3 office and it's your duty to perform the autopsy on the
 4 individual?
 5 A Correct.
 6 Q And determine the cause and manner of death?
 7 A That's my main work product, yes.
 8 Q Okay. But in addition to just having the individual
 9 there for the autopsy, you're given some information from
 10 other members of the coroner's office that actually do go out
 11 to the scene?
 12 A Correct.
 13 Q And in doing that, you get information from them
 14 about what was found at the scene?
 15 A Well, it's mostly geared toward the body and then
 16 the immediate surroundings. They don't usually go into too
 17 much detail about evidence collection 'cause I think they're
 18 there for a much shorter period of time. But -- so they try to
 19 give a flavor of the circumstances of death, along with the
 20 body.
 21 Q And it's not your job to test for DNA or fingerprints
 22 or hair combs or things of that nature?
 23 A No, that's part of the processing that goes on prior
 24 to the start of the autopsy,

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SIMMS - CROSS

1 Q Okay, And there's crime scene analysts should be
2 present in order to collect those items?

3 A Correct,

4 Q Okay. And you don't have a specific recollection in
5 this case, but you're 99.9 percent sure there would've been a
6 crime scene analyst there?

7 A You know, even .9999 because I mean that's a
8 standard practice, and I'm sure there must've been. And I'm
9 sure there's a record of it somewhere,

10 Q I mean certainly in this case with the type of injuries
11 that you were looking at, if there wasn't a crime scene analyst
12 you probably would've stopped and said —

13 A Correct.

14 Q — where is the crime scene analyst?

15 A Right. Yes,

16 Q Okay. You wouldn't necessarily then have been —
17 have personal knowledge of the amount of blood that was
18 present at the scene where the body was recovered?

19 A No, I didn't go to the scene so I didn't have personal
20 knowledge of it,

21 Q You do have some opinions though concerning the
22 amount of blood that would've been spilled as a result of the
23 injuries, correct?

24 A Definitely.

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SIMMS - CROSS

1 know, like a bleeding gum or something, it's going to start
2 coming out. But it's gonna be short of squirting out, but it's
3 going to start draining out continuously.

4 Q I would imagine that there are a number of blood
5 vessels and veins in that area of the human body?

6 A Yes.

7 Q Okay, And that a stab wound or an incised wound
8 to that area is going to cause bleeding at a fairly rapid pace?

9 A And that's what I was trying to communicate by
10 briskly, yes.

11 Q Okay. And that certainly, if the individual was
12 standing, would get blood on the ground area around the
13 individual?

14 A Definitely.

15 Q Okay, And it would be fair to assume that whoever
16 the other person was would probably have gotten blood on
17 them?

18 A Just from that wound? From that wound alone, it's
19 kinda hard to say. They definitely have the potential to get it
20 on them, yes,

21 Q Okay. And certainly if there was blood on the
22 ground as a result of that wound, there would be a possibility
23 of stepping in that blood and leaving bloody footprints?

24 A Definitely have a possibility, yes,

V111-12

SIMMS - CROSS

1 Q Okay. And there were a number of places that you
2 indicated the blood was oozing from the body?

3 A Yes, on the neck and on the scrotum would be two
4 minimal places, Of course, he had other injuries, and it would
5 be also oozing from those, you know, while he was alive,

6 Q Okay, And you included in that a bloody nose, is
7 that correct?

8 A Yes, he did have a bloody nose.

9 Q Did that appear to be a bloody nose prior to death
10 or something that was leaking after death?

11 A No, it appeared to be an antemortem bleeding
12 'cause there was some clotting associated with it and
13 everything.

14 Q And so you would expect at the scene that there
15 would've been blood about the scene of the area where the
16 incident --

17 A Where he was killed. I don't know whether he was
18 killed and found at the same area or not, but wherever the
19 location that he was killed there should be blood, yes,

20 Q Now you referred to the injury to the scrotum as
21 briskly oozing, which is a term I hadn't heard before, What is
22 briskly oozing?

23 A Well, I was trying to show that with an injury of that
24 size it's not gonna just, you know, kinda ooze out like a, you

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SIMMS - CROSS

1 Q Now you talked about the blood nose, but can you
2 really say how much blood emitted from the nose prior to
3 death?

4 A No, No, It's just a matter that there's indication
5 that it was bleeding.

6 Q Okay. And bloody noses come in different varieties,
7 there's some that are slow and some that are much more?

8 A Some that are slow and some that briskly ooze,

9 Q Do you have any opinion on this one whether it was
10 briskly bleeding?

11 A No, I couldn't go back in time and, you know, give
12 an opinion about that. It was — you know, there's no signs
13 about exactly how much it was bleeding.

14 Q And then the injury to the neck that severed the
15 artery or nearly severed the artery, but caused quite a bit of
16 damage to the artery, correct?

17 A Oh, definitely, It opened the artery up, yes,

18 Q Okay. And you indicated that there would actually
19 have been some arterial spraying from that?

20 A There would've been blood that was pumping out of
21 that. And depending on some other factors I think is what I
22 said, is that it actually may have a fairly wide arch. It may be
23 a shorter arch, but it would be pumping out,

24 Q Okay. And you indicated on the photographs that

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SIMMS CROSS

1 there were areas where you could see the blood had run off of
2 the body?

3 A Yes. When they were talking about what position
4 the body was in, there's no doubt that there would've been
5 some blood on his chest, and then I think there were a
6 number of rivulets of blood that had run down on different
7 parts of the body,

8 Q You don't have any opinion or do you have any an
9 opinion whether or not it was possible he was still standing at
10 the time he received the wound to his neck?

11 A That would be -- based on what I've seen in the
12 pictures and everything, that would be kinda difficult to say, I
13 don't know whether he was or wasn't. I think the scene,
14 probably the scene would have a better -- an analysis of the
15 scene would have a better idea about where he was when that
16 wound occurred rather than just the body,

17 Q Now a number of the injuries to the body were, my
18 term close proximity wounds, such that whoever inflicted those
19 wounds would have to be in close proximity to the body in
20 order to inflict those?

21 A Probably all the wounds. The blunt force and the
22 sharp force, they're all close proximity wounds.

23 Q Okay, And that would include the postmortem
24 wounds to the abdomen?

V111-14

SIMMS - CROSS

1 someone from the coroner's office reporting back to you in
2 conjunction with their job responsibilities --

3 A Oh, no --

4 Q -- of describing the scene?

5 A No, I'm sorry, I meant to say I just learned about
6 that recently. I think it was from the prosecution that told me,
7 I don't recall, you know, ever hearing about that prior to that,
8 that there was an actual footprint somewhere.

9 Q And there in the coroner's office the investigators
10 prepare a report of investigation, is that correct?

11 A Right, And there may actually be, you know, in
12 there about a footprint, I just don't recall,,

13 Q Okay, And --

14 A But they prepare that report after they attend the
15 scene and come back to the office, that's the report that they
16 prepare,

17 Q Okay. And in this case, would it have been Shelley
18 Pierce Stauffer, the investigator?

19 A That's correct,

20 Q And do you have a copy of her report?

21 A Yes,

22 Q And she would've been one of the people there at
23 the autopsy that provided you with some information?

24 A Well, she wouldn't have been at the autopsy, she

V111-16

SIMMS - CROSS

1 A Yes,

2 Q The postmortem wounds to the penis area?

3 A Yes,

4 Q And the postmortem wounds to the rectum?

5 A Yes,

6 Q Okay, I mean that indicates that the individual was
7 right there near the body, within at least arm's reach and if not
8 closer to the body?

9 A Yes;

10 Q And certainly with the amount of wounds that we've
11 saw prior to death, there would've been quite a bit of blood
12 around that area?

13 A Yes, I would say it's a high probability there'd be a
14 significant amount of blood,

15 Q And so that a person in that area could be expected
16 to step into the blood and leave bloody footprints behind?

17 A I think that'd probably be more likely than not, yes,
18 that that would happen, yes,

19 Q Okay Are you aware of bloody footprints being
20 found at the scene of this homicide?

21 A I think someone said that there was some -- a
22 footprint on some material, but! didn't -- I didn't review, you
23 know, the scene on a detail by detail basis,,

24 Q When you say someone, would that have been

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SIMMS - CROSS

1 would've had -- I would've had the report, at least the
2 preliminary report, that would look a lot like the one that you
3 have. This is the final report 'cause it's signed, but I wouldn't
4 have substantially the same report

5 Q As part of your work in this case, did anyone report
6 to you that the bloody footprints found at the scene were
7 consistent with a male athletic shoe?

8 A At the time of the autopsy or since then?

9 Q Since then or at the time of the autopsy?

10 A As I said before, at the time of the autopsy I don't
11 recall even having that knowledge, But I think that I do recall
12 that they said that it was a larger shoe size is what I recall.

13 Q Okay, And being if it was a male athletic shoe of a
14 larger size, that would be consistent with your description of
15 this as being more of a male on male type of situation?

16 A That would definitely be supportive of that, yes.

17 Q Okay, That would corroborate your findings that it's
18 more consistent with male on male?

19 A Yes,

20 Q Okay. Was it reported to you the area surrounding
21 where the body was found, a description of it?

22 A It probably was in the investigator report, so I was
23 aware of the scene as it was described in the investigative
24 report at the time of the autopsy. Now since that time I've

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SIMMS - CROSS

1 been shown various pictures of the scene.
 2 Q You're familiar with -- are you familiar with that it
 3 was behind a dumpster type area?
 4 A Yes,
 5 Q That it was a blocked in dumpster enclosure?
 6 A I might've been aware of that at the time, but I was
 7 remade aware of it just recently by looking at some of the
 8 pictures. I didn't recall -- realize in how closed in it was,
 9 Q Okay, And if Ms, Pierce Stauffer described it as the
 10 cage area is square a made with three block — excuse me,
 11 three brick walls, that would be consistent with your
 12 recollection?
 13 A Definitely.
 14 Q And that the front area is closed with a metal gate?
 15 Is that consistent?
 16 A I didn't have that recollection, but it's consistent with
 17 the pictures that I've seen recently.
 18 Q Okay. And if she described the area as 10 foot wide
 19 by 14,7 feet deep, does that sound --
 20 A Yes,
 21 Q The reason I'm asking you those questions is when
 22 we talk about the time of death and how quickly rigor mortis
 23 would've set in, you're familiar with Las Vegas in July, it's a
 24 warm time of year, one of the warmest months of the year?

V111-18

SIMMS - CROSS

1 A Yes.
 2 Q So even after nightfall, the bricks are actually
 3 warmer than the ambient temperature?
 4 A At least for a short time, based on, you know,
 5 having lived here. I mean I've never done any scientific
 6 studies on that, but they do emit their heat at night and kinda
 7 keep things a little bit warm for awhile anyway.
 8 Q Okay. And so that would also increase the speed of
 9 which things would decompose?
 10 A Yes.
 11 Q Okay. And now yesterday you'd indicated that in
 12 talking about the time of death, and correct me if I'm wrong
 13 on my quotations on this. You said 8 to 24 hours to a high
 14 degree of probability, 12 to 18 hours to a reasonable medical
 15 certainty?
 16 A Correct. Lower probability but probably more -- a
 17 reasonable conclusion.
 18 Q Okay, And you've been asked questions about that
 19 in the past concerning this case?
 20 A Oh, I'm sure that I was, yes.
 21 Q And you'd indicated that rigor mortis is usually fully
 22 formed by 12 to 18 hours?
 23 A 12 to 18 to 24. I probably kinda move it out to 24,
 24 but you know there's a continuum kinda from when it starts

V111-20

SIMMS - CROSS

1 A Definitely,
 2 Q Okay, And you'd indicated yesterday that the
 3 presence of debris or garbage from this dumpster would have
 4 helped keep the heat in on the body so that it would, in fact,
 5 progress quicker than if it was just exposed?
 6 A By -- if it was exposed, I think what I said yesterday
 7 was if the outside temperature is cooler than if it was covered
 8 with debris, that would keep heat in. If the outside
 9 temperature is hot, very hot, then if it was covered with
 10 debris, it would actually kinda keep it from getting too hot is
 11 what I was trying to say,
 12 Q Okay. But it would keep that heat in the area?
 13 A Oh, definitely,
 14 Q Okay. And the fact that it's in a three sided brick
 15 enclosure, that would tend to keep the heat confined to that
 16 area also?
 17 A Yeah, it would be a relatively controlled
 18 environment, rather than out on a, you know, a windy area.
 19 Q And here in the southwest during the daytime the
 20 warm sun warms -- actually warms those bricks, is that
 21 correct?
 22 A That's correct, yes,
 23 Q And they tend to keep that heat and keep it
 24 enclosed there in that area?

V111-19

SIMMS - CROSS

1 after a few hours to when it finally gets formed. And you
 2 know, I don't have any problem with 12 to 24 hours as a good
 3 time frame.
 4 Q Do you recall previously testifying that it's usually
 5 fully formed by 12 to 18 hours?
 6 A I'm sure that I've probably said that, yes,
 7 Q Okay. Is that still accurate, it's usually formed within
 8 12 to 18 hours?
 9 A Yes. I would say probably as far as like, you know,
 10 when you get into like 60 percent of the cases or, you know,
 11 the majority of the cases I would say yeah, yes,
 12 Q And that's full rigor mortis?
 13 A Yes. Well, including the major muscle groups.
 14 Q Okay, And again, if you testified previously that it's
 15 usually fully formed by 12 to 18 hours, which means it involves
 16 all the muscles, that would be accurate?
 17 A Yes,
 18 Q Okay. So and that's to a reasonable medical
 19 certainty, that 12 to 18 hour period, 8 to 24. You've expanded
 20 the time period, which is even more inclusive, but the 12 to 18
 21 is still more than likely?
 22 A More than likely, yes.
 23 Q And your determination of those figures just are
 24 based on general literature and general knowledge, correct?

V111-21

SIMMS - CROSS

1 A They're based specifically on what I was told the
2 rigor mortis was and the level of decomposition of the body,
3 combined with my experience and the literature.

4 Q And the degree of rigor mortis would've been
5 described to you by the coroner investigator that was on the
6 scene and reported to you?

7 A Correct,

8 And it would've been her responsibility to declare
9 death?

10 A Yes

11 Q And then make that determination?

12 A Yes

13 Q Okay. And just so -- and you have her report there
14 in front of you, just so we're clear. Is it true that her reports
15 indicates that she was not called to the scene until
16 approximately 125 in the morning?

17 A Correct.

18 Q And it actually says 0325 hours, which would be
19 3:25 in the morning? □

20 A Correct.

21 Q Okay, So she was not called to the scene, according
22 to her report, until 3:25 —

23 A Correct.

24 Q -- correct? And so she couldn't have made any

V111-22

SIMMS - CROSS

1 A Not only for that reason though, just for the reason
2 that rigor mortis doesn't -- in every dead body it doesn't
3 propagate in a standard way,, It has some generalities to it,
4 but it can be different.

5 Q And it depends on the environment that the body's
6 in?

7 A And then the next thing is then the environment, So
8 not only is characteristics of the body, but then it's
9 characteristics in the environment.

10 Q Okay. And the environment in this case was July in
11 Las Vegas in an enclosed brick area during -- at least partially
12 during sunlight hours, correct?

13 A So that would tend to accelerate it.

14 Q That would accelerate it?

15 A Correct.

16 Q Okay, So our 12 to 18 before 3:50 is pretty fair to a
17 reasonable medical certainty?

18 A I believe it is, yes,

19 Q Okay. And 12 hours prior to 3:50 a.m. would be
20 3:50 p.m.?

21 A P.m., right.

22 Q Okay. Which would be 3:50 in the afternoon?

23 A Correct,

24 Q Which would be in Las Vegas, pretty much the

V111-24

SIMMS - CROSS

1 observations before then clearly?

2 A Correct.

3 Q And it indicates in the next paragraph that she
4 arrived at approximately 3:45?

5 A Correct.

6 So she couldn't make any observations before 3:45,
7 correct?

8 A Correct,

9 Q Okay And then it, I believe on the next page
10 indicates that it was at 3:50 that she described as full body
11 rigor mortis, is that correct?

12 A Correct,

13 Q Okay, So that's the time we're going from?

14 A Yes.

15 Q Okay, So 12 to 18 hours prior to 3:50 a.m. is the
16 time you're going from?

17 A Well, I'm not actually -- I want to be clear about
18 this I'm not actually going from a specific time I mean I'm
19 assuming -- I would assume that he didn't go into full rigor
20 mortis -- or that he wasn't in full rigor mortis at 3:00 but he
21 was at 3:50, so I'm kinda, you know, going as a general rule
22 sometime in that range, give or take a couple hours.

23 Q Okay, That's why we have the 12 to 18 hour □
24 general range is because there is some leeway on both ends?

V111-23

SIMMS - CROSS

1 hottest part of the day?

2 A Correct.

3 Q Okay. Which again goes to the acceleration of the
4 process, correct?

5 A Correct.

6 Q And then 18 hours before 3:50 a.m. would be 9:50
7 in the morning, correct?

8 A Correct.

9 Q Okay. So again, that's during the daylight hours?

10 A Correct,

11 Q Not the warmest part of the day but progressing
12 toward the warmest part of the day?

13 A Correct.

14 Q So the 12 to 18 hour time period gives us some time
15 between 9:30 a.m. and 3:50 p.m, on July 8, 2001?

16 A As a reasonable conclusion, yes.

17 Q To a reasonable medical certainty?

18 A Yes.

19 Q Are you familiar with Panaca, Nevada? Panaca,
20 Nevada, do you know where that's at?

21 A No, I don't

22 Q You don't know how far it is from Las Vegas?

23 A No.

24 Q Certainly if someone was in Panaca between 9:50

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SIMMS - CROSS

1 and 3:50 they wouldn't have been able to commit this
 2 homicide?
 3 A Obviously.
 4 Q Now you'd indicated that when the body came into
 5 the medic -- the coroner or the medical examiner's office that
 6 your recollection was that the hands were probably bagged?
 7 A I didn't even see the body. I think I was asked
 8 about -- there was some pictures of manila -- you know, I
 9 didn't take part in that, so I just inferred that based on those
 10 pictures and the standard operating procedure of the police
 11 department.
 12 Q Okay. So to be fair to you, let's establish the
 13 condition of the body when you first saw it as part of your
 14 responsibilities to perform the autopsy. Was it still clothed?
 15 A No, it was -- it had been completely processed and
 16 photographed, cleaned up, photographed, and then that's
 17 when I first started seeing the body.
 18 Q Okay. So as the coroner/medical examiner, you
 19 don't see the body until it's already been processed by the
 20 crime scene analyst, photographed by both the crime scene
 21 analyst and the coroner's office, cleaned up by a coroner's
 22 assistant?
 23 A Correct.
 24 Q Okay. And by cleaned up, that would be cleaning

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SIMMS - CROSS

1 cloth?
 2 A Yes.
 3 Q Okay. And then that's collected also --
 4 A Yes.
 5 Q in case any trace evidence has fallen onto that?
 6 A Correct,
 7 Q In this case then you wouldn't have seen any saran
 8 wrap or plastic wrap that was on the body when it was
 9 brought in?
 10 A No.
 11 Q You wouldn't have seen any paper towels that were
 12 shoved into the area where the penis was missing from?
 13 A Unless someone had showed it to me, and you
 14 know, then I might've been -- I might've saw it after they
 15 removed it. That would definitely be a possibility,
 16 Q Do you recall in this case if anybody showed you any
 17 of the evidence after?
 18 A I don't have an independent recollection of it. I
 19 know that I found some silver paper kinda things that -- in the
 20 rectal area that I remember taking, you know, taking pictures
 21 of., And then I remember turning it over or calling attention to
 22 the evidence technician about it.
 23 Q Okay. So -- and that was in the rectal area?
 24 A Right.

VIII-28

SIMMS - CROSS

1 off off the excess loose blood, clotted blood, things of that
 2 nature?
 3 A Right, so you can see the wounds.
 4 Q Okay. And that would -- if there were things on the
 5 body, such as matches or cigarette butts, those would already
 6 be removed before you even saw the body?
 7 A Correct. And also any kind of trace evidence that
 8 they were interested in, that would've been removed too,
 9 Q Okay. You are familiar, however, with the normal
 10 protocol or procedures of the coroner's office when a body
 11 comes in?
 12 A Yes, I think so.
 13 Q Usually it comes in in a body bag?
 14 A Yes.
 15 Q Okay, And the body bag is then photographed
 16 closed and then opened?
 17 A Correct.
 18 Q Okay. And whatever identifying information is on
 19 the body bag is recorded?
 20 A Yes,
 21 Q And then the body is removed from the bag and
 22 then it's processed?
 23 A And then it's -- then the police processing starts.
 24 Q Okay. And usually it's brought in on a sterile white

VIII-27

SIMMS - CROSS

1 Q Okay. And that -- you discovered that as part of
 2 your autopsy procedures?
 3 A Yes,
 4 Q And I'm looking at your autopsy report on the
 5 second page. You indicate the skin demonstrates -- this is
 6 under clothing, the second sentence. "The skin demonstrates
 7 adherent plant debris".
 8 A Okay.
 9 Q So there was still debris left on the body that hadn't
 10 been cleaned off in the cleaning process?
 11 A Yes.
 12 Q Do you have any recollection of what that was --
 13 A No.
 14 Q -- or why -- would it normally have been cleaned off
 15 of the body before you saw it?
 16 A Oh, they -- you know, they do a pretty good job, but
 17 they don't -- sometimes there's blood left, sometimes there's
 18 other things like -- or little rocks or things like that, you know.
 19 Q So when they clean the body off before you begin
 20 the autopsy, do they wipe it down or wash it down, or how do
 21 they do that, do you know?
 22 A Both,
 23 Q Okay.
 24 A It's a combination of washing and then also wiping.

VIII-29

SIMMS - CROSS

1 Q And your report wouldn't indicate when the body
2 was actually received by the coroner's office?

3 A No, it just starts when I start. There should be
4 other documents over there and indicate when it was first
5 received by the coroner's office.

6 Q Okay, And when it's first received by the coroner's
7 office, it's at that point refrigerated to stop any further
8 decomposition?

9 A Correct.

10 Q Okay, Or at least to slow any further
11 decomposition?

12 A Correct.

13 Q Okay. And so the longer the body would've
14 remained there at the scene where it was discovered, the
15 longer the decomposition would've processed until it was
16 refrigerated?

17 A Correct.

18 Q Okay. You had talked about the fracture to the back
19 of the head, and correct me if I'm wrong, but my recollection
20 was is your indicated that if had been a baseball bat you
21 would've expected to seen a depressed fracture?

22 A I think more likely than not with an instrument like
23 that, you know, wielded in a lethal manner, you would see a
24 more substantial kind of fracture along with depression, yes.

V111-30

SIMMS - CROSS

1 fracture?

2 A Yes. The fracture that I'm seeing there is, you
3 know, not suggestive of that, so I wouldn't have -- if
4 somebody would've said, you know, that -- I would've included
5 that as one of the weapons, the possible weapons that
6 would've caused that fracture 'cause it would -- I would've
7 expected a more significant fracture.

8 Q And there are a whole variety of items that can
9 cause -- of blunt trauma to the head that can cause a fracture,
10 is that a fair statement?

11 A Well, yeah. Not only are there instruments but also,
12 depending on what the head hits, you know. The head can --
13 either something can strike the head or the head can strike
14 something to cause this type of a linear skull fracture.

15 Q In this case would you say it's more likely that the
16 head struck something or something struck the head to cause
17 that fracture?

18 A That's a good question. There's obviously significant
19 impacts to the head, but I can't really tell. There's no specific
20 pattern to them that would tell me whether the head struck
21 something or whether something struck the head.

22 Q You had talked yesterday about some abrasions to
23 that area?

24 A On the side of the head?

VIII-32

SIMMS - CROSS

1 Q Okay. And you didn't see that in this case?

2 A No, this was a linear fracture that was on the left
3 side of the head that went to the back of the head on the left
4 side.

5 Q With no depression?

6 A No depression.

7 Q Okay. Was that injury x-rayed?

8 A Prior to the -- me actually starting the autopsy it was
9 radiographed, and that was recorded in the inventory
10 radiographic findings here on page 2 near the bottom.

11 Okay. Would you have examined the x-rays or is
12 that --

13 A Yes,

14 Q Okay,

15 A I'm the one that dictated this, you know, that wrote
16 this report. What I said that there was an apparent fracture
17 on the left side of the head,

18 Q Okay. And when you say no other abnormalities are
19 identified, would -- is that where you would have identified the
20 depression?

