

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

THE STATE OF NEVADA,)
)
)
 Plaintiff,) CASE NO. C177394
)
 vs.)
)
 KIRSTIN BLAISE LOBATO,) DEPT. NO. II
)
)
 Defendant.) Transcripts of
) Proceedings

BEFORE THE HONORABLE VALORIE J. VEGA, DISTRICT COURT JUDGE

"ROUGH DRAFT"

JURY TRIAL - DAY 19
VOLUME XIX

THURSDAY, OCTOBER 5, 2006

COURT RECORDER:

LISA LIZOTTE
District Court

TRANSCRIPTION BY:

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1 LAS VEGAS, NEVADA THURSDAY, OCTOBER 5, 2006

2 **PROCEEDINGS**

3 PROCEEDINGS BEGAN AT 11:08:40 A.M.

4 (Jurors are not present)

5 THE COURT: The record shall reflect that we're
6 convened outside the presence of the jury in State versus
7 Lobato, under C177394. That Mr. Kephart is present for the
8 State and that all three defendant's counsel are present.

9 MR. SCHIECK: We'd ask that you waive the
10 defendant's presence for the settling of instructions, Your
11 Honor.

12 THE COURT: Granted. And it looks like I've got a
13 new set. I had placed a phone call to Mr. Schieck and Ms.
14 DiGiacomo this morning about a couple of typos that were in
15 the draft set from yesterday and it appears that those have
16 been revised.

17 MR. KEPHART: Appears there may be another typo
18 and another one that Mr. Schieck found.

19 (Pause in the proceedings)

20 MR. KEPHART: Your Honor, also with the packet
21 that you have and the old packet, there was two additional
22 ones that we put on the back.

23 THE COURT: Right.

24 MR. KEPHART: And I didn't include them in that

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1 packet, so if you have the old ones it'd be --

2 THE COURT: I do.

3 MR. KEPHART: Okay.

4 THE COURT: Those were the ones to -- one of them
5 would be given if the defendant requested it.

6 MR. KEPHART: Correct.

7 THE COURT: It's the Fifth Amendment ones.

8 Okay. Did you find a typo, Mr. Schieck?

9 MR. SCHIECK: Yes, in the deadly weapon
10 instruction that's towards the --

11 MR. KEPHART: Right in the middle?

12 MR. SCHIECK: -- more than halfway through. I
13 don't --

14 THE COURT: The State is not required to recover
15 the deadly -- or the one that defines a deadly weapon?

16 MR. KEPHART: Yeah, it starts out deadly weapon in
17 quotes.

18 THE COURT: Probably be the one right before that
19 then. Deadly weapon means?

20 MR. SCHIECK: It's just about halfway in, second
21 line, do you have it, Your Honor?

22 THE COURT: Yes.

23 MR. SCHIECK: Or is like to cause, I think that's
24 suppose to be or is likely to cause.

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1 MR. KEPHART: Likely to cause.
 2 THE COURT: Likely to cause.
 3 MR. SCHIECK: And the rest -- I'm not sure this is --
 4 THE COURT: Let me see if it's right in the other set
 5 or if --
 6 MR. SCHIECK: No, it's not. I'm looking at the other
 7 set.
 8 THE COURT: The other one is wrong too? Okay.
 9 MR. SCHIECK: I was gonna ask you to look at the
 10 statute on that instruction also, Your Honor. And I just know
 11 the number of the statute.
 12 THE COURT: I think that's actually case law.
 13 MR. KEPHART: Well, part of it is, because after the
 14 *Zombic* [phonetic] case, there was a lot of issues as to the use
 15 of a weapon or in the manner in which it's used. And, so if
 16 you look at this instruction there's two different concepts
 17 they're talking about. They're talking about one that is
 18 designed, the -- the design is contemplated for the use to
 19 cause substantial bodily harm or death. And then the other
 20 one is device instrument material or substance under the
 21 circumstances in which it's used, attempted to use or threaten
 22 to use is readily [sic] capable of substantial bodily harm or
 23 death. That's contemplating -- there's both statute and case
 24 law on that.

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1 MR. SCHIECK: The case law that was superceded
 2 by the statute, which was designed to alleviate the design
 3 issue that came up in *Zombic* and I think that the -- starting on
 4 line 4 language with any weapon is actually the language of
 5 the statute. Deadly weapon means any instrument which if --
 6 any weapon, device, instrument, material and continuing to
 7 the end.
 8 THE COURT: Do you have -- you have the cite?
 9 MR. SCHIECK: I sure don't, Your Honor, I'm sorry.
 10 I don't have it off the top of my head.
 11 MR. KEPHART: I don't know it either. I know there
 12 was some cases after *Zombic*, 'cause they were -- that was the
 13 cause of the statute change, but I don't -- I don't know it.
 14 MR. SCHIECK: I can check the statute during the
 15 break, Your Honor.
 16 THE COURT: Okay. So we need to get that typo
 17 corrected. I'll have the JEA type it up. Get that corrected and
 18 then there's one in the old packet that starts, "the fact that a
 19 witness has been convicted of a felony".
 20 MR. KEPHART: Mm-hmm. That should be in this
 21 one as well. Yeah, it is. It's about 2/3rd of the way in the
 22 packet. The reason we offered that, Your Honor, is because
 23 Mr. Pyszkowski is felon and he testified that he's a felon.
 24 THE COURT: Okay. That's right.

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1 MR. KEPHART: I mean it was offered last time
 2 because of Katrina Martin, but -- and there was no other felons
 3 at the time, but Steve is now, so.
 4 THE COURT: Okay. Are there any of the State's
 5 proposed instructions that the defense is objecting to?
 6 MR. SCHIECK: Your Honor, there's an instruction
 7 that's towards the back that indicates -- it talks about not
 8 being here to determine the guilt or innocense of anyone other
 9 than the defendant. And it's out position that there's no
 10 evidence of anyone else involved that's been presented by the
 11 State and therefore it would improper to give that instruction
 12 implying that there was. It starts with "You are here to
 13 determine the guilt or innocense of the defendant". It's pretty
 14 close to the end.
 15 MR. KEPHART: It's about eight -- eight from the
 16 end.
 17 THE COURT: Okay. Five, 6, 7, 8. I've got the
 18 evidence which you are to consider.
 19 MR. KEPHART: Go one more.
 20 THE COURT: Okay. There we are.
 21 (Pause in the proceedings)
 22 MR. KEPHART: Well, Your Honor, first of all the
 23 defendant's own expert had testified that this -- this case
 24 involved multiple assailants in his --

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1 THE COURT: Mr. Turvey.
 2 MR. KEPHART: Mr. Turvey did. Second, the jury
 3 had asked the question that was objected to as to being
 4 outside the scope of rebuttal on Detective Thowsen's about
 5 Doug's car being searched. And also there was a question
 6 asked by the jury as to Jeremy Davis, whether or not his place
 7 was searched. So there is some questioning about whether or
 8 not there was anybody else involved here and they're
 9 specifically instructed with this instruction they're not to
 10 consider that for purposes of guilt and innocense in this case.
 11 And it's a stock instruction that we always give because there's
 12 always that chance that a jury may thing other people are
 13 involved. Even if there isn't any evidence to support that,
 14 there's always that chance that they're thinking that, hey,
 15 they, you know, he could have done it with someone else or is
 16 there somebody else involved here. That's not what we're
 17 here for, we're here to determine the guilt or innocense of Ms.
 18 Lobato, not anyone else. So they're not to determine that.
 19 MR. SCHIECK: Your Honor, I think his argument
 20 pretty much concedes there is no evidence. There may have
 21 been a couple of inquiries from the jury that they're curious
 22 about why certain things weren't done in the investigation of
 23 this case. That certainly neither one of those question, which
 24 aren't evidence in the case, indicated anything about the guilt

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1 of either Mr. Twining or Mr. Davis. In fact they want to know
 2 about Mr. Davis' house because of the testimony that the car
 3 was left there, according to Blaise's statement and according
 4 to Mr. Davis it was left there over Memorial Day weekend. Not
 5 because he was involved in anything that happened on July
 6 8th. Quite a quantum leap of reasoning that because the car
 7 was at his house on May -- or Memorial Day in May that he
 8 was involved in something on July 8th. Likewise, with Mr.
 9 Twining there's absolutely no evidence of his involvement in
 10 anything having to do with the death of Duran Bailey. Mr.
 11 Turvey said one or more people could have been involved. He
 12 didn't say it was definitely more than one, he said one or
 13 more. So I would ask that the Court not give this instruction.
 14 It just invites the jury to speculate as to things that there's no
 15 evidence of.

16 MR. KEPHART: Well, this -- this tells 'em not to do
 17 that, so.

18 MR. SCHIECK: But it's like telling somebody, you
 19 know, whatever you do don't look over there, you know, it's
 20 like the first thing you want to do is look over there.

21 THE COURT: The questions that Mr. Kephart
 22 referenced that came out from the jury came out because of
 23 various facts and circumstances that have been put before the
 24 jury and I do recall that testimony from Brent Turvey as well,

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1 so the Court overrules the objection. The instruction is
 2 appropriate to be given in this case.

3 The deadly weapon instruction has been retyped.
 4 You know what, the spacing on it is different.

5 MR. KEPHART: I can -- I can have it redone, Judge,
 6 on our font.

7 THE COURT: Richard, it looks like she's got it like
 8 triple spaced instead of double spaced. See how it --

9 THE COURT: Any other one?

10 MR. SCHIECK: Just double checking, Your Honor. I
 11 had a question about the language on the sexual penetration
 12 of the human body instruction, there's two of them. One of
 13 which gives the definition of sexual penetration and that's
 14 somewhere in the middle.

15 MR. KEPHART: It's about four --

16 THE COURT: It's right after the self-defense.

17 MR. SCHIECK: The one after the definition, it starts
 18 out with "Plain meaning of the relevant statute. I don't
 19 recognize that as being any jury instruction language to begin
 20 with. If the intent is to inform the jury that motive is not an
 21 element of sexual penetration of a human body -- of dead
 22 human body, I think we can phase it in such a way without
 23 starting with "Plain meaning of relevant statute", there's no
 24 reference to what statute they're talking about. So I would

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1 ask that it be changed or amended to just merely indicate that
 2 motive is not an element of the act of sexual penetration of
 3 dead human body and leave it at that. Of course we've
 4 already got the instruction that tells that motive is not an
 5 element of murder.

6 (Pause in the proceedings)

7 THE COURT: Motive is not an element of the crime
 8 of sexual penetration of a dead human body?

9 MR. SCHIECK: Yes.

10 THE COURT: Does the state agree to that
 11 substitution?

12 MR. KEPHART: I'm trying to -- I remember when
 13 we discussed this last time. I'm trying to remember what it --

14 MR. SCHIECK: I think last time there was a huge
 15 objection to the entire statute being vague and ambiguous.
 16 There was a lot of discussion of it.

17 MR. KEPHART: Well, there was in this area,
 18 because, see the -- it's almost like a strict liability type of thing
 19 and -- and so, I mean you don't have to prove what her
 20 reasons for it were. All you have to do is prove that the -- that
 21 it occurred and -- and that's the purpose of the statute, is
 22 you're punishing the act versus the reason for it. And so, I
 23 mean we argued was the plain meaning of it is to punish the
 24 penetration of a dead human body, regardless of what you

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1 believe caused her to do it or caused him to do it. And I think
 2 that's cleaner than just motive is not an element. I know -- I
 3 mean, we don't have to prove motive into anything, you know,
 4 it's just -- it's just a -- I thought it was more -- it's understood
 5 better by the way it reads now.

6 MR. SCHIECK: I don't think there's any plain
 7 meaning to the statute.

8 MR. KEPHART: Well, that's exactly the meaning of
 9 the statute.

10 MR. SCHIECK: Maybe that's the objection I've got.

11 MR. KEPHART: Yeah. But that is the --

12 MR. SCHIECK: I agree there's no motive
 13 requirement.

14 THE COURT: The purpose of the statute?

15 MR. KEPHART: Yeah, that -- that's --

16 MR. SCHIECK: For purposes of the statute I don't
 17 think -- I don't think motive is an element of the crime. I think
 18 they're right on that. It's a general intent crime.

19 MR. KEPHART: So if you reads the purpose of the
 20 statute is to punish the act of sexual penetration to a dead
 21 human regardless of motive says the same thing. I mean, I
 22 don't -- I can't remember what Phil and Gloria, and we were
 23 arguing about with this, but I remember that there was some -
 24 -- quite discussion on that and I'm thinking that we were -- we

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1 agreed on the plain meaning of the statute, but I think it reads
 2 the same if you say the purpose of the statute is to punish the
 3 act of the sexual penetration.

4 THE COURT: Do you like that language better?

5 MR. SCHIECK: Well, I -- I -- I don't think the
 6 purpose of any statute is to punish. The purpose of statute is
 7 set for our laws to be followed.

8 MR. KEPHART: Well, that's kinda what the
 9 argument --

10 MR. SCHIECK: I think it's up to the -- whatever
 11 body is in charge of doling out punishment. I mean if you're
 12 convicted of a crime, it's the Court's determination of what's
 13 punishment is going to be.

14 THE COURT: The purpose of the statute is to deter?

15 MR. SCHIECK: That would -- that's better than
 16 punish.

17 MR. KEPHART: That -- okay, plain meaning or the
 18 purpose or however you want to say it, that's -- that's -- I
 19 guess that's fine.

20 (Pause in the proceedings)

21 THE COURT: And motive is not an element of that
 22 crime?

23 MR. SCHIECK: That's fine.

24 (Pause in the proceedings)

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1 this is what you'd be telling the jury is that there is evidence.
 2 They're making an argument that this is evidence and explains
 3 to the jury why -- I mean it tells the jury that this is evidence
 4 that, yeah, that they gave to you that you have to determine
 5 whether or not the defendant was here or not. In the case
 6 that we -- I mean in the instruction we give to you, we just
 7 basically alibi. We're not going so far as to saying that they
 8 have given you evidence or we haven't given you any
 9 evidence. I believe it's argument. You could certainly argue
 10 that later, but it's not something that you want to be
 11 presenting in the jury instruction. Their second sentence they
 12 talk about essential elements of the offense, he says including
 13 the presence or involvement of the defendant, the second
 14 portion of that is wrong as a statement of law. Identity is not
 15 an element of the offense. So by making them put that in
 16 here like this it is -- it's not the correct statement of the law, so
 17 that's incorrect there as well. And I looked at the instruction --
 18 I mean in the cases that they have cited and they've cited the
 19 United States v. Roves [phonetic], saying approved instruction
 20 statute same form [sic]. That was instruction that the court
 21 rejected and then used a form of their own where they talked
 22 -- well, he talks about alibi. But -- and then the Nester v.
 23 State was a -- when they were concluding the two differences
 24 between reasonable doubt and the instruction involving the

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1 THE COURT: Okay. We'll have that one typed up.
 2 Any others?

3 MR. SCHIECK: Other than the alibi, we had offered
 4 an alternative to their alibi instruction. Does the court want to
 5 hear argument on that at this time?

6 THE COURT: Do you have that typed up for me?

7 MR. SCHIECK: Yes. With the change as to time and
 8 place.

9 THE COURT: Okay. That was a typo we discussed
 10 on the phone. Let me just -- I know she typed it up for me,
 11 so.

12 (Pause in the proceedings)

13 MR. KEPHART: Okay. Thanks.

14 MR. SCHIECK: It just changed right there.

15 (Pause in the proceedings)

16 THE COURT: and you want this one put in place of
 17 the one that the State's got that starts "A, quote, "alibi"
 18 unquote, "amounts to".