21 A That would've helped been able to kinda tune me in
22 on that

23 Q So your testimony is it's more likely -- it's less likely
24 than not that a baseball bat was the weapon that caused the

V111-31

SIMMS - CROSS

1 Q Yes. If you recall,,

2 A I don't recall it. There was some abrasions on the
3 left side of the face and the right side of the face.

4 Q Which would be consistent with rubbing up against
5 something or something being rubbed against the face?

6 A I think that there was a -- what I called a pattern
7 abrasion I think on the left side, which could be either one of
8 those things. But there was some -- a little bit of a pattern to
9 it, indicating it just wasn't a flat, you know, surface.

10 Q Do you have any opinion what the pattern was?

11 A Well, it could've been the surface of cement. You
12 know, it's rough and it'll leave linear scratches. Based on
13 where he was found, that would be the first thing to think of.
14 But then there could be a number of other things that could be
15 equivalent to it.

16 Q Doesn't necessarily have to be the concrete of the
17 ground, it could be the brick itself --

18 A Definitely.

19 Q -- could impact?

20 A Yes.

21 Q And while we're talking about the baseball bat, the
22 face itself has a lot of very fine bone structure to it?

23 A Yes.

24 Q Okay. That would include the nose, the occipital

V111-33

SIMMS - CROSS

1 orbits of the eye?
 2 A Yes,
 3 Q Any indication that those areas had been struck with
 4 a baseball bat?
 5 A No. He had some teeth knocked out, but if it
 6 would've been a baseball bat it would've done more damage
 7 to the surrounding structures, at least I would expect it to
 8 have done more damage to the surrounding structure.
 9 Q You would've expected to see a broken nose, for
 10 instance?
 11 A More of a, kind of a crush injury, you know, rather
 12 than just that I'm not -- that's not to say it couldn't have
 13 been, but based on those injuries, his mouth could've been
 14 maybe open, but as a probability I would've expected more,
 15 Q Same thing to the D-orbits [sic] around the eye?
 16 A Correct,
 17 Q If there -- I mean if he was struck in the orbital area
 18 of either eye you would expect to see some bone damage?
 19 A Yes,
 20 Q And that's not present in this case?
 21 A No.
 22 Q And based on those findings, it more likely than not
 23 that he wasn't struck with a baseball bat to the face?
 24 A That would be a good conclusion. You know, I

V111-34

SIMMS - CROSS

1 person's alive in order for the cells to get in there. And that
 2 was also corroborated by the fact that he had some swelling in
 3 his brain. So there's -- there's no doubt that he was alive for
 4 awhile after the head injury because your brain -- it takes
 5 some time to swell, so —
 6 Q You were able to tell that the swelling was from the
 7 injury of -- that was approximately two hours old as opposed
 8 to the fracture, or it was from the fracture?
 9 A No, that it was just two hours prior to his death.
 10 Q Okay,
 11 A That would be a good ballpark figure, at least a few
 12 hours prior to his death.
 13 Q But it wasn't — that injury wasn't a fatal injury?
 14 A Well, it was -- this was just hemorrhage in the tissue
 15 underneath the skin. So I mean if you're talking about -- no,
 16 that by itself wouldn't be fatal, You know, of course, that
 17 might've been the same injury that the baseball — or that the
 18 skull was fractured with, you know. You understand what I'm
 19 saying, that — okay.
 20 Q But the fracture could've been two hours old also?
 21 A Yes, because it was -- that area was on the same
 22 side as the fracture, and if it was on the different side then I'd
 23 have a different opinion, but because that area is on the same
 24 side as the fracture, it could've been that that was

V111-36

SIMMS - CROSS

1 would say it's a low probability that it would be a -- that a
 2 baseball bat would be an instrument.
 3 Q And we've talked about the head. Any other parts
 4 of the body that would indicate being struck with a baseball
 5 bat?
 6 A No,
 7 Q Now -- and I may be wrong on this. I don't know
 8 where I came up with this. I thought that there had been
 9 some testimony that there was an older injury to the head that
 10 was several hours old?
 11 A Yes.
 12 Q Okay,
 13 A There -- on the left side there -- I took several
 14 sections from different injuries, and one of them appeared to
 15 have a little bit more of a cellular reaction than the others, so
 16 and that was on the left side of the head.
 17 Q But the same side as the fracture was?
 18 A Yes.
 19 Q Okay, How older was it?
 20 A Just by several hours, at the most.
 21 Q Okay, But it definitely, in your opinion, was not
 22 contemporaneous to the fracture?
 23 A In my experience, you know, to have that kind of a
 24 cellular reaction, you know, there has to be time while a

V111-35

SIMMS - CROSS

1 contemporaneous with the fracture.
 2 Q Now the fractured showed quite a bit of bleeding
 3 and swelling, that injury itself?
 4 A The fracture itself, no. That's in bone so it's not
 5 gonna show that. But the underlying brain —
 6 Q Right.
 7 A -- had a tremendous amount of hemorrhage over it.
 8 I don't think we've shown you pictures of that, but it had a
 9 significant amount of hemorrhage over it. And then it was --
 10 actually had some swelling started in the brain.
 11 Q Okay, And it's actually the swelling of the brain that
 12 usually is the lethal mechanism of death for a head injury?
 13 A It's definitely one of the major components of it.
 14 The bleeding on the surface would be another component of it
 15 and, you know, and the mechanical injury directly to the brain
 16 of the shock of going through the brain, so there's different
 17 components. But the swelling definitely is a component,
 18 Q Okay. In this case, was the swelling of the brain the
 19 cause of death or can you narrow it down to just one cause?
 20 A Well, I -- I think there's too much injury to narrow it
 21 down to one cause. He had several injuries that were
 22 completely competent to cause his death, and that -- the head
 23 injury certainly was one of them.
 24 Q And the other one would be the stab to the neck?

V111-37

SIMMS - CROSS

1 A Definitely.
 2 Q How long would it take for that stab wound to the
 3 carotid artery to cause death for you to bleed out?
 4 A Oh, it would just be minutes,
 5 Q When you say minutes, I had to say, you know --
 6 A Oh, not -- definitely not 30 minutes or something
 7 like that, it'd be more like — you're talking about 2 to 5, maybe
 8 10 minutes at the most, in that range.
 9 Q That wouldn't necessarily cause instantaneous
 10 unconsciousness, but eventually it would because of blood
 11 loss?
 12 A If you just look at that injury --
 13 Q Yes,
 14 A -- and we disregard the head injuries, then no, that
 15 wouldn't cause instantaneous loss of consciousness. A person
 16 would be conscious for a short period of time after,
 17 Q And you indicated that the blow to the head that
 18 caused the fracture would possibly cause unconsciousness?
 19 A It would definitely possibly cause unconsciousness,
 20 yeah.
 21 Okay. However, there were defensive wounds to
 22 the hands, which would indicate that those were inflicted prior
 23 to the blow to the head, is that fair?
 24 A Yes.

VIII-38

SIMMS - CROSS

1 impressions on the back,, I think they were mostly on the
 2 front,
 3 Q Okay. Certainly if the body is laying for a period of
 4 time on a certain surface, that surface is gonna leave whatever
 5 impressions are on the surface?
 6 A Correct.
 7 Q Okay, And if you're wearing a shirt, that might leave
 8 an impression, depending on the type of fabric and whether
 9 there's a zipper or a button?
 10 A Correct,
 11 Q And if, for instance, saran wrap or a plastic bag is
 12 wrapped around a part of the body that's resting on the
 13 ground, that could leave an impression?
 14 A If it had irregularities in it.
 15 Q Like if it was bunched or folded?
 16 A Correct.
 17 Q Okay. Twisted?
 18 A Yes.
 19 Q Those could leave impressions?
 20 A Yes.
 21 Q Are you involved at all with the operation of the
 22 coroner's office when it comes time to locate and notify the
 23 next of kin, or is that done by other people?
 24 A That's done by the investigators,

V111-40

SIMMS - CROSS

1 Okay. But you can't tell us how long before, or can
 2 you?
 3 A I can't tell you with any scientific method. I think,
 4 you know, from a commonsense we'd probably all agree it was
 5 probably just right before, but that's really speculation I think,
 6 Q Okay, You had talked about some markings that
 7 would -- had been caused by pressure or impressions left in
 8 the body, correct?
 9 A Coriect,
 10 Q You didn't see any items adhering to the body when
 11 you did the autopsy?
 12 A No.
 13 Q So you don't know what could've been, if anything,
 14 pressing against the body prior to you seeing it?
 15 A No,
 16 Q Okay, And you've never seen photographs of the
 17 body as the various levels of debris were removed from the
 18 body?
 19 A No, I've seen some general photographs that I recall
 20 had the body exposed, so I didn't see any -- or get any specific
 21 idea of what items were on the body,
 22 Q What about any type of impression type of markings
 23 left under the body? Did you note any of those?
 24 A On the back, I don't recall any significant

V111-39

SIMMS - CROSS

1 Q You're not involved in that process at all?
 2 A No,
 3 Q Okay. And you're not involved in any interaction
 4 they have with the homicide detectives about what they're
 5 doing to notify the next of kin?
 6 A No.
 7 Q Okay. So other people would be better to ask those
 8 questions of?
 9 A Yes, I -- in this case I do not have any knowledge
 0 at all about any of that process.
 1 Q Now with respect to the wounds to the rectum, I
 2 noticed in the photographs that in order to take the
 3 photographs of the injuries that there was -- the cheeks had
 4 been spread or the buttocks had been spread. Was that
 5 necessary in order to see the injuries?
 6 A Well, it showed the extent of the injuries,
 7 Q Would it have been necessary to spread the buttocks
 8 in order for those injuries to be inflicted?
 9 A No. It would not be, no,
 10 Q And as part of your autopsy process, do you note
 11 the size and weight of the individual?
 12 A Yes.
 13 Q Okay,
 14 A Well actually, I take that back,, It's noted for me, let

VIII-41

SIMMS - CROSS

1 me put it that way, and I record it in my autopsy report. But I
2 don't take the measurements directly.

3 Q Okay. But you have no reason to question whether
4 or not those would be accurate?

5 A Usually I kinda eyeball it, and if they're not accurate
6 I do have 'ern take them again. But in this particular situation
7 I think they looked relatively accurate to me and I didn't —□

8 Q And what are they in the autopsy report?

9 A The height is 70 inches, which would be 5'10", and
10 the weight is 133 pounds.

11 Q Now the weight is the weight when the body arrives
12 at the medical examiner's office?

13 A Correct,

14 Q Okay. And would the loss of blood effect that
15 weight?

16 A To some extent.

17 Q And you had indicated that a toxicology had been
18 taken on the body. Do you recall what fluids were used in
19 order to determine the toxicology?

20 A I recurred blood, and — which is -- comes from the
21 heart, and vitreous fluid, and it was -- the blood was the
22 sample that was tested.

23 Q And that was blood drawn directly from the heart?

24 A Correct,

V111-42

SIMMS - CROSS

1 Q Okay. With respect to the various impression type
2 markings on the body, did you collect any histological slides of
3 those areas to determine age of the wounds — or the
4 impressions?

5 A Of the impressions, no,

6 Q Okay, Did you collect any slides at all of those type
7 of impressions?

8 A Tissue slides?

9 Q Yes.

10 A No, no. To my knowledge, you cant really age an
11 impression. I've never heard — you can age an injury where
12 there's bleeding in it, but just a surface impression, I wasn't
13 aware that you could age that.

14 Q Did you take slides, though, of other areas?

15 A I took tissue samples, yes,

16 Q Okay, And where did you take those from?

17 A Under the inventory of histologic sections, I took
18 three sections from the base of the amputated penis, I took a
19 section from the liver where the stab wound was, I took two
20 sections from the back of the head, one section from the left
21 tiperalus [phonetic] muscle, which is on the side of the head,,
22 I took one section from the -- next to the voice box in the left
23 neck. I took a section back of the feeding tube in the neck,
24 And I took a section of the carotid artery where it was injured.

V111-44

SIMMS - CROSS

1 Q Okay. Would the fact that the individual had
2 basically bled out have effected the percentages of the
3 substances found in the blood?

4 A No, it should be the same — you know, the same
5 concentration. Even though there'd been a lot of blood loss,
6 you assume that it was uniformly distributed in his blood so it
7 should be the same concentration.

8 Q You had talked about the fact that there was — or
9 were you aware that there was in the sexual assault kit some
10 semen detected?

11 A I think I was just told about that recently. I was not
12 aware of the results of the -- of any testing done.

13 Q And you'd offer some possibilities as to how semen
14 could -- Mr. Bailey's semen could've been present due to the
15 trauma he suffered, correct?

16 A From a transfer of the same weapon that cut the
17 penis off to the rectal area I think was the issue, and it's
18 definitely possible, yes.

19 Q Okay, Is it also possible it could've been done --
20 been the result of a recent ejaculation prior to death?

21 A Yes

22 Q Okay. So there's a number of possibilities with
23 respect to the presence of semen?

24 A Yes.

V111-43

SIMMS - REDIRECT

1 Have you done any review or examination of those
2 slides?

3 A Yes, yes. I filed a report, and in that report was
4 where I talked about, as you brought out earlier, that one of
5 the injuries appeared to be slightly older than the other injury,
6 Q And that would be the injury to the head?

7 A To the left side of the head, right.

8 MR. SCHIECK: Okay. Could I have the Court's
9 indulgence for one minute?

10 THE COURT: Yes,

11 MR. SCHIECK: Thank you- No further questions.
12 Thank you, Doctor.

13 THE COURT: Redirect,

14 MR. KEPHART: Thank you, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. KEPHART:

17 Q Doctor, you talked about this injury to the left side of
18 Mr. Bailey's head, and you also talked in conjunction with his
19 skull fracture. The injury that you did the slides -- I guess the
20 microscopic examination, would -- did you have any — did you
21 -- was there any evidence in that that showed that it was
22 connected to the skull fracture?

23 A No, What I -- just from an anatomic point of view,
24 you've got the skull and then on top of that you got a lot of

V111-45

SIMMS - REDIRECT

1 soft tissue. So I took a section from the soft tissue above the
 2 skull, and it did have a difference in time. But I can't -- there's
 3 nothing that I can tie that to specifically the fracture, except
 4 that it's on the same side of the head.

5 Q Okay. So you're -- it's not your testimony today that
 6 he received that earlier injury the same time that he received
 7 the skull fracture is it?

8 A It's a possibility, but no, I don't have any way to
 9 conclude that to a reasonable degree of certainty, no.

10 Q Okay. With respect to what you saw with the injury
 11 that was the older injury, would that be what you saw, could it
 12 be consistent with somebody just getting punched in the side
 13 of the head with a fist?

14 A Definitely.

15 Q Okay, And now we talked about earlier -- in direct
 16 and in cross we talked about the skull fracture, the injury to
 17 the back of Mr. Bailey's head, and is it your testimony that that
 18 could be consistent with him falling back and cracking his head
 19 on the curb?

20 A Definitely consistent with it.

21 Q And that's the one that you don't believe that you
 22 would -- there was any evidence to support that he was hit
 23 with a bat? You would expect to see maybe some indentions
 24 or something there?

VIII-46

SIMMS - REDIRECT

1 probability, if that's what you meant that —

2 Q Okay.

3 A -- right, that it was a female on male. I didn't
 4 exclude that, I just said it was a low probability.

5 Q Okay, So you're not saying that women don't
 6 commit these kind of crimes?

7 A No, I couldn't -- I wouldn't feel comfortable making
 8 an absolute statement like that, no,

9 Q Okay. And you're not testifying today that the
 10 injury, the older injury that you saw is definitely what caused
 11 the skull fracture?

12 A No, I'm not saying that.

13 Q Okay,,

14 A I just said it was on the same side --

15 Q Okay,

16 A -- and it could be, but I have no way to tie those
 17 two together.

18 Q Okay,, It'd be more consistent in receiving a skull
 19 fracture by striking something, such as a curb?

20 A That would be more consistent than a baseball bat
 21 causing the skull fracture, right, because this is a typical linear
 22 skull fracture that you see with that striking a curb fairly often.

23 Q Okay,, Now also the -- the injury -- the older injury,
 24 do you remember testifying whether or not you felt that would

V111-48

SIMMS - REDIRECT

1 A In the skull, in the skull part, right.

2 Q Okay. Now with regards to his face area, you talked
 3 about his teeth were busted out, is that a yes?

4 A Yes. Sorry,

5 Q Okay. Matter of fact, six teeth and a tooth fragment
 6 was brought to the autopsy, is that correct?

7 A Correct,

8 Q Okay, That — your understanding that was
 9 recovered from the scene?

10 A Correct.

11 Q Okay, And also there was all the contusions on his
 12 face?

13 A Correct.

14 Q And do you remember questioning yesterday with
 15 regards to whether or riot there's a possibility that it could be
 16 done with a bat, and your testimony was that if it was with —
 17 by somebody weaker, maybe not as strong as a grown man
 18 would be?

19 A Definitely possible.

20 Q Okay. Now you also said that -- I think you used a
 21 low probability with that, but you also said that it is a low
 22 probability with respect to this type of injury being something
 23 other than a male on a male, based on just your -- your —

24 A Oh, there's definitely a -- I didn't exclude the

V111-47

SIMMS - REDIRECT

1 be a fatal injury?

2 A I don't remember whether or not I testified about it
 3 or not, but I do, you know, have to say that it was
 4 hemorrhage in a muscle, and that by itself wouldn't be a fatal
 5 injury,

6 Q Okay.

7 A It might be — you know, the head injury that goes
 8 with it, or the brain injury, let me put it that way. The brain
 9 injury that goes with it, that might be fatal if that's what
 10 happened,

11 Q Okay.

12 A But in and of itself it's not fatal, no,

13 Q Okay, Now the injuries, however, with regards to
 14 the skull fracture and the injury to the back of the head, do
 15 you have an opinion as to whether or not those could be fatal?

16 A Again, those by themselves wouldn't be fatal,, They
 17 would -- although the skull fracture would indicate a significant
 18 amount of force, it's gonna be the brain injury that's gonna be
 19 the fatal aspects.

20 Q Okay. And with respect to the skull fracture, would
 21 you expect to see that individual knocked unconscious?

22 A With that significant a skull fracture I would say that
 23 there's a really high probability they would be unconscious.

24 Q Okay. And then with respect to the skull fracture

V111-49

SIMMS - REDIRECT

1 and with respect to the injury to his carotid artery, do you
 2 have any opinion as to -- do you have any opinion as to the
 3 injury to the carotid artery and whether or not it would be a
 4 calculated type of injury?

5 A In my opinion, yeah, that's what I call a directed
 6 violent injury because in a knife fight you're not gonna be able
 7 to deliver -- in my opinion, you're not gonna be able to deliver
 8 that kind of deep, very directed injury. So that's the type of
 9 injury you see after somebody's unable to move, and then it's
 10 and there's a specific area that's targeted,

11 Q Okay. In this particular case you testified about a
 12 lot of multiple defensive wounds --

13 A Correct,

14 Q -- on his hands? So when you say that a person is
 15 not able to deliver a directed injury, such as to the carotid
 16 artery, that would be consistent with maybe because the
 17 person's stopping him with his hands?

18 A Definitely, resisting.

19 Q But on the other hand -- on the other case, if he's
 20 knocked unconscious it would be very easy to --

21 A Very easy.

22 Q -- deliver that type of injury?

23 A Yes,

24 Q Okay, Now you testified a little bit about your

V111-50

SIMMS - REDIRECT

1 Q Doc, do you -- you had testified that you saw some
 2 photos at a later date with regards to the area of where the
 3 body was located, is that correct?

4 A Correct,

5 Q And you had some questions by the defense about
 6 what you would expect to see in reference to somebody that
 7 had as much blood loss as that you -- that you've saw with
 8 regards to Mr. Bailey here? Okay.

9 A Yes,

10 MR. KEPHART: Your Honor, may I approach the
 11 witness, Your Honor?

12 THE COURT: Yes.

13 BY MR. KEPHART:

14 Q Okay, I'm showing you a series of photographs,
 15 State's Proposed Exhibit 46, 47, 48, and 52, and ask you if you
 16 can take a look at those, and ask you if you remember seeing
 17 those photos before?

18 A Yes, I saw 'em just recently,

19 Q Okay, Now you weren't -- you weren't at the scene
 20 obviously, you've testified to that, is that correct?

21 A No, I wasn't at the scene,

22 Q Okay, And so you don't know how the scene
 23 looked, other than the photographs that you've seen?

24 A Correct.

V111-52

SIMMS - REDIRECT

1 limited knowledge of where the body was found, and you were
 2 told by the coroner's investigator. And matter of fact, in your
 3 report you talked about some plant debris on Duran's body, is
 4 that correct?

5 A Correct.

6 Q Now you were aware that he was found in the
 7 trash?

8 A Correct.

9 Q And when -- whenever an individual is found in the
 10 trash before you can look at him, that's all removed,
 11 supposedly removed from the body?

12 A Most of it, yes,

13 Q Okay, And in this particular case though, they
 14 weren't successful even doing that. It had some plant
 15 debris --

16 A Correct

17 Q -- on him? So you would more than likely expect if a
 18 person is found in the trash you would find trash on him?

19 A You mean when I start the autopsy or when they --

20 Q When they bring him or when they first see him?

21 A Oh, definitely, definitely.

22 Q Okay.

23 A There would probably be a lot of things that struck
 24 to him, yeah.

V111-51

SIMMS - REDIRECT

1 Q Okay. With respect to these photographs, do you
 2 believe that those would help you in your explanation to the
 3 jury as to whether or not somebody had lost a lot of blood in
 4 that area?

5 A Definitely.

6 Q Okay,

7 MR. KEPHART: Your Honor, I'm going to move to
 8 admit State's Exhibits 146, 47, 48, and 52,

9 THE COURT: 1?

10 MR. KEPHART: I'm sorry. 146 --

11 THE COURT: 146.

12 MR. KEPHART: -- 147, 148, and 152.

13 MR. SCHIECK: No objection, Your Honor,

14 THE COURT: Granted.

15 (State's Exhibit Nos. 146, 147, 148, 152, admitted)

16 BY MR. KEPHART:

17 Q Now you also aren't aware that there was a lot of
 18 trash in the area that had to be removed before they brought
 19 Mr. Bailey's body out? You're not aware of that either?

20 A Well, I saw a lot of the trash in the pictures recently
 21 so --

22 Q Okay,

23 A -- I'm currently aware of it.

24 Q I'm gonna show you 148 first, Can you see that

V111-53

SIMMS - REDIRECT

1 photo? Is that —
 2 A Yes.
 3 Q Okay. Can you tell what is under the -- you see the
 4 big area, the big black area in the middle?
 5 A Yes,
 6 Q What do you believe that to be?
 7 A That's blood.
 8 Q Okay, And it's throughout this whole picture, is that
 9 correct?
 10 A Yes.
 11 It's even down here at the lower portion off of the
 12 object?
 13 A Yeah, that's a significant amount of blood, yes.
 14 Okay. And there's also -- do you see what appears
 15 to be some kind of cardboard object laying on the bottom and
 16 the blood's on that?
 17 A Yes.
 18 Q Cardboard is absorbent?
 19 A Yes.
 20 Q And here's a view further away looking in after all
 21 the trash has been pulled away. Does that appear to be a
 22 significant amount of blood?
 23 A Definitely,
 24 Q Significant enough to be consistent with what you

V111-54

SIMMS - REDIRECT

1 smaller, kind of a line in the photo? Yeah, right there.
 2 A Yes,
 3 Q Would that be consistent with blood, consistent with
 4 what you see in the back as well?
 5 A It looks like it's a blood trail,
 6 Q Okay. Now I'm showing you what's been admitted
 7 as No. 14. You see that — oh, there we go,
 8 A That same trail is right there,
 9 Q Okay. You see what appears to be Duran's body
 10 laying there?
 11 A Correct.
 12 Q And his right arm extended out to the right there?
 13 A Correct.
 14 Q And then you see that trail?
 15 A Yes.
 16 Q Okay.
 17 A I just drew a -- that's the same trail.
 18 Q Okay, And in reference to No. 52 again, that would
 19 basically put his body out here, his head just about where the
 20 -- that little trail is? His head would be — yeah, there you --
 21 okay.
 22 A Something like that,
 23 Q Al! right. So it appears that his body had been
 24 maybe drug from the back towards the front, moved?

V111-56

SIMMS - REDIRECT

1 saw of Mr. Bailey with the loss of his blood?
 2 A Definitely.
 3 Q Okay. If you were -- okay, And here's kind of a
 4 closer view of the same area, still a significant amount of
 5 blood?
 6 A Yes.
 7 Q Matter of fact, in some areas it's even greater?
 8 A Well, it looks like there's blood splatter, you know,
 9 all over this area here,
 10 Q Okay, And you see in the — would the darker areas
 11 be a greater concentration of blood?
 12 A Oh, yeah, it's concentrated significantly in those
 13 areas, yeah.
 14 Q Okay, Now in —
 15 MR. KEPHART: Court's indulgence, Your Honor, I'm
 16 trying to --
 17 BY MR. KEPHART:
 18 Q Okay. Doctor, I'm gonna show you some photos
 19 that have been admitted into evidence previously and ask you
 20 to look at them in conjunction to the ones I just -- first of all,
 21 Exhibit 152, do you see that, it shows you after the trash has
 22 been moved out?
 23 A Yes,
 24 Q Do you see this area down here, this kind of a

V111-55

SIMMS - REDIRECT

1 A Well, you're getting into an area that, you know,
 2 that may be out of my expertise,
 3 Q Okay,
 4 A But I mean I think I would probably agree with you,
 5 But I'm not sure that I —
 6 Q Okay,
 7 A — you know, would —
 8 Q That's fine, Doc, I understand,
 9 A Okay.
 10 Q Now 140 —
 11 A I mean 'cause I wasn't at the scene and everything,
 12 so --
 13 Q Okay. Clear that off, Doc. 147, you see that photo
 14 there? Can you see that clear?
 15 A Yes.
 16 Q You see up on the curb? Does that appear to be
 17 some kind of blood transfer as well?
 18 A Definitely, and it looks like some blood splatter. You
 19 can see the blood is streaking too.
 20 Q Do you see to the right of that photo, right there.
 21 Does it appear to be some kind of blood transfer as well?
 22 A That's a big blood smear.
 23 Q Looks like it was smeared?
 24 A Yes,

V111-57

SIMMS - REDIRECT

1 Q Consistent maybe that he was drug towards the area
 2 I just talked about?
 3 A That's -- actually that's a good thing to show, and I
 4 think that definitely lends evidence toward that, yes,
 5 Q Okay. And —
 6 THE COURT: Could you identify that one, please,
 7 MR. KEPHART: It's 147, Judge.
 8 THE COURT: Thank you.
 9 MR. KEPHART: Yes,
 10 BY MR. KEPHART:
 11 Q And then here's a photo of Mr. Bailey when they
 12 found him still covered with trash. You see that there appears
 13 to be blood on the cardboard there?
 14 A This is his head here?
 15 Q Yes,
 16 A Okay.
 17 Q Can you see that —
 18 A Yes, there's a
 19 Q -- see down at the bottom, his foot?
 20 A Oh, here?
 21 Q Yes,
 22 A Okay, And yeah, this cardboard here has a
 23 significant amount of blood soaked into it.
 24 Q Okay. That'd be consistent with coming into contact

V111-58

SIMMS - REDIRECT

1 into a lot of questioning about the area of which the body was
 2 found in, And State's Exhibit No. 4 shows that behind the
 3 dumpster, and you see that it's open on the top, is that -- can
 4 you see that, Doc?
 5 A Correct, yes.
 6 Q And then the front gates are similar to that of what
 7 you see up on the top. Did you -- does that also play into part
 8 in reference to whether or not something's gonna retain heat -
 9 or release heat? And you did testify that if it's hot Out and you
 10 cover the person up, it's more than likely going to prevent it
 11 from outside heat getting -- I mean explain that, is that —
 12 A Yeah,
 13 Q Okay.
 14 A If the -- if you assume the outside temperature is
 15 cool and you cover somebody up, that's gonna cause them to
 16 retain heat. If you assume the outside temperature is very,
 17 very hot and you cover them up, it's gonna actually protect it
 18 from the really hot outside environment, and obviously it's
 19 gonna help -- it's gonna retain heat too, but it's gonna protect
 20 it from the much higher heat of the outside environment.
 21 Q Okay. Doc, are you familiar with a swamp cooler?
 22 A Yes,
 23 Q And they work like an evaporated cooler where they
 24 work with moisture?

V111-60

SIMMS - REDIRECT

1 with him and maybe soaking up the blood?
 2 A Definitely,
 3 Q And here's even a better one right here that just
 4 shows it straight down. Okay. And you see there's items on
 5 his body, cardboard, these little palm tree things, you see
 6 those —
 7 A Yes.
 8 Q -- on there? Paper, multiple debris, multiple debris
 9 in the garbage?
 10 A Yes,
 11 Q Okay.
 12 MS, GREENBERGER: What exhibit number is that,
 13 counsel?
 14 MR. KEPHART: That's No, 5, I'm sorry, No. 5.
 15 BY MR. KEPHART:
 16 Q And so when you talk about pressure marks, items
 17 such as these could potentially leave pressure marks on his
 18 body?
 19 A Potentially, yes.
 20 Now you talked about time frame. You talked about
 21 rigor mortis and the degree of decomposition of the body is
 22 what you were kinda basing your time frame on —
 23 A Correct,
 24 Q -- is that correct? And you saw -- I mean we went

V111-59

SIMMS - REDIRECT

1 A Correct.
 2 Q In this particular case you saw the tremendous
 3 amount of blood that's in that area, you testified about that,
 4 that's consistent with him bleeding to the point where you saw
 5 it in his body. Could it, in fact, work of somewhat a type of a
 6 swamp cooler type of mechanism in the sense that he's
 7 covered with moisture?
 8 A No, I — well, I'm not a physicist and maybe they
 9 would say it would to some extent, but I think it would be of
 10 such a minimal -- if it did, that it wouldn't have any effect on
 11 that.
 12 Q But there's a lot of variables that has an effect on
 13 how long somebody's body is laying, is that correct?
 14 A Definitely.,
 15 Q Are you familiar with the Hale-Bopp incident that
 16 happened in California where all the individuals took --
 17 committed suicide?
 18 A Correct.
 19 Q Are you familiar with the fact that multiple
 20 individuals were found dead?
 21 A Yes,
 22 Q And that their bodies were in different degrees of
 23 rigor mortis, decomposition, and all that, and there was an
 24 assumption that they all died -- or took the poison at the same

V111-61

SIMMS - REDIRECT

1 time?
 2 A I wasn't aware of that, but go ahead,
 3 Q Okay, I was just asking you, were you aware of
 4 that? You weren't?
 5 A No, I wasn't aware of that.
 6 Q Okay, Do you have any information that tells
 7 otherwise?
 8 MR. SCHIECK: Your Honor, I'm gonna object, This
 9 is beyond the scope of cross and --
 10 MR. KEPHART: Judge, we're talking about time
 11 frame
 12 MR. SCHIECK: -- relevance,
 13 THE COURT: Overruled.
 14 THE WITNESS: Well, I would -- if the assumption
 15 was that all those people died at once, I would think there
 16 would be some variation in rigor mortis and decomposition
 17 because, as I've talked about before, that process does have
 18 some just built in variation to it. But if -- if it's assumed that
 19 they died at different times, then that would support that So
 20 that would be the only way -- they only two ways I could --
 21 Q Okay. Okay, Well, my point is is that there was
 22 obviously different signs with different individuals with the
 23 assumption that they all died at the same time, but --
 24 A And it does proceed -- it doesn't proceed -- as I said

V111-62

SIMMS - REDIRECT

1 a, you know, dropping a ping pong ball or there's not any --
 2 but in a biologic process like that there's so many variables,
 3 and that's why there's variation in it. And you have to -- if
 4 you're gonna talk about a biologic process you have to talk
 5 about that variation that's built into it.
 6 Q Okay, Now Doctor, you also were asked questions
 7 about whether or not you knew that there's a footprint at the
 8 scene?
 9 A Right,
 10 Q And that's not your speciality is a CSA, it's the
 11 scenes, right?
 12 A That's the correct, yeah.
 13 Q Okay.
 14 A It wouldn't have anything to do with, you know, the
 15 conclusions that I'm gonna come to based on the body.
 16 Q Okay. And matter of fact, you said that there's --
 17 you would expect that if somebody was involved in this type of
 18 killing here what you see, that you would expect that the
 19 individual may have stepped in the blood and tracked it?
 20 A Well, there was gonna be a lot of blood at the scene
 21 and I -- that's how I would infer that, yes,
 22 Q Okay. Now if I -- if I put back up on the screen
 23 Exhibit No, 14, we're talking about where you see Duran's
 24 body, and you kinda drew on the screen how you saw it kind

V111-64

SIMMS - REDIRECT

1 before, it doesn't proceed uniformly in every dead body.
 2 There is variation,
 3 Q Okay. So in this particular case the defense asked
 4 you in reference to the reasonable degree of medical certainty.
 5 You came to a conclusion of 12 to 18 hours. And you said that
 6 it's also a high degree of probability that it was between 8 to
 7 24 hours?
 8 A Yes.
 9 Q So in all reality here, we can say that if the coroner's
 10 investigator determines the time of death of 3:50, it could go
 11 all the way back to 3:50 a.m. the day before?
 12 A Yeah, I don't have any problem with that, yeah.
 13 That would be a real high confidence interval to be in is one
 14 that's that size.
 15 Q Okay. You're more comfortable with that than
 16 actually the 12 to 18, is that correct?
 17 A It has a higher probability, in my opinion, of being
 18 correct, so that would make me more comfortable, yes,
 19 Q Okay. And that is based partly on the fact that
 20 you're not in a controlled environment to test how the rigor
 21 mortis or when the rigor mortis is gonna set in or -- is that
 22 correct in this case?
 23 A Well, it's just based on the fact that any biological
 24 process is -- there's a huge number of variables. It's not like

V111-63

SIMMS - REDIRECT

1 of turn sideways on another photograph. I think it was this
 2 photograph here, Exhibit No. 147, You -- wait, like that. You
 3 drew on the screen how you perceived the body to be laying,
 4 is that right?
 5 A I think it was a different photograph than that one.
 6 Q It was a different one?
 7 A Yeah, It was a wider angle.
 8 Q Oh, here. This one.
 9 THE COURT: Is that 14?
 10 MR. KEPHART: I'm sorry, Judge. That is 152.
 11 THE COURT: 152. Okay,
 12 MR. KEPHART: Okay. Your Honor --
 13 THE WITNESS: Right. Based on the other previous,
 14 the head was down here and the body was extended --
 15 MR. KEPHART: Okay,
 16 THE WITNESS: -- kinda that way.
 17 BY MR. KEPHART:
 18 Q And in 1 -- I mean in 14, you see how his -- how his
 19 arm is -- his right arm is kinda up to his right side there?
 20 A Correct.
 21 Q And both legs are straight out? And you can't see
 22 his left arm here, but you said that that would be consistent
 23 possibly him being drug after we looked at other photographs?
 24 A Right. I think the -- when you talk about the being

VIII-65

SIMMS - REDIRECT

1 drugged possibility, the blood smear and the other stuff -- the
2 other — in that other photograph, that was definitely
3 corroborative to me for that.

4 Q Okay. And you would probably expect to see if
5 someone stepped in the blood while they were doing this,
6 you'd probably expect to see footprints down in here if
7 someone's dragging him?

8 A One would think so, yes

9 Q And on the other hand, were you aware from your
10 coroner's -- the coroner investigator's report, you were aware
11 that the actual person that found Duran Bailey's body was an
12 individual -- a homeless individual himself that was dumpster
13 diving?

14 A I think I recall that, yes.

15 Q It actually says that in the report.

16 A Okay.

17 Q Is that something that you would've been privy to?

18 A Yes.

19 THE COURT: Would counsel approach?

20 (Off-record bench conference from 12:02:01-12:02:32 p.m.)

21 THE CLERK: On the record.

22 THE COURT: You can go back on.

23 Ladies and gentlemen, we'll be taking our lunch
24 recess at this time and resuming at 1:15, Dr. Simms may step

VIII-66

SIMMS - REDIRECT

1 information for the Court.

2 MR, KEPHART: Judge, I ask that we have a hearing
3 outside the presence of the jury just to make a record.

4 After lunch when Ms. DiGiacomo and I were coming
5 back into the courthouse we rode the elevators up to the office
6 -- up this courtroom, and during the time when the elevators
7 were first opened when we entered, Ms. Lobato entered with -
8 - I believe it's this lady here in the front row. I don't know
9 who this lady is, but she entered -- they entered together then
10 the lady left and Ms. Lobato stayed in the elevator with us.
11 There was other people in the elevator.

12 At some point in time everyone left the elevator.
13 That would've left just Ms. DiGiacomo and I and Ms, Lobato in
14 the elevator. We left the elevator. I don't want to be in a
15 situation in the event that she testifies that we're accused of
16 any type if misbehavior that occurred in that elevator. So if
17 she has anything like that, I want to hear about it now. Other
18 than that, I've made my record.

19 MR. SCHIECK: Could I have the Court's indulgence
20 for a minute, Your Honor?

21 THE COURT: Yes.

22 MR. SCHIECK: There's no issue, Your Honor.

23 THE COURT: Okay, It appears that just by
24 coincidence they all ended up on the same elevator at the

VIII-68

SIMMS - REDIRECT

1 down from the stand. At 1:15 please be in the hallway, the
2 bailiff will meet you there to return you to your seats in the
3 courtroom.

4 During the recess you're admonished not to talk or
5 converse among yourselves nor with anyone else on any
6 subject connected with this trial. And you're not to read,
7 watch, or listen to any report of or commentary on the trial or
8 any person connected with the trial by any medium of
9 information, including without limitation, newspaper, television,
10 radio, and internet. And you're not to form or express any
11 opinion on any subject connected with the trial until the case is
12 finally submitted to you.

13 Court's in recess until 1:15,

14 (Jurors are not present)

15 (Court recessed at 12:03:16 p.m. until 1:22:09 p.m.)

16 (Jurors are not present)

17 THE BAILIFF: Department 2 is back in session.

18 Please be seated,

19 THE COURT: The record shall reflect that we're
20 resuming trial outside the presence of the jury at counsel's
21 request in State versus Lobato under C177394. The defendant
22 is present, together with her three counsel, the two
23 prosecuting attorneys are present.

24 Mr, Kephart is on his feet, so I assume he has

VIII-67

SIMMS - REDIRECT

1 same time.

2 MR. SCHIECK: And I, while we're at it, make a
3 record on this, Your Honor.

4 Unfortunately the elevator situation is not the best in
5 the world. We rode up —

6 THE COURT: I'll take judicial notice of that.

7 MR. SCHIECK: We rode down in the company of
8 your bailiff and the bailiff from Department 5, and there was a
9 juror from our case in the elevator with us after — when we
10 went to lunch, and we didn't talk. There's been a couple of
11 times when we've intentionally avoided getting on elevators
12 with jurors, and we think those things are gonna happen.

13 MS, LOBATO: Yeah, I —

14 MR. SCHIECK: Just be quiet.

15 And everybody just — we just gotta -- everybody
16 just remain silent when we're in there. That's how we've been
17 handling it, and I think that's what happened here,

18 THE COURT: Talk about the weather, Okay, Thank
19 you.

20 I'm gonna ask the bailiff to bring the jury into the
21 courtroom at this time,

22 MR, BAILIFF: Yes, Your Honor, Would you like Dr.
23 Simms on the witness stand?

24 THE COURT: Yes, Dr. Simms can return to the

VIII-69

SIMMS - REDIRECT

1 witness stand, and when he arrives there he may be seated.

2 MR. BAILIFF: Jury is now present.

3 (Jurors are present)

4 THE COURT: The record shall reflect that we are
5 now joined by the jury who's been returned to the courtroom
6 and seated by the bailiff.

7 Ladies and gentlemen, we're resuming in the State's
8 case in chief, Dr. Simms remains on the witness stand under
9 oath, and Mr. Kephart may resume his redirect examination,

10 MR. KEPHART: Thank you, Your Honor,

11 **REDIRECT EXAMINATION (Continued)**

12 BY MR. KEPHART:

13 Q Dr. Simms, before we left for lunch I was trying to
14 ask you some questions with regards to specifically I wanted
15 to talk to you about the carotid artery, the injury to the carotid
16 artery. You had indicated that you would expect that type of
17 injury to — you said blood would be pumping out, and you
18 actually used the word "spray"?

19 A Correct:

20 Q Okay. Now this individual, Mr. Bailey, was 70 inches
21 tall, 5' 10" tall, and where the injury was up here on his neck,
22 that -- if he was standing back in the back corner of that
23 enclosure and he received the injury to his carotid artery,
24 you'd expect to see some type of blood on the walls, would

VIII-70

SIMMS - REDIRECT

1 A Yes.

2 Q And you said maybe even bent over or cause some
3 kind of pain there?

4 A Yes, that would be a significant injury that would
5 have his complete attention, yeah.

6 Q Okay. So when I say vulnerable, his complete
7 attention is there, vulnerable to possible attacks around?

8 A Yes.

9 Q Okay. Now you indicated in this particular case
10 there was two mechanisms of injury. We discussed the blunt
11 force trauma and the stab wounds?

12 A Correct.

13 Q Do you have an opinion as to whether or not both of
14 these injuries he received -- both types of injuries he received
15 concurrently?

16 A Well, they could be very close in time, but probably
17 the — most likely the carotid injury was the terminal, you
18 know, lethal kind of injury 'cause it would've resulted in his
19 death fairly rapidly.

20 Q Okay. Could both of the injuries caused him to die?

21 A Either one of them independently could've caused
22 him to die, yes.

23 Q And in your autopsy report you found that he died
24 as a result of blunt force trauma with contributing factors, the

VIII-72

SIMMS - REDIRECT

1 you not?

2 A That would be a very high probability, yes.

3 Q And it'd be relatively higher, I mean close to his
4 height?

5 A Yes, because it'd be, you know, around neck level.

6 Q Okay. And if you weren't to see any of that on the
7 walls at that level, it'd be consistent with him being on the
8 ground and bleeding from his neck?

9 A Correct.

10 Q Okay, And that would also be consistent with
11 maybe having the blood up on his chest?

12 A Correct

13 Q Okay. And that would also be consistent with him
14 possibly receiving the blunt force trauma to the head, which
15 would knock him down?

16 A Correct, You mean prior to the carotid artery injury?

17 Q Yes,

18 A Correct.

19 Q Okay. Now the injury to his scrotum, the stab
20 wound to his scrotum, would you characterize that as an injury
21 that would leave him vulnerable?

22 A What do you mean by vulnerable?

23 Q Well, obviously incapacitated in a sense where he
24 would be hurting?

VIII-71

SIMMS - RE-CROSS

1 stab wounds?

2 A Correct.

3 Q Okay, Okay, Now you had testified about that he
4 had multiple teeth that were busted out --

5 A Correct.

6 Q — and that you talked about at least six of them,
7 plus a fragment was provided to you by the crime scene
8 analyst?

9 A As I recall, yes.

10 Q Okay. Would that be consistent with what you
11 reviewed of his mouth without teeth?

12 A Yes. He had significant lacerations to his lips and
13 trauma to his dental -- his teeth, yes,

14 Q Okay.

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

16 Pass the witness, Your Honor. Thank you, Doctor,

17 THE COURT: Further cross.

18 MR. SCHIECK: Thank you, Your Honor.

19 RE-CROSS-EXAMINATION

20 BY MR. SCHIECK:

21 Q What was the general dental condition of Mr. Bailey,
22 do you recall, other than he was missing teeth?

23 A I didn't really make an observation as to his general
24 dental condition.

VIII-73

SIMMS - RE-CROSS

1 Q The — your general dental condition could have an
 2 impact on how easily teeth are knocked out?
 3 A Oh, definitely, If you have significant gum disease
 4 they could be very easily. Well, they could actually, at the very
 5 worst, fall out on their own, so —
 6 Q And we've established that he was a homeless
 7 individual, it's fair to assume his dental hygiene was not the
 8 best in the world?
 9 A That would be a reasonable assumption.
 10 Q Okay. You'd indicated on -- I believe on cross
 11 earlier that in your opinion there wasn't enough trauma to the
 12 mouth area to indicate being struck with a bat —
 13 A Yes,
 14 Q -- but you'd expect to see much more trauma?
 15 A On a probabilistic or more likely than not, I would
 16 expect to see more trauma if struck with a baseball bat that
 17 was being swung, you know, lethally.
 18 Q You wevsked some questions about a situation
 19 that occurred where there was a mass suicide. And correct me
 20 if I'm wrong, you really weren't too familiar with all the details
 21 of that?
 22 A No,
 23 Q Okay. And it certainly would've impacted on the
 24 information on deterioration of the bodies if they were in

VIII-74

SIMMS - RE-CROSS

1 scene?
 2 A No.
 3 Q Okay. You weren't there as each level of debris was
 4 removed from the body?
 5 A No,
 6 Q Okay, You weren't there as the crime scene analyst
 7 photographed each level of debris as it was removed from the
 8 body?
 9 A No.
 10 Q Okay. You were shown some palm leaves that
 11 appeared to be like plastic palm leaves, You don't know
 12 whether any of those were pressed against the body or not?
 13 A No.
 14 Q Okay. Crime scene analyst would be the person to
 15 ask those questions of?
 16 A Yes.
 17 Q Okay. Because they would've -- if they were there
 18 would've photographed them?
 19 A And also observed,
 20 Q The — you were also asked some questions
 21 concerning blood spatter at the creme [sic] -- at the scene.
 22 You're not an expert in blood spatter analysis?
 23 A No.
 24 Q Okay, And didn't hold yourself out to be either?

VIII-76

SIMMS - RE-CROSS

1 different locations at the time of their death?
 2 A Different locations, and especially if there was
 3 different temperatures. Like if one was near an air
 4 conditioning duct or one was near a heating source, those will
 5 have an effect, yeah,
 6 Q Or some were inside and some were outside?
 7 A Correct
 8 Q Some were in water and some were exposed to
 9 sunlight?
 10 A Definitely.
 11 Q All of those things would play factors?
 12 A Yes,
 13 Q Okay, And would show different time frames of
 14 decomposition?
 15 A Yes,
 16 Q Okay. You'd have to factor that into any
 17 generalization about that?
 18 A Yes.
 19 Q Okay, In this situation we're only dealing with one
 20 individual and one location, correct?
 21 A Correct,
 22 Q Okay, You had been asked some questions about
 23 debris found at the scene and I think were even shown a
 24 number of crime scene photographs. You weren't at the crime

VIII-75

SIMMS - RE-CROSS

1 A No, I don't.
 2 Q Okay. You were just looking at some photographs,
 3 making some observations?
 4 A Correct,
 5 Q Okay, You would leave an opinion concerning the
 6 blood spatter and the meaning of that blood spatter to those
 7 that are experts in the area?
 8 A Yes, I would.
 9 Q And in fact, there was one place where they — you
 10 were shown a photograph that looked like a trail of blood I
 11 think you refer to it as?
 12 A Correct,
 13 Q That would also be consistent with blood as it ran
 14 away from where the body was laying?
 15 A Yes. If there was a downgrade there that would
 16 definitely be the case,
 17 Q Okay. And if there was a downgrade and there was
 18 debris blocking the path of that, it could account for the
 19 directions that that flow took?
 20 A Yes,
 21 Q Okay,, Those are all things the crime scene analysts
 22 would be better to ask, correct?
 23 A That is definitely correct, yes.
 24 Q Okay, It's really kinda asking you to speculate as to

SIMMS - RE-CROSS

1 what you're looking at?
 2 A Especially, yeah, just based on the pictures too.
 3 Q Can you quantify at all on how much blood would
 4 have bled out of Mr. Bailey before he got to the coroner's
 office? Or converse, how much was left?
 6 A Well, in order to make your organs pale, that would
 7 be what I would mostly go on 'cause we didn't, you know,
 8 measure how much blood was left in his body. But normally —
 9 a normal blood volume is about 5 liters, which is about 5
 10 quarts of blood, And usually to get it pale like that you're
 11 gonna be losing at least 40 percent. So it'd be somewhere
 12 around — you've lost at least 2 quarts -- 2 quarts of blood
 13 somewhere in that general area to be starting to be pale like
 14 that.
 15 Q 2 quarts or 2 liters?
 16 A Well, a quart is about equal to a liter,
 17 Q Okay. And the photographs you saw at the crime
 18 scene, would that be generally consistent with about 2 quarts
 19 of blood?
 20 A It was a substantial amount, and yes, I would say
 21 it's pretty close to that, yes,
 22 Q And you were asked some more questions about
 23 time of death, and you gave us the 8 to 24 time period as
 24 being higher rate of probability?