19 MR. SCHIECK: Yes, Your Honor.

20 THE COURT: Does the State have any opposition?

21 MR. KEPHART: We do, Your Honor. The first
 22 sentence in their instruction I believe is argument to the point
 23 where they're telling the jury that -- that what they have
 24 produced or what they're -- what they have given, because

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1 alibi. I think the alibi in our instruction is clearly the statement
 2 of the law, defining what alibi is and it doesn't give any kind of
 3 insinuation that any type of evidence was presented by -- I
 4 mean supported by the Court's reading of the statement to the
 5 jury.

6 MR. SCHIECK: If I might, Your Honor? This
 7 instruction is very similar to the instruction that we give in self-
 8 defense cases where the jury is told that there's been evidence
 9 of self-defense proffered by the defendant, which shifts the
 10 burden to the state to prove that it was not an act of self-
 11 defense. Alibi is the same type of offense. Once a defendant
 12 presents any evidence of alibi, the burden is on the state to
 13 disprove that there was an alibi. The burden remains with
 14 them and that's what this instruction makes clear. It's not
 15 intended to change or modify. It's the law in the state of
 16 Nevada that this made clear what that burden is. In fact there
 17 was -- there was time not too long ago, within the last 30 to
 18 40 years where the burden was on the defendant to prove the
 19 alibi by a preponderance of the evidence in order to gain an
 20 acquittal. And obviously the Supreme Court said you can't do
 21 that, you can't put that burden on the defendant, because an
 22 alibi negates elements of the defense and that is the person
 23 who committed the crime. So, yes, identity is an element of
 24 the crime of first degree murder. You can prove that there

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1 was a first degree murder, but you have to prove the identity
 2 of the perpetrator. That is an element of convicting someone
 3 of first degree murder. So to say identity is not an element it's
 4 totally erroneous. And once it's been raise, and I don't care if
 5 they say you can't believe a single person that lives within 20
 6 miles of the State of -- or the city of Panaca, there has been
 7 evidence offered of an alibi and the burden is now on them to
 8 prove that in fact the alibi is not true and the jury is entitled to
 9 be instructed to that and I would submit it.

10 MR. KEPHART: Your Honor, in the instruction that
 11 we've offered, that specifically says that. If after a
 12 consideration of all the evidence you have reasonable doubt as
 13 to whether the defendant was present, the time and place the
 14 crime was committed, she is entitled to a verdict of not guilty.
 15 There's nothing shifting burdens there. We're telling them,
 16 basically this is what an alibi is, and if you believe, after
 17 considering all the evidence, you have a doubt as to whether
 18 or not the defendant was present at the time and place of the
 19 crime, she's entitled to a verdict of not guilty. And that's
 20 specifically saying that. But when they go into their position
 21 basically they're saying, there is evidence, you'd be saying
 22 that. And I'll submit it, Your Honor.

23 THE COURT: [Sneezing].
 24 MR. KEPHART: Bless you.

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1 THE COURT: Thank you. I think the -- the last
 2 sentence of both of 'em is essentially the same. I do agree
 3 that the first sentence of the defendant's proposal is more akin
 4 to argument than to language that should be in an instruction.
 5 But it sounds like the middle sentence, "it's the state's burden
 6 to establish beyond a reasonable doubt each of the essential
 7 elements of the offense," that if we took out the word
 8 "including" and put the word "and" instead -- and the presence
 9 of it -- and involvement of the defendant, I think that would be
 10 a more accurate statement of the law. And we could put that
 11 sentence in the middle of the State's proposed one. Kind of
 12 cut and paste 'em.

13 So I'm gonna step down and have the JEA type that
 14 up.

15 MR. SCHIECK: So the second sentence is gonna be
 16 inserted into the middle of the State's instruction?

17 THE COURT: Right. I think the last sentence is the
 18 same on both, isn't it?

19 MR. SCHIECK: I think our says you must find the
 20 defendant not guilty and theirs is slightly different.

21 THE COURT: It says she is entitled to a verdict of
 22 not guilty.

23 MR. SCHIECK: Right. A slight difference.
 24 THE COURT: They're both correct.

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1 MR. SCHIECK: That's true.
 2 THE COURT: It's the not guilty part that's the
 3 important part.
 4 [Laughter]
 5 MR. SCHIECK: No, as we like that "must" though.
 6 That's fine, Your Honor.
 7 THE COURT: Well, we can -- we can do that. I
 8 don't like your first sentence is my main problem for the
 9 argument reason, so I like the State's first sentence. It reads
 10 more consistent with language of instructions.
 11 Do you care on the "you must find" or "she is
 12 entitled to"?
 13 MR. SCHIECK: Either one is fine with the defense,
 14 Your Honor.
 15 MR. KEPHART: Whatever you want to do, Judge.
 16 That's fine. We've always given she's entitled -- I mean
 17 they're entitled to a verdict of not guilty, it's like you're not
 18 ordering them to do something it's just that they're making
 19 that determination based on an entitlement of the law, so.
 20 THE COURT: Since Mr. Schieck doesn't care we'll
 21 leave it that way then.
 22 Go off the record.
 23 (Court recessed at 11:39:04 a.m. until 11:43:38 a.m.)
 24 (Jurors are not present)

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1 THE COURT: Okay. I had the JEA retype the alibi in
 2 accordance with our discussions. Does anybody have any
 3 opposition to this one being given?
 4 MR. KEPHART: Let's see.
 5 MR. SCHIECK: No, Your Honor, I think that
 6 addresses the concern we had the burden of proof, so that's
 7 fine with us.
 8 MR. KEPHART: That's fine, Judge. We've -- I've
 9 already addressed our objection to their instruction, but I
 10 understand you're giving this one, so.
 11 THE COURT: Okay. Do you want yours marked as
 12 State's offered, not given?
 13 MR. KEPHART: Yes, Your Honor.
 14 THE COURT: All right. And here's the one on the
 15 statute. Here's the one on the deadly weapon.
 16 (Pause in the proceedings)
 17 THE COURT: Any opposition to the purpose of the
 18 statute?
 19 MR. SCHIECK: No, Your Honor.
 20 MR. KEPHART: I don't have any opposition to the --
 21 that either, Judge.
 22 THE COURT: Okay.
 23 MR. KEPHART: I -- I'm just kinda wondering, I
 24 mean we're looking at the different types here and they still

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1 appear differently. I mean does -- I don't know. Do you have
 2 a concern with that at all, Your Honor?
 3 THE COURT: No.
 4 MR. KEPHART: Okay.
 5 THE COURT: I think they're close enough.
 6 MR. SCHIECK: I don't think it matters when they
 7 read the instructions.
 8 THE COURT: And then the deadly weapon with the
 9 typo corrected. Deadly weapon means. Will or is likely to.
 10 Any opposition to that one?
 11 MR. KEPHART: No, not by the state, no.
 12 MR. SCHIECK: No, Your Honor.
 13 THE COURT: Okay. Any others?
 14 MR. SCHIECK: No, Your Honor, not from the
 15 defense.
 16 MR. KEPHART: Not by the state.
 17 THE COURT: Okay. We've got the two at the back -
 18 -
 19 MR. SCHIECK: We wanted the second of the two,
 20 Your Honor.
 21 THE COURT: The longer one?
 22 MR. SCHIECK: Yes.
 23 THE COURT: "It's the constitutional right of a
 24 defendant in a criminal trial that he may not be compelled to

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1 testify. Thus the decision as to whether he should testify is
 2 left to the defendant on the advice and counsel of his attorney.
 3 You must not draw any inference of guilt from the fact that he
 4 does not testify, nor should this fact be discussed by you or
 5 enter into your deliberations in any way."
 6 MR. SCHIECK: Yes, Your Honor.
 7 THE COURT: Should we change "he" to "she"?
 8 MR. KEPHART: You can if you wanted to.
 9 MR. SCHIECK: I think to be consistent we probably
 10 should.
 11 THE COURT: Okay. From "his" to "her". While
 12 that's getting typed up, we have one form of verdict, any
 13 opposition to the form of verdict?
 14 MR. SCHIECK: No, Your Honor.
 15 THE COURT: That will given backed by the Court --
 16 by the court clerk. And then where did you want me to put
 17 the -- the Fifth Amendment.
 18 MR. SCHIECK: Somewhere around the reasonable
 19 doubt instruction would be fine.
 20 (Pause in the proceedings)
 21 THE COURT: You want it right after reasonable
 22 doubt?
 23 MR. SCHIECK: That's good, Your Honor.
 24 THE COURT: Any opposition?

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1 MR. KEPHART: No, I don't have any objection to
 2 that.
 3 THE COURT: Okay. And I'll take us off the record
 4 'til we get that typed up.
 5 (Court recessed at 11:49:52 a.m., until 11:50:35 a.m.)
 6 (Jurors are not present)
 7 THE COURT: We're gonna now number the
 8 instructions.
 9 Number 1, It is now my duty as Judge.
 10 Number 2, If, in these instructions.
 11 Number 3, An information is.
 12 Number 4, In this case the defendant is accused in
 13 an Information.
 14 Number 5, Murder is.
 15 Number 6, Malice aforethought means.
 16 Number 7, Express malice is.
 17 Number 8, The prosecution is not required.
 18 Number 9, Murder of the first degree.
 19 10, The law does not undertake to measure in units
 20 of time.
 21 Number 11, The crime of first degree murder.
 22 Instruction Number 12, Murder of the first degree
 23 includes murder which.
 24 Number 13, Manslaughter is.

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1 MR. KEPHART: Your Honor, could you -- probably
 2 not have -- hold on. On Number 12, we had -- I think it's 12,
 3 is it 12, Dave?
 4 MR. SCHIECK: I think so.
 5 MR. KEPHART: Number 12 we had deleted a
 6 portion of that from the original packet that I gave you
 7 involving involuntary manslaughter. Does it -- it doesn't say
 8 anything on there about involuntary manslaughter, does it, on
 9 the one you have?
 10 THE COURT: The Number 12 that I have says
 11 "Murder of the first degree includes murder which is any kind
 12 of willful, deliberate and premeditated killing.
 13 MR. KEPHART: Okay.
 14 THE COURT: All murder which is not Murder of the
 15 First Degree is Murder of the Second Degree. Murder of the
 16 Second Degree is murder with malice aforethought, but
 17 without the admixture of premeditation and deliberation.
 18 MR. KEPHART: Okay. That's it then.
 19 THE COURT: Okay.
 20 So, Number 13, Manslaughter is.
 21 Number 14, The heat of passion.
 22 Number 15, The crime of murder may include.
 23 Number 16, You are instructed that.
 24 Number 17, Deadly weapon means.

XIX-25

1 Number 18, The State is not required to have
 2 recovered the deadly weapon.
 3 Number 19, The killing or attempted killing.
 4 Number 20, The right of self-defense.
 5 21, Actual danger.
 6 22, If evidence of self-defense is present.
 7 23, If a person kills another in self-defense.
 8 24, A person who commits a sexual penetration.
 9 25, The purpose of the statute is to deter the act of
 10 sexual penetration of dead human body.
 11 Number 26, The flight of a person.
 12 27, No act committed by a person while in a state of
 13 voluntary intoxication. That's 27.
 14 28, The fact that a witness has been convicted of a
 15 felony.
 16 29, An, quote, "alibi", unquote, amounts to.
 17 Number 30, To constitute the crime charged.
 18 31, The defendant is presumed innocent until the
 19 contrary is proved.
 20 32 will be the right to remain silent, one that the
 21 defense requested.
 22 33, You are here to determine the guilt or
 23 innocense.
 24 34, The evidence which you are to consider.

XIX-26

1 that his father has concerning dates and times of a trip to
 2 Idaho.
 3 MR. KEPHART: That's correct, Your Honor.
 4 THE COURT: Okay. Is there anything further that
 5 we need to do with regard to the instructions or the form of
 6 verdict?
 7 MR. KEPHART: I -- the State doesn't have anything
 8 further.
 9 MR. SCHIECK: No, Your Honor.
 10 THE COURT: Okay. I'm gonna make copies of the
 11 instructions to hand out to the jury and we've got 14 of them,
 12 right? And you guys have your copies, right?
 13 MR. KEPHART: Yes.
 14 THE COURT: And defendant's counsel nodding their
 15 head up and down, so I'm gonna make 15.
 16 And we'll see everybody at 1 o'clock unless there's
 17 something further.
 18 MS. GREENBERGER: Thank you, Your Honor.
 19 MR. SCHIECK: Thank you.
 20 MS. GREENBERGER: Have a nice lunch.
 21 THE COURT: Thanks. You too.
 22 (Court recessed at 11:58:01 a.m., until 1:21:22 p.m.)
 23 (Jurors are present)
 24 THE COURT: Good afternoon. Let the record reflect

XIX-28

1 35, The credibility of believability.
 2 36, A witness who.
 3 37, Although you are to consider only the evidence.
 4 38, In arriving at a verdict in this case.
 5 39, If, in your deliberation, you should desire to be
 6 further informed.
 7 Number 40, When you retire to consider your
 8 verdict.
 9 41, Now you'll listen to arguments of counsel.
 10 (Pause in the proceedings)
 11 THE COURT: 32, we now have is, It is the
 12 constitutional right of a defendant in a criminal trial.
 13 (Pause in the proceedings)
 14 THE COURT: Mr. Schieck had advised the Court at
 15 the end of the day yesterday at sidebar that Doug Twining
 16 would be the defendant's last witness.
 17 MR. SCHIECK: Correct.
 18 THE COURT: So I assumed from that, that the
 19 defendant will be taking the Fifth and so that it why it would
 20 be appropriate to include this instruction.
 21 MR. SCHIECK: That's correct, Your Honor.
 22 THE COURT: Okay.
 23 MR. SCHIECK: And with respect to Douglas, they
 24 just stipulated that he can testify as to some documentation

XIX-27

TWINING - DIRECT

1 that resuming trial in State versus Lobato, under C177394, in
 2 the presence of the defendant, together with her three
 3 counsel. The two prosecuting attorneys are present. And the
 4 ladies and gentlemen of the jury are present as well.
 5 We are proceeding forward in the case. We had
 6 taken a couple of State's rebuttal witnesses out of order, but
 7 we are returning now to the defendant's case in chief and
 8 defendant may call their next witness.
 9 MR. SCHIECK: We would call Douglas Twining, Your
 10 Honor.
 11 THE CLERK: Please come all the way forward.
 12 Remain standing and raise your right hand.
 13 **DOUGLAS TWINING, DEFENDANT'S WITNESS SWORN**
 14 THE CLERK: Thank you, please be seated. State
 15 your name and spell it for the record, please.
 16 THE WITNESS: My name is Douglas Howell
 17 Twining, D-o-u-g-l-a-s H-o-w-e-l-l T-w-i-n-i-n-g.
 18 THE COURT: You may proceed, Mr. Schieck.
 19 MR. SCHIECK: Thank you, Your Honor.
 20 **DIRECT EXAMINATION**
 21 BY MR. SCHIECK:
 22 Q Mr. Twining, where did you reside in July of 2001?
 23 A At my parents' house at 3899 Montell Avenue.
 24 Q Is that here in Las Vegas?