VIII-78

IS - FURTHER REDIRECT

1 Thank you very much, Doctor.,
 2 THE WITNESS: Thank your
 3 THE COURT: Redirect.
 4 MR. KEPHART: Just a couple, Your Honor,
 FURTHER REDIRECT EXAMINATION
 6 BY MR, KEPHART:
 7 Q Mr. Schieck asked you about the general condition of
 8 Mr. Bailey's dental. And he said that maybe -- he asked you if
 9 you would agree that maybe if an individual is homeless he
 10 would have possibly poor dental hygiene, and therefore, so
 11 probably a little less stronger, his teeth wouldn't stay in his
 12 mouth?
 13 A Correct,
 14 Q Okay. And then he asked about would it be
 15 consistent with being struck with a bat, and you said not a bat
 16 that you would see being swung lethally?
 17 A Correct.
 18 Q Okay. That leaves the possibility open that if
 19 someone, depending on the size of the person, were to
 20 depend on the lethality of swinging the bat?
 21 A Definitely.
 22 Q Okay. And in this case it's highly possible that the
 23 person swinging this bat could've been a woman?
 24 A Yes.

V111-80

SIMMS - RE-CROSS

1 A Correct
 2 Q Okay. But you would agree that the 12 to 18 time
 3 period fits within the 8 to 24 time period?
 4 A Oh, definitely. Yes, it does,
 5 Q In fact, fits right in the middle of that time frame?
 6 A Correct
 7 Q Okay. And the 8 to 24 is really the outside limits of
 8 what we're talking about?
 9 A I would say that's probably like a 95 percent
 10 confidence interval, so there would actually be a 5 percent
 11 chance it would actually be outside of those limits. But it, you
 12 know, I would have a much higher confidence in that interval,
 13 yes
 14 Q Is it sort of like a bell curve?
 15 A To --
 16 Q If we were thinking of it in terms of probabilities, a
 17 bell curve is the more you get toward the center the greater
 18 the chances are?
 19 A That is correct,
 20 Q Okay. And the 12 to 18 is sort of in the middle of
 21 that bell curve?
 22 A Correct.
 23 Q Okay,
 24 MR. SCHIECK: Nothing further, Your Honor.

V111-79

SIMMS - FURTHER REDIRECT

1 Q And you wouldn't see any injuries consistent with an
 2 indentation of the bat if it's a weaker person swinging the bat?
 3 A Because it wasn't swung with as much force, yes,
 4 that's correct.
 5 Q Okay. And also you saw that the area is kinda
 6 confined, you saw that there's -- it's got three walls and a gate
 7 and then there's an overhead?
 8 A Correct,
 9 Q And you wouldn't expect to see maybe the bat being
 10 swung overhead?
 11 A No. There was actually a dumpster in one of the
 12 pictures. If that was there that would actually have confined
 13 the area even much more.
 14 Q Okay, Make it even harder to swing the bat --
 15 A Yes,
 16 Q -- with more lethality?
 17 A Yes.
 18 Q Okay. Also we showed you some crime scene
 19 photos and asked you if you could give us an opinion. I was
 20 talking with regards to having his body being drug towards
 21 where the dumpster was at. Do you remember that
 22 testimony?
 23 A Yes.
 24 Q And the defense said that you'd -- basically looking

V111-81

SIMMS - FURTHER REDIR

1 at that, you'd be speculating on whether or not he was moved
2 or there was blood. It would be better the crime scene
3 analysts would be looking at that?

4 A I think that would be a good idea, yes.

5 Q Okay. And do you remember answering that
6 question, saying yeah, just based on looking at the pictures I'd
7 be speculating?

8 A I don't recall exactly what I said, but I would agree
9 with that statement if I said it, yeah.

10 Q Okay. Would that also hold true in your very
11 profession as a medical examiner that, is it true -- I mean we
12 sat here and showed you pictures that you actually looked at
13 and said well, they're too far away, I can't really see what this
14 is, and then I had to give you pictures that you took. Would it
15 also be safe to say that just by pictures, could you come to the
16 conclusions that you were able to come to in this case?

17 A About the crime scene?

18 Q About the death of the body?

19 A Oh,, I think that since that's something I'm familiar
20 with, and I have been asked to review cases just on picture
21 alone, you know, I have a much greater comfort level and I
22 think most forensic pathologists have a much greater comfort
23 level with just -- with the pictures. Of course, they would use
24 that in conjunction with the report and any other findings, but

V111-82

45- FURTHER RECROSS

1 A I think it would be probably really likely, actually.

2 MR. KEPHART: Nothing further, Your Honor.

3 Thank you, Doctor.

4 THE COURT: Recross,

5 MR. SCHIECK: Just one area, Your Honor,

6 FURTHER RECROSS EXAMINATION

7 BY MR. SCHIECK:

8 Q With regard to the baseball bat, you're not giving us"
9 an opinion whether it was a male or female to swing a baseball
10 bat?

11 A No, there's no basis that I could give that opinion
12 on, so I don't know who the assailant was.

13 Q Baseball players come in all different sizes?

14 A That is true.

15 Q All different sexes?

16 A That is true.

17 Q Okay. And women can hit the ball as far as men a
18 lot of times?

19 A That is true.

20 Q It has nothing to do with being male or female?

21 A Not in those situations that you're talking about.

22 MR. SCHIECK: Thank you. Nothing further.

23 THE COURT: Redirect.

24 MR. KEPHART: Nothing further, Your Honor,

V111-84

SIMMS - FURTHER REDIRECT

1 there is a greater comfort level that I'd have with that.

2 Q And you would expect to review the autopsy report?

3 A Yes, you'd want that with the pictures.

4 Q Okay. Otherwise you'd just be what, speculating as
5 to what you see?

6 A Well, yes because there -- you know, there would be
7 maybe further dissections or something that has to be done,
8 and that's recorded in the report. But you know, they didn't
9 take a step by step picture -- set of pictures, so you'll have all
10 the information if you have both.

11 Q Okay. And with that in regards, the pressure marks
12 that you talk about, the pressure marks that were on Mr.
13 Bailey's upper abdomen area, those weren't stains, were they?

14 A No, those are pressure marks.

15 Q Okay. So if someone characterized them as stains,
16 they'd be incorrect?

17 A In my -- in a forensic -- my forensic opinion, yeah,
18 that would be correct. Those are made not by some kind of
19 pigment staining, those are from a direct pressure on that area
20 by an object.

21 Q Okay. Would you agree with me, however, if
22 someone was looking at those photographs and wasn't really
23 that familiar with your line of work, could mistake those for
24 stains?

V111-83

1 THE COURT: You may step down.

2 THE BAILIFF: I do have a note, Judge.

3 THE COURT: Oops, we're gonna have some jury
4 questions. You may be seated.

5 Counsel may approach.

6 (Off-record bench conference from 1:43:58-1:50:15 p.m.)

7 THE COURT: Dr. Simms, the Court's going to read
8 to you at this time some questions that have come from
9 members of the jury. After the Court reads you the question
10 then you may answer it as you would any of the questions
11 coming from the counsel. After these questions are read and
12 you give the answers to them, counsel will have the
13 opportunity to followup with additional questions as they deem
14 appropriate.

15 "Does decomposition and rigor mortis vary with BMI,
16 muscle mass, weight and height?"

17 THE WTTNESS: Yes. And BMI is the body mass
18 index, which is -- it's a function of the height and weight, so --

19 THE COURT: "Is the rate of decomposition and rigor
20 mortis effected by blood loss?"

21 THE WITNESS: Not to my knowledge, no.

22 THE COURT: "What was, or do you remember, the
23 size of Mr. Bailey's foot or shoe size?"

24 THE WITNESS: I do not know that. I think the -- if

VIII-85

1 he did have shoes on or socks on that would give you, you
2 know, I would assume that that's in the custody of the police
3 department, so I would assume that they would have some
information on that..

5 THE COURT: "Were there quote 'sawing' type cuts
6 on the severed penis, or was it one single slice?"

7 THE WITNESS: The wound edges, and I don't think
8 we saw any pictures that really showed it really well, but if you
9 look at the wound edges they're very straight and clean, so I
10 would say there was definitely not any sawing, no,

11 THE COURT: "You commented that the reason
12 there may not have been an 'crushing' pattern on the smaller
13 bones of the face by a bat could be the result of a weaker
14 individual using the bat., Are the other injuries consistent with
15 a 'weaker individual', including the severed penis and the
16 depth of the neck stab or liver?"

17 THE WITNESS: I think the weakness -- the weaker -
18 - or the importance of the size of the individual only relates to
19 the blunt force injuries. They don't relate to any of the sharp
20 force injuries. I think that the sharp force injuries could've
21 been made by, you know, any adult. But the blunt force
22 injury, if we are talking about a baseball bat rather than
23 something else, then that's when it comes into play. And the
24 injuries that were present, if somebody was swinging a

1 baseball bat with a full swing with lethal intent, I would expect
2 a lot more damage than what I saw, so that's where the size
3 of the individual would come into play,

4 THE COURT: "With regards to the quote 'swamp
5 cooler' effect, is it not true that in addition to liquid/blood you
6 need quote 'moving air', Le, a fan to get a swamp cooler
7 effect?"

8 THE WITNESS: Excellent point, I would agree with
9 that. That would be correct.

10 THE COURT: Followup questions by the State? I
11 should note for the record that these will be marked in the
12 same order as read, Court's 31 through 36.

13 MR. KEPHART: None by the State, Your Honor.

14 THE COURT: Any by the defense?

15 MR, SCHIECK: No, Your Honor.

16 THE COURT: Okay, You may step down.

17 The State may call their next witness.

18 MR, !KEPHART: Thank you, Your Honor. State
19 would call Chris Carrington.

20 THE CLERK: Please come all the way forward.

21 Remain standing and raise your right hand,

22 **CHRISTOPHER CARRINGTON, STATE'S WITNESS, IS**
23 **SWORN**

24 THE CLERK: Thank you, Please be seated.

KRRINGTON - DIRECT

1 State your name and spell it for the record, please,
2 THE WITNESS: Christopher Carrington,
3 C-H-R-I-S-T-O-P-H-E-R-C-A-R-R-I-N-G-T-O-N,
4 THE COURT: State may proceed.
5 MR. KEPHART: Thank you.

DIRECT EXAMINATION

7 BY MR. KEPHART:

8 Q Mr. Carrington, I want to draw your attention back
to the year of July -- I mean the year of 2001, specifically the
10 month of July, and ask you if you recall where you were living
11 during that month?

12 A In July I was in Panaca with my grandma.

13 Q Okay. Panaca, Nevada?

14 A Yes.

15 Q And your grandma is Diane Allen?

16 A Yes.

17 Q And that -- she lived at 625 Callaway, Panaca,
18 Nevada?

19 A Yes.

20 Q Okay, Do you know an individual by the name of
21 Blaise Lobato?

22 A Yes, I do.

23 Q Okay, Is she in the courtroom now?

24 A Yes, she is,

VIII-88

CARRINGTON - DIRECT

1 Q Just so we know who you're talking about, can you
2 point to her and identify what she's wearing for the record?

3 A Looks like flowered blouse. She's right there.

4 Q Okay, There's three women there. Can you tell us--

5 A She's in the middle.

6 Q In the middle.

7 MR. KEPHART: I'd ask the record reflect he's
8 identified the defendant,

9 THE COURT: The record shall so reflect.

0 MR. KEPHART: Okay,

1 BY MR. KEPHART:

2 Q Prior to July of 2001 had you met the defendant?

13 A Prior to, yes.

14 Q Okay. How long had you known her prior to that?

15 A I'd known her for a few years.

16 Q Okay, And how did you meet her?

17 A I'm sorry?

18 Q How did you meet her?

19 A We used to date.

20 Q Okay. High school?

21 A Yeah.

22 Q And your grandma's house, 625 Callaway, where is
23 that located in reference to the defendant's house?

24 A It's just right down the street on the opposite side of

VIII-89

CARRINGTON - DIREC

1 the road, like four or five houses down or so, maybe more,
 2 Q Okay. Now do you recall police talking to you July
 3 26th of 2001?
 4 A Vaguely, yeah,
 5 Q Okay. Were you actually prior to today provided you
 6 with a copy of your statement that you provided to the police?
 7 A I received a copy of that from you guys,
 8 Q Okay. And you also had testified in a previously
 9 hearing here in this court before, haven't you not?
 10 A Yes.
 11 Q And you were also provided that testimony as well?
 12 A Yes,
 13 Q Okay. So my question to you is now, do you
 14 remember giving a statement to the police on July 26th of
 15 2001?
 16 A Yes.
 17 Q Okay. Do you remember where you were when you
 18 gave this statement?
 19 A I was in my apartment with my mother —
 20 Q Okay. And where was that?
 21 A -- in Caliente.
 22 Q Caliente?
 23 A Yes,
 24 Q Okay, And do you remember what they were ask --

VIII-90

'RRINGTON - DIRECT

1 MR. KEPHART: May I approach, Your Honor?
 2 THE COURT: You may
 3 BY MR. KEPHART:
 4 Q Just for purposes of identification, I'm showing you
 5 what has been marked as State's Proposed Exhibit 116,
 6 THE CLERK: 216,
 7 MR. KEPHART: 216, I'm sorry.
 8 BY MR, KEPHART:
 9 Q Can you take a look at that and just tell Me if you
 10 recognize that as being the statement that you gave to the
 11 police?
 12 A Yeah, it looks the same as the one that I have
 13 Q Okay. Can you take a look at page 3, at the top of
 14 page 3? Read that to yourself, then I'm gonna ask you again,
 15 I'm gonna ask you where it is where the police told you if
 16 you'd see her 7 or 8 days ago?
 17 A It says on here that I said that —
 18 Q Okay,
 19 A — 7 or 8 days.,
 20 Q Can you tell me where the police used those words,
 21 telling you that you -- had you seen, or asked you if you'd
 22 seen her 7 or 8 days ago?
 23 A I don't see that on here.
 24 Q Okay. You believe, though, that they told you those

V111-92

CARRINGTON - DIRECT

1 talking to you about?
 2 A They were asking questions about how long I've
 3 known her an like if she ever carried a knife with her or how I
 4 knew her and stuff like that.
 5 Q Okay. And do you recall talking to them of the last
 6 time that you spoke to the defendant was prior to July 26th of
 7 2001?
 8 A Say that again?
 9 Do you remember talking to the police about the last
 10 time that you spoke to her prior to July 26th of 2001?
 11 A Yes.
 12 Q What did you tell the police?
 13 A They asked me if I'd spoke to her, seen her like 7 or
 14 8 days prior to.
 15 Q And that's what you told her -- told them?
 16 A I said yeah, it was around about 7 or 8 days before
 17 then,
 18 Q Well, let -- now let's get this straight. They asked
 19 you if you spoke to him [sic] 7 or 8 days, or did they ask you
 20 when the last time it was and you told them 7 or 8 days?
 21 A They asked if it had been 7 or 8 days prior to,
 22 MR., KEPHART: Your Honor, I need to have this
 23 marked.
 24 THE COURT: You may.

V111-91

CARRINGTON - DIRECT

1 dates -- they used those words?
 2 A I'm not sure exactly how it went.
 3 Q Okay.
 4 A But I'm -- it was like 7 or 8 days ago,
 5 Q All right, So prior to July 26th of 2001 you had spoke
 6 to the defendant approximately 7 or 8 days before that?
 7 A Approximately, yeah.
 8 Q And where were you when you spoke to her?
 9 A I believe I was in front of the Swallows Drug Store,
 10 Q And where is that?
 11 A In Caliente, Nevada.,
 12 Q Okay. And do you know why you were talking to
 13 her that day?
 14 A She had just drove by with her friend, I believe, and
 15 she'd stopped. She was back in town, that was like my first
 16 time seeing her.
 17 Q Okay. So she was back in town from where?
 18 A From Vegas.
 19 Q Okay, So you were a little surprised?
 20 A Yeah, 'cause I wasn't expecting her that earlier_
 21 Q To be --
 22 A 'Cause last time I'd talked to her before that she was
 23 coming back down to Vegas.
 24 Q Okay,

V111-93

CARRINGTON - DIREC

1 ▲ I wasn't sure if she was gonna stay down here or
 2 whatnot,
 3 Q Okay, So now you're telling us now, and matter of
 4 fact you testified before that you had actually talked to her on
 5 a previous occasion prior to what you told the police?
 6 A Before the 7 or 8 days?
 7 Q Yes,
 8 A Yes,
 9 Q Okay, Now I want you to -- I want you -- I'm gonna
 10 ask you this. When they spoke to you on the 26th of July of
 11 2001, did you know what they were talking about? Did you
 12 know there was something that had occurred with Blaise?
 13 A No, I wasn't_
 14 Q Okay, Did you tell the police that you had actually
 15 read the -- read a newspaper article about it?
 16 A Yeah, I believe that's what I said in here —
 17 Q Okay,
 18 A -- I read a paper article about it.
 19 Q Okay. So you knew -- you knew somewhat about
 20 the fact that she had been arrested?
 21 A I don't believe I read a paper article about it,
 22 though. It was just stuff going around town —
 23 Q Okay,
 24 A — that I'd heard,

V111-94

RRINGTON - DIRECT

1 Q And you told them no --
 2 A Yes,
 3 Q -- is that right? Okay,
 4 A Mm-hmm.
 5 Q Now let me go with just the statements here. You
 6 said that the police were asking you about whether or not the
 7 defendant had — you'd seen her with a knife?
 8 A Mm-hmm,
 9 Q Had you ever -- is that a yes?
 0 A Yes.
 1 Q Okay, The -- she's typing this down and we can't
 12 take uh-huhs and uh-uhs,
 13 A I understand,
 14 Q Okay. Okay?
 15 A Yes,
 16 Q All right, Did you tell the police whether or not you
 17 knew that she carried a knife?
 18 A I've seen her a few times, like maybe once or so,
 19 with a knife before.
 20 Q Okay,
 21 A I'm not sure if she carried it on her all the time or
 22 whatnot, though,
 23 Q Okay. They asked you about how she got back to —
 24 from Las Vegas, Do you remember telling the police what she

V111-96

CARRINGTON - DIRECT

1 Q Okay. So you heard some information from around
 2 town?
 3 A Yeah.
 4 Q Matter of fact, did you have a conversation with the
 5 defendant's mother?
 6 A Briefly, not really a conversation.
 7 Q Was that before the police talked to you or after the
 8 police talked to you?
 9 A I believe that was after the police had talked to me.
 10 Q Okay, But you knew that she had been arrested
 11 prior to July 26th of 2001, is that right —
 12 A Yes,
 13 Q -- before you talked to the police?
 14 A Yes,
 15 Q And you knew what she was arrested for?
 16 A Yes.
 17 Q Okay, Now on page 7 of your statement, do you
 18 recall the police asking you if there was anything else that you
 19 could talk to them about that would help them in their
 20 investigations? Do you see that? It's like the fourth sentence
 21 down, starts out with a Q?
 22 A Mm-hmm.
 23 Q Do you remember that?
 24 A Yes,,

V111-95

CARRINGTON - DIRECT

1 told you?
 2 A Yeah, but that was a mistake in my last testifying_
 3 Q Okay, But what did you tell the police she told you?
 4 A Last time I said that she had drove in her red car
 5 back,
 6 Okay. And you actually went so far as describing as
 7 a Fiero?
 8 A Yeah, they asked me what kind it was and I knew
 9 what kind of a car she drove, so yeah.
 10 Q Okay, But you're saying that that was a mistake?
 11 A Yes, it was.
 12 Q Okay. Now you're telling us now that you saw her
 13 on a previous occasion prior to you talking to the police on the
 14 26th where you said that you saw her 7 or 8 days prior, is that
 15 right?
 16 A Yes.
 17 Do you remember what days it was that you saw
 18 her?
 19 A I initially seen her on the 3rd of July--
 20 Okay.
 21 A -- in Caliente
 22 Okay.
 23 A And then I seen her again back when I was in
 24 Panaca at my grandma's on the 5th —

V111-97

CARRINGTON - DIREC

1 Q Okay.
 2 A -- through the 8th,
 3 Q Okay, And that's what you said before, right?
 4 A Yes,
 5 Q Okay, You say through the 8th?
 6 A Yes,
 7 Q Did you see her on the 5th?
 8 A Yes,
 9 Q Did you see her on the 6th?
 10 A Yes.
 11 Q Did you see her on the 7th?
 12 A Yes.
 13 Q Did you see her on the 8th?
 14 A Yes.
 15 Q Where was she?
 16 A At her house. We were around town in Panaca, we
 17 were out in Caliente just for like a few hours each day or
 18 whatnot.
 19 Q Okay.
 20 A There was a few times I went to her house and I
 21 worked out and —
 22 Q Okay, But you never told the police anything like
 23 that, you would agree with me?
 24 A Yeah,

VIII-98

IRRINGTON - DIRECT

1 grandma that you're not going back because they're fighting?
 2 A No, I don't recall that.
 3 Q Do you remember telling your grandma they were
 4 fighting about the fact that she was going back to Las Vegas?
 5 A No.
 6 Q Okay. And you're saying it's your testimony that you
 7 saw her on the 7th and the 8th?
 8 A Yes,
 9 Q Okay, And do you remember your -- your grandpa
 10 having to go to the hospital?
 11 A No, I don't really remember that.
 12 Q Okay, Your grandpa had -- you don't remember
 13 your grandpa having heatstroke and --
 14 A A heatstroke
 15 Q — was actually taken to the hospital in an
 16 ambulance?
 17 A Mm-hmm.
 18 Q Do you remember that?
 19 A I don't really remember that, no.
 20 Q Okay. You don't remember driving your mom -- I
 21 mean your grandma to the hospital because her husband was
 22 just taken to the hospital in an ambulance?
 23 A No, I don't remember that.
 24 Q Okay. Do you remember why she came back or

VIII-100

CARRINGTON - DIRECT

1 Q Okay. And the first time you said that was the last
 2 time you came into this courtroom, is that right?
 3 A Yeah,
 4 Q Okay. Let me ask you this. On the 5th, do you recall
 5 the defendant and her mother fighting?
 6 A No, I don't.
 7 Q You don't? Do you remember telling your
 8 grandmother, Diane Allen, that she was fighting with her
 9 mom?
 10 A No, I don't.
 11 Q Did you go home and come home from her house
 12 and she called you, the defendant, and you went back up to
 13 see her on the 5th?
 14 A I'm not sure if it was on the 5th, but I vaguely
 15 remember something like that happening where I left from her
 16 house to my grandma's --
 17 Q And did you tell --
 18 A -- and then went back up,
 19 Q Did you tell your grandma that you left because her
 20 and her mom were fighting?
 21 A No, I don't recall that,
 22 Q Okay, On the 6th did you -- were you at her house?
 23 A Yes.
 24 Q Did you leave her house and go home and tell your

VIII-99

CARRINGTON - DIRECT

1 what she told you why she came back from Vegas so soon?
 2 A Blaise?
 3 Q Yes,
 4 A Because her bodyguard pulled a gun on her.
 5 Q She had an issue with her bodyguard?
 6 A Yes.
 7 Q Okay. Now when you -- I just asked you if you had
 8 a conversation with the defendant's mother, Rebecca. You
 9 said it wasn't a conversation, but she did contact you in
 10 reference to this case, didn't she?
 11 A Yes, I was at my grandmother's out in the yard and
 12 she had pulled up and she had told me that she had phone
 13 records —
 14 MR. SCHIECK: Objection, hearsay to what she told
 15 him,
 16 THE COURT: Sustained.
 17 BY MR. KEPHART:
 18 Q With reference to what she said, not telling us what
 19 she said, did that help you remember the dates of 7/5, 7/6,
 20 7/7, and 7/8, more specifically 7/8?
 21 A No. I just basically like brushed her off because I'd
 22 already gone over everything with my mom.
 23 Q Okay. And you — so you were saying that you never
 24 talked to Ms. Lobato?