XIX-29

TWINING - DIRECT

1 A Yes, sir.
 2 Q And how long had you been living there in -- as of
 3 July 2001?
 4 A Approximately -- since 1996.
 5 Q So about five years?
 6 A Yeah.
 7 Q Are you acquainted with an individual by the name
 8 of Kirstin Blaise Lobato?
 9 A Yes, sir.
 10 Q Do you see her here in court today?
 11 A Yes, sir.
 12 Q And where is she seated and what is she wearing?
 13 A She's wearing a light colored dress behind that
 14 monitor right there at the defendant's table.
 15 Q Between the two other young ladies?
 16 A Yes, sir.
 17 MR. SCHIECK: Okay. Could the record reflect the
 18 identification of the defendant, Your Honor.
 19 THE COURT: The record shall so reflect.
 20 BY MR. SCHIECK:
 21 Q Do you recall when you first met Blaise?
 22 A Yes, sir.
 23 Q When was that?
 24 A It was approximately May to June -- early June, I

XIX-30

TWINING - DIRECT

1 believe in 2001.
 2 Q And do you recall where you met her?
 3 A I believe I met her at Steve's -- a guy named Steve's
 4 house.
 5 Q Do you know Steve's last name?
 6 A I believe it's like Pyszkowski or actually no, I don't
 7 recall. It's like a Polish sounding kinda name.
 8 Q Does Pyszkowski sound familiar?
 9 A Yeah, that -- that could be.
 10 Q And you were still living at Montell at that time?
 11 A Correct, sir.
 12 Q And how well did you get to know Blaise at that
 13 time?
 14 A We had, you know, seen each other and hung out
 15 for awhile.
 16 Q There -- did there --
 17 A Got to know --
 18 Q I'm sorry, go ahead.
 19 A -- got to know each other. You know, friends.
 20 Q Did there ever come a time where she stayed at
 21 your house?
 22 A Yes, sir.
 23 Q And I want to break that down. Were there any
 24 times that she would stay for a day or two, for instance?

XIX-31

TWINING - DIRECT

1 A I believe she -- she probably spent the night a
 2 couple times, you know, during the couple months I hung
 3 around with her.
 4 Q During -- when did she first spend a couple of nights
 5 at your house, that you recall?
 6 A Probably like in May, June.
 7 Q Now you'd indicated that you -- you met her
 8 approximately in June of 2001 and you just say -- said that she
 9 may have stayed at your house in May. Are you sure exactly
 10 when you met her?
 11 A No, it could have been the end of -- the end of -- it
 12 was either the middle to the end of May, or April, right around
 13 in there some where. I can't recall exactly.
 14 Q You're not sure of the exact date?
 15 A No.
 16 Q Okay. Now did there come a point in time where
 17 Blaise started staying at your house more regular?
 18 A She stayed -- yeah, there was.
 19 Q When was that?
 20 A That would be the end of -- probably the end of
 21 June.
 22 Q 2001?
 23 A Yeah.
 24 Q Okay. How long did she stay there during the end

XIX-32

TWINING - DIRECT

1 of June at your house? At your parents' house?
 2 A Probably a couple few days at a time and I think
 3 actually she stayed there for approximately a week in July.
 4 Q Let's stick with June for right now.
 5 A Okay.
 6 Q We'll get to July. Okay. Did -- and who was living in
 7 your house -- in your parents' house, besides yourself at that
 8 period of time?
 9 A My mother, my father was in and out on business
 10 and myself.
 11 Q And your mother's name?
 12 A Violet Marie Twining.
 13 Q And your father's name?
 14 A Thomas Howell Twining.
 15 Q Did there ever come a time, after Blaise had stayed
 16 with you at the June that she went somewhere else?
 17 A She had went to Panaca to her parents' house, I
 18 believe.
 19 Q Do you recall when she left to go to Panaca?
 20 A She had -- I think maybe July 2nd, I think sticks out.
 21 Q Are you sure of the date or is that just --
 22 A No, I'm not sure of the date at all.
 23 Q Did you take her to Panaca?
 24 A I took her to Panaca -- no, I did not.

XIX-33

TWINING - DIRECT

1 Q On July 2nd, I'm talking about?
 2 A No.
 3 Q What was she driving?
 4 A She was driving her -- okay, it was July 2nd and she
 5 was driving her red Fiero -- or I -- I think it's a Fiero, yeah.
 6 Mazda Miata or Fiero.
 7 Q Was it a big car?
 8 A No, a little car.
 9 Q Now you're how big? How tall are you?
 10 A I'm '6"6.
 11 Q Did you ever ride in that car?
 12 A No.
 13 Q Why not?
 14 A I don't think I'd fit in there.
 15 Q So did Blaise take her car, to your knowledge, to
 16 Panaca on July 2nd when she went?
 17 A Yes.
 18 Q She didn't leave it at your house?
 19 A No.
 20 Q Did you assist her packing to --
 21 MS. DIGIACOMO: Objection, leading.
 22 THE COURT: Sustained.
 23 BY MR. SCHIECK:
 24 Q You said that she left on July 2nd, can you tell us

XIX-34

TWINING - DIRECT

1 A I thought it was gonna be nicer than it was. It was
 2 pretty dry, the desert air, you know, blowing in your eyes and
 3 stuff, but --
 4 Q How long did --
 5 A -- it was evening, it wasn't too bad.
 6 Q -- do you recall how long it took you to drive up
 7 there?
 8 A To the best of my recollection several hours. Like
 9 about three hours, I think. Two and a half, three hours. I
 10 don't recall.
 11 Q Had you ever been to Panaca before?
 12 A No, sir.
 13 Q During that period of time did you have a cell
 14 phone?
 15 A Yes, sir. Actually, I'm sorry, it was my father's cell
 16 phone.
 17 Q Okay. Did you have a cell phone that you used?
 18 A Yes, sir.
 19 Q And during the period of time while Blaise was in
 20 Panaca between the 2nd and the 9th, were there any phone
 21 calls between you and her?
 22 A Yeah, there was numerous phone calls.
 23 Q I'm gonna hand you what's been marked as
 24 Defendant's Exhibit EE.

XIX-36

TWINING - DIRECT

1 what happened prior to her leaving on July 2nd?
 2 A Prior -- in the moments prior to her leaving?
 3 Q Yes.
 4 A As I recall, I helped her load up some bags and said
 5 goodbye.
 6 Q Do you recall how many bags?
 7 A No. It wasn't too many. It wasn't a very big car
 8 and, you know, there was maybe several.
 9 Q When was the next time you saw Blaise after July
 10 2nd?
 11 A July 2nd would be on the -- the 8th -- late the 8th,
 12 early 9th.
 13 Q And where was that?
 14 A In Panaca.
 15 Q And how did you get to Panaca?
 16 A I drove my white Mustang convertible.
 17 Q And what happened when you got to Panaca?
 18 A I met with Blaise and her parents and said hello and
 19 -- her dad helped me put my top up on my convertible and we
 20 came back to Vegas.
 21 Q Was your top down all the way from Las Vegas to
 22 Panaca?
 23 A Yes, sir.
 24 Q Was that comfortable?

XIX-35

TWINING - DIRECT

1 MR. SCHIECK: May I approach, Your Honor.
 2 THE COURT: You may.
 3 BY MR. SCHIECK:
 4 Q I'm gonna show you what's been marked as
 5 Defendant's Proposed Exhibit EE and ask you to just look at
 6 that briefly and tell me if you recognize what it is?
 7 A It looks to be my father's cell phone bill from Verizon
 8 Wireless for July 2001. July 9th, 2001, this page.
 9 Q Have you looked at all the pages?
 10 A Oh, I'm sorry. Oh, it says billing date July 9th. It
 11 looks to be the whole month of -- from July 1st to July 9th.
 12 Q And you recognize that as your father's phone bill
 13 that -- on the cell phone that you used?
 14 A 275-9271, yes.
 15 Q That was your number?
 16 A Yes, sir.
 17 MR. SCHIECK: And move to admit Defendant's EE,
 18 Your Honor.
 19 MS. DIGIACOMO: No objection.
 20 THE COURT: Granted.
 21 (Defendant's Exhibit EE, admitted)
 22 BY MR. SCHIECK:
 23 Q Mr. Twining, I'm going to illustrate this for you on a
 24 projection device here that you can actually see on the screen

XIX-37

TWINING - DIRECT

1 in front of you, okay, when I put it up here. Do you recall
 2 testifying at a prior proceeding?
 3 A Yes, sir.
 4 Q Do you recall during that proceeding that you had
 5 circled the number of phone calls that you had made to
 6 Panaca with your cell phone?
 7 A Yes, sir.
 8 Q And those were circled in red?
 9 A I don't recall the -- I think I highlighted them. I
 10 don't recall if I highlighted them or circled them, but I did
 11 indicate numerous phone calls.
 12 Q Well, let me show you portions of the phone bill you
 13 just identified. This is the document EE that you were just
 14 looking at?
 15 A Okay.
 16 Q Appears to be a phone call circled on July 2nd at 9:00
 17 p.m. to Panaca, is that correct?
 18 A I -- you're talking about right in the center?
 19 Q Yes, line 781. And I can zoom in if you need me to.
 20 A I see Panaca, I don't see that it's incoming or
 21 outgoing. I don't know how they indicate that.
 22 Q If I show you the top of the page, it says called from
 23 and called to, does that help you?
 24 A Okay, yes.

XIX-38

TWINING - DIRECT

1 Q Would you have called her when she got there?
 2 A Yes.
 3 Q Do you recall doing so?
 4 A I don't recall, but I'm sure I called her numerous
 5 times, so.
 6 Q Do you have any reason to doubt the accuracy of
 7 your phone records?
 8 A No.
 9 Q We're just gonna continue over. Were you calling
 10 her a number of times while she was up there?
 11 A Yes.
 12 Q Did you call her almost every day?
 13 A I believe so.
 14 Q There appears to be two calls on July 3rd.
 15 MS. DIGIACOMO: Objection, leading.
 16 THE COURT: Sustained.
 17 BY MR. SCHIECK:
 18 Q How many calls are there on July 3rd to Panaca?
 19 A From what I can see on the screen there's two calls
 20 on there so far.
 21 Q There's additional calls on the 3rd. We'll scan down.
 22 Do you see any further -- any other calls to Panaca?
 23 A I don't see any other circled ones. And I don't see
 24 any other calls to Panaca, no.

XIX-40

TWINING - DIRECT

1 Q Okay. So that would indicate a call to Panaca at
 2 9:00 p.m. on the 2nd?
 3 A That's correct.
 4 Q Okay. And do you recognize the phone number that
 5 was called from your cell phone?
 6 A I don't -- I don't recall the number at all. I don't
 7 recall any of the phone numbers.
 8 Q And can you read the phone number though?
 9 A The phone number that's circled is 702-728-4589.
 10 Q And as you sit here today do you know whose phone
 11 number that was?
 12 A Like I don't have -- I don't recall any of the phone
 13 numbers from back then.
 14 Q And, again, there shows another phone call on the
 15 2nd, 11:40 p.m. to Panaca?
 16 A Line 789?
 17 Q Yes.
 18 A Yeah, 702-728-4589, yes.
 19 Q Other than Blaise, did you know anyone else in
 20 Panaca?
 21 A No.
 22 Q And you'd indicated that you'd thought she'd gone to
 23 Panaca on July 2nd?
 24 A Correct.

XIX-39

TWINING - DIRECT

1 Q Okay. You were also -- on this phone bill does it
 2 reflect calls that you received?
 3 A Yeah, according to the bill.
 4 Q Does it show the number of the person that called
 5 you though?
 6 A Yeah, it looks like it does.
 7 Q Or does it just show -- oh, on the -- I'll withdraw
 8 that question, Your Honor. Turning to the next page, do you
 9 recall whether or not you called Blaise on the 4th of July?
 10 A I believe I did.
 11 Q Would the phone bill reflect that?
 12 A I may have called her from my home phone, but the
 13 phone bill probably would reflect it if I called her from my cell
 14 phone. It should.
 15 Q On July 4th, can you tell if there's any calls to
 16 Panaca?
 17 A Looks like two. Yes, it looks like two that are circled.
 18 Q Do you recall whether or not you called Blaise on the
 19 5th of July?
 20 A I don't recall offhand, but I probably did.
 21 Q You had talked about your house phone. Was there
 22 a phone in your house also?
 23 A Yes.
 24 Q Do you recall whether you ever used that to call

XIX-41

TWINING - DIRECT

1 Blaise while she was in Panaca during that week?
 2 A I don't recall for sure, but it's quite possible that I
 3 did. That would be in the long distance records from that
 4 phone.
 5 Q Okay, where -- I'm just gonna show you the 5th real
 6 quickly. If you could just -- if I'm going to fast just let me
 7 know. Would it be fair to say you're not seeing any calls to
 8 Panaca?
 9 A Yeah, I don't see any on here. There's one there.
 10 Q Okay, at 7:34 p.m.?
 11 A Correct, line -- line 931 to Panaca.
 12 Q Do you recall whether you called Blaise in Panaca on
 13 the 6th of July?
 14 A I don't recall offhand. I would assume I did.
 15 Q I'm going to scan down the 6th and at the very
 16 bottom we've already gone to the 7th, would it be fair to say
 17 you don't see any calls to Panaca on the 6th?
 18 A Yeah, no cell phone calls.
 19 Q What about the 7th, do you recall specifically on the
 20 7th?
 21 A I don't recall offhand. I just saw two on the bill
 22 there. More than two.
 23 Q Were there any calls on the 7th or the 8th to Panaca?
 24 A I see three on the 7th, one on the 8th.

XIX-42

TWINING - DIRECT

1 A It was before noon.
 2 Q Can you -- any closer estimate than that -- than
 3 that, or is that the best you can do?
 4 A It was between 9:00 and noon.
 5 Q Okay.
 6 A Probably closer to like 10:00.
 7 Q And do you know where he was going?
 8 A He was going to Boise, Idaho.
 9 Q I'm going to show you what's been marked as
 10 proposed BBBB.
 11 MR. SCHIECK: May I approach, Your Honor?
 12 THE COURT: You may.
 13 BY MR. SCHIECK:
 14 Q This is BBBB, do you recognize what that document
 15 is?
 16 A A copy of my father's time sheet from July of 2001
 17 for HDR Construction Control Corporation.
 18 Q And do you know, did your father bring that to Court
 19 and provide it to us?
 20 A Yes, I got it from his previous employer for her.
 21 Q And that reflects his first day of work in Idaho as
 22 being on what day?
 23 A July 9th --
 24 MR. SCHIECK: Move to --

XIX-44

TWINING - DIRECT

1 Q Now you'd indicated that you had traveled to Panaca
 2 to pick up Blaise on the night of the 8th, early morning on the
 3 9th.
 4 A Yes, sir.
 5 Q Did you surprise her when you went up there?
 6 A No.
 7 Q To your knowledge did she know you were coming?
 8 A Yes.
 9 Q How would she know that?
 10 A We had arranged, you know, me coming up there
 11 and picking her up.
 12 Q Had you -- how had you arranged it?
 13 A Over the phone.
 14 Q During some of these phone calls?
 15 A Yeah.
 16 Q Is that a yes?
 17 A Yes, sir. Sorry.
 18 Q Do you recall what you were doing on Sunday, July
 19 8th, in Las Vegas?
 20 A Sunday the 8th? Early in the morning taking my dad
 21 to the airport for business and later that day doing a lot of
 22 running around preparing to go pick up Blaise.
 23 Q Now you say taking your dad to the airport, do you
 24 recall what time you took him to the airport, approximately?

XIX-43

TWINING - DIRECT

1 THE WITNESS: -- 2001.
 2 MR. SCHIECK: Move to admit BBBB.
 3 MS. DIGIACOMO: No, objection.
 4 THE COURT: Granted.
 5 (Defendant's Exhibit BBBB, admitted)
 6 BY MR. SCHIECK:
 7 Q So would this have been the trip that you took him
 8 to the airport so he can go to work in Idaho?
 9 A Yes, sir.
 10 Q What time did you leave for Panaca on the 8th to go
 11 up and pick up Blaise?
 12 A Mmm, somewhere around like 8:00 or 9:00 or
 13 something like that, I think, or -- I'm not sure exactly what
 14 time. Somewhere after dinner.
 15 Q 8:00 or 9:00 in the evening?
 16 A Yes, sir.
 17 Q After you left for Panaca did you make any other
 18 calls to Blaise?
 19 A Several. I believe several.
 20 Q Let me show you what is page -- it shows the July
 21 8th calls from your cell phone. Do you recognize any of those
 22 calls?
 23 A Yes. It looks like the same number.
 24 Q And what do those calls reflect?

XIX-45

TWINING - DIRECT

1 A Outgoing calls to Panaca to 728-4589.
 2 Q Now, I'm looking at the call at 10:46 p.m., indicates
 3 it was called from Alamo, Nevada to -- or incoming while in
 4 Alamo, Nevada. Do you recall that call at all?
 5 A Incoming? Line 1024?
 6 Q Yes.
 7 A Offhand, I don't. The -- I know I stopped for gas in
 8 Alamo.
 9 Q The next line, 1025, is a call from Alamo to Panaca,
 10 do you recall that call?
 11 A Yeah, that looks like when I -- from the time it looks
 12 like when I was leaving Alamo and probably letting Blaise
 13 know I was leaving Alamo.
 14 Q If you didn't -- if you'd never been to Panaca before,
 15 how did you know how to find Blaise's house?
 16 A I had some directions and she was gonna guide me
 17 in once I got there, 'cause it -- dark, I guess.
 18 Q How was she gonna guide you in?
 19 A Over the phone.
 20 Q And did she do that?
 21 A Yes.
 22 Q Are these the calls that are reflected on the bill?
 23 A From 12:45 to -- at 12:45?
 24 Q Yes.

XIX-46

TWINING - DIRECT

1 A That seems a little bit later than I recall, but it could
 2 -- it could've been that time. I thought it was around
 3 midnight. It could've been later.
 4 Q After you picked Blaise up in Panaca, where did you
 5 go?
 6 A To my parents' house in Vegas.
 7 Q So you drove back to Las Vegas with Blaise?
 8 A Yes, sir.
 9 Q And so you would have got back to Las Vegas on the
 10 9th some --
 11 A Yeah, it would have been early in the morning on
 12 the 9th.
 13 Q Did -- where did Blaise stay when you got back on
 14 the 9th?
 15 A With me.
 16 Q At your parents' house?
 17 A Yes, sir.
 18 Q How long did she stay there?
 19 A Let me see. It was -- I don't recall offhand. I think
 20 it was around a week, I think. Five days, a week, maybe
 21 something like that.
 22 Q Do you recall what day she left?
 23 A I don't offhand.
 24 Q Do you recall how she left?

XIX-47

TWINING - DIRECT

1 A Yeah, I remember her father picked her up.
 2 Q Picked her up at your parents' house?
 3 A Yes, sir.
 4 Q Did there ever come a time when you were
 5 interviewed by the police in connection with this case?
 6 A Yes, sir.
 7 Q Do you recall what date they came out to interview
 8 you?
 9 A No, I don't recall the date at all. But there would be
 10 -- there was a -- they took a statement though, so.
 11 Q Okay, would the statement reflect the date they
 12 came out and talked with you?
 13 A It should.
 14 Q If I showed you the statement would it refresh your
 15 recollection as to the date?
 16 A I believe so.
 17 Q I'll show you the first page.
 18 MR. SCHIECK: May I approach, Your Honor?
 19 THE COURT: You may.
 20 BY MR. SCHIECK:
 21 Q Do you recognize this as the first page of your
 22 statement?
 23 A Yes, it looks like it.
 24 Q And what date did they interview you?

XIX-48

TWINING - DIRECT

1 A It looks -- the day of the statement 8/2/01.
 2 Q So August 2nd, 2001?
 3 A Yes, sir.
 4 Q And when they interviewed you on August 2nd, 2001,
 5 did you give them anything?
 6 A I believe I gave them my phone records.
 7 Q The phone records we've just looked at?
 8 A Yes, sir.
 9 Q Did you have those ready for them or not?
 10 A I think -- I think I had them -- I know I had them
 11 there, yeah. I believe they were -- they were readily
 12 accessible.
 13 Q Do you know Larry Lobato?
 14 A Blaise's father?
 15 Q Yes.
 16 A I've met him.
 17 Q Had you talked to him about -- or prior to the police
 18 coming to see you?
 19 A Yes.
 20 Q Had you discussed the date of July 8th?
 21 A Yes.
 22 Q Why did you give the police your phone records on
 23 August 2nd when they came to interview you?
 24 A To show them that I was going to pick her up.

XIX-49

TWINING - DIRECT

1 Q After August 2nd, did there come a time that you
 2 talked to the police again?
 3 A Yes, sir.
 4 Q And, as a result of that conversation, do you know
 5 whether the police went to your house?
 6 MS. DIGIACOMO: Objection, vague.
 7 THE COURT: Overruled.
 8 MS. DIGIACOMO: As to time.
 9 THE COURT: Withdrawn.
 10 BY MR. SCHIECK:
 11 Q Did you -- as a result of that conversation do you
 12 know whether or not -- do you know, first, did the police go to
 13 your house and, second, if they did, when that was?
 14 A I don't recall exactly what date it was, but there was
 15 -- homicide detectives came to my house and served a warrant
 16 for a previous -- I had broken a window from before that I
 17 didn't pay restitution on.
 18 MS. DIGIACOMO: Objection, relevance.
 19 THE COURT: Counsel approach.
 20 (Off-record Bench Conference at 1:47:04, until 1:50:07)
 21 THE COURT: The objection is overruled.
 22 BY MR. SCHIECK:
 23 Q Do you remember the question?
 24 A The question was, did Metro police come to my

XIX-50

TWINING - DIRECT

1 A 15s, I think or something like that.
 2 Q Okay. And did you get out of jail?
 3 A Yes.
 4 Q Did you ever know whether or not your house had
 5 been searched or your room had been searched at your
 6 parents' house?
 7 A Yes. When I was in jail for that day, the homicide
 8 detectives came to the house and searched the house.
 9 MS. DIGIACOMO: Objection, Your Honor, foundation
 10 THE COURT: Sustained.
 11 MS. DIGIACOMO: Move to strike.
 12 THE COURT: Granted.
 13 BY MR. SCHIECK:
 14 Q Were you ever served with an inventory of items
 15 seized from your house?
 16 A Yes, sir. It was at my house when I got -- when I
 17 returned there from jail.
 18 Q Were items of yours on that list?
 19 A Yes, sir.
 20 Q Did it include shoes?
 21 A Yes, sir.
 22 Q Okay. What size were those shoes?
 23 A Somewhere between 14s and 15s.
 24 Q You've got large feet?

XIX-52

TWINING - DIRECT

1 house and the other question was --
 2 Q When?
 3 A Okay.
 4 Q Do you recall when they came to your house?
 5 A When would be on my -- the date I was arrested. I
 6 don't recall what date it was exactly. There should be a record
 7 of that.
 8 Q Do you recall what month it was?
 9 A Was it December? I mean I don't -- no, I don't. I
 10 don't recall actually. I mean if you have the paperwork. I
 11 don't have the paperwork with me.
 12 Q Did -- you indicated you were -- when they came to
 13 your house you were arrested because you had an outstanding
 14 warrant?
 15 A That's correct.
 16 Q Okay. Did you have contact with the homicide
 17 officers at the jail?
 18 A Yes, sir.
 19 Q Did you provide them with something?
 20 A Yeah, I gave 'em information for a DNA test and
 21 they confiscated my shoes.
 22 Q What type of shoes?
 23 A Nike tennis shoes.
 24 Q And what size shoes?

XIX-51

TWINING - CROSS

1 A Yes, sir.
 2
 3 MR. SCHIECK: Thank you. That's all I have, Your
 4 Honor.
 5 THE COURT: Cross?
 6 MS. DIGIACOMO: Thank you.
 7 **CROSS-EXAMINATION**
 8 BY MS. DIGIACOMO:
 9 Q Good afternoon.
 10 A Good afternoon, Ms. DIGIACOMO.
 11 Q How old were you in 2001?
 12 A 2001, would have been 38.
 13 Q How long had you known Steve and Kathy by the
 14 end of June 2001?
 15 A I've know Kathy for a couple of years I think, and
 16 Steven I'd just met through Kathy.
 17 Q When they were living together?
 18 A Yes, ma'am.
 19 Q And are you sure when you met Blaise?
 20 A Mmm, within -- within several weeks, yeah. Within
 21 several weeks.
 22 Q Okay. So when did you meet her?
 23 A I think it was -- I'm gonna say the end of May.
 24 Q The end of May?

XIX-53

TWINING - CROSS

1 A Yeah.
 2 Q All right. Well, let's approach it a different way.
 3 When she went home on July 2nd to Panaca.
 4 A Mm-hmm.
 5 Q Do you know approximately how long you had
 6 known her at that point?
 7 A A couple months, I believe.
 8 Q Okay. So a couple months. So possibly it was the
 9 end of April when you met her?
 10 A Yes, it's possible.
 11 Q Okay. So you would have know her the entire
 12 month of May and the entire month of July?
 13 A Yeah --
 14 Q I mean, excuse me, June?
 15 A -- June. Yes.
 16 Q Okay. And in fact when you first met her she wasn't
 17 living with Steve and Kathy, she was just hanging out there,
 18 correct?
 19 A Oh, I -- I believe so.
 20 Q Okay. And she would hang out there and she would
 21 do drugs, correct?
 22 A Yes.
 23 Q Did you do drugs with Steve and Kathy as well?
 24 A Yes.

XIX-54

TWINING - CROSS

1 supply her the drugs?
 2 A No.
 3 Q When she stayed with you at the end of June until
 4 she went home July 2nd, how long did she stay with you?
 5 A I think it was less than a week. It was -- like I said
 6 before I'm not sure exactly.
 7 Q The time that she stayed with you the end of June,
 8 what was your relationship with her?
 9 A Trying to boyfriend -- trying to be boyfriend and
 10 girlfriend. I liked her.
 11 Q And so it's fair to say you liked her and you wanted
 12 a relationship with her?
 13 A Yes, ma'am.
 14 Q At that time were you intimate with her?
 15 A Yes, ma'am.
 16 Q You start -- you said that you had started out as
 17 friends with her through Steven and Kathy, at what point did it
 18 become a more intimate relationship between the two of you?
 19 A Probably the first time we fooled around.
 20 Q Okay. But I mean when --
 21 A I don't what -- I don't know what time -- I mean --
 22 Q What time period?
 23 A Well, yeah.
 24 Q Was it before she moved in with Steve and Kathy?

XIX-56

TWINING - CROSS

1 Q Did you do drugs with Blaise, as well?
 2 A Yes.
 3 Q Methamphetamine?
 4 A Yes, ma'am.
 5 Q Do you know who supplied the methamphetamine
 6 when you did it with either Blaise or Blaise, Steve and Kathy?
 7 A Offhand, no. It was -- people had it around.
 8 Q Okay. So there's times when you brought the
 9 methamphetamine to the party?
 10 A Yes, ma'am.
 11 Q And times when Steve or Kathy brought the
 12 methamphetamine?
 13 A Yes, ma'am.
 14 Q And times when Blaise even had the
 15 methamphetamine.
 16 A If I recall, I would assume that. I don't recall
 17 offhand, but I would assume so. We were all -- we were all
 18 doing it.
 19 Q And do you recall testifying at the prior proceeding
 20 that Blaise did know how to get drugs without help from you?
 21 A Yes, ma'am.
 22 Q Or Steve or Kathy?
 23 A Yes, ma'am.
 24 Q Okay. So she didn't need you or Steve or Kathy to

XIX-55

TWINING - CROSS

1 A I'm not exactly clear when -- when that transition
 2 was, you know, the --
 3 Q Oh. It is possible then, before she actually moved in
 4 with Steve and Kathy that she would have stayed over for the
 5 night?
 6 A Yeah, it's possible.
 7 Q And she, at times, would stay with you at your place
 8 as well?
 9 A As I recall, yes.
 10 Q And the times that she started to stay with you, is
 11 that when the relationship or the intimacy began?
 12 A Yeah, I would say so.
 13 Q Okay. The bags that you helped Blaise load up on
 14 July 2nd, were those the same bags she brought with her from
 15 Steve and Kathy's to your house?
 16 A For the most part. There might have been like a --
 17 you know, I think there was some plastic bags.
 18 Q Okay. Do you recall if she had any like luggage
 19 pieces?
 20 A Offhand I don't recall. I remember what sticks out is
 21 some leopard bags, I think.
 22 Q Like shopping bags?
 23 A Yeah, I believe so.
 24 Q Okay, but it's possible she did have some luggage?

XIX-57

TWINING - CROSS

1 A Yeah, I think. Possible.
 2 Q And when she was staying with you for that week or
 3 so, did she bring her belongings inside your residence?
 4 A Yes, I believe so.
 5 Q Well, you helped her pack 'em into the car, correct?
 6 A Right.
 7 Q So is it fair to say that she did bring them in your
 8 house?
 9 A Yes, I believe so.
 10 Q Do you remember anything unusual about her
 11 belongings?
 12 A No, ma'am.
 13 Q When you drove up there on July 9th and got to
 14 Blaise's residence, that was the first time you had met her
 15 parents?
 16 A I may have met them briefly before, like when -- at
 17 Steve and Kathy's the -- but I don't recall for sure.
 18 Q And you said that when you were driving the top
 19 was down on your Mustang convertible?
 20 A Yes, ma'am.
 21 Q I missed it, was that the way up or the way back?
 22 A That was the way up there.
 23 Q All right. Did you drive with it down on the way
 24 back?

XIX-58

TWINING - CROSS

1 THE COURT: Yes.
 2 MS. DiGIACOMO: First, counsel, it's going to be
 3 page 4 of his trans -- or voluntary statement to the police.
 4 BY MS. DiGIACOMO:
 5 Q I'm showing you a 39 page statement, voluntary
 6 statement, does that look familiar to you?
 7 A Yes, ma'am.
 8 Q Okay. Is this a transcribed copy of the statement
 9 you gave to the police?
 10 A On -- yes. Yes, ma'am.
 11 Q On August 2nd, 2001?
 12 A Yes, ma'am.
 13 Q If you could read page 4 to yourself and let me
 14 know when you're done reading that.
 15 (Pause in the proceedings)
 16 Q Did you discuss on page 4, in your statement,
 17 regarding whether or not -- anything more than other you
 18 drove the white Mustang to Panaca?
 19 A There's nothing else on there -- well, it mentions my
 20 convertible, they didn't need the VIN number, about Steve and
 21 Jeremy.
 22 Q Okay, but nothing else about the car, whether the
 23 top was up or down when you drove it?
 24 A No, ma'am.

XIX-60

TWINING - CROSS

1 A No, ma'am.
 2 Q Okay. And so when you got to Blaise's house is that
 3 when you put it up, or did you do it when you were at the gas
 4 station in Alamo?
 5 A I believe Blaise's dad helped me do it at her house.
 6 The motor was broken on so it took two people.
 7 Q Have you reviewed your prior statement and prior
 8 testimony before coming to court today?
 9 A I've not today, I did previously.
 10 Q Within the last couple of weeks?
 11 A Yes.
 12 Q And would you agree with me that nowhere
 13 previously did you state that you drove with the top up or
 14 down?
 15 A That I didn't -- I don't recall if that was in there or
 16 not.
 17 Q Okay, is it possible it was in there?
 18 A It's possible it was in there, yes.
 19 Q Is it -- would you like to review your statement and
 20 testimony?
 21 A That I -- that I did mention before, or?
 22 Q Correct.
 23 A Sure. If you'd like me to.
 24 MS. DiGIACOMO: May I approach, Your Honor?