VIII-101

CARRINGTON - DIREC

1 A No,
 2 Q Not at all?
 3 A Not about the trial or nothing, no,
 4 Q She didn't say nothing to you at all about this trial?
 5 A She just told me that one little bit about she has--
 6 MS. ZALKIN: Objection, hearsay.
 7 THE COURT: Sustainedr
 8 MR, KEPHART: Okay.
 9 BY MR. KEPHART:
 10 Q And you're saying it was not about the trial -- I
 11 mean not about the case?
 12 A It was just about that one day.
 13 Q And it's your testimony today that that didn't help
 14 you remember the dates of 7/5, 7/6, 7/7, or 7/8?
 15 A No,
 16 Q Okay. Now once again, I want you to go back to
 17 your statement,
 18 A Mm-hmm.
 19 Q You said that you -- let's do it this way. Panaca's a
 20 small town?
 21 A Yes,
 22 Q Everyone talking?
 23 A Everybody,
 24 Q Everybody talking, right?

VIII-102

RRINGTON - DIRECT

1 Q This is one of the mistakes —
 2 A Yes,,
 3 Q -- that was part of that statement? Okay. Is it also
 4 safe to say then also one of the mistakes is that when the
 5 officers asked you if you could tell them anything else that
 6 would help their investigation about this incident, the dates of
 7 7/5, 7/6, 7/7 and 7/8 were mistakenly left out of your
 8 conversation with the officers?
 9 A Yes,
 10 Q Also you — you've known her for quite some time?
 11 A Yes.
 12 THE COURT: Record shall reflect he pointed to the
 13 defendant.
 14 BY MR. KEPHART:
 15 Q Have you ever been with her to see her actually
 16 punch somebody?□
 17 A Yes,
 18 Q Knock 'em out?
 19 A Yeah.
 20 Q How many occasions?
 21 A Just once.
 22 Q Okay. Was the person she punched a man?
 23 A Yeah,
 24 Q Knocked him out, knocked him out cold?

VIII-104

CARRINGTON - DIRECT

1 A They know what you did before you even do it.
 2 Q Okay, And so in this particular case it's fair to say
 3 that you heard and you knew what the defendant was arrested
 4 for by the time you talked to the police?
 5 A By the time I talked to the police, no. It was shortly
 6 after that,
 7 Q So within 6 days of her arrest the word didn't get
 8 around? You just said you know it before the day it happens.
 9 A I didn't know before the day it happened,
 10 Q You just said that. Up there everyone talks so much
 11 that you would know before anything even happens?
 12 A I didn't know that, no.
 13 Q My question to you, Chris, is by the time you talked
 14 to the police is it your testimony that you did not know what
 15 she was arrested for?
 16 A Yes.
 17 Q Well, on the last page, page 7, you go down one,
 18 two, three questions, It says did you ultimately read about
 19 Blaise being arrested and see it on the news, and your answer
 20 is I read about it?
 21 A I just stated earlier that I didn't really read about it,
 22 I just heard about it from around the town.
 23 Q Okay. So this is wrong then?
 24 A Yes, sir,

V111-103

CARRINGTON - CROSS

1 A Yeah, on his butt,
 2 Q That happened in Panaca?
 3 A I believe it was in Caliente.
 4 Q Okay.
 5 MR, KEPHART: Pass the witness, Your Honor,
 6 THE COURT: Cross.
 7 CROSS-EXAMINATION
 8 BY MS. GREENBERGER:
 9 Q Good afternoon,
 10 A Good afternoon,
 11 Q Do you remember when you first met Blaise?
 12 A Yeah, vaguely,
 13 Q Give us your best recollection,,
 14 A When I first met her? I believe it was in Dixie's
 15 class, I'm not sure. I went there with my brother when he
 16 was going to school with her.
 17 Q Would you have been approximately 14 years old
 18 around that time?
 19 A Yeah, approximately, I was in like 10" grade,
 20 before -- right before le grade started.
 21 Q Dixie's class, would that have been Dixie Tienken,
 22 the teacher —
 23 A Yes,
 24 Q -- that lives in Panaca?

V111-105

CARRINGTON - CROSE

1 A Yes.

2 Q Would that have been in 1998, approximately?

3 A Approximately,

4 Q Did you go through schooling with Dixie to

5 completion?

6 A Yes.

7 Q Was Blaise in your class that entire time?

8 A No.

9 Q Was she a year ahead of you or so?

10 A Yeah, I do believe so,

11 Q Were you born and raised in Panaca?

12 A No, I was not

13 Q Where were you born?

14 A I was born in California and I was raised here and

15 little bits of everywhere else.

16 Q Were you living in the Caliente/Panaca area during

17 your high school years?

18 A I lived there my sophomore year and I moved away

19 my junior year and I moved back my senior year.

20 Q And does your mom live in that area as well?

21 A Yeah, she lives in Caliente.

22 Q And your grandma, Diane Allen, lived in Panaca?

23 A Yes.

24 MS. GREENBERGER: I want to just grab one thing,

VIII-106

CARRINGTON - CROSS

1 sure, it might've been the Shell station at that time.

2 Q Do you remember, was she alone or with someone?

3 A I don't remember.

4 Q You remember that was the first time you saw her

5 that summer?

6 A Yes.

7 Q Where were you living at the time you saw her?

8 A I think I was still staying with my friend at that time -

9 in Caliente, and then it was after that I moved in with my

10 grandma after the 4th of July.

11 Q Do you recall talking with her when you first saw

12 her?

13 A Yeah.

14 Q How long did you talk with her?

15 A Just for a minute or so.

16 Q How do you remember -- that's a long time ago --

17 that particular date of July 2nd?

18 A Because I was with my brother, my brother just got

19 into town, and we were going to fill up and I ran into a lot of

20 people that I hadn't seen for a long time there at the Shell

21 station, and she was one of the people that I ran into.

22 Q Did you ever look at a calendar to refresh your

23 recollection on terms of the date that you actually first saw her

24 that summer?

V111-108

CARRINGTON - CROSS

1 BY MS. GREENBERGER:

2 Q Were you living in Panaca or Caliente the summer of

3 July 2001, do you recall?

4 A I had just moved back.

5 Q Where had you been prior to moving back?

6 A In Cedar City.

7 Q Do you remember what time period you came back

8 to the Panaca/Caliente area?

9 A I'm not sure if it was the end of June or the

10 beginning of July,

11 Q And that would be 2001?

12 A Yes,

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

14 THE COURT: Yes.

15 BY MS. GREENBERGER:

16 Q I'm going to give you a pen, and if you could put

17 your initials on this board — you can step down from the stand

18 — when it was that you first remember seeing Blaise in July

19 2001? And you may sit down for a moment.

20 THE CLERK: I didn't hear that answer.,

21 THE WITNESS: It was on the 2.

22 BY MS. GREENBERGER:

23 Q Do you recall where you saw her at that time?

24 A It was at the Chevron station in Caliente. I'm not

V111-107

CARRINGTON - CROSS

1 A After all of this had happened and all the dates were

2 starting to get real serious and they're twisting them around,

3 after that my mother and I sat down, we'd looked at it, at a

4 calendar,

5 Q Who was twisting dates around?

6 A I don't know about twisting, but the -- is that the

7 defense or the prosecution?

8 Q The prosecution?

9 A Yeah, from my last testimony.

10 Q And you wanted to be clear in your mind when you

11 came into the court of law that you knew exactly what date

12 you were talking about?

13 A Yeah

14 Q Did there come a time after July 2, 2001 that you

15 went to stay with your grandmother in Panaca?

16 A I'm sorry, say that again?

17 Q Did there some a time after July 2, 2001 --

18 A Mm-hmm.

19 Q -- that you went to stay with your grandmother in

20 Panaca?

21 A Yes,

22 Q What time period was that?

23 A I'm not sure if it was like the 4th or the 5th, 'cause I

24 know my mom wasn't having me staying with my friends

V111-109

CARRINGTON -

1 anymore after that, so I went and stayed in Panaca with my
2 grandmar

3 Q Do you remember when you next saw Blaise in
4 Panaca after July 2,2001?

5 A I believe it was on the 5th,

6 Q Can you mark your initials on the calendar? Where
7 was she staying, if you know, when you saw her on July 5?

8 A At her mom and dad's house,

9 Q Where was that?

10 A It was just down the street from my grandmother's
11 house

12 Q In Panaca?

13 A Yeah,

14 Q Who was staying there at the house, if you know?

15 A Her little sister.

16 Q What is her name?

17 A I believe her name's Ashley.

18 Q Okay,

19 A And her mom and her dad,

20 Q All right And do you remember -- did you see her
21 in passing or did you spend time with her on July 5th?

22 A I actually spent time with her.

23 Q Do you remember what you did?

24 A We were just hanging out, going over like the last

V111-110

CARRINGTON - CROSS

1 year previous 'cause I was gone, We were just catching up,

2 Q She was filling you in on details?

3 A Yeah. And at that time I started getting into
4 working out, since she had a Bowflex at her house and
5 punching bags, so I'd work out over there as well,

6 Q Can you speak up a little bit just when you're talking
7 so we can all hear?

8 A Sorry.

9 Q I know I don't speak that loud myself, So you were
10 working out on a Bowflex in her —

11 A Garage,

12 Q -- garage?

13 A Yeah.

14 Q Do you remember seeing her on -- then when's the
15 next day you remember seeing her?

16 A On the 6th, the following day.

17 Q Can you mark your initials on that as well? And
18 while you're up there, when do you remember seeing her after
19 the 6th?

20 A The 7th.

21 Q Can you mark your initials up there? And after the
22 7th, when do you remember seeing her?

23 A On the 8th,

24 Q Can you mark your initials up there? You can come

VHF-ill

\RRINGTON - CROSS

1 sit down for a minute, So how do you remember that you saw
2 her the 5th, the 6th, the 7th, and the 8th, consecutive days in a
3 row?

4 A Because I'd seen her consecutively since I went to
5 Panaca until she had left and then I left and went up to the
6 mountains to cut wood with my friends.

7 Q Were you staying with your grandmother a few
8 houses down on the 5th, the 6th, 7th, and 8th in Panaca?

9 A Yes.

10 Q Do you -- can you give us some more detail about
11 what you recall doing with her on the 6th and 7th and 8th?

12 A I don't really remember what we did, I know we
13 just drove around. We hung out at her house quite a bit and
14 just talked, Didn't really do too much.

15 Q Do you remember spending time with her in the
16 days or the evenings or both?

17 A It was both.

18 Q Was it just the two of you on those days, or were
19 other people around?

20 A There was other people around,

21 Q Can you identify who?

22 A I remember we seen her aunt, I believe it was, on
23 one of those days. She came over to the house.

24 Q Would that have been on July 8th, a Sunday? Would

V111-112

CARRINGTON - CROSS

1 that have been Shayne Kraft?

2 A She was the pregnant lady, her aunt, yeah.

3 Q do you remember what you did on the 8th of July?
4 Do you remember spending time at her house? That would've
5 been--

6 A Yeah, we were hanging out at her house, I worked
7 out for a little bit, I believe that day I went back to my
8 grandmother's. I believe I had to mow her yard or the
9 neighbor's yard or something to that, and then I'd gone back
10 later on that night and we hung out for a little while until she
11 had to pack and then she sent me to my house 'cause I was a
12 distraction to her.

13 Q Why was she packing?

14 A She was going to Vegas.

15 Q And you recall this was the Sunday night, July 8th?

16 A Yes,

17 Q Are you certain of that?

18 A Yes.

19 Q This was in Panaca?

20 A Yes,

21 Q This was at her parent's house?

22 A Yes,

23 Q Do you remember seeing her the morning of July
24 8th?

V111-113

CARRINGTON - CROSS

1 A In the early morning?
 2 Q When do you remember seeing her that day?
 3 A I remember seeing her like in the afternoon and
 4 then later that night
 5 Q When is the next time you remember seeing her in
 6 Panaca?
 7 A In Panaca?
 8 Q Or Caliente?
 9 A The last time — or the next time following that I
 10 seen her was in Caliente there at the Swallows Drug Store.
 11 Q And do you recall when that was?
 12 A I believe that was the 13th or so,
 13 Q Is that the 7 or 8 days you were referring to —
 14 A Yes, it was.
 15 Q — when the police came to talk with you?
 16 A Yes.
 17 Q Do you remember when the police came to talk with
 18 you, talking with them before they taped your statement?
 19 A A little bit, yes.
 20 Q How old were you at the time? Were you 17 years
 21 old?
 22 A I believe that was right before I started my senior
 23 year, so yeah, around there,
 24 Q Had you ever been interviewed by the police before?

V111-114

\RRINGTON - CROSS

1 A Yes_
 2 Q So every time you've testified in a court of law about
 3 your recollection and when asked specific questions you've
 4 been completely consistent, correct?
 5 A Yes.
 6 Q Do you remember on the 8th of July when you were
 7 at Blaise's house, who else was present besides her aunt? For
 8 example, do you remember seeing her sister, Ashley?
 9 A Yes, I do believe so. Her mother was there too, and
 10 her dad I'd like to say,
 11 Q You recall that?
 12 A Yeah,
 13 Q Do you recall anyone else being present?
 14 A Just seeing her aunt, but that was it.
 15 Q Do you recall why her aunt had come over?
 16 A I think it had something to do with her medication or
 17 something 'cause she was poisoned or something. I'm not real
 18 sure, She was bringing something over.
 19 Q Do you know if she was getting Tiger Balm for her
 20 husband's neck?
 21 MR_ KEPHART: Your Honor, I'm gonna object.
 22 That's not what he said, he said poison. I don't see what Tiger
 23 Balm has anything to do with poison.
 24 THE WITNESS: I'm not sure.

V111-116

CARRINGTON - CROSS

1 A No,
 2 Q Were you nervous?
 3 A Yes, I was,
 4 Q Did the police tell you -- or did the police ask you
 5 when the last time that you had seen Blaise was?
 6 A Yes, they did,
 7 Q When you answered the 13th you were referring to
 8 the last —
 9 MR_ KEPHART: Judge, I'm gonna object. She -- he
 10 never answered the 13th,
 11 THE WITNESS: I never answered the 13th,
 12 BY MS, GREENBERGER:
 13 Q When you said — excuse me, I'll rephrase it. When
 14 you said 7 or 8 days prior, were you referring to the last time
 15 you had seen her?
 16 A Yes, I had just barely recalled it being the 13th the
 17 other night when my wife and I were going back over all of
 18 this, knowing that I was coming in here today,
 19 Q When you testified at the last proceeding, you
 20 clarified in detail that you had been Blaise Lobato on the 2nd of
 21 July, correct?
 22 A Yes,
 23 Q And then you also testified you had seen her on the
 24 5, 6, 7th, and 8th of July, is that correct?

V111-115

CARRINGTON - CROSS

1 THE COURT: Overruled.
 2 BY MS. GREENBERGER:
 3 Q If you know. That is if you know?
 4 A I'm not sure,
 5 Q Can you describe the circumstances when you saw
 6 Blaise punch someone? First of all, when did that happen?
 7 A ft was back like when I had first moved to Caliente.
 8 I wasn't really living there yet, I was just there visiting my
 9 mother.
 10 Q What year would that have been, approximately?
 11 A Oh, I'm not sure. I think it was like my freshman
 12 year, so a year previously to me moving there, so like '97.
 13 Q All right- And what were the circumstances, if you
 14 remember?
 15 A I believe there was just like a party going on, and he
 16 had -- he done something, I don't know. It was out on the
 17 balcony and she turned around and punched him.
 18 Q She didn't render him unconscious, did she?
 19 A Knocked him on his butt, yeah.
 20 Q Did she — was he unconscious?
 21 A I wasn't right next to him to see if he was knocked
 22 out cold, but I just seen him fall on his butt.
 23 Q Did you see him get back up?
 24 A Yeah, he got back up,

VIII-117

CARRINGTON - CROSS

1 Did you see what had happened prior to her hitting
 2 him?
 3 A No, I didn't,
 4 Q Sometime after you were interviewed by the police
 5 you sat down with your mother to look at a calendar so you
 6 could identify the last dates you had seen Blaise?
 7 A Yes.
 8 Q And that was prior to your testimony from the last
 9 proceeding?
 10 A Yes.
 11 Q When Blaise's step-mother came to talk with you,
 12 you already knew in your mind the last dates you had seen
 13 her, is that true?
 A Yeah, that's why I kinda just brushed her off.
 15 Q So you disregarded any conversation she had with
 16 you?
 17 A Yeah.
 18 Q Why was that?
 19 A Because at that point I knew what was going on was
 20 pretty serious and for me to be talking to everybody about
 21 what was going on and it wouldn't be good.
 22 Q You didn't want to talk to anyone 'cause you didn't
 23 want to have your testimony influenced one way or another?
 24 A Yeah, 'cause everybody was basically telling me

VIII-118

IRINGTON - REDIRECT

1 her driving a red Fiero, were you referring to the July 2, 2001
 2 date?
 3 A I'm sorry, say that again?
 4 Q When the police were talking to you about when you
 5 saw her driving a red Fiero, were you referring to the July 2'
 6 date?
 7 A I believe so.
 8 You remember the other person, or one of the other
 9 people you saw on July 8, 2001 at Blaise's house was a
 10 pregnant woman?
 11 A Yes.
 12 MS. GREENBERGER: Court's indulgence.
 13 THE COURT: Yes,
 14 MS. GREENBERGER: Nothing further.
 15 THE COURT: Redirect.
 16 REDIRECT EXAMINATION
 17 BY MR, KEPHART:
 18 Q Mr. Carrington, you just wrote on the board the
 19 dates of the 2" of July, 2001, then you skipped the 1 and the
 20 4 , then you wrote the 5th, 5th, 7th, and 8th, is that correct?
 21 A I'm sorry, I meant for the 3rd —
 22 Q Okay.
 23 A -- not the 2"d,
 24 Q Okay. So when the defense attorney's asking you

V111-120

CARRINGTON - CROSS

1 different things, and so I just stuck with my mom and we went
 2 over what happened and where I was at and —
 3 Q No one has influenced your testimony here today?
 4 This is what you remember?
 5 A Yes.
 6 Q When you spoke about the vehicle you saw Blaise
 7 driving, what time period was it you were referencing?
 8 A I'm sorry?
 9 Q Did you see Blaise driving a red vehicle back to
 10 Panaca at any time?
 11 A At any time? I've seen —
 12 Q At any time in the July 2001 area?
 13 A I seen her when -- I'm not sure if she was driving
 14 her car when I seen her on the 2nd or not. But I know I seen
 15 her car parked in front of her mom's house after that every
 16 time I was out in Panaca at her house.
 17 Q And it was parked directly in front of her house?
 18 A Yeah.
 19 Q Did you ever see the car move?
 20 A No, we drove her mom's car.
 21 Q Do you know if the car was having any problems, in
 22 terms of --
 23 A Not to my recollection, no.
 24 Q When the police asked you about if you had seen

V111-119

CARRINGTON - REDIRECT

1 dates and you wrote down the 2"^d, you said I'm sure it was the
 2 2nd because my brother came back and I remember him
 3 coming here, and I've been consistent all along when I've told
 4 dates, now it's the 31d?
 5 A I just wrote it up there wrong. I was meaning to
 6 write onto the Yd.
 7 Q Okay. So every time the defense attorney asked
 8 you the r^d, you meant the 3rd?
 9 A Yes.
 10 Q Okay. So we can mark that one out and probably
 11 put down the r then?
 12 A Yes.
 13 Q Okay. And you also said that you were positive prior
 14 to your last testimony about these dates because you sat down
 15 with your mom and you spoke to your mom about those dates,
 16 is that right?
 17 A Yes.
 18 Q Okay. Do you remember testifying in a previous
 19 hearing as to the fact that the only time you were positive
 20 about the date was after the defendant's step-mother,
 21 Rebecca Lobato, discussed the day of July the 8th with you, do
 22 you remember that?
 23 A That was a mistake in my last testimony.
 24 Q Okay, Just so we know what we're talking about,

V111-121

CARRINGTON - REDIRE

1 I'm gonna show you that, okay?
 2 A I remember reading that, yes.
 3 Q Let me read you it and ask you if you remember
 4 this. It says here, question, page 151, it's line 5, Okay. Well,
 5 actually you'll start at the top.
 6 "Did there come a point in time after or maybe even
 7 before -- no, after you spoke to the police on July 26th that you
 8 spoke with the defendant's mother, Rebecca Lobato?"
 9 Do you remember what answer you gave?
 10 A No, I don't.
 11 Q You said yes in your previous testimony, and this
 12 testimony took place in May of 2002, do you remember that?
 13 MS. GREENBERGER: Your Honor, I'm gonna object
 14 to the leading form of the question. He's a State witness
 15 THE COURT: Sustained.
 16 BY MR, KEPHART:
 17 Q Question to you then, Did you also tell — did you
 18 also have — remember this question, "On that date when you
 19 spoke to the defendant's mother, Rebecca Lobato, did you
 20 discuss the day of the 8th of July?" Do you remember the
 21 answer?
 22 A Yes,
 23 Q What's the answer?
 24 A Yes,

VIII-122

;RINGTON - REDIRECT

1 BY MR. KEPHART:
 2 Q The next question, do you remember this? I said
 3 "Okay,, And you got that information from the defendant's
 4 mother?" Do you remember your answer?
 5 A I remember reading that, yes,
 6 Q What did you say?
 7 A I said yes,
 8 Q Okay. And now it's your testimony that you
 9 remember sitting down with your mom and discussing these
 10 dates?
 11 A Yes.
 12 Q And that's how you remember this?
 13 A That's how it was last time too.
 14 Q Tell me what day it was that you sat down with your
 15 mom and you discussed these dates?
 16 A I don't remember what day it was for sure. I do
 17 believe it was shortly after the detectives came and
 18 interviewed me.
 19 Q Okay. On the 26th?
 20 A Yes.
 21 Q Okay, And on the 26th you said that you remember
 22 seeing her about 7 or 8 days earlier?
 23 A Yes.
 24 Q Okay, Just so we know what day we're talking

CARRINGTON - REDIRECT

1 Q Yes,
 2 A She had told me about the 8th of July, yes.
 3 Q Okay, Do you remember this question? "That's the
 4 day you figured out that you were at Kirsten's on the 8th of
 5 July, is that correct?" Do you remember your answer?
 6 A That was wrong. Yes, I do remember what I read in
 7 there.
 8 Q Okay, You said yeah to that question, didn't you?
 9 A That's what I was saying —
 10 Q Okay.
 11 A -- that my words were getting twisted around,,
 12 Q The -- your words were getting twisted around?
 13 A Yes
 14 Q Was that a way of twisting your words around, those
 15 questions that were just asked?
 16 A Well, I was scared, and you kept circling around, so
 17 I just fell into that.
 18 Q Okay. The next question, I guess circling around, is
 19 in the same area.
 20 MS, GREENBERGER: Objection, argumentative and
 21 leading.
 22 THE COURT: The Court will sustain the objection as
 23 to argumentative and Mr. Kephart may rephrase,
 24 ///

VIII-123

CARRINGTON - REDIRECT

1 about, can you go down to the board there, right here —
 2 MR. KEPHART: Can I use the blue one? Can I use
 3 this black one?
 4 BY MR. KEPHART:
 5 Q And mark on the board -- count back from the 26'
 6 of July and mark on there when it was that you told the police
 7 7 or 8 days earlier you saw the defendant?
 8 A It was either the 18th of 19th.
 9 Q It's not working?
 10 MR. KEPHART: Judge, I want the record to reflect
 11 that came from the clerk,,
 12 THE COURT: The record shall so reflect.
 13 MR, KEPHART: Can I have another one?
 14 BY MR, KEPHART:
 15 Q Okay. So you count back 7 or 8 days from the 26th,
 16 A [unintelligible].
 17 Q Okay. So that's 1, 2, 3, 4, 5, 6, 7, or 8. Okay. Why
 18 don't you put your initials underneath there, C.C. Okay. All
 19 right. Now but you testified on cross-examination that it was
 20 the 13th?
 21 A Yes,
 22 Q Why don't you put your initials there as well. And
 23 that you remember because you sat down with your wife —
 24 A My wife,,

VIII-125

CARRINGTON - REDIRE

1 Q -- prior to coming into today?
 2 A As we were reading over my testimony that I gave
 3 and I realized that was another mistake in my testimony from
 4 before,
 5 Q Okay.
 6 MS, GREENBERGER: Objection, Your Honor, its a
 7 leading question.
 8 THE COURT: Overruled.
 9 BY MR KEPHART:
 10 Q Can you tell me how it was that you remember the
 11 13th?
 12 A 'Cause I was sitting down, it was just shortly after,
 13 that's why I was surprised she came back so early 'cause it
 14 was just over the weekend that she -- I'd seen her that
 15 following day, and that was the day that I came back from
 16 cutting wood, and that's how I know that that was the day
 17 that I had seen her_
 18 Q Okay. Now Mr- Carrington, you said that you've —
 19 well, let me ask you this. Have you read anything about this
 20 case?
 21 Since? No.
 22 You haven't read about the 13th? 13" doesn't stick
 23 out in your mind in anything, other than you've just now said
 24 that that's the date that you recall?