XIX-59

TWINING - CROSS

1 Q Would you trust me that it's not mentioned in the
 2 rest of the statement either?
 3 A Yes, ma'am, I trust you.
 4 Q And I show you page 160, counsel, of your prior
 5 testimony.
 6 A If you say it's not in there I believe you.
 7 Q I'm gonna show you -- counsel, I was wrong, page
 8 156. If you could read from 156 to the end of 160 and let me
 9 know when you're done.
 10 (Pause in the proceedings)
 11 A This is my --
 12 Q Prior testimony.
 13 A -- previous proceedings?
 14 Q Yes.
 15 A Okay.
 16 (Pause in the proceedings)
 17 A And what was the question?
 18 Q Keep reading all the way through to 160.
 19 (Pause in the proceedings)
 20 A This looks like the highlighting of that phone bill that
 21 defense --
 22 Q Keep going, there's going to be more about the car.
 23 (Pause in the proceedings)
 24 A Okay, the question again?

XIX-61

TWINING - CROSS

1 Q Okay. Let me just make sure that you
 2 [unintelligible] to 160. All right, that looks like -- the phone
 3 call.
 4 A It says that -- about me -- when I was -- the police
 5 officer in Alamo.
 6 Q Oh, that's the --
 7 A Right here.
 8 Q Okay. But within pages 156 to 160, 161 of your
 9 testimony you're discussing your drive up to Panaca and
 10 picking up Blaise, correct?
 11 A That's correct, ma'am.
 12 Q All right. Anywhere in these pages did you mention
 13 about your top being down, the need to put it up or anything
 14 like that?
 15 A No, I didn't see that in there.
 16 Q Okay. And with regard to --
 17 MS. DIGIACOMO: Do you have EE, counsel?
 18 MR. SCHIECK: Do I have it or do I know what it is?
 19 I think I do.
 20 MS. DIGIACOMO: May I approach, Your Honor.
 21 THE COURT: Yes.
 22 BY MS. DIGIACOMO:
 23 Q I'm going to show you Defense Exhibit EE that you
 24 looked at previously. This was your cell phone bill.

XIX-62

TWINING - CROSS

1 Q And how long did you stay when you got there?
 2 A Less than half an hour.
 3 Q So you would have gotten there a little bit around
 4 12:45, a little before 1:00 and left by 1:20'ish?
 5 A I would say that's a good time frame.
 6 Q How long did it take you to get back to Las Vegas?
 7 A I think like -- I think it's like three hours. I don't
 8 recall for sure.
 9 Q Did you have any problems with your car on the way
 10 home?
 11 A On the way home, no, ma'am. On the way -- no,
 12 ma'am.
 13 Q Okay. You did have problems on the way up,
 14 correct?
 15 A Yes, ma'am.
 16 Q When you spoke to the police on August 2, 2001,
 17 you were prepared to discuss what you knew about the case,
 18 correct?
 19 A Yes, ma'am.
 20 Q In fact, you had spoken to Becky Lobato numerous
 21 times before you talked to the police on August 2nd?
 22 A Yes, ma'am. On August 2nd?
 23 Q Right. Between the time that Blaise was arrested on
 24 July 20th --

XIX-64

TWINING - CROSS

1 A Okay.
 2 Q Now -- or your father's cell phone bill.
 3 A Correct.
 4 Q This is not the entire bill, correct?
 5 A Correct. This looks like to be from the 1st to the 8th,
 6 I believe I said before. The 1st to the 9th.
 7 Q 1st to the 9th. Okay.
 8 A Yes, ma'am.
 9 Q And we don't have home records or your land line
 10 records from that time period, correct?
 11 A I don't know if you have them or not.
 12 Q Well, they weren't shown to you in court today, were
 13 they?
 14 A No, they weren't.
 15 Q You weren't asked to provide them, were you?
 16 A No, ma'am.
 17 Q Okay. What time was it that you left to take Blaise
 18 back to Las Vegas on the early morning hours of July 9th?
 19 A It looks from the -- it must have been around 1
 20 o'clock in the morning, it looks like.
 21 Q Are you gathering that from the phone calls?
 22 A Yeah, from the best of -- 'cause I recall -- I thought
 23 it was a little bit earlier than that, but it must have been
 24 around 1:00 it looks like, quarter to 1:00, something like that.

XIX-63

TWINING - CROSS

1 A Okay.
 2 Q -- until you gave the statement on August 2, 2001,
 3 you had spoken to the defendant's mom Becky numerous
 4 times?
 5 A Yes.
 6 Q And you'd spoken to her father as well?
 7 A Correct.
 8 Q How many times would you say you spoke to Becky?
 9 A I don't recall for sure. Probably between the two of
 10 them, maybe a dozen times.
 11 Q All right. And do you recall making any three-way
 12 calls?
 13 A Yes, ma'am.
 14 Q What were those about?
 15 A When -- you mean -- you're talking about when
 16 Blaise was incarcerated?
 17 Q Right.
 18 A The --
 19 Q After she was arrested July 20th?
 20 A As I recall, she was unable to -- I'm sorry. They
 21 were unable to receive collect calls in Panaca at their phone,
 22 so Blaise would call me from CCDC and I would make the call
 23 up there so that her parents could talk.
 24 Q When she would do this she'd call your home phone,

XIX-65

TWINING - CROSS

1 correct?
 2 A Yes, ma'am.
 3 Q And then you would call her parent's home in
 4 Panaca?
 5 A Yes, ma'am.
 6 Q And then that way she can talk to her parents?
 7 A Yes, ma'am.
 8 Q Did you stay on the line when they were talking?
 9 A Yeah, I pretty much had to.
 10 Q All right. But you weren't taking place in the
 11 conversation?
 12 A I probably was, yeah. I know I was actually.
 13 Q When you did these three-ways, do you recall a time
 14 when Blaise snapped at her father for discussing the case
 15 because the calls were recorded?
 16 A I recall -- somewhat, yeah.
 17 Q Yes or no, do you recall it or not?
 18 A Yes, ma'am.
 19 Q Okay. There was at least one time she did snap at
 20 her father for discussing the case on the phone?
 21 A Yes, ma'am.
 22 Q Now you said you talked to Becky and/or Larry
 23 approximately a half a dozen times between the time of her
 24 arrest and the time you talked to the police?

XIX-66

TWINING - CROSS

1 Q And you had spoken with Becky several times about
 2 talking to the police as well, correct?
 3 A As I recall, yes.
 4 Q Now the reason that you went to pick up Blaise and
 5 brought her back to Las Vegas, I believe you told the police
 6 was so that the both of you could lay low, stay away from
 7 Steve and Cathy during that time period, correct?
 8 A I believe that's what I said, yeah. I believe I said
 9 lay low and hang out.
 10 Q In fact, when she was there between the 9th and
 11 when her father picked her up, you didn't go out or do
 12 anything other than go out for food, correct?
 13 A As I recall, we were pretty much kicking back.
 14 Q So you didn't leave the house other than when you
 15 went to get food?
 16 A I don't recall that for sure.
 17 Q Okay. If I was to show you your statement that you
 18 gave to the police, would that refresh your recollection?
 19 A Yes, ma'am.
 20 Q Okay.
 21 MS. DIGIACOMO: Page 10, counsel.
 22 BY MS. DIGIACOMO:
 23 Q I'm gonna show you page 10 of your statement.
 24 A Okay. I did say other than go out and get food. I

XIX-68

TWINING - CROSS

1 A Actually I said I think it was probably a dozen, I
 2 estimated.
 3 Q Oh, a dozen. I'm sorry. Okay. So approximately
 4 that many times in between those two dates?
 5 A Yeah. Yes, ma'am.
 6 Q During those conversations you were talking about
 7 the case, correct?
 8 A Yes, ma'am.
 9 Q And you actually had discussed the date of July 8th,
 10 correct?
 11 A Yes, ma'am.
 12 Q And that's why when the police came and talked to
 13 you you had your phone records ready?
 14 A Yeah. Yes, ma'am.
 15 Q And you also had your information regarding your
 16 Mustang with the VIN number ready, correct?
 17 A Oh, I had that -- I think it was in my insurance -- my
 18 insurance card I think I was looking at.
 19 Q Okay. But you had all that documentation together
 20 before you were interviewed by the police?
 21 A Yes, ma'am.
 22 Q In fact, you had spoken to the defendant's father
 23 earlier in that day, correct?
 24 A As I recall, yes, ma'am.

XIX-67

TWINING - CROSS

1 didn't recall.
 2 Q You didn't recall leaving the house other than just to
 3 go out and get food?
 4 A Correct.
 5 Q While you were there, do you recall watching a news
 6 report regarding a homicide?
 7 A Yeah, I believe so.
 8 Q Do you recall what date that was on?
 9 A I think it was maybe the 9th or the 10th.
 10 Q All right. It was shortly after you brought Blaise
 11 back from Panaca, correct?
 12 A Yes, ma'am.
 13 Q And Blaise was present with you when you watched
 14 this news report, correct?
 15 A She was at my house, yes.
 16 Q She was watching the news report with you?
 17 A I don't recall for sure, but I think that's -- I think she
 18 was.
 19 Q Would it refresh your recollection if you looked at
 20 your prior statement that you gave to the police?
 21 A Yes, ma'am.
 22 Q Okay.
 23 MS. DIGIACOMO: Page 11 and 12.
 24 ///

XIX-69

TWINING - CROSS

1 BY MS. DIGIACOMO:
 2 Q I'm gonna ask you to read this page from here down
 3 and then the next page.
 4 A Okay. Yeah, Monday or Tuesday would've been the
 5 10th or 11th, is that correct?
 6 Q The 9th or the 10th.
 7 A 9th or the 10th. Yes, Monday or Tuesday. And I said
 8 Blaise --
 9 Q Well, does this refresh your recollection after looking
 10 at your statement as to whether or not Blaise was watching
 11 that report with you?
 12 A It refreshes -- well, while I'm reading it I said she
 13 was there, so -- and I never did finish the sentence.
 14 Q Okay.
 15 A I know she was there with me. I don't recall, she
 16 might've been sleeping.
 17 Q Well, do you recall them asking you next, was
 18 anything said about it, meaning did the two of you talk about
 19 it, and you said no?
 20 A Yes.
 21 Q Okay.
 22 A Yes, ma'am.
 23 Q So it's possible she was there then watching the
 24 report with you?

XIX-70

TWINING - CROSS

1 about right.
 2 Q Okay. And do you recall telling the police as well
 3 that her father was in town so he went ahead and picked her
 4 up?
 5 A I know that he picked her up. I don't recall if he
 6 was in town or --
 7 Q Well, do you --
 8 A -- he was coming to town or something.
 9 Q Do you recall telling the police that you had planned
 10 on taking her back either at the end of the weekend or on
 11 Monday to Panaca, but her dad happened to be in town so he
 12 went ahead a picked her up on Friday?
 13 A That sounds familiar.
 14 Q Okay. Is that -- that's what you told the police?
 15 A If that's what's in my statement. I don't recall, to
 16 tell you the truth.
 17 Q Do you want to look at your statement again?
 18 A Yes, please.
 19 Q Okay. Let me show you page 11 and then page 15.
 20 A Okay.
 21 Q Maybe it's just page 15.
 22 MS. DIGIACOMO: Court's indulgence. Okay.
 23 May I approach again, Your Honor?
 24 THE COURT: You may.

XIX-72

TWINING - CROSS

1 A Yes, ma'am.
 2 Q 'Cause the police asked you, well, did she -- was
 3 there anything said about it, correct?
 4 A Yes, ma'am.
 5 Q How many times did you talk to the defendant from
 6 jail after she was arrested on July 20th until you spoke to the
 7 police on August 2nd?
 8 A I couldn't even estimate.
 9 Q Numerous times?
 10 A Yes, ma'am.
 11 Q And she would always have to call your home phone
 12 to make those collect calls, correct?
 13 A As I recall, yes. I don't think my cell phone would
 14 accept those either.
 15 Q The time that she was there between the 9th of July
 16 and when her father picked her up, she talked to you about
 17 going into rehab and getting cleaned up, correct?
 18 A Yes, ma'am, that is correct.
 19 Q When her father came to pick her up, do you recall
 20 what time of the day it was?
 21 A For some reason right after lunch stands out.
 22 Q Yet do you recall telling the police sometimes
 23 between 1:00 and 4:00, it was mid-afternoon?
 24 A If that's what my statement says then that sounds

XIX-71

TWINING - CROSS

1 MS. DIGIACOMO: Okay.
 2 BY MS. DIGIACOMO:
 3 Q I am gonna show you the top of page 11 right here,
 4 and then I'm gonna show you page 15.
 5 A Okay.
 6 Q Yeah. If you'd mark that and read that to yourself
 7 and let me know if that refreshes your recollection.
 8 A Yes, ma'am.
 9 Q Okay. That refreshes your recollection?
 10 A Yes, ma'am.
 11 Q Okay. And so you actually had planned on taking
 12 her home at the end of the weekend or on Monday, but her
 13 father happened to be down there and went ahead and picked
 14 her up?
 15 A Yeah, we had a -- her and I had a little conflict and
 16 he picked her up.
 17 Q You had a fight before she left?
 18 A Not a fight, just --
 19 Q Disagreement?
 20 A Yes, ma'am.
 21 Q Okay. And do you recall what day of the week it
 22 was? Was it the -- before the weekend that her father just
 23 happened to come pick her up?
 24 A Yes, ma'am.

XIX-73

TWINING - CROSS

1 Q Possibly Friday?
 2 A I'm sorry, I -- can I see that again?
 3 Q Sure.
 4 A I don't recall what day it was at all, 'cause possibly it
 5 was Wednesday or Friday -- Wednesday to Friday.
 6 Q Let me see. Okay. I'm gonna show you page 10.
 7 MS. DIGIACOMO: May I approach, Your Honor?
 8 THE COURT: Yes.
 9 BY MS. DIGIACOMO:
 10 Q I'm gonna show you page 10 of your statement.
 11 Look at that and let me know if that refreshes your recollection
 12 when she got to your house and then when she left?
 13 A Yes, ma'am.
 14 Q Okay. When was it that she left your house?
 15 A The 13th.
 16 Q And so if Monday was the 9th, Friday would've been
 17 the 13th?
 18 A Yes, ma'am.
 19 THE COURT: Has his statement been marked?
 20 MS. DIGIACOMO: No, it has not.
 21 THE COURT: Okay. We should do that.
 22 MS. DIGIACOMO: You didn't make the defense do
 23 it.
 24 (Off-record colloquy)

XIX-74

TWINING - CROSS

1 BY MS. DIGIACOMO:
 2 Q When you picked up Blaise at her house on the early
 3 morning hours of July 9th, she brought back just a few
 4 belongings, not as much as she had left with when she came
 5 home July 2nd, correct?
 6 A Yeah, I believe so.
 7 Q Okay. She just brought like one bag?
 8 A Probably something like that.
 9 Q Okay. It wasn't all the belongings that you helped
 10 her load up on July 2nd?
 11 A No, ma'am.
 12 Q That week between July 9th and July 13th, 2001
 13 when she was at your house, you had talked -- or she had
 14 talked about going into rehab and getting cleaned up off of
 15 drugs, correct?
 16 A Yes, ma'am.
 17 Q But doing that week the two of you were also doing
 18 drugs as well?
 19 A As I recall we weren't -- we were doing marijuana,
 20 we weren't doing meth.
 21 Q You were doing what?
 22 A Marijuana.
 23 Q Marijuana not meth?
 24 A I believe so.

XIX-76

TWINING - CROSS

1 MS. DIGIACOMO: Your Honor, for the record, the
 2 statement -- or the voluntary statement by Mr. Twining is --
 3 has been marked as State's Proposed Exhibit 272. It's the
 4 same copy of what I have been discussing with Mr. Twining
 5 and showing him, as well as the front page is the same as
 6 what defense counsel showed him.
 7 THE COURT: The record shall so reflect.
 8 MS. DIGIACOMO: Thank you.
 9 BY MS. DIGIACOMO:
 10 Q Do you recall a time when somebody defecated or
 11 urinated inside the interior of Blaise's car?
 12 A Only from hearsay.
 13 Q Okay. Did you learn it from Blaise?
 14 A Yes, ma'am.
 15 Q Did you learn it when she was still living at Steve
 16 and Cathy's?
 17 A Yes, ma'am.
 18 Q Okay. And did she also tell you that she had to
 19 clean the car to get rid of what was in there?
 20 A Yes, ma'am. She had it cleaned, I believe.
 21 Q And that would've been before she came to stay
 22 with your at the end of June, 2001?
 23 A That's correct.
 24 MS. DIGIACOMO: Court's indulgence.

XIX-75

TWINING - CROSS

1 Q But you did tell the police you were doing drugs?
 2 A Probably, yeah. I'm sure I did.
 3 Q When she went up on July 2nd to go up to her
 4 parents, you were talking to her, 'cause at this point you're still
 5 kind of having a relationship with her, correct?
 6 A Yes, ma'am.
 7 Q And the two of you had talked about her coming
 8 back down to see you on July 4th and spending that together,
 9 correct?
 10 A I believe so, yes.
 11 Q Okay. But she ended up not coming back down?
 12 A Correct.
 13 Q Okay. But you did want her to?
 14 A Yes, ma'am.
 15 Q And when she was gonna come back down on July
 16 4th she was gonna drive herself down in her car, correct?
 17 A I think she had car problems and was unable to do
 18 that.
 19 Q Well, you didn't talk about going up and picking her
 20 up at that time, correct?
 21 A I don't recall, actually.
 22 Q Okay. But you did talk about her coming down to
 23 Las Vegas for the 4th of July?
 24 A Yes, ma'am.

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TWINING - REDIRECT

1 MS. DIGIACOMO: Pass the witness.
 2 THE COURT: Redirect.

REDIRECT EXAMINATION

4 BY MR. SCHIECK:

5 Q It's your recollection she didn't come down 'cause of
 6 car problems?

7 A No, I don't think that's why she didn't come down. I
 8 think she had -- I think she had other engagements up there
 9 with her parents and stuff, but I believe her car wasn't running
 10 then.

11 Q You were asked about your phone bill. The phone
 12 bill that was shown to you, Exhibit EE, that ended on July 9th,
 13 that was the last day of the billing cycle?

14 A The phone bill we were looking at?

15 Q Yes.

16 A Yes, sir. Actually I'm not sure of the end of the
 17 billing cycle, but that was the end of the -- that was the last
 18 date on that particular set of pages.

19 Q If I could show you EE.

20 MR. SCHIECK: If I may approach, Your Honor?

21 THE COURT: You may.

22 BY MR. SCHIECK:

23 Q Tell us what the bill request is the billing date?

24 A Billing date, July 9, 2001, it says up here.

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MINING - REDIRECT

1 Q You told us about the police coming to your house,
 2 and this was after they had interviewed you on August 2nd
 3 sometime? You don't remember the date?

4 A No, I don't remember the date.

5 Q Okay. When they came to your house then did they
 6 say by the way, do you got the phone bill for August?

7 MS. DiGIACOMO: Objection, Your Honor, leading.

8 THE WITNESS: I wasn't at my house, I was in jail
 9 when they were at my house.

10 THE COURT: Sustained.

11 MS. DiGIACOMO: And Your Honor, I'd move to
 12 strike the answer.

13 THE COURT: Granted.

14 BY MR. SCHIECK:

15 Q You've talked with the district attorney in this case?

16 A Yes, sir.

17 Q Did you talk to them back in 2002 before the prior
 18 proceeding?

19 A I believe I did.

20 Q Did you talk to them before this proceeding?

21 A Yes, sir.

22 Q Did they ever ask you for the phone bill?

23 A No. I would've provided it if they asked me for it. I
 24 would've tried to. That's a long time ago. Not if they have

XIX-80

TWINING - REDIRECT

1 Q That's -- the last day reflected is July 9th?

2 A Yes, sir.

3 Q Is this what you would've -- or a copy of this what
 4 you gave to Detective Thowsen?

5 A That's correct, sir.

6 Q And Detective Thowsen came back and talked with
 7 you after that?

8 MS. DIGIACOMO: Objection, leading.

9 THE COURT: Sustained.

10 BY MR. SCHIECK:

11 Q How many times did Detective Thowsen ask you for
 12 the next bill?

13 A I'm sorry, the question?

14 Q How many times did Detective Thowsen ask you for
 15 the bill that follows that one?

16 MS. DIGIACOMO: Objection, leading, and assumes
 17 facts not in evidence.

18 THE WITNESS: I was never asked --

19 THE COURT: Overruled.

20 THE WITNESS: I was never asked. I offered him
 21 that. I was never asked for those.

22 BY MR. SCHIECK:

23 Q Were you ever asked for any other bills?

24 A Never asked for bills. I offered those.

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TWINING - REDIRECT

1 records of --

2 Q Have you ever gotten a subpoena for those bills?

3 A No, sir.

4 Q You were asked about the top on your Mustang
 5 being down when you drove up to Panaca on July 8th. Had
 6 anyone ever asked you before about your -- whether it was up
 7 or down when you drove up there?

8 A No, sir.

9 Q Who was the first person that asked you that?

10 A I believe it was Ms. DiGiacomo.

11 Q Okay. And when was that?

12 A I think it was at our meeting prior to these
 13 proceedings.

14 Q And prior to that no one had ever bothered to ask
 15 you that before?

16 A No. I don't know if she just asked me now, or I
 17 don't recall if it was brought up when I went to their -- I
 18 should clarify. I don't recall if it was brought up when we had
 19 our meeting, but I -- she did just bring it up now for sure.

20 Q You mean here in court?

21 A Yes, sir.

22 MR. SCHIECK: Thank you. That's all I have, Your
 23 Honor.

24 THE COURT: Recross.

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TWINING - RECROSS

1 MS. DIGIACOMO: Yes. Thank you.

2 **RECROSS EXAMINATION**

3 BY MS. DIGIACOMO:

4 Q Just so we're clear, the defense asked you about
5 whether or not the top was up or down during the direct
6 examination, and then I followed up on my cross, correct?

7 A If you say he did. I don't recall actually, the -- I
8 know he -- I just recall for sure, I know we were just talking
9 about it now --

10 Q Okay. But --

11 A -- 'cause we looked back through the records.

12 Q Yeah. The records would indicate that the defense
13 brought it up first.

14 A Okay.

15 Q Now you said that first you thought we had
16 discussed it in a prior meeting that we had a couple weeks
17 ago, but then you said you don't recall that?

18 A Let me think about it. The -- I think we did talk
19 about it -- Blaise's dad helping me put it up.

20 Q Okay. So that's your recollection?

21 A Yes, ma'am.

22 Q Okay. You also recollect that you talked to us before
23 the last proceeding, correct?

24 A I don't recall for sure. I think we did.

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WINING - RECROSS

1 MS. DIGIACOMO: That's fine. I'll withdraw.

2 BY MS. DIGIACOMO:

3 Q When --

4 A I'm pretty sure. I'm pretty sure. Yeah, I'm pretty
5 sure.

6 Q Okay. When you spoke to us a couple weeks ago, it
7 was after you had already spoken to the defense, correct?

8 A I've spoken to them several times on the -- you
9 know, on the phone briefly.

10 Q Okay. But you do recall telling us that you'd already
11 met with the defense when he met with us, correct?

12 A Yes, ma'am.

13 Q All right. Now you said that the police never asked
14 for any other phone bills from you, correct?

15 A Correct.

16 Q Okay. They didn't even ask for these, you
17 volunteered them, correct?

18 A I believe so, yes.

19 Q The ones that are marked EE?

20 A Correct.

21 Q All right. The defense never asked you for any other
22 phone records, did they?

23 A I don't believe so. I think they were already --
24 they'd already been turned in as evidence.

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TWINING - RECROSS

1 Q Okay. Well, you tell me, how long before the last
2 proceeding did we meet?

3 A I don't recall. I thought I met with both sides last
4 time. Subpoenaed by you guys, I know that.

5 Q Right. But it's possible that you were subpoenaed
6 but you never met with us?

7 A It's possible, yes.

8 Q Okay. 'Cause do you recall what office you were
9 sitting in when you met with us?

10 A No, I don't recall.

11 Q Did you recall where you met with us just a couple
12 of weeks ago?

13 A Yes, ma'am.

14 Q Okay. So it's possible that you're wrong that you
15 met with us before the last proceeding?

16 A Yes, ma'am, it's possible. It's true.

17 Q It's also possible you're wrong that you brought up
18 the fact that the top was up or down when you talked to us a
19 couple weeks ago in that meeting?

20 A Now that I think about it, I'm pretty sure we did talk
21 about Blaise's dad helping me put it up.

22 Q Okay. But you don't know for sure, do you?

23 MR. SCHIECK: Objection, asked and answered,
24 Your Honor.

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TWINING - RECROSS

1 Q Okay. Just the cell phone records, but no one ever
2 asked you for other cell phone records, correct?

3 A Not to my knowledge.

4 Q Okay.

5 A Not that I recall.

6 Q The State nor the defense asked you?

7 A Yes, ma'am, I don't believe they -- that I've been
8 asked for them or I would've provided them.

9 Q When -- now you said that Blaise told you that she
10 was having car problems on the 4th and that's why she couldn't
11 come down? Is that your testimony now?

12 THE WITNESS: I believe my --

13 MR. SCHIECK: Objection, Your Honor, that
14 misstates the evidence.

15 THE COURT: Sustained.

16 BY MS. DIGIACOMO:

17 Q Okay. You said that Blaise was having car trouble so
18 she couldn't come down on the 4th, correct?

19 A I believe what I said was she -- she had been having
20 car troubles, but I think they had previous engagements with
21 her parents. They were going to some party or some 4th of
22 July event or something.

23 Q And that information that you're testifying to you
24 had to have learned from Blaise?

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TWINING - RECROSS

1 A Yes, ma'am.
 2 Q You didn't talk to anybody else in Panaca, correct?
 3 A Not about 4th of July party, no, ma'am.
 4 MS. DIGIACOMO: Nothing further.
 5 THE COURT: Redirect.
 6 MR. SCHIECK: None, Your Honor.
 7 THE COURT: Mr. Bailiff.
 8 Counsel approach.
 9 (Off-record bench conference from 2:30:59-2:31:47 p.m.)
 10 THE COURT: Mr. Twining, the jury has a question
 11 for you, which I am going to read to you. After I have read
 12 you the question, please answer it. After you've answered it
 13 the attorneys will have an opportunity to pose any followup
 14 questions to you which they deem appropriate.
 15 "Would Blaise often call home to her family while
 16 she was staying at your home from July 9th to July 13th?"
 17 THE WITNESS: I don't believe so.
 18 THE COURT: Any followup by the State?
 19 MS. DIGIACOMO: No, Your Honor.
 20 THE COURT: Any by the defense?
 21 MR. SCHIECK: No, Your Honor.
 22 THE COURT: This will be marked as Court's 87.
 23 You may step down from the stand.
 24 THE WITNESS: Thank you, Your Honor.

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1 THE COURT: Would counsel approach?
 2 (Off-record bench conference from 2:33:07-2:34:33 p.m.)
 3 THE COURT: Ladies and gentlemen of the jury,
 4 we're gonna take a 15 minute stretch break. In 15 minutes
 5 please be in the hallway. The bailiff will meet you there to
 6 return you to your seats in the courtroom.
 7 During this evening recess you are admonished not
 8 to talk or converse among yourselves nor with anyone else on
 9 any subject connected with the trial. And you're not to read,
 10 watch, or listen to any report of or commentary on the trial or
 11 any person connected with the trial by any medium of
 12 information, including without limitation, newspaper, television,
 13 radio, and internet. And you're not to form or express any
 14 opinion on any subject connected with the trial until the case is
 15 finally submitted to you.
 16 The jury may exit at this time.
 17 (Jurors are not present)
 18 THE COURT: The record shall reflect that the jury
 19 has exited.
 20 Ms. Lobato, have you had the opportunity to discuss
 21 with your counsel your right to remain silent? I'm gonna cover
 22 that with you at this time.
 23 Under the constitution of the United States and
 24 under the constitution of the State of Nevada you cannot be

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1 compelled or required -- be required to testify in this case. Do
 2 you understand that?
 3 DEFENDANT LOBATO: Yes, Your Honor.
 4 THE COURT: You may at your own request waive
 5 and give us this right and then take the witness stand, be
 6 placed under oath, and testify. If you do, you would be
 7 subject to cross-examination by the prosecution and anything
 8 that you may say, whether it be on direct examination by your
 9 counsel or on cross-examination by the prosecution, would be
 10 the subject of fair comment when the prosecution speaks to
 11 the jury in final closing arguments. Do you understand that?
 12 DEFENDANT LOBATO: Yes, Your Honor.
 13 THE COURT: If you choose not to testify then the
 14 Court will not permit the prosecution to make any comments
 15 to the jury because you've not testified. Do you understand
 16 that?
 17 DEFENDANT LOBATO: Yes, Your Honor.
 18 THE COURT: If you elect not to testify and your
 19 counsel requests of the Court, the Court would then instruct
 20 the jury that the law doesn't compel a defendant in a criminal
 21 case to take the stand and testify, and no presumption may be
 22 raised and no inference of any kind can be drawn from the
 23 failure of a defendant to testify. Do you understand this as
 24 well?

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1 DEFENDANT LOBATO: Yes, Your Honor.
 2 THE COURT: Do you have any questions about any
 3 of these rights?
 4 DEFENDANT LOBATO: No, I do not.
 5 THE COURT: The Court further advises you that if
 6 you have a felony conviction and more than 10 years has not
 7 elapsed from the date that you were convicted or discharged
 8 from prison, parole, or probation, whichever was the latter,
 9 and the defense has not sought to preclude that from coming
 10 before the jury and you elect to take the stand and testify, the
 11 prosecution in the presence of the jury would be permitted to
 12 ask you if you'd ever been convicted of a felony, what the
 13 felony was, and when it happened, but not further details
 14 could be gone into. Do you understand this as well?
 15 MR. SCHIECK: Court's indulgence for one second.
 16 THE COURT: Yes, Mr. Schieck.
 17 MR. SCHIECK: Her question was whether or not
 18 they would be allowed to refer to prior conviction in this case,
 19 which obviously the answer is no because that conviction was
 20 set aside by the Supreme Court.
 21 THE COURT: That is correct.
 22 Did you have any other questions?
 23 DEFENDANT LOBATO: No, Your Honor.
 24 THE COURT: Very well.