VIII-126

ZRINGTON - REDIRECT

Q And when was it that you saw her? What time of
 2 day was it?
 3 A That was later in the afternoon, I do believe,
 4 Q Okay. Do you remember where she was earlier that
 5 day?
 6 A No, I wasn't with her earlier.
 7 You don't remember telling us before, testimony
 8 before what she was doing? Okay. You read it.
 9 MS, GREENBERGER: Objection, argumentative and
 10 leading,
 11 BY MR_ KEPHART:
 12 Q Did you — did you —
 13 THE COURT: That's actually not a question_
 14 Sustained.
 15 BY MR- KEPHART:
 16 Q Did you read in your statement what you testified
 17 about what she was doing before, what you said she was
 18 doing?
 19 A I don't remember now,
 20 Q Okay. If I was to tell you that you testified that she
 21 just had gotten back from the doctor, would that refresh your
 22 memory?
 23 A That sounds familiar, yes,
 24 Q Okay. How was she acting on the 6th?

VIII-128

CARRINGTON - REDIRECT

1 A No
 2 MS, GREENBERGER: Objection, asked and
 3 answered,
 4 THE COURT: Overruled,
 5 BY MR, KEPHART:
 6 Q Your answer is no?
 7 A No.
 8 Q So you've never read anything about the fact that
 9 maybe her father went down and picked her up on the 13th?
 10 A No, I haven't.
 11 MS. GREENBERGER: Objection, asked and
 12 answered,
 13 THE COURT: Overruled.
 14 BY MR. KEPHART:
 15 Q Now on the 5", when you said that you saw the
 16 defendant, can you tell me how she — you said that you were
 17 working out with a Bowflex?
 18 A With her dad's Bowflex, yes.
 19 Q Okay_ And was she working out with you?
 20 A No.
 21 Q What was she doing?
 22 A Just talking with me.
 23 Q Just normal?
 24 A Yeah.

CARRINGTON - REDIRECT

A She was normal.
 2 Q Normal? What were you doing on the 6th?
 3 A Just hanging out, talking,
 4 Q Where was her mom and dad?
 5 A Her mom was at the house and I'm not sure where
 6 her dad was.
 7 Q Okay. And your testimony is that you never told
 8 anybody that her and her mom were fighting?
 9 A I don't remember that, no,
 10 Q What was she doing on the 7"?
 11 A We were just hanging out again,
 12 Q How was she acting?
 13 A She was normal.
 14 Q And what do you characterize as normal?
 15 A Just normal behavior, hanging out. I mean she
 16 wasn't schizophrenic or anything like that, if that's what you're
 17 asking.
 18 Q No, I didn't ask that.
 19 A Just normal, we were just sitting, talking.
 20 Q Were you guys drinking?
 21 A No,
 22 Q Did you eat lunch there?
 23 A No.
 24 Q How long did you stay there?

VIII-129

CARRINGTON - REDIRE

1 A Just for a few hours, maybe.
 2 Q How long is a few hours?
 3 A Like two, maybe three,
 4 Q When did you get there?
 5 A I'm not real sure,
 6 Q You don't know if it was in the morning, the
 7 afternoon, the evening?
 8 A I'm not real sure. I believe it was probably like right
 9 before afternoon —
 10 Q Okay.
 11 A -- still in the morning —
 12 Q So you don't remember, do you?
 13 A -- 'cause it was shortly after I was done doing all my
 14 yard work around Panaca that I go over and hang out with
 15 her.
 16 Q On the 7th?
 17 A It depended on when I was done doing my work.
 18 Q On the 7th?
 19 A For that whole week,
 20 Q The 5th, 6th, 7th?
 21 A the 5th, 6th, 7th. That's why I was down at Panacar I
 22 was staying with my grandma and I was doing yard work for
 23 everybody else around Panaca as well,
 24 Q Okay. So when would it be that you'd go over

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ZRINGTON - REDIRECT

1 A I would say like 10:30, 11 o'clock or so.
 2 Q You remember testifying before that it was
 3 midnight?
 4 A It was around about that time.
 5 Q Okay. Did you have lunch there on those days?
 6 A No.
 7 Q Who was there on the 5th? Who was there when
 8 you were there, besides her mom?
 9 A Her sister,
 10 Q Anyone else?
 11 A And her dad too.
 12 Q Okay. On this 6th?
 13 A It was just her mom and her dad, I believe,
 14 Q Okay,
 15 A Her sister was in and out playing with friends,
 16 Q On the 7th?
 17 A Basically the same,
 18 Q Okay, No one else on those days you were this
 19 Blaise was there other than her mom, her dad, and her sister?
 20 A Yes, that I remember.
 21 Q Okay, The 7th? Same?
 22 A The same.
 23 Q And the 8th?
 24 A The same, besides her aunt

V111-132

CARRINGTON - REDIRECT

1 there?
 2 A When I was done and had time,
 3 Q When would you be done?
 4 A Depending on how much work I had for the day,
 5 Q Okay, Is it possible that you -- that you remember
 6 seeing her on the 5th and the 6th but you didn't see her on the
 7 7th or 8th? Is it a possibility?
 8 A I seen her on the 7th and 8th,
 9 Q What's that?
 10 A I said I seen her on the 7th and 8th.
 11 Q Okay. What did you do with her on the 8th?
 12 A Same thing that we did all those other dates, we just
 13 hung out —
 14 Q Yard work first?
 15 A Mm-hmm.
 16 Q Working out?
 17 THE COURT: I'm not hearing an answer,
 18 THE WITNESS: Yes,
 19 BY MR. KEPHART:
 20 Q Yes? Okay, You didn't go to church or anything?
 21 A No.
 22 Q Okay, How late were you with her on the 8th?
 23 A It was late at night when I left,
 24 Q How late's late?

V111-131

CARRINGTON - REDIRECT

1 Q Her aunt came?
 2 A Yeah,
 3 Q What day?
 4 A That's the pregnant lady.. The 8th.
 5 Q And that's the date that you talked to Ms. Lobato
 6 about?
 7 A That's the date that she said she had phone records
 8 or whatever,
 9 Q Okay.
 10 A I didn't talk to her about it, no,
 11 Q So your testimony before is a mistake?
 12 A Yes,
 13 Q Your statement to the police is a mistake?
 14 A Parts of it, yes.
 15 Q And you made a mistake here because you meant
 16 the 3rd and not the 2nd —
 17 A Yeah.
 18 Q is that right? Okay. What did you do for the 4th
 19 of July?
 20 A I was in Caliente,
 21 Q What was going on in Caliente?
 22 A They have fireworks at the park.
 23 Q Did you see her there on the 4th?
 24 A I don't believe so.

v111-133

CARRINGTON - RECRO:

MR KEPHART: Nothing further.

RECROSS EXAMINATION

BY MS. GREENBERGER:

Q Just so the calendar is accurate, can you cross out July 2nd and put July 3rd if that is the actual date you recall seeing her?

A Yes.

Q Thank your Isn't it true that when you last testified you stated in open court that you spoke to your mom before you had any interaction from Blaise's step-mother?

A Yes.

Q That is what you testified to previously?

A Yes.

Q That is what you're testifying to today?

A Yes,

Q Nothing has changed?

A No

Q Do you remember seeing Clint Hohman with Ashley Lobato, Blaise's sister, during the first week of July?

A That's who her sister was hanging out with while I was down there, yeah,

Q So you remember seeing him at the house during those time periods?

A I'm not sure if he came over to the house or not, but

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CAI 3TON - FURTHER REDIRECT

your words?

A I feel so, yes.

MS. GREENBERGER: I have nothing further,

THE COURT: Redirect,

MR. KEPHART: One question if I could, Judge,

FURTHER REDIRECT EXAMINATION

BY MR, KEPHART:

Q Mr. Carrington, do you remember testifying before about why you were down here testifying and who You were testifying for?

A Say that again?

Q Did you tell us before why you were down here testifying, who you were testifying for?

A I was down here testifying for Blaise I believe I said.

Q Okay. And that's still your feeling today?

A My feeling today is I'm here testifying in court.

Q Okay, And you feel you're testifying for Blaise? You said that before.

A I came to testify for you guys today. That's who I was subpoenaed for. That's how I feel I came into court today.

Q Well, you know, last time you were subpoenaed by us as well, weren't you?

A I don't remember seeing that. I thought I was

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CARRINGTON - RECROSS

I know that's who her little sister was going out and playing with.

Q Did you see Blaise's vehicle parked in front of her house each time you went over to her house?

A Yes,

Did the vehicle seem to be in the same position?

^ Yes.

Did you ever see the vehicle move?

A No.

Q Do you feel that the prosecution in this case has badgered you, even today?

MR. KEPHART: Your Honor, I'm gonna object as to his feelings,

THE COURT: The question is argumentative and the Court sustains the objection,

BY S. GREENBERGER:

Q Do you feel that the prosecution has been trying to twist your words and dates?

MR, KEPHART: Your Honor, I'm gonna object, the same objection. To his feelings? And it's certainly argumentative

MS. GREENBERGER: I can rephrase it,

BY MS. GREENBERGER:

Q Have the -- has the prosecution been trying to twist

V111-135

CARRINGTON - FURTHER REDIRECT

subpoenaed by them last time.

Q If I was to tell you that you were called by the State of Nevada and I'm the one that questioned you, would you accept that?

A If that's what that says.

Q That's your testimony?

A Okay.

Q And I asked you then, like I asked you today, if you remember what you told us why you were down here, and you said you were down here testifying for Blaise?

A Yes.

Q Is that still your testimony?

A My testimony is I came in to testify in court today for you guys. That's how I felt today.

MR. KEPHART: Nothing further, Your Honor

MS. GREENBERGER: Nothing further, Your Honor,

THE COURT: You may step down from the stand.

Oh, you may not step down from the stand.

Ladies and gentlemen of the jury, I need to make legal notes on each of the notes that are sent out from the jury for the record, and so I'm getting some that are real small, they're partial pages, and that's making it difficult to preserve them for the record. So I'm gonna add a new request to the jury notes. Would you please put each separate

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CARRINGTON - FURTHER RE CT

1 question on a separate regular sized page out of your
 2 notebook. Thank you,
 3 Would counsel please approach,
 4 (Off-record bench conference from 2:48:10-2:54:54 p.m.)
 5 THE COURT: One of the notes that came out is a
 6 question to the Court rather than to the witness. And in the
 7 initial instructions to the jury the Court advised you that should
 8 you feel ill or need to utilize the restroom facilities you need to
 raise your hand to draw our attention to that. And the reason
 10 is that Nevada law requires me to give you the admonishment
 11 before you recess or leave the courtroom every time we have
 12 a break, So that is the procedure that we have to follow. That
 13 note will be marked as Court's No, 37,

14 Mr, Carrington, there are a number of questions that
 15 have come from the jury that they have written down that the
 16 Court will be asking you. Listen to the question and then
 17 answer it. After you have completed answering all of the
 18 questions the attorneys for both sides will have the opportunity
 19 to pose followup questions to you if they deem them
 20 appropriate,

21 THE WITNESS: Okay.

22 THE COURT: "To your knowledge did Blaise go
23 four-wheeling on July 7' and/or July 8th?"

24 THE WITNESS: No,

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CAF 3TON - FURTHER REDIRECT

1 "Do you know how large, specifically the height and
2 weight of the man she punched and knocked out was?"

3 THE WITNESS: He's bigger than me, so I would say
4 like around 6', probably like 180 pounds or so, approximately,

5 THE COURT: That will be marked as Court's No. 43,
6 "Were you aware of any drug use Blaise could have
7 or was using when you had seen her in early July?"

8 THE WITNESS: Not while I was seeing her, but
9 prior to it looked like she had been, yes,

10 THE COURT: That will be marked as Court's No. 44.
11 Followup questions by the State,

FURTHER REDIRECT EXAMINATION

12 BY MR, KEPHART:

13 Q Mr. Carrington, we'd asked quite a few questions
14 earlier about who was with you and Blaise when you were at
15 her house. Can we go over that again? Tell me who you were
16 with on the 5"?

17 A It was me, her mom and her dad —

18 Q Okay,

19 A -- and her little sister.

20 Q Okay. And then on the 6th?

21 A Me, her mom and her dad,

22 Q Okay. The 7th?

23 A Me and her mom.
24

V111-140

CARRINGTON - FURTHER REDIRECT

1 THE COURT: That will be marked as No, 38,
2 Court's.

3 "Are you aware of any wounds Blaise received on
4 her abdomen during this time period of July 7 or July 8 to July
5 14 or July 15?"

6 THE WITNESS: Yes.

7 THE COURT: That will be marked as 39, Court's,
8 "Since you stated you were with Blaise on July 7"
9 and July 8', 2001, do you know who else she was with that
10 day?"

11 THE WITNESS: If she wasn't with me, no, I do not,

12 THE COURT: That will be marked as Court's No. 40.

13 "Would you consider you and Braise to be close
14 friends and does she confide in you?"

15 THE WITNESS: I consider us to be friends, and
16 confide as in like to tell secrets to? I'm not sure what — what's
17 the question?

18 THE COURT: That will be Court's No. 41.

19 When you and Blaise talked about the past year,
20 did Blaise tell you about being sexually assaulted?"

21 THE WITNESS: We've talked about her being
22 sexually assaulted like a number of times. I'm not sure if that
23 came up in the conversation when we were going over or not,
24

THE COURT: That will be marked as Court's No. 42.

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CARRINGTON - FURTHER REDIRECT

1 Q The ath?

2 A Me, her mom, I believe her dad was there too.

3 Q Okay. And if you weren't with her you don't know
4 who else was there?

5 A No.

6 Q Okay, Now a question was asked by the jury about
7 whether or not she discussed with you about being sexually
8 assaulted?

9 A Mm-hmm,

10 Q Is that a yes? You understand that question?

11 A We had talked about her being sexually assaulted
12 before, I don't think we had talked about it during this time,
13 no.

14 Q Okay, And that was something that occurred in
15 Panaca though, is your understanding?

16 A Yeah.

17 Q Okay, Now you — when you talked to the police you
18 never said anything with regards to the police about any type
19 of assault or anything that she talked to you about, is that
20 right?

21 A Yeah.

22 Q Okay, And do you know — you said that during the
23 time that you were talking to her you don't know whether or
24 not she was doing any drugs or anything, but you believe that

V111-141

CARRINGTON - FURTHER RE

CAL GTON - FURTHER RECROSS

1 she had before. What kind of drugs are you talking about?
 2 A My assumption would probably be speed because
 3 her appearance had changed so much from when I seen her
 4 last to this time that I seen her the --
 5 Q Okay. And when we say speed, what is that?
 6 A Methamphetamine.
 7 Q Okay. Now that is an assumption based on what
 8 you saw of her?
 9 A Yeah, it's just an assumption.
 10 Q Okay. She didn't talk to you about it --
 11 A No
 12 Q -- tell you that she was taking methamphetamine or
 13 anything like that?
 14 A No.
 15 Q Okay. Now one of the questions by the jury was
 16 whether or not you had seen any injuries to her abdomen. Do
 17 you remember when it was that you saw the injuries to her
 18 abdomen?
 19 A I believe that was in front of Swallows --
 20 Q Okay,
 21 A -- Swallows Drug Store.
 22 Q And that would've been on the 13th --
 23 A I thought the question was --
 24 Q -- or on the 18th and 19th, right?

VIII-142

1 A No, not on a four-wheeler, no
 2 Q Have you known Blaise to go four-wheeling with
 3 Michele Austria?
 4 A I can't picture who Michele Austria is.
 5 Q When Blaise told you about the wounds to her
 6 abdomen she said it was from a four-wheeling accident?
 7 A Yes.
 8 Q Did she tell you who she had been four-wheeling
 9 with?
 10 A I don't remember that, no.
 11 Q Did you see the scratches?
 12 A Yes, I did.
 13 Q Did they appear to be fresh?
 14 A They were scabbed up, so I don't know how fresh
 15 they were.
 16 Q Did you see any other scratches on her besides the
 17 ones on her abdomen?
 18 A Not that I remember, no.
 19 Q When is the last time you spoke to Blaise?
 20 A I don't know, it was a long time ago.
 21 Q Over 5 years?
 22 A Or so, yeah.
 23 Q Prior to the last time -- prior to her arrest?
 24 A I think the last time I spoke to her was probably like

VIII-144

CARRINGTON - FURTHER RECROSS

CARRINGTON - FURTHER RECROSS

1 A When I seen her, it was the 13¹, yeah.
 2 Q Okay, So it had been on the 13th? You're talking
 3 about this time that you talked to the police about
 4 A That I seen the scratches, yes --
 5 Q Okay.
 6 A -- on her stomach.
 7 Q Okay. And did you know how she got those?
 8 A She told me it was from a four-wheeler accident.
 9 Q Okay.,
 10 A I'm not sure what day that happened on, though.
 11 Q Okay, Okay.
 12 MR KEPHART: Nothing further.
 13 **FURTHER RECROSS EXAMINATION**
 14 BY MS. GREENBERGER:
 15 Q Hello again. In response to the question if Blaise
 16 went four-wheeling on July 7th or 8th, do you know if she did or
 17 not? I just wanted clarification.
 18 A She didn't while I was with her, no. If she did while
 19 I wasn't around, I'm not sure. I know she had scratches on
 20 her stomach, though, the next time I seen her.
 21 Q Do you know anyone in Panaca that owns a four-
 22 wheeler?
 23 A Yeah, lots of people.
 24 Q Have you ever gone four-wheeling with Blaise?

VIII-143

1 on the 13th.
 2 Q Of July --
 3 A Yeah.
 4 Q -- 2001? Do you remember how old you were when
 5 you saw Braise and this other man get in a fight?
 6 A I was young, probably like -- it was my 9th grade
 7 year,
 8 Q 9th grade?
 9 A Yeah,
 10 Q Was it at a party?
 11 A Yeah.
 12 Q Had people been drinking?
 13 A Yeah.
 14 Q Had you been drinking?
 15 A No.
 16 Q Had people -- let me ask you this. How quickly did
 17 you see the person get up after the hit?
 18 A It was a minute. It took him a second to stand up,
 19 like he was -- it stunned him a little bit. But he'd been drinking
 20 as much as everybody else. I'm not sure how much he had
 21 had to drink or not, so I don't know how much that had to play
 22 in it,
 23 Q Did she hurt him?
 24 A I don't remember seeing him after that?

VIII-145

CARRINGTON - FURTHER RE 35

ALLEN - DIRECT

1 Q Well, you chuckled when you said she knocked him
 2 on his butt?
 3 A Yeah.
 4 Q Why did you chuckle?
 5 A 'Cause I thought it was funny 'cause he's like —
 6 you'd have to know the guy, I guess, He probably had it
 7 coming, so I just kinda think that's kinda funny that a girl
 8 knocked him out — well, not knocked him out, but yeah.
 9 Q He wasn't hurt, though?
 10 A Not severely or nothing like that, no,
 11 Q He continued partying?
 12 A Yeah,
 13 Q When you saw -- when you first saw Blaise on the
 14 3 of July, 2001, you said her appearance had changed?
 15 A Yeah
 16 Q And you attributed that to her drug use?
 17 A Yeah,
 18 Q Did she appear skinny?
 19 A Well, she's always been skinny,
 20 Q Well, can you explain —
 21 A Skinnier? No, she was no skinnier than I remember
 22 her --
 23 Q Can --
 24 A -- it was just her appearance.

V111-146

1 THE COURT: Is this a followup to the jury question?
 2 MS, GREENBERGER: I was just gonna followup on
 3 the time, the time period that he returned — or came over to
 4 her house. That was my last question.
 5 THE COURT: I don't believe that was one of the
 6 jury questions, so the Court will sustain the objection.
 7 MS, GREENBERGER: I have nothing further.
 8 THE COURT: Anything further from the State?
 9 MR. KEPHART: We don't have anything further, No,
 10 Your Honor.
 11 THE COURT: I have no jury hands up. You may
 12 step down,
 13 State may call their next witness,
 14 MR. KEPHART: State would call Diane Allen,
 15 THE CLERK: Please come all the way forward.
 16 Remain standing and raise your right hand,
 17 DIANE ALLEN, STATE'S WITNESS, IS SWORN
 18 THE CLERK: Thank you. Please be seated.
 19 State your name and spell it for the record, please.
 20 THE WITNESS: Diane Allen, D-I-A-N-E Allen,
 21 A-L-L-E-N.
 22 DIRECT EXAMINATION
 23 BY MR. KEPHART:
 24 Q Ms, Allen, do you live in Panaca, Nevada?

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CARRINGTON - FURTHER RECROSS

ALLEN - DIRECT

1 Q Can you explain in more detail description?
 2 A She went from having like long brown hair, like she
 3 has now, to -- it was real, real short and bleached blonde,
 4 spiky, and like she turned into a stripper, I guess, and -- she
 5 just changed a lot, so I figured it probably had something to
 6 do with that,
 7 Q When you were with her during that time period, the
 8 first week in July, she was not using drugs with you?
 9 A No Never around me, no.
 10 Q At any time?
 11 A No,
 12 Q When you were at her house on the 8', is it your
 13 testimony that you were with Blaise, you saw her mother or
 14 step-mother, her father, and then did you also see her aunt
 15 and Ashley that day?
 16 A Yes, I'm not sure about Ashley, but her aunt, yeah.
 17 Q Okay, During that time period you were working on
 18 people's lawns up in Panaca?
 19 A Yes.
 20 Q And so when you were finished with your --
 21 MR, KEPHART: Your Honor, I'm gonna object. This
 22 has all been asked and answered. She's recovering the very
 23 testimony that he's already testified to, and this is way beyond
 24 anything that the jury has asked.

V111-147

1 A Yes.
 2 Q What's the address that you live at?
 3 A 625 Callaway.
 4 Q Okay. Are you familiar with the -- at some point in
 5 time back in 2001 did you know of a family by the name of
 6 Lobato that lived on the same address --
 7 A Yeah.
 8 Q -- I mean same street?
 9 A Yes.
 10 Q Okay, And do you know an individual by the name
 11 of Chris Carrington?
 12 A Yes,
 13 Q Who is Chris Carrington?
 14 A My grandson.
 15 Q Okay, And do you recall whether or not Chris was
 16 living with you back in July of 2001?
 17 A He was staying with me, yes-
 18 Q Okay. Do you remember when it was that he came
 19 to stay with you?
 20 A Probably about a week before that weekend.
 21 Q Okay, What weekend are we talking about?
 22 A The 4th of July weekend.
 23 Q Okay, So you remember the 4th of July week -- or
 24 weekend?