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1 Have you made the decision as to whether you are
 2 going to waive your Fifth Amendment rights and testify, or
 3 whether you are going to take the Fifth at this time?
 4 DEFENDANT LOBATO: May I be permitted a little
 5 time to consider that during this break?
 6 THE COURT: I will take us off the record for about
 7 5 minutes and you can confer with counsel. That decision has
 8 to be placed on the record outside the presence of the jury.
 9 DEFENDANT LOBATO: Okay.
 10 THE COURT: So we will reconvene in 5 minutes --
 11 DEFENDANT LOBATO: Okay.
 12 THE COURT: -- and go off the record 'till that time.
 13 (Off-record at 2:38:52 p.m. until 2:54:32 p.m.)
 14 (Jurors are not present)
 15 THE BAILIFF: Department 2 is back in session.
 16 THE COURT: The record shall reflect that we are
 17 reconvened outside the presence of the jury in State versus
 18 Kirstin Blaise Lobato under C177394 in the presence of the
 19 defendant, her three counsel, and the two prosecuting
 20 attorneys.
 21 Ms. Lobato, have you made your decision?
 22 DEFENDANT LOBATO: Yes, I have.
 23 THE COURT: What are you going to do?
 24 DEFENDANT LOBATO: I'm going to choose not to

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1 take the stand.
 2 THE COURT: You're gonna take the Fifth and use
 3 your right to remain silent at this time?
 4 DEFENDANT LOBATO: Yes, Your Honor.
 5 THE COURT: Very well.
 6 We'll go off the record for a few more minutes until
 7 the bailiff returns the jury to the courtroom.
 8 (Off-record at 2:55:22 p.m. until 2:55:26 p.m.)
 9 (Jurors are not present)
 10 THE CLERK: On the record.
 11 THE COURT: Mr. Schieck's asking to go back on.
 12 The same parties and counsel are present.
 13 MR. SCHIECK: I object that we have admitted those
 14 things that [unintelligible] to be admitted or were admissible,
 15 and we are ready to rest.
 16 THE COURT: Okay. Thank you.
 17 (Off-record at 2:55:49 p.m. until 2:57:25 p.m.)
 18 (Jurors are present)
 19 (Off-record at 2:59:06 p.m. until 3:02:27 p.m.)
 20 (Jurors are present)
 21 THE BAILIFF: Department 2 is back in session.
 22 Please be seated.
 23 THE COURT: The record shall reflect that we're
 24 resuming the trial in State versus Lobato under C177394, in

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1 the presence of the defendant, her three counsel, the two
 2 prosecuting attorneys, and the ladies and gentlemen of the
 3 jury.
 4 Mr. Schieck.
 5 MR. SCHIECK: The defense would rest, Your Honor.
 6 THE COURT: Would counsel please approach?
 7 (Off-record bench conference from 3:02:57-3:04:08 p.m.)
 8 (Jurors are present)
 9 THE COURT: The record shall reflect that we
 10 received a juror's note that Court and counsel have reviewed
 11 at the bench. In the evening hours when the Court is in
 12 recess there is a janitorial crew that comes in and goes
 13 through the courtroom and cleans it up. And they -- they are
 14 the only ones who are in here when we are not.
 15 This will be marked as the Court's next in number.
 16 THE CLERK: 88.
 17 THE COURT: Thank you.
 18 The defense has rested case in chief.
 19 State?
 20 MR. KEPHART: We have nothing further, Your
 21 Honor.
 22 THE COURT: Ladies and gentlemen, with both sides
 23 resting their cases in chief, that concludes the presentation of
 24 evidence and testimony for the purposes of this trial. It is now

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1 the time for the Court to instruct you on the law that applies to
 2 this case.
 3 The Court has prepared written instructions for you.
 4 Some of them are long, some of them are a little complicated,
 5 and some of them contain exact quotations from various
 6 statutes or from Supreme Court decisions, both U.S. Supreme
 7 Court and State of Nevada Supreme Court decisions. So to
 8 make sure that I don't omit or misstate anything, I will be
 9 reading through them to you.
 10 The instructions are all numbered in the upper right
 11 and corner. I will first give you the number of the instruction
 12 and then I will give you the body of law. To assist you I have
 13 prepared copies of the instructions, which the bailiff will now
 14 hand out to you.
 15 (Pause in the proceedings)
 16 THE COURT: The original instructions, which I am
 17 going to read through, are signed on the back page. The
 18 copies which you have are not signed. That is one way that
 19 you can always tell the difference between the original for the
 20 file and your own.
 21 Also this is a form of verdict that's been prepared for
 22 your convenience. The clerk has done what we call blue
 23 backing to it. It's stapled to a blue backing. The Court's
 24 instructions will also be blue backed after I complete reading

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1 them.

2 Please do not write on the original instructions that

3 are blue backed, as they are to be maintained in the official file

4 kept in the clerk's office. The copies which have been just

5 distributed to you, those you may write on if you find that

6 helpful. I would ask that you please write your name across

7 the top of the front page so that when you get back into the

8 jury deliberation room and you have them all spread out

9 across the table you'll be able to find your own.

10 As I go through them you can circle things,

11 underline things. Sometimes I see the ladies and gentlemen

12 of the jury kinda dog earring certain pages that they want to

13 go back and refer back to, and you can do that as well.

14 Others will listen to the Court read through the instructions

15 and on the front page write down a couple of numbers of

16 certain instructions that they want to go back and refer to.

17 Both the original copy -- or the original of the instructions and

18 the copies that you have with you, you may take with you into

19 the jury deliberation room and refer back to.

20 **JURY INSTRUCTIONS**

21 THE COURT: Instruction Number 1. It is now my

22 duty as Judge to instruct you in the law that applies to this

23 case. It is your duty as jurors to follow these instructions and

24 to apply the rules of law to the facts as you find them from the

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1 evidence. You must not be concerned with the wisdom of any

2 rule of law stated in these instructions. Regardless of any

3 opinion you may have as to what the law ought to be, it would

4 be a violation of your oath to base a verdict upon any other

5 view of the law than that given in the instructions of the Court.

6 Instruction Number 2. If in these instructions any

7 rule, direction, or idea is repeated or stated in different ways,

8 no emphasis thereon is intended by me and none may be

9 inferred by you. For that reason you are not to single out any

10 certain sentence or any individual point or instruction and

11 ignore the others. But you are to consider all the instructions

12 as a whole and regard each in the light of all the others. The

13 order in which the instructions are given has no significance as

14 to their relative importance.

15 Instruction Number 3. An information is but a

16 formal method of accusing a person of a crime and is not of

17 itself any evidence of her guilt.

18 In this case it is charged in an information that on or

19 about the 8th day of July, 2001, the defendant committed the

20 offenses of, murder with use of a deadly weapon and sexual

21 penetration of a dead human body, felony Nevada Revised

22 Statute Section 201.450, within the County of Clark, State of

23 Nevada, contrary to the form, force and effect of statutes in

24 such cases made and provided and against the peace and

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1 dignity of the State of Nevada.

2 Count 1, murder with use of a deadly weapon, did

3 then and there willfully, feloniously, without authority of law

4 and with premeditation and deliberation and with malice

5 aforethought, kill Duran Bailey, a human being, by the said

6 defendant, beating the said Duran Bailey with a blunt object

7 and/or by stabbing and/or by cutting the said Duran Bailey

8 with a deadly weapon, to-wit: a knife.

9 Count 2, sexual penetration of a dead human body,

10 did then and there willfully, feloniously, and without authority

11 of law, sexually penetrate a dead human body, to-wit: Duran

12 Bailey, in the following manner, by inserting a knife into and/or

13 cutting the anal opening of the said Duran Bailey.

14 It is the duty of the jury to apply the rules of law

15 contained in these instructions to the facts of the case and

16 determine whether or not the defendant is guilty of one or

17 more of the offenses charged. Each charge and the evidence

18 pertaining to it should be considered separately. The fact that

19 you may find a defendant guilty or not guilty as to one of the

20 offenses charged should not control your verdict as to any

21 other offense charged.

22 Instruction Number 4. In this case the defendant is

23 accused in an information alleging a open charge of murder.

24 This charge may include, murder of the first degree, murder of

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1 the second degree, and voluntary manslaughter. The just

2 must decide if the defendant is guilty of any offense, and if so,

3 of which offense.

4 Instruction Number 5. Murder is the unlawful killing

5 of a human being with malice aforethought, either express or

6 implied. The unlawful killing may be effected by any of the

7 various means by which death may be occasioned.

8 Instruction Number 6. Malice aforethought means

9 the intentional doing of a wrongful act without legal cause or

10 excuse, or what the law considers adequate provocation. The

11 condition of mind described as malice aforethought may arise

12 from anger, hatred, revenge, or from particular ill will, spite or

13 grudge towards the person killed. It may also arise from any

14 unjustifiable or unlawful motive or purpose to injure another,

15 or with reckless disregard of consequences and social duty.

16 Malice aforethought does not imply deliberation of

17 the lapse of any considerable time between the malicious

18 intention to injure another and the actual execution of the

19 intent. But denotes an unlawful purpose and design as

20 opposed to accident and mischance.

21 Instruction Number 7. Express malice is that

22 deliberate intention unlawfully to take away the life of a human

23 being, which is manifested by external circumstances capable

24 of proof. Malice may be implied when no considerable

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1 provocation appears or when all the circumstances of the
 2 killing show an abandoned and malignant heart.
 3 Instruction Number 8. The prosecution is not
 4 required to present direct evidence of a defendant's state of
 5 mind as it existed during the commission of a crime. The jury
 6 may infer the existence of a particular state of mind of a party
 7 or a witness from the circumstances disclosed by the evidence.
 8 Instruction Number 9. Murder of the first degree is
 9 murder which is perpetrated by means of any kind of willful,
 10 deliberate, and premeditated killing. All three elements,
 11 willfulness, deliberation, and premeditation must be proven
 12 beyond a reasonable doubt before an accused can be
 13 convicted of first degree murder.
 14 Willfulness is the intent to kill. There need be no
 15 appreciable space of time between formation of the intent to
 16 kill and the act of killing. Deliberation is the process of
 17 determining upon a course of action to kill as a result of
 18 thought, including weighing the reasons for and against the
 19 action and considering the consequences of the actions.
 20 A deliberate determination may be arrived at in a
 21 short period of time. But in all cases the determination must
 22 not be formed in passion, or if formed in passion, it must be
 23 carried out after there has been time for the passion to
 24 subside and a deliberation to occur.

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1 A mere unconsidered and rash impulse is not
 2 deliberate, even though it includes the intent to kill.
 3 Premeditation is a design, a determination to kill, distinctly
 4 formed in the mind by the time of the killing. Premeditation
 5 need not be for a day, an hour, or even a minute. It may be
 6 as instantaneous as successive thoughts of the mind. For if
 7 the jury believes from the evidence that the act constituting
 8 the killing has been proceeded by and has been the result of
 9 premeditation, no matter how rapidly the act follows the
 10 premeditation, it is premeditated.
 11 Instruction Number 10. The law does not undertake
 12 to measure in units of time the length of a period -- strike that.
 13 The law does not undertake to measure in units of time the
 14 length of the period during which the thought must be
 15 pondered before it can ripen into an intent to kill, which is truly
 16 deliberate and premeditated. The time will vary with different
 17 individuals and under varying circumstances.
 18 The true test is not the duration of time, but rather
 19 the extent of the reflection. A cold calculated judgment and
 20 decision may be arrived at in a short period of time, but a
 21 mere unconsidered and rash impulse, even though it includes
 22 an intent to kill, is not deliberation and premeditation as will fix
 23 an unlawful killing as murder of the first degree.
 24 Instruction Number 11. The crime of first degree

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1 murder includes the crime of second degree murder. You are
 2 instructed that if you find that the State has established that
 3 the defendant has committed first degree murder, you shall
 4 select first degree murder as your verdict.
 5 You may find the defendant guilty of second degree
 6 murder if, one, some of you are not convinced beyond a
 7 reasonable doubt that the defendant is guilty of murder of the
 8 first degree. And two, all 12 of you are convinced beyond a
 9 reasonable doubt the defendant is guilty of the crime of
 10 second degree murder.
 11 If you are convinced beyond a reasonable doubt that
 12 the crime of murder has been committed by the defendant,
 13 but you have a reasonable doubt whether such murder was of
 14 the first or of the second degree, you must give the defendant
 15 the benefit of that doubt and return a verdict of murder of the
 16 second degree.
 17 Instruction Number 12. Murder of the first degree
 18 includes murder which is any kind of willful, deliberate, and
 19 premeditated killing. All murder which is not murder of the
 20 first degree is murder of the second degree. Murder of the
 21 second degree is murder with malice aforethought, but without
 22 the add mixture of premeditation and deliberation.
 23 Instruction Number 13. Manslaughter is the
 24 unlawful killing of a human being without malice, express or

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1 implied, and without any mixture of deliberation. Voluntary
 2 manslaughter is a voluntary killing upon a sudden heat of
 3 passion caused by a provocation apparently sufficient to make
 4 the passion irresistible.
 5 The provocation required for voluntary manslaughter
 6 must either consist of a series and highly provoking injury
 7 inflicted upon the person killing, sufficient to excite an
 8 irresistible passion any reasonable person, or an attempt by
 9 the person killed to commit a serious person injury on the
 10 person killing. The serious and highly provoking injury which
 11 causes the sudden heat of passion can occur without direct
 12 physical contact.
 13 For the sudden violent impulsive passion to be
 14 irresistible resulting in a killing, which is voluntary
 15 manslaughter, there must not have been an interval between
 16 the assault or provocation and the killing, sufficient for the
 17 voice of reason and humanity to be heard; for if there should
 18 appear to have been an interval between the assault or
 19 provocation given for the killing, sufficient for the voice and
 20 reason of humanity to be heard, then the killing shall be
 21 determined by you to be murder. The law assigns no fixed
 22 period of time for such an interval, but leaves its determination
 23 to the jury under the facts and circumstances of the case.
 24 Instruction Number 14. The heat of passion which

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1 will reduce a homicide to voluntary manslaughter must be
 2 such, an irresistible passion as naturally would be aroused in
 3 the mind of an ordinarily reasonable person in the same
 4 circumstances. A defendant is not permitted to set up her own
 5 standard of conduct and to justify or excuse herself because
 6 her passions were aroused, unless the circumstances in which
 7 she was placed and the facts that confronted her were such as
 8 would have aroused the irresistible passion of the ordinarily
 9 reasonable person if likewise situated. The basic inquiry is
 10 whether or not at the time of the killing the reason of the
 11 accused was obscured or disturbed by passion to such an
 12 extent as would cause the ordinarily reasonable person of
 13 average disposition to act rationally and without deliberation
 14 and reflection, and from such passion rather than from
 15 judgment.

16 Instruction Number 15. The crime of murder may
 17 include the crime of voluntary manslaughter. If you find the
 18 State has established that the defendant has committed
 19 murder, you shall select the appropriate degree of murder as
 20 your verdict.

21 You may find the defendant guilty of voluntary
 22 manslaughter if, one, some of you are not convinced beyond a
 23 reasonable doubt that the defendant is guilty of murder of
 24 either the first or second degree, and all 12 of you are

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1 circumstances in which it is used, attempted to be used, or
 2 threatened to be used, is readily capable of causing substantial
 3 bodily harm or death.

4 Instruction Number 18. The State is not required to
 5 have recovered the deadly weapon used in an alleged crime,
 6 or to produce the deadly weapon in court at trial to establish
 7 that a deadly weapon was used in the commission of the
 8 crime.

9 Instruction Number 19. The killing or attempting
 10 killing of another person in self defense is justified and not
 11 unlawful when the person who kills or attempts to kills actually
 12 and reasonably believes one, that there is immanent danger
 13 that the assailant will either kill her or cause her great bodily
 14 injury, and two, that it is absolutely necessary under the
 15 circumstances for her to use in self defense force or means
 16 that might cause the death of the other person for the purpose
 17 of avoiding death or great bodily injury to herself.