VIII-149

ALLEN - DIRECT

1 A Yes.
 2 Q Okay. And why is it that he came to stay with you?
 3 A Probably 'cause he was fighting with his mother.
 4 Q Okay. And when he comes to stay with you, does
 5 he come up there specifically to get away from his mom, or
 6 does he have jobs and stuff that he has to do when he comes?
 7 A He had jobs, odd jobs helping me out 'cause my
 8 husband was sick.
 9 Okay. You said your husband was sick at that time?
 10 A Yes.
 11 Q Okay. I want to draw your attention specifically to
 12 the day of July the 2001. Do you have any independent
 13 recollection of that particular day?
 14 A Yes.
 15 Q Why is it that you have independent recollection of
 16 that day?
 17 A My sister came from California.
 18 Q Okay. And why did she come from California?
 19 A To have a party up at the lake celebrating the 4th of
 20 July, but they got there a day late.
 21 Q Okay. So that's why you remember the 51?
 22 A Yes,
 23 Q Okay. Came to visit?
 24 A Yes

VIII-150

ALLEN - DIRECT

1 A Yes.
 2 Q Matter of fact, you gave testimony in a previous
 3 hearing, is that correct?
 4 A Right.
 5 Q Okay. How did you characterize Chris to us? What
 6 did you use? What words did you use?
 7 A That he was a lame brain,
 8 Q Lame brain?
 9 A Yes.
 10 Q Okay. Did you also indicate that he is slow?
 11 A Yes.
 12 Q Okay. Now drawing your attention back to the 5th of
 13 July, you indicated that you remember that Chris was there?
 14 A Yes,
 15 Q Okay. Do you know if Chris went any place that
 16 day --
 17 A Yes.
 18 -- that is of attention for purposes of your
 19 testimony?
 20 A Yes.
 21 Q Okay, What — where did he go?
 22 A He went up the street to Lobato's house.
 23 Q Okay. When you say Lobato, are you talking about -
 24

VIII-152

ALLEN - DIRECT

1 And during that time was Chris staying with you as
 2 well?
 3 A Yes, he was.
 4 Okay. Now Chris has testified that in July of 2001
 5 he was 17 years old?
 6 A Yes.
 7 Q Was he going to school in Panaca or in that area at
 8 that time?
 9 A He was going to, not school but the -- okay. Like an
 10 at school -- I'm sorry, I --
 11 Q Do you know what the reason he was going to
 12 something other than high school?
 13 A It was probably 'cause he had flunked high school,
 14 so he was taking the extra courses through this schooling —
 15 Q Okay.
 16 A -- to get his GED
 17 Q Okay. So maybe a special program type school —
 18 A Yes.
 19 Q -- for that?
 20 A Yes.
 21 Q Okay. Do you remember talking to Ms. DiGiacomo
 22 and 1 back before May of 2002 --
 23 A Yes.
 24 -- in reference to this case?

VIII-151

ALLEN - DIRECT

1 A Blaise Lobato's house.
 2 Q Okay. Did you know Blaise Lobato back then?
 3 A Yes.
 4 Q Okay. Is she in the courtroom now?
 5 A Yes,
 6 Q Okay. Just so we know who you're talking about,
 7 point to her and tell us what she's wearing?
 8 A Sitting in front of the screen there with the dark hair
 9 and a flowery shirt on.
 10 Q Okay.
 11 MR. KEPHART: I'd ask the record to reflect she's
 12 identified the defendant, Your Honor,
 13 THE COURT: The record shall so reflect.
 14 MR. KEPHART: Okay.
 15 BY MR. KEPHART:
 16 Q And you knew that she lived right up the street from
 17 you?
 18 A Yes,
 19 Q Okay. And do you know who she lived with?
 20 A She lived with her dad and step-mom,
 21 Q Okay, On the 5th do you remember — you said that
 22 Chris went up to her house?
 23 A Yes.
 24 Q Did there come a point in time that day that he

VIII-153

ALLEN - DIRECT

1 came back?
 2 A Yes,
 3 Q Was there any concern about when he came back?
 4 A I just asked him why he came back early and he
 5 said that they were -- her and her mother, Becky, were
 6 arguing —
 7 Q Okay,
 8 A — and he didn't want to be in the middle of it so he
 9 came home,
 10 Q Okay. Did there come a point in time that he went
 11 back up to the Lobato's?
 12 A Yes,
 13 Q The same day?
 14 A Yes.
 15 Q Okay. Let's go over to the 5. Do you remember if
 16 Chris was staying with you on the 6th as well?
 17 A Yes,
 18 Q Okay.. And do you know whether or not he went to
 19 the Lobato's on the 6th?
 20 A During the daytime, no —
 21 Q Okay,
 22 A -- 'cause we had gone up to the party up at the lake
 23 and he didn't go,
 24 Q Okay.

VIII-154

ALLEN - DIRECT

1 A Yes.
 2 Q -- that he told you that?
 3 A Yes,
 4 Q Okay, Now did something happen on the 7th, Ms.
 5 Allen, that caused you to have to leave Panaca?
 6 A Yes,
 7 Q What happened?
 8 A My husband had had a heat stroke and the
 9 ambulance had taken him to Caliente to the hospital, and
 10 Christopher was there, And I was hysterical because I didn't
 11 know what was happening to my husband. So anyway, they
 12 took him to the hospital and I had made Christopher drive me
 13 over to the hospital.
 14 Q Okay. And was he there on the 8th as well?
 15 A Not at the hospital, no.
 16 Q Okay. Was he back home by the 8th?
 17 A Yes.
 18 Q Okay, Now Chris had told you that he didn't want to
 19 deal with the defendant and her mother fighting, is that right?
 20 A Right.
 21 Q Okay. And he also told you that they were fighting
 22 about her going -- that she was leaving and going back to Las
 23 Vegas?
 24 A That she wanted to, yes,

VIII-156

ALLEN - DIRECT

1 A But then when I came back probably 4:00 or 5
 2 o'clock that evening, he was there and then went back up the
 3 street.
 4 Q Okay. Did he come home that evening?
 5 A Yes.
 6 Q Was it the same type of thing the night before?
 7 A That I can't remember.
 8 Q Okay.
 9 A I don't know.
 10 Q You don't remember whether or not they were
 11 fighting?
 12 A Not that day. That's I think the only day he said
 13 that they were arguing and he didn't want to be in the middle
 14 of it
 15 Q Okay, Do you remember what you testified to as to
 16 why they were arguing?
 17 A Probably some things about Vegas —
 18 Q Okay,
 19 A -- and that's all I —
 20 Q Do you remember testifying that they were arguing
 21 about -- her and her mom were arguing because she was
 22 going back to Las Vegas?
 23 A Yes,
 24 Q Okay, And that would've been on the 6th --

VIII-155

ALLEN - DIRECT

1 Q Do you believe that Chris was at her house on the
 2 7th, based on what you just testified to?
 3 A That morning, yes, he could've been.
 4 Q Okay. You don't know, though?
 5 A Not for sure, no.
 6 Q Okay.
 7 A He was supposed to be mowing my grass, but I
 8 don't recall. I was just upset and —
 9 Q Yeah. Okay.
 10 A It did get mowed,
 11 Q It did or it didn't?
 12 A It did.
 13 Q Okay, And he's the one that mows your lawn?
 14 A Yes.
 15 Q Now when he stayed with you did he have a curfew?
 16 A Yes.
 17 Q What was that?
 18 A 11 o'clock at night
 19 Q Okay. So if he testified that he was up at the
 20 Lobato's on the 8th until midnight, would you have
 21 remembered that?
 22 A No, 'cause I would've been in bed.
 23 Q Okay,
 24 A I wouldn't have known.

VIII-157

ALLEN - DIRECT

1 Q So he would come home anytime he wanted to?

2 A No, usually it was be there at 11:00 or you can go

3 home or you're getting locked out.

4 Okay. Do you remember him being locked out that

5 night?

6 A No

7 Now you had an opportunity to speak to the police

8 department about what you're testifying to now, April of 2002,

9 is that correct?

10 A I talked to them, yes. I don't remember the dates,

11 Q Okay. If I was to tell you that we have a copy of a

12 statement that you made and it's dated April 24th of 2002,

13 would you accept that?

14 A Yes,

15 Q Okay, And do you recall telling the police about

16 some concern you had with regards to the defendant's step-

17 mother, Becky, Rebecca Lobato?

18 A That is the part where she met me at the store,

19 Q Okay. What was she doing?

20 A I was at the store and she came in right directly to

21 me and --

22 MR. SCHIECK: Objection. If she's gonna say

23 anything that said, Your Honor, is hearsay,

24 ///

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ALLEN - DIRECT

1 when Christopher had spoken to the police about this

2 particular incident?

3 A No.

4 Q Do you remember testifying that you believe the

5 police had talked to her --

6 MR SCHIECK: Objection, Your Honor, she said no,

7 she didn't remember.

8 MR. KEPHART: I'm asking if she remembers, trying

9 to refresh her memory.

10 MR. SCHIECK: You show her what she testified to

11 the proper way.

12 THE COURT: The Court sustains the objection to

13 the form of the question,

14 BY MR. KEPHART:

15 Q Ms. Allen, when you — when Ms, Lobato came in

16 and you told her that Chris wasn't gonna be lying for anybody,

17 do you know whether or not Chris had talked to the police by

18 then?

19 A No, I don't.

20 Q Okay, Do you ever remember sitting down with

21 Chris and trying to go over any dates?

22 A No, I didn't.

23 Q Okay,, Did he ever talk to you about dates?

24 A We actually never really talked about it at all

V111-160

ALLEN - DIRECT

1 BY MR, KEPHART:

2 Q Without telling us what she told you, what was your

3 response to -- she came -- first of all, when she came in, do

4 you remember her demeanor?

5 THE COURT: Overruled as premature. You may

6 answer,

7 BY MR. KEPHART:

8 Q Do you remember her demeanor?

9 A Yes, she was aggravated.

10 Q Okay. And without telling us what she told you,

11 what did you tell her?

12 A I told her I didn't know where Christopher was at

13 the time.

14 Q Okay. Did you tell her anything else?

15 A No, other than he wasn't going to be giving false

16 testament for anybody or anything, and she got mad and left,,

17 Q So you were trying to protect Christopher?

18 A No, I was telling the truth,

19 Q Okay,

20 A If he was gonna lie or whatever he was gonna be in

21 trouble.

22 Q You didn't want him lying for anybody?

23 A No, I didn't.

24 Q Okay. And do you believe that -- do you remember

V111-159

ALLEN - DIRECT

1 anymore 'cause so many things had happened in between.

2 Q Okay,

3 A I had no reason to talk about it.

4 Q Okay. You say some many things happened, you're

5 talking about up in Panaca?

6 A I'm talking about my family, my husband, his cancer,

7 running back and forth to Vegas, all hysterical all the time.

8 Q Okay.

9 A So it just never come up to have to tell him to do

10 anything because nothing else was happening at that time.

11 Q Okay. Now you said that you knew the defendant

12 and you pointed her out. Do you know what connection she

13 has with Chris?

14 A They were good friends. I think they were at the

15 time going together kinda.

16 Q Okay.

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

18 BY MR,, KEPHART:

19 Q You said that your sister had come down to Panaca

20 from California, is that right?

21 A Yes.

22 Q And it was for a party at the lake?

23 A Yes.

24 Q And do you remember how your sister — did she get

V111-161

ALLEN - DIRECT

1 to the lake?
 2 A Yes
 3 Q Do you remember how she got back from the lake?
 4 A In her vehicle.
 5 Q Okay. And who went to get her?
 6 A Christopher and my daughter, Shari [phonetic].
 7 Q When did that happen?
 8 A After my husband was taken to the hospital,
 9 Q Okay. That would've been on the --
 10 A He asked for my sister and so I sent Christopher and
 11 he had his mother and they took the back road out to Echo
 12 Dam and had them come back to the hospital.
 13 Q That'd been on the 7th?
 14 A Yes, they were driving a motor home --
 15 Q Okay.
 16 A -- pulling a little Geo.
 17 Q Okay. When did your sister leave, do you
 18 remember?
 19 A My sister left then on the 8th, the next day.
 20 Q And your sister would be your -- Chris' great aunt--
 21 A Aunt.
 22 Q or aunt?
 23 A Just aunt.
 24 Q Okay. And did he get along with her?

V111-162

ALLEN - CROSS

1 A Yes, I did,
 2 Q How far is that drive?
 3 A About 200 miles from where I came from, Eagle
 4 Valley.
 5 Q So you're up in Eagle Valley?
 6 A We have a trailer up there, plus a house in Panaca.
 7 Q Is it cooler up in Eagle Valley?
 8 A Yes.
 9 Q So you stay up there during the warm weather?
 10 A We're just up there a lot. We have two dogs and
 11 sometimes I work up there.
 12 Q Is that where the party was at was up at Eagle
 13 Valley?
 14 A No, it was at Echo Dam.
 15 Q Okay. When you come from Panaca to Las Vegas,
 16 how far is it?
 17 A About 178 miles,
 18 Q And how long does it take you to drive there?
 19 A say three hours.
 20 Q If you're driving, I mean --
 21 A Two and a half to three hours.
 22 Q Okay. You have to go out of Panaca to the main
 23 highway and then down to Caliente, slow down at Caliente to
 24 go through the town?

V111-164

ALLEN - CROSS

1 A Yes.
 2 Q Did they socialize?
 3 A Yes.
 4 Q Did they socialize during this time?
 A Yes,
 6 Q And she was only there the 5th, 6th, 7th, and 8th?
 7 A Right.
 8 Q For a party at the lake?
 9 A Right.
 10 Q And the whole family was invited?
 11 A Yes.
 12 Q And unfortunately your husband had heat stroke on
 13 one of the days?
 14 A Yes,
 15 Q Okay. Okay.
 16 MR. KEPHART: Pass the witness, Your Honor.
 17 Thanks, ma'am.
 18 CROSS-EXAMINATION
 19 BY MR. SCHIECK:
 20 Q Good afternoon, Ms. Allen.
 21 A Good afternoon.
 22 Q We'll try to get you out of here as soon as we can.
 23 A Thank you.
 24 Q You drive down from Panaca today?

V111-163

ALLEN - CROSS

1 A Right.
 2 Q And then you go over the mountain and you end up
 3 in Alamo?
 4 A Yes.
 5 Q You gotta slow down in Alamo?
 6 A Yes.
 7 Q And then it's pretty much a straight shot from Alamo
 8 into Las Vegas?
 9 A Yes.
 10 Q And you said it takes you about two and a half
 11 hours, as some people drive it a little bit quicker?
 12 A Yes.
 13 Q But it's still about 170 miles?
 14 A Yes.
 15 Q Okay. You didn't take the shortcut through Rainbow
 16 Canyon?
 17 A I never take the shortcut through Rainbow Canyon,
 18 It's kind of a rough road?
 19 A Yes. Most of it's dirt road.
 20 About 38 miles of dirt road?
 21 A I couldn't tell you how many miles it is.
 22 Okay. Just a few questions. Now you said that you
 23 sister was coming for the 4th of July to stay and get together
 24 with the family, is that right?

V111-165

ALLEN - CROSS

1 A Yes.
 2 Q But she didn't make it on time on the 4th?
 3 A That's right.
 4 Q Okay, Was Chris already staying up at your house
 on the 4th?
 6 A Yes.
 7 Q Do you recall him going to the fireworks show at the
 8 park in Caliente on the 4th?
 9 A No.
 10 Q Okay. And they do have a fireworks show in
 11 Caliente?
 12 A No,
 13 Q They don't?
 14 A I went to one in Caliente, yes,
 15 Q Okay.
 16 A But he wasn't with me at the fireworks,,
 17 Q Was this in 2001?
 18 A Yes,
 19 Q Okay. And so you went to the fireworks show?
 20 A Yes.
 21 Q Just yourself or your and your husband or —
 22 A I don't think my husband went that year, me and
 23 the kids —
 24 Q Okay, Did

V111-166

ALLEN - CROSS

1 been living there in Caliente before he —
 2 A He had been there in Caliente.
 3 Q And he was staying with his mom in Caliente?
 4 A Yes,
 5 Q And just for the record, what's his mom's name?
 6 A Shari,
 7 Q But did Chris have his own transportation so he
 8 could get around?
 9 A No,
 10 Q Okay,
 11 A He didn't have his driver's license at the time.
 12 Q Okay. But he drove you to the hospital?
 13 A That time he did, yes, because I was hysterical and I
 14 made him drive.
 15 Q He was able to drive a car?
 16 A Yes.
 17 Q That's not unusual in small towns, that young men,
 18 even before they have driver's license, operate equipment?
 19 A Yes,
 20 Q Okay. And in fact, he drove up to the lake with his
 21 mom to get his great aunt?
 22 A His aunt, yes,
 23 Q And so he could've found -- or gotten to the □
 24 fireworks on the 4th of July, either with friends or any other

V111-168

ALLEN - CROSS

1 A -- grand kids.
 2 Q Okay. And Chris is one of your grand kids, but he
 3 didn't go?
 4 A Well, he could've been there, I just -- he wasn't with
 5 me.
 6 Q Okay, He wasn't with you, but he could've been
 7 there at the park?
 8 A Right.
 9 Q Is UV a pretty big thing in Caliente on the 4th of
 10 July, the fireworks at the park?
 11 A Yes.
 12 Q Everybody comes early and picnics and plays softball
 13 and things —
 14 A Yes
 15 Q -- of that nature?
 16 A Yes.
 17 Q And so everybody's sort of mingling around, getting
 18 reacquainted?
 19 A Yes.
 20 Q Sort of a get together there in Lincoln County?
 21 A Yes,
 22 Q So Chris could've been there and you didn't see him?
 23 A Yes-
 24 Q In fact, he was just back into the area, or had he

V111-167

ALLEN - CROSS

1 way?
 2 A I would say with friends, yes,
 3 Q Okay. And you indicated that you knew that he had
 4 gone up to Blaise's house on the 5th?
 5 A Yes,
 6 Q Did he have responsibilities in addition to mowing
 7 your lawn and mowing other lawns in Panaca?
 8 A Yes, he did.
 9 Q Okay. How many other lawns was he taking care
 0 of?
 1 A Probably two more —
 2 Q Okay,
 13 A — my landlord's and the people that live next door to
 14 me.
 15 Q There on Callaway?
 16 A One's on Callaway right next door, and the one
 17 behind me is on 5th Street.
 18 Q And you know that he went up to Blaise's house on
 19 the 6th also? You recall that?
 20 A Yes,
 21 Q Okay. And then on the 7th was when your husband
 22 had the heat stroke?
 23 A Yes,
 24 Q Okay. Was he with you the whole time on the 7th or

V111-169

ALLEN - CROSS

1 was --
 2 A No
 3 Q Okay, There were times he wasn't with you?
 4 A He could've been up there that morning on the 7th,
 5 But in the afternoon, the heat stroke was about 1 o'clock, and
 6 from then on he was with me,
 7 Q And he took you down to Caliente and stayed with
 8 you?
 9 A Yes,
 10 Q But then on the 8th he was back in Panaca, correct?
 11 Do you recall on the 8th?
 12 A No,
 13 Q And it was on the 8th that your sister left and went
 14 back home?
 15 A Yes,
 16 Q Now you said that when Chris stayed with you he
 17 had a curfew, you wanted him in by 11:00?
 18 A Yes,
 19 Q But sometimes you'd go to bed before 11:00, is that
 20 fair to say?
 21 A No, I never went to bed `till 11:00.
 22 Q Okay. You said on the 8th he could've come in after
 23 11:00 'cause you were already in bed?
 24 A He could've. If he was there, I just -- I'm not

VIII-170

ALLEN - REDIRECT

1 recalling,
 2 Q Okay,
 3 A I'm not saying he was there on the 8th.
 4 Q Okay, It's a long time ago. It's hard to remember
 5 all these details.
 6 A I couldn't remember then and it's been four years,
 7 five years now,
 8 Q Okay.
 9 MR. SCHIECK: All right, Thank you very much.
 10 We'll let you get back on the road. Thank you,
 11 THE WITNESS: Thank you.
 12 THE COURT: Redirect?
 13 MR. KEPHART: I do, Your Honor.
REDIRECT EXAMINATION
 15 BY MR. KEPHART:
 16 Q Ms. Allen, do you recall telling the police officer that
 17 was on the 5th and then the next day they were doing it again,
 18 and he came back home and he didn't go back down there, as
 19 far as you know, on the 6th? Do you remember telling the
 20 police that?
 21 A Yes.
 22 Q Is that right?
 23 A Yes.
 24 Q Okay, And then once again, as far as you know

VIII-171

ALLEN - REDIRECT

1 after the 6th, at least what you told the police, is that he did
 2 not go back down there because -- because why?
 3 A Because she was going to Vegas,
 4 Q Okay. And did you tell the police because he told
 5 you that they were fighting as well?
 6 A Yes.
 7 Q Okay. And then the next day, at least on the 6th,
 8 you had all this problem with your husband, is that right?
 9 MR. SCHIECK: It was the 7th.
 10 THE WITNESS: The 7th.
 11 BY MR. KEPHART:
 12 Q I'm sorry, on the 7th you had the problem with your
 13 husband?
 14 A Yes.
 15 Q Okay, And you testified that the defendant's step-
 16 mother tried to contact you. Where were you when she tried
 17 to contact you?
 18 A I was at the grocery store.
 19 Q Okay, And where is that located? Is that in Panaca?
 20 A Panaca on the main street.
 21 Q And she came in and you said that she was
 22 agitated?
 23 A Yes.
 24 Q Okay, And you told us that you said something to

VIII-172

ALLEN - REDIRECT

1 her after she said something to you? Do you remember what
 2 you told her?
 3 MR. SCHIECK: Object, Your Honor, that's asked and
 4 answered and beyond the scope of cross.
 5 THE COURT: Sustained.
 6 MR. KEPHART: Okay, Let me ask one further.
 7 Judge, I would just ask to reopen then with regards
 8 to this area.
 9 MR. SCHIECK: To ask the same questions again?
 10 Asked and answered, Your Honor,
 11 MR. KEPHART: I'm not asking the same questions
 12 again,
 13 THE COURT: The Court will grant the motion to
 14 reopen.
 15 MR. KEPHART: Okay.
 16 BY MR. KEPHART:
 17 Q Ms, Allen, when you described Ms. Lobato as being
 18 agitated, and you told her some things. What did you tell her?
 19 MR. SCHIECK: Objection, asked and answered,
 20 Your Honor..
 21 THE COURT: The question hasn't been concluded,
 22 BY MR. KEPHART:
 23 Q The question is, what did you tell her after she had
 24 asked you some things in the supermarket? Without telling us

VIII-173

ALLEN - REDIRECT

1 what she said, what did you tell her?
 2 A I told her that I did not know where Christopher was
 3 at that time and that he wasn't going -- she told me what she
 4 wanted and I told her then that he wasn't going to be lying to
 5 anybody for any reason.
 6 Q Okay, And what -- how did she act or what was her
 7 demeanor after that?
 8 A She was ever madder and walked out the door.
 9 Q She was even madder you said --
 10 A Yes --
 11 Q -- and walked out the door?
 12 -- then when she walked in,
 13 Q And do you know whether or not she ever did talk to
 14 Christopher?
 15 A I don't know if she talked to him or not.
 16 Q Okay. You never saw it?
 17 A I never saw it I never heard about it.
 18 Q Since that point, since that time, do you know
 19 whether or not she has tried to talk to you or Christopher?
 20 A No,
 21 Q Okay. You don't know?
 22 A Since that time I seen her probably two months ago,
 23 and that's the last time I've seen her. And that conversation
 24 was I asked how she was doing --

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ALLEN - REDIRECT

1 opinion on any subject connected with the trial until the case is
 2 finally submitted to you.
 3 Court's in recess for 10 minutes.
 4 THE BAILIFF: All rise, please.
 5 (Jurors are not present)
 6 (Court recessed at 3:36:55 p.m. until 3:58:35 p.m.)
 7 (Jurors are present)
 8 THE BAILIFF: All rise, please.
 9 Department 2 is back in session. Please be seated,
 10 THE COURT: The record shall reflect that we're
 11 resuming in State versus Kirstin Blaise Lobato under case
 12 number C177394, in the presence of the defendant, her three
 13 counsel, the two prosecuting attorneys, and ladies and
 14 gentlemen of the jury.
 15 Proceeding forward in the State's case in chief.
 16 State may call its next witness.
 17 MR. KEPHART: Thank you, Your Honor, The State
 18 would call Maria Thomas,
 19 THE CLERK: Please come all the way forward.
 20 Remain standing and raise your right hand,
 21 MARIA THOMAS, STATE'S WITNESS, IS SWORN
 22 THE CLERK: Thank you, Please be seated.
 23 State your name and spell it for the record, please,
 24 THE WITNESS: Maria Thomas, M-A-R-I-A T-H-O-M-

VIII-176

ALLEN - REDIRECT

1 Q How the defendant was doing?
 2 A -- and she said she -- Blaise was doing fine,
 3 Q Okay,
 4 A I said that's good, and we went on our way,
 5 MR, SCHIECK: Objection, Your Honor, as to any
 6 further hearsay evidence.
 7 THE COURT: Sustained.
 8 MR. KEPHART: Okay. Thank you, Ms. Allen.
 9 THE COURT: You passing the witness?
 10 MR. KEPHART: Yes.
 11 MR. SCHIECK: Nothing, Your Honor. Thank you.
 12 Thank you very much, ma'am.
 13 THE COURT: You may step down,
 14 THE COURT: We'll be taking a stretch break at this
 15 time Ladies and gentlemen, in 10 minutes please be out in
 16 the hallway. The bailiff will meet you there to return you to
 17 your seats in the courtroom.
 18 During the recess you're admonished not to talk or
 19 converse among yourselves nor with anyone else on any
 20 subject connected with the trial, And you're not to read,
 21 watch, or listen to any report of or commentary on the trial or
 22 any person connected with the trial by any medium of
 23 information, including without limitation, newspaper, television,
 24 radio, and internet. And you're not to form or express any

VIII-175

THOMAS - DIRECT

A-S.
 2 THE COURT: State may proceed,
 3 MR. KEPHART: Thank you, Your Honor.
 4 DIRECT EXAMINATION
 5 BY MR, KEPHART:
 6 Q Ms. Thomas, how are you employed?
 7 A I'm a senior crime scene investigator with the Las
 8 Vegas Metropolitan Police Department.
 9 Q I want to draw your attention back to July of 2001,
 10 and ask you if you were working in that capacity then?
 11 A Yes,
 12 Q Okay. How long have you been a crime scene
 13 investigator?
 14 A Approximately 10 years,
 15 Q What is the basic duties of a crime scene
 16 investigator?
 17 A To identify, document, collect, and preserve
 18 evidence that will prove or disprove a crime has been
 19 committed.
 20 Q Okay. Specifically on July 9th of 2001, do you recall -
 21 - well, did you review anything prior to today in anticipation of
 22 your testimony in this case?
 23 A Yes, my reports.
 24 Q Okay, Do you recall drafting a report from a date of

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THOMAS - DIRECT

1 July 9th of 2001 involving an autopsy?
 2 A Yes, that's correct,
 3 Q Okay. And that involved -- at that point in time you
 4 didn't have the name of the victim, is that correct?
 5 A That's correct, we did not,
 6 Q Okay, And with respect to crime scene investigator
 7 at the autopsy in this particular case, is it uncommon for there
 8 to be multiple crime scene investigators working throughout
 9 the pendency of investigation?
 10 A No, it's quite common actually you'd have more than
 11 one investigator involved in a homicide.
 12 Q Matter of fact, in this case there was more than one?
 13 A Yes
 14 Q Is it quite common that one crime scene investigator
 15 may go to an autopsy while other crime scene investigators for
 16 the same crime may be at the crime scene?
 17 A That's correct,
 18 Q Okay, In this particular case, is that the case that a
 19 crime scene investigator went to the autopsy and other crime
 20 scene investigators went to the crime scene?
 21 A In this particular case I was day shift and day shift
 22 only responds to autopsies on homicides.
 23 Q Okay. And when you go to a homicide, what are
 24 you - what are your duties with regards to the homicide - to

THOMAS - DIRECT

gonna give you the ones that haven't been admitted,
 2 MR. KEPHART: Your Honor, just for the record,
 3 just call out the numbers for defense and make sure that he's
 4 seen these Kind of - we're out of order here.
 5 Exhibits 199, 200 --
 6 THE COURT: These are the ones already admitted?
 7 MR, KEPHART: No, that have not.
 8 THE COURT: Okay. I need to make a listing,
 9 MR. KEPHART: Okay.
 10 THE COURT: Would you start over, please?
 11 MR. KEPHART: Okay, 199, 200 -- oh wait, I'm
 12 sorry, Judge, Those have been. I'm sorry. Let me start over.
 13 41, 48, 49, 50, 51, 52, 53, 54, 55, Those are the
 14 only ones so far that have not been admitted.
 15 THE COURT: Okay. The record shall reflect that
 16 they've been turned over to Mr. Schieck for inspection.
 17 MR. KEPHART: Okay.
 18 THE COURT: Mr. Schleck has now returned them to
 19 Mr. Kephart,
 20 MR, KEPHART: May I approach, Judge,
 21 THE COURT: Yes,
 22 BY MR. KEPHART:
 23 Q The first stack I'm showing you, which I've read out
 24 already as marked as State's Proposed Exhibits 41, 48, 49, 50,

VIII-180

THOMAS - DIRECT

1 an autopsy, I'm sorry?
 2 A Basically an autopsy is considered a continuation of
 3 the crime scene, so we're there to document the condition of
 4 the body and to collect any evidence.
 5 Q Okay, And how would you go about documenting
 6 the condition of the body?
 7 A Photography, reports.
 8 Q Okay. And in this particular case did you do a report
 9 in reference to the autopsy evidence?
 10 A Yes, the autopsy report.
 11 Q Okay. And -- excuse me?
 12 A It's an autopsy report.
 13 Q Okay. Did you do an autopsy report in this case?
 14 A Yes, it's an autopsy report assigned to crime scene
 15 investigators,
 16 Q Okay, And can you tell me if you had an opportunity
 17 to review that report?
 18 A Yes,
 19 Q Okay. And you said that you took photos?
 20 A That's correct.
 21 Q All right, Now I'm gonna show you a series of
 22 photos, and a lot of these photos have been admitted, so I'm
 23 gonna ask you to look at -- I'm gonna give them to you in two
 24 different stacks, the ones that have been admitted, and I'm

THOMAS - DIRECT

1 51, 52, 53, 54, and 55. Ask you if you'd take a look at these,
 2 tell me if you can recognize or if you've taken those?
 3 A I took these -- these here.
 4 Q Okay. So you recognize Exhibits 41, 48, 51, 52, 53,
 5 and 55?
 6 A Yes.
 7 Q And you're saying that you don't recognize 50 - 49,
 8 50, or 54?
 9 A That's correct.
 10 Q How is it that -- I mean what gives you that
 11 indication that you don't recognize these?
 12 A Because according to my property impound, the
 13 victim did not have any shoes at time of autopsy on him.
 14 Q Okay, Okay. So this would've been possibly another
 15 crime scene?
 16 A Most likely, yes.
 17 Q Okay,
 18 MR. KEPHART: Your Honor, I'll move to admit then
 19 41, 48, 51, 52, 53, and 55,
 20 MR. SCHIECK: No objection, Your Honor,
 21 THE COURT: Granted,
 22 (State's Exhibit Nos. 41, 48, 51, 52, 53, and 55, admitted)
 23 MR, KEPHART: I'll try to get these in order.

/11

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THOMAS - DIRECT

1 BY MR. KEPHART:
 2 Q Okay. I'm showing you what's been marked as —
 3 and admitted as 42, 43, 44, 45, 46, 47, 55, 53 --
 4 THE COURT: 55 and 53 were just admitted,
 5 MR. KEPHART: Sorry, Judge. I know. I want to try
 6 to get these in — 48 —
 7 THE COURT: 48 was just admitted,
 8 MR. KEPHART: Yeah. 49, 50, 51, 52, 53, 54,
 9 THE COURT: 54 was not admitted. It was one she
 10 indicated she did not take.
 11 MR. KEPHART: Okay, That's right. And 53 —
 12 Judge, can you help me out here? I'm sorry.
 13 THE COURT: And 55.
 14 MR. KEPHART: It was 55? There we go. 54 and
 15 55. Okay,
 16 THE COURT: Not 54.
 17 MR. KEPHART: Right. Those two were not —
 18 THE COURT: Yes, 55.
 19 MR. KEPHART: Yes, 55. Is there any other ones,
 20 Judge?
 21 THE COURT: No, 41,
 22 MR. KEPHART: Actually -- yeah, 50, 49, All right.
 23 I'm just trying to put them in order. Just apologize to the
 24 Court,

THOMAS - DIRECT

1 A You want me to keep these in order, correct?
 2 Q Yes. 199, 200, 201, 202, 203, and 204. Just put
 3 those right on the back of that. Just take a look at those.
 4 (Pause in the proceedings)
 5 Q Did you have any opportunity to do that -- look at
 6 those?
 7 A Yes,
 8 Q Okay. And are those consistent with what you recall
 9 that you took of the autopsy in this matter?
 10 A Yes, with the exception of these two. I did take
 11 these photographs, but they've been cut,
 12 Q Okay, That's fine, And just for the record, can you
 13 identify those, the one that was cut?
 14 A Yes.
 15 For the record, can you identify it? Look at the
 16 number,
 17 A Oh.
 18 Q Okay,
 19 A 93 and 93-A,
 20 Q Okay. Now those photos there basically depict -- I
 21 mean we've had Dr. Simms testify to a number of those. And
 22 what are you trying to document when you're taking photos of
 23 those nature -- of the nature that you have in your hand
 24 there?

V111-184

THOMAS - DIRECT

1 THE COURT: 49, 50 and 54 were the three that she
 2 indicated she did not take.
 3 MR. KEPHART: All right.
 4 BY MR. KEPHART:
 5 Q You've already — you've testified as to 41, but I'm
 6 just trying to put these -- keep these in order, okay? Now let
 7 me ask you this. You were at the coroner's office, you took
 8 photographs of the body before it was being processed by the
 9 coroner?
 10 A Yes,
 11 Q Okay.
 12 A Yes,
 13 Q And also photographs after it had been processed by
 14 the coroner?
 15 A Some In this particular case there was one while
 16 the victim was being processed by the coroner that I was
 17 asked to take —
 18 Q Okay.
 19 A -- a photograph of injuries to the head, specifically
 20 to the skull.
 21 Q Okay. Let me put give you these, let you go look
 22 through those, and then we're gonna go through number by
 23 number, just so -- in addition to those, I want you to take a
 24 look at --

THOMAS - DIRECT

1 A The condition of the body when it arrives at the
 2 coroner's office —
 3 Q Okay,
 4 A -- once it's taken out of the bag.
 5 Q When Duran Bailey's body arrived at the coroner's
 6 office, you said taken out of the bag, what are you talking
 7 about?
 8 A It's placed in a body bag at the crime scene, it's
 9 sealed by the coroner's office, the coroner investigator seals
 10 the bag. We make a note of the seal and then the body is
 11 transported to the coroner's office. The following day, as I
 12 said before, due to the coroner's business hours, the autopsies
 13 are conducted during the day. So the following day one of the
 14 day shift personnel, crime scene investigator like myself, would
 15 show up at the coroner's office. We would then document the
 16 seal, showing that the seal is intact.
 17 Q Okay,
 18 A We document the condition of the bag and then we
 19 break that seal. We open the bag and we proceed to
 20 document the condition of the body in the bag.
 21 Q Okay. And the first time that you see, in this
 22 particular case, that you would see Mr. Bailey's body would've
 23 been when you opened that bag?
 24 A That's correct.

VIII-183

V111-185

THOMAS - DIRECT

1 Q Okay. You weren't at the crime scene?
 2 A I was not.
 3 Q So you didn't have anything to do with actually
 4 packaging him up in the bag and sending him?
 5 A That's correct,
 6 Q That would be another crime scene analyst?
 7 A Yes,
 8 Q Okay,
 9 A Well, the coroner investigator is actually who —
 10 Q Okay,
 11 A -- is in -- that's their jurisdiction, the body's their
 12 jurisdiction.
 13 Q Okay. And in reference to Duran Bailey here, when
 14 he arrived at the coroner's office, do you recall whether or not
 15 he had any type of clothing on him? Or would it be
 16 inconsistent with somebody that comes into the coroner's
 17 office to have clothing on? Do you understand my question?
 18 Would they take his clothing off at the scene before they send
 19 him in or —
 20 A No.
 21 Q Okay-
 22 A No. Typically not,
 23 Q Okay. So he would arrive with his clothing that they
 24 found him in?

VIII-186

THOMAS - DIRECT

1 that impress your memory —
 2 A Yes.
 3 Q as to whether or not you're correct on that?
 4 A Yes.
 5 MR. KEPHART: May I approach, Your Honor?
 6 THE COURT: You may.
 7 BY MR. KEPHART:
 8 Q Showing you what's been marked as State's
 9 Proposed Exhibit 120, and ask you if you can identify that
 10 photograph?
 11 A Yes, I can,
 12 Q Is that a photograph accurately depict, as you recall,
 13 a photo that you took on that particular day?
 14 A Yes.
 15 MR, KEPHART: Move to admit 120 -- 220.
 16 MR. SCHIECK: No objection, Your Honor.
 17 THE COURT: Granted_
 18 (State's Exhibit No. 220, admitted)
 19 BY MR. KEPHART:
 20 Q Does that also show the way he's dressed, as you've
 21 just described?
 22 A Yes.
 23 Q Okay. What else does this photo show?
 24 A His hands had been bagged at the crime scene to

V111-188

THOMAS - DIRECT

1 A Yes.
 2 Q Okay. Did that happen in this case?
 3 A Yes,
 4 Q Okay, And do you recall any specifics about the way
 5 he was dressed in this particular case?
 6 A He was wearing a plaid shirt, tan colored pants, and
 7 white socks.
 8 Q Okay, And do you recall how — was he fully clothed
 9 in the sense that his clothes were up, were they down —
 10 A No, His --
 11 Q -- was his shirt open, shirt clothed?
 12 A His shirt was open.
 13 Q Okay,
 14 A Down the front was open, so his chest was exposed.
 15 His pants were lowered below the groin area, and I could
 16 observe what appeared to be blood on his clothing, his person,
 17 socks, all articles of clothing he had on.
 18 Q Okay, And you said now that his pants were
 19 lowered below his groin area?
 20 A Yes.
 21 Is that -- they were up above his knees or below his
 22 knees?
 23 A They were right like above his knees,
 24 Q If I was to show you a photograph of that, would

V111-187

THOMAS - DIRECT

1 preserve any trace evidence that may be found on his hands.
 2 And there was a plastic bag covering the upper legs, for the
 3 most part,
 4 Q Okay. Anything else? Does he have pants on in
 5 there?
 6 A Well, his pants and shirt and socks, as I indicated
 7 before --
 8 Q Okay.
 9 A -- he did have that on, yes.
 10 And where are his pants and —
 11 A His pants are about the knees.
 12 About the knees?
 13 A Yes,
 14 Okay. So not above the knees?
 15 A No, they're more like about the knees.
 16 Q Okay. And you said a plastic bag was covering his
 17 mid-section or below his mid-section?
 18 A Below -- below the mid-section.
 19 Q Okay. Actually can you see that on the —
 20 A Yes, it's below -- like below the groin area, so upper
 21 legs for the most part,
 22 Q Okay, Actually in this particular photo you can see
 23 his genital area, is that correct?
 24 A That's correct,

V111-189

THOMAS - DIRECT

1 Q So right below that is where this plastic is?
 2 A Yes.
 3 Q And that plastic, is that something that you recall,
 4 what type of — you said plastic and you said plastic bag?
 5 A Yes, It looked like a garbage bag to me.
 6 Q Okay. Were you given information as to when the —
 7 where the body was found?
 8 A Yes.
 9 Q Were you aware that he was found in a garbage
 10 dump area, around a dumpster —
 11 A That's correct, yes.
 12 Q in the mixed of a bunch of garbage?
 13 A Yes, that's correct,
 14 Q I want to show you Proposed Exhibits 217, 218, 219
 15 — we talked about 220 already -- 221, 222, 223, 224, 225,
 16 226, and ask you to look at those, I'm gonna ask you if you
 17 remember these five as well, if you -- if the photographs -- if
 18 you remember taking the photographs?
 19 A Not this one.
 20 Q Okay. When you say this one, you're talking about
 21 226, and that's another photo of the shoes?
 22 A Right,
 23 Q Okay. You took all the other ones?
 24 A Yes.

V111-190

THOMAS - DIRECT

1 A It looked like a plastic garbage bag —
 2 Q Okay.
 3 A -- with apparent blood and -- don't know what other
 4 trace evidence would've been on there,
 5 Q Okay.
 6 A I didn't examine it for that.
 7 Q There's also down here at the bottom like a knot in
 8 the -- appear to be a knot in the plastic?
 9 A Yes, that's one of the indicators to me that it
 10 could've been a trash bag or a garbage bag.
 11 Q Like when they're putting it into a --
 12 A Container.
 13 Q -- into a container they tie it so it stays?
 14 A Correct
 15 Q Okay. So this isn't saran wrap or anything like that,
 16 is it?
 17 A No.
 18 And now besides the photographs, besides taking
 19 photos of multiple items at the autopsy you just talk -- I mean
 20 talk about god, 60 some photos or so. What else did you do
 21 at the autopsy?
 22 A I completed a report, an autopsy evidence form
 23 Q Okay.
 24 A We also collected local swabs from his mouth, we

V111-192

THOMAS - DIRECT

1 Q Those accurately depict items that you
 2 photographed on the 9th of July of 2001?
 3 A Yes.
 4 MR. KEPHART: Move to admit Exhibits 217, 218,
 5 219, 221, 222, 223, 224, and 225, Your Honor.
 6 MR, SCHIECK: No objection, Your Honor,
 7 THE COURT: Granted,
 8 (State's Exhibit Nos. 217, 218, 219, 221, 222,
 9 A 223, 224, and 225, admitted)
 10 BY MR. KEPHART:
 11 Q And you were just testifying about this plastic item,
 12 and that is shown in 218, is that correct?
 13 A Yes.
 14 Q Okay. And 219 shows a better look of the way Mr
 15 Bailey was dressed, is that correct?
 16 A Yes,
 17 Q I need to zoom out some, Correct?
 18 A Mm-hmm,
 19 Q Okay.
 20 A Yes,
 21 Q And 217 is the actual plastic that you removed from
 22 Mr. Bailey, is that correct?
 23 A Yes.
 24 Q Okay. And what would you call this?

VIII-191

THOMAS - DIRECT

1 did a sexual assault kit on him, which basically I observe the
 2 coroner investigator assistant do that -- or the coroner's
 3 assistant, excuse me. And they conduct the actual sexual
 4 assault kit, which consists of various different swabs, including
 5 in this particular case, a penial swab, oral, rectal, combed
 6 pubic hairs, pulled pubic hairs for any DNA that may have
 7 been done on any -- anything involving a sexual assault of any
 8 time,
 9 Q And you -- also in the photographs it shows a —
 10 what appears to be a white sheet on him --
 11 A Yes.
 12 Q -- when you open up the bag? What's the purpose
 13 of that? How does that get there, do you have any idea?
 14 A Yes,, We provide a sterile sheet to the coroner
 15 investigator at the crime scene, and what they do is they wrap
 16 the body in the sheet to preserve the condition of the body as
 17 much as possible. There is going to be movement, shifting of
 18 the body obviously because it's being transported. But it tends
 19 to minimize that, and also it may collect any trace evidence.
 20 So that's why we impound that sheet into custody so that if
 21 there's any trace evidence that falls off the body we will check
 22 the sheet for it and we also check the bag --
 23 Q Okay.
 24 A -- the body bag.

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THOMAS - DIRECT

1 Q Did you impound that then?
 2 A The sheet?
 3 Q Yeah,
 4 A Yes, I did,
 5 Q Did you impound any other items?
 6 A Yes, quite a few items.
 7 Q Okay. Well, let's just go through your report.
 8 A May I refer to it for —
 9 Q Do you have it there with you?
 10 A Yes, I do have it with me,
 11 Q Okay, Just so we know what you're talking about, is
 12 it a three page report dated July 9th of '01, or is there more to
 13 it?
 14 A Three pages,
 15 Q Okay, And it's identified as evidence impound
 16 report?
 17 A That's correct,
 18 Q Has your name on it?
 19 A Yes.
 20 Q Okay. And at this point in time you actually
 21 identified the victim as John Palms Doe, is that correct?
 22 A Yes
 23 Q All right, And now you indicated that you did a
 24 sexual assault kit, DNA kit, impounded those?

V111-194

THOMAS - DIRECT

1 A He's in a plastic bag, I'm assuming moisture, the
 2 climatic conditions. He's first outside, now he's in a plastic bag
 3 and refrigerated at the coroner's office, so I think the climatic
 4 conditions may have caused the bag to adhere to the skin if, in
 5 fact, it wasn't like that already. Like I said, I was not at the
 6 crime scene.
 7 Q Okay,, But when you -- when you got it out of the
 8 got him out of the coroner's bag it was on him?
 9 A Yes.
 10 Q And did he appear to have blood on him as well?
 11 A Yes,
 12 Q Okay, And the photo that you showed has blood on
 13 the plastic bag?
 14 A Yes.
 15 Q Okay, And -- but it wasn't wrapped around him?
 16 A Not around the buttocks area, no.
 17 Q All right. After the plastic bag, what else did you
 18 impound?
 19 A A watch that was found,
 20 Q Where was it found?
 21 A That was in his right front pocket, pants pocket
 22 Q Okay.
 23 A Several small pieces of what appeared to be plastic
 24 with silver colored paper attached to it were given to me

VIII-196

THOMAS - DIRECT

1 A Yes.
 2 Q Wrapped a - the sheet that was wrapped around
 3 him, you impounded that?
 4 A That's correct,
 5 Q What else did you impound?
 6 A The clothing he was wearing, which would've been
 7 the tan pants, the white socks, the plaid shirt, the clear plastic
 8 bag that was covering the section that we discussed
 9 previously. There was a men's wristwatch found in his pants
 10 pocket,
 11 Q Okay, Before we go any further, with regards to the
 12 plastic bag again. Was the plastic bag wrapped around him?
 13 A At time of autopsy, which was my observation of
 14 that plastic, it was wrapped just up to the thighs, not wrapped
 15 around him,
 16 Okay,
 17 A It was not covering the buttocks area at all,
 18 Okay.
 19 A It was just over him and it had adhered to his
 20 body --
 21 Q Okay.
 22 A — somewhat.
 23 Okay. And do you have any idea of what it caused it
 24 to adhere to the body?

V111-195

THOMAS - DIRECT

1 actually by Dr. Simms, who is the coroner —
 2 Q Okay.
 3 A -- or the pathologist, and he recovered that from his
 4 rectum, from the victim's rectum.
 5 Q Okay.
 6 A One dollar bill, that was in the left front pocket,
 7 pants pocket. The nine cents, which were found in the right
 8 leg pocket — yeah, in the right pocket of the pants, Three
 9 cigarette butts, which were found in the body bag, a used
 10 match on his upper left thigh, a book of matches with some
 11 writing on it,
 12 Q And where was that found?
 13 A And that was in the left rear pocket of -- pants
 14 pocket again.
 15 Q Okay.
 16 A An orange matchbook, which was in the left rear
 17 pocket, pants pocket. A brown leather bifold wallet, which was
 18 in the right rear pants pocket, The -- three pieces of paper
 19 with phone numbers and miscellaneous writing, that was in the
 20 right rear pocket, pants pocket again. A piece of metal, it
 21 looked like a thin strip that was four and three-quarter inches
 22 long was found in his left sock. A yellow post-it note with a
 23 strip a green paper was found in the body bag with the victim.
 24 And a nail cutter -- or clippers were found in the right front

V111-197

THOMAS - DIRECT

1 pocket, pants pocket, and that completes that report.
 2 Q And all those items you had impounded from the
 3 coroner investigation, is that correct, at the -- from the
 4 coroner's office?
 5 A Yes, at autopsy.
 6 Q At the time of autopsy?
 7 A Right.
 8 Q Okay. And specifically with regards to the victim's
 9 clothing, you had testified that you impounded the tan pants,
 10 the pair of white socks, and the plaid shirt?
 11 A Yes,
 12 Q Okay, When you —
 13 THE COURT: We'll be taking our recess at this time.
 14 Counsel approach.
 15 (Off-record bench conference from 4:29:50-4:30:55 p.m.)
 16 THE COURT: The witness may step down from the
 17 stand. And due to a prior scheduling conflict, she will not be
 18 able to be with us tomorrow, but will be returning to resume
 19 her testimony on Monday at 10:30. The State will be
 20 proceeding forward with other witnesses tomorrow.
 21 Tomorrow we will resume at 1:15 in the afternoon.
 22 Ladies and gentlemen, during this evening recess
 23 you are admonished that you are not to talk or converse
 24 among yourselves nor with anyone else on any subject

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AFFIRMATION
Pursuant to C177394

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

Kari Riley
Transcriber

4/29/07
Date

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

8 You have a good evening and a good morning and we'll see you at 1:15 tomorrow, The jury may exit.

(Jurors are not present)

11 THE COURT: Everyone have a good evening,

12 MS. GREENBERGER: You too, Your Honor. □


13 COURT ADJOURNED AT 4:34:36 RM. UNTIL THE
14 FOLLOWING DAY, SEPTEMBER 21, 2006

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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-EN171ED MATTER.

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