18 A bare fear of death or great bodily injury is not
 19 sufficient to justify a killing. To justify taking the life of
 20 another in self defense, the circumstances must be sufficient to
 21 excite the fears of a reasonable person placed in a similar
 22 situation. The person killing must act under the influence of
 23 those fears alone and not in revenge. An honest but
 24 unreasonable belief and the necessity for self defense does not

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1 convinced beyond a reasonable doubt the defendant is guilty
 2 of the crime of voluntary manslaughter.

3 If you are satisfied beyond a reasonable doubt that
 4 the killing was unlawful, but you have a reasonable doubt
 5 whether the crime is murder or voluntary manslaughter, you
 6 must give the defendant the benefit of that doubt and return a
 7 verdict of voluntary manslaughter.

8 Instruction Number 16. You are instructed that if
 9 you find the defendant guilty of murder or voluntary
 10 manslaughter, you must also determine whether or not a
 11 deadly weapon was used in the commission of this crime. If
 12 you find beyond a reasonable doubt that a deadly weapon was
 13 used in the commission of such an offense, then you shall
 14 return the appropriate guilty verdict reflect quote "with use of
 15 a deadly weapon", unquote.

16 If, however, you find that a deadly weapon was not
 17 used in the commission of such an offense, but you find that it
 18 was committed, then you shall return the appropriate guilty
 19 verdict reflecting that a deadly weapon was not used.

20 Instruction Number 17. Quote "deadly weapon",
 21 unquote, means any instrument which if used in the ordinary
 22 manner contemplated by its design and construction will, or is
 23 likely to, cause substantial bodily harm or death, any weapon,
 24 device, instrument, material, or substance which under the

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1 negate malice and does not reduce the offense from murder to
 2 manslaughter.

3 Instruction Number 20. The right of self defense is
 4 not generally available to an original aggressor. That is a
 5 person who has sought a quarrel with the design to force a
 6 deadly issue, and thus, through her fraud, contrivance or fault,
 7 to create a real or apparent necessity for making a felonious
 8 assault.

9 The original aggressor is only entitled to exercise self
 10 defense if she makes a good faith endeavor to decline any
 11 further struggle before the mortal blow is given. Where a
 12 person without voluntarily seeking, provoking, inviting, or
 13 willingly engaging in a difficulty of her own free will is attacked
 14 by an assailant. She has the right to stand her ground and
 15 need not retreat when faced with a threat of deadly force.

16 Instruction Number 21. Actual danger is not
 17 necessary to justify a killing in self defense. A person has a
 18 right to defend from apparent danger to the same extent as
 19 she would from actual danger.

20 The person killing is justified if, one, she is
 21 confronted by the appearance of immanent danger which
 22 arouses in her mind an honest belief and fear that she is about
 23 to be killed or suffer great bodily injury, and two, she acts
 24 solely upon these appearances and her fear and actual beliefs,

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1 and three, a reasonable person in a similar situation would
 2 believe herself to be in like danger.
 3 The killing is justified even if it develops afterward,
 4 that the person killing was mistaken about the extent of the
 5 danger.
 6 Instruction Number 22. If evidence of self defense
 7 is present, the State must prove beyond a reasonable doubt
 8 that the defendant did not act in self defense. If you find that
 9 the State has failed to prove beyond a reasonable doubt that
 10 the defendant did not act in self defense, you must find the
 11 defendant not guilty.
 12 Instruction Number 23. If a person kills another in
 13 self defense, it must appear that the danger was so urgent
 14 and pressing that in order to save her own life or to prevent
 15 her receiving great bodily harm, the killing of the other was
 16 absolutely necessary and the person killed was the assailant,
 17 or that the slayer had really and in good faith endeavored to
 18 decline any further struggle before the mortal blow was given.
 19 Instruction Number 24. A person who commits a
 20 sexual penetration of the dead body of a human being is guilty
 21 of sexual penetration of a dead human body. Quote, "sexual
 22 penetration", unquote, is defined as any intrusion, however
 23 slight, of any part of a person's body, or any object
 24 manipulated or inserted by a person into the genital or anal

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1 considered by you only for the purpose of determining the
 2 credibility of that witness. The fact of such a conviction down
 3 not necessarily destroy or impair the witness' credibility. It is
 4 one of the circumstances that you may take into consideration
 5 in weighing the testimony of such a witness.
 6 Instruction Number 29. An quote, "alibi", unquote,
 7 amounts to contention that the defendant was not present at
 8 the time and place where she is alleged to have committed the
 9 offense charged in the information. It is the State's burden to
 10 establish beyond a reasonable doubt each of the essential
 11 elements of the offense and the presence and involvement of
 12 the defendant.
 13 If after a consideration of all the evidence you have
 14 a reasonable doubt as to whether the defendant was present
 15 at the time and place the crime was committed, she is entitled
 16 to a verdict of not guilty.
 17 Instruction Number 30. To constitute the crime
 18 charged there must exist a union or joint operation of a act
 19 forbidden by law and an intent to do the act. The intent with
 20 which an act is done is shown by the facts and circumstances
 21 surrounding the case.
 22 Do not confuse intent with motive. Motive is what
 23 prompts a person to act. Intent refers only to the state of
 24 mind with which the act is done. Motive is not an element of

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1 openings of the body of another.
 2 Instruction Number 25. The purpose of the statute
 3 is to deter the act of sexual penetration of a dead human
 4 body, and motive is not an element of that crime.
 5 Instruction Number 26. The flight of a person
 6 immediately after the commission of a crime, or after she is
 7 accused of a crime, is not sufficient in itself to establish her
 8 guilt, but is a fact which if proved may be considered by you in
 9 light of all other proved facts in deciding the question of her
 10 guilt or innocence.
 11 Whether or not evidence of flight shows a
 12 consciousness of guilt and the significance to be attached to
 13 such a circumstance are matters for your deliberation.
 14 Instruction Number 27. No act committed by a
 15 person while in a state of voluntary intoxication shall be
 16 deemed less criminal by reason of his condition. But whatever
 17 the actual existence of any particular purpose, motive, or
 18 intent is, a necessary element to constitute a particular species
 19 or degree of crime, evidence of intoxication may be taken into
 20 consideration in determining such purpose, motive, or intent.
 21 Intoxication alone cannot reduce murder to voluntary
 22 manslaughter.
 23 Instruction Number 28. The fact that a witness had
 24 been convicted of a felony, if such be a fact, may be

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1 the crime charged, and the State is not required to prove a
 2 motive on the part of the defendant in order to convict.
 3 However, you may consider evidence of motive, or lack of
 4 motive, as a circumstance in the case.
 5 Instruction Number 31. The defendant is presumed
 6 innocent until the contrary is proved. This presumption places
 7 upon the State the burden of proving beyond a reasonable
 8 doubt every material element of the crime charged and that
 9 the defendant is the person who committed the offense.
 10 A reasonable doubt is one based on reason. It is
 11 not mere possible doubt, but is such a doubt as would govern
 12 or control a person in the more weighty affairs of life. If the
 13 minds of the jurors after the entire comparison and
 14 consideration of all the evidence are in such a condition that
 15 they can say they feel an abiding conviction of the truth of the
 16 charge, there is not a reasonable doubt. Doubt to be
 17 reasonable must be actual, not mere possibility or speculation.
 18 If you have a reasonable doubt as to the guilt of the
 19 defendant, she is entitled to a verdict of not guilty.
 20 Instruction Number 32. It is a constitutional right of
 21 the defendant in a criminal trial that she may not be compelled
 22 to testify. Thus, the decision as to whether she should testify
 23 is left to the defendant on the advice and counsel of her
 24 attorney.

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1 You must not draw any inference of guilt from the
 2 fact that she does not testify. Nor should this be -- nor should
 3 this fact be discussed by you or enter into your deliberations in
 4 any way.

5 Instruction Number 33. You are here to determine
 6 the guilt or innocence of the defendant from the evidence in
 7 the case. You are not called upon to return a verdict as to the
 8 guilt or innocence of any other person. So if the evidence in
 9 the case convinces you beyond a reasonable doubt of the guilt
 10 of the defendant, you should so find, even though you may
 11 believe one or more persons are also guilty.

12 Instruction Number 34. The evidence which you are
 13 to consider in this case consists of, the testimony of the
 14 witnesses, the exhibits, and any facts admitted or agreed to by
 15 counsel.

16 There are two types of evidence, direct and
 17 circumstantial. Direct evidence is the testimony of a person
 18 who claims to have personal knowledge of the commission of
 19 the crime which has been charged, such as an eye witness.
 20 Circumstantial evidence is the proof of a chain of facts and
 21 circumstances which tend to show whether the defendant is
 22 guilty or not guilty.

23 The law makes no distinction between the weight be
 24 given either direct or circumstantial evidence. Therefore, all of

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1 testimony of that witness, or any portion of their testimony,
 2 which is not proved by other evidence.

3 Instruction Number 36. A witness who has special
 4 knowledge, skill, experience, training, or education in a
 5 particular science, profession, or occupation is an expert
 6 witness. An expert witness may give his or her opinion as to
 7 any matter in which he is skilled. You should consider such
 8 expert opinion and weigh the reasons, if any given for it.

9 You are not bound, however, by such an opinion.
 10 Give it the weight to which you deem it entitled, whether that
 11 be great or slight, and you may reject it if in your judgment
 12 the reasons given for it are unsound.

13 Instruction Number 37. Although you are to
 14 consider only the evidence in the case in reaching a verdict,
 15 you must bring to the consideration of the evidence your
 16 everyday commonsense and judgment as reasonable men and
 17 women. Thus, you are not limited solely to what you see and
 18 hear as the witnesses testify. You may draw reasonable
 19 inferences from the evidence which you feel are justified in the
 20 light of common experience, keeping in mind that such
 21 inferences should not be based on speculation or guess.

22 A verdict may never be influenced by sympathy,
 23 prejudice, or public opinion. Your decision should be the
 24 product of sincere judgment and sound discretion in

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1 the evidence in the case, including the circumstantial evidence,
 2 should be considered by you in arriving at your verdict.

3 Statements, arguments, and opinions of counsel are
 4 not evidence in the case. However, if the attorneys stipulate
 5 to the existence of a fact, you must accept the stipulation as
 6 evidence and regard that fact as proved.

7 You must not speculate to be true any insinuations
 8 suggested by a question asked a witness. A question is not
 9 evidence and may be considered only as it supplies meaning to
 10 the answer.

11 You must disregard any evidence to which an
 12 objection was sustained by the Court, and any evidence
 13 ordered stricken by the Court. Anything you may have seen or
 14 heard outside the courtroom is not evidence and must also be
 15 disregarded.

16 Instruction Number 35. The credibility or
 17 believability of a witness should be determined by their
 18 manner upon the stand, their relationship to the parties, their
 19 fears, motives, interests, or feelings. their opportunity to have
 20 observed the matter to which they testified, their
 21 reasonableness of their statements, and the strength or
 22 weakness of their recollections.

23 If you believe that a witness has lied about any
 24 material fact in the case, you may disregard the entire

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1 accordance with these rules of law.

2 Instruction Number 38. In arriving at a verdict in
 3 this case as to whether the defendant is guilty or not guilty,
 4 the subject of penalty or punishment is not to be discussed or
 5 considered by you and should in no way influence your verdict.
 6 If the jury's verdict is murder of the first degree, you will at a
 7 later hearing consider the subject of penalty or punishment.

8 Instruction Number 39. If during your deliberation
 9 you should desire to be further informed on any point of law or
 10 hear again portions of the testimony, you must reduce your
 11 request to writing signed by the foreperson. The officer will
 12 then return you to court where the information sought will be
 13 given you in the presence of and after notice to the district
 14 attorney and the defendant and her counsel.

15 Play backs of testimony are time consuming and are
 16 not encouraged, unless you deem it a necessity. Should you
 17 require a play back, you must carefully describe the testimony
 18 to be played back so that the court recorder can arrange her
 19 notes. Remember, the Court is not at liberty to supplement
 20 the evidence.

21 Instruction Number 40. When you retire to consider
 22 your verdict you must select one of your number to act as
 23 foreperson who will preside over your deliberation and will be
 24 your spokesperson here in court. During your deliberation you

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1 will have all of the exhibits that were admitted into evidence,
 2 these written instructions and a form of verdict which has been
 3 prepared for your convenience.

4 Your verdict must be unanimous. As soon as you
 5 have a agreed upon a verdict, have it signed and dated by
 6 your foreperson and then return with it to this room.

7 Instruction number 41. Now you will listen to the
 8 arguments of counsel who will endeavor to aid you to reach a
 9 proper verdict by refreshing in your minds the evidence and by
 10 showing the application thereof to the law. But whatever
 11 counsel may say, you will bear in mind that it is your duty to
 12 be governed in your deliberation by the evidence as you
 13 understand it and remember it to be, and by the laws given
 14 you in these instructions, with the sole fixed and steadfast
 15 purpose of doing equal and exact justice between the
 16 defendant and the State of Nevada.

17 Mr. Schieck, you had no surrebuttal, is that correct?

18 MR. SCHIECK: Correct, Your Honor.

19 MR. SCHIECK: Well, the State had no rebuttal so I
 20 didn't think I could --

21 MS. DIGIACOMO: The State did have rebuttal.

22 THE COURT: Well, they had the --

23 MR. SCHIECK: Oh, I'm sorry. That's right.

24 THE COURT: That's right. We had discussed that at

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1 fit together.

2 This big picture here is that the defendant
 3 committed murder and she killed Duran Bailey on July 8, 2001.
 4 This is not about how somebody killed Duran Bailey in
 5 retaliation for a rape of Diane Parker. This is not about
 6 somebody killing the victim with scissors. And this case is not
 7 about the defendant having to fend off an attacker and use
 8 self defense. You're not gonna find any pieces of the puzzle
 9 that are gonna put together that picture for you, because
 10 that's not what this case is about. It's about how the
 11 defendant took out her anger and her rage on the defendant --
 12 or excuse me, on the victim, Duran Bailey, on July 8, 2001.

13 What I'm gonna do for you first is we're gonna go
 14 through a time line, what did the evidence show the time line
 15 to be.

16 First, you know from Jeremy Davis' testimony May
 17 23, 2001, that's when the defendant left her car at Jeremy
 18 Davis' house. That's when he was -- he left on that Friday the
 19 25th to go to Caliente for a softball tournament, he returned on
 20 May 28th, and the car was gone.

21 At this point, you know, next, June 26, 2001, that's
 22 when her car was being towed down the street at the
 23 apartment complex, a Steve Pyszkowski -- I cannot say that
 24 word -- Pyszkowski's house. And then you next know July 2,

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1 the bench at sidebar, but we hadn't put it on the record, so I
 2 wanted to do that now.

3 Proceeding with the closing arguments. State may
 4 proceed.

5 MS. DIGIACOMO: Thank you, Your Honor.

6 **STATE'S CLOSING ARGUMENT**

7 MS. DIGIACOMO: Good afternoon, ladies and
 8 gentlemen.

9 It has been four long weeks and you've gotten a lot
 10 of information thrown at you in that time. Now it's your job to
 11 go back there and try and piece everything together. And the
 12 way you should look at this is like it's a puzzle. But I submit to
 13 you it is not a three-year-old's puzzle that only has six pieces
 14 in the box and it's really easy to figure out how they go
 15 together. This is one of those complicated puzzles where you
 16 have to dump it out, there's tons of pieces, you have to flip it
 17 over and start to figure out how you can even go about
 18 putting it together.

19 And keep in mind sometimes in boxes there's pieces
 20 of puzzles from another puzzle, and sometimes you might be
 21 missing a piece. But when you put together what you have it
 22 does give you the big picture. What I intend to do with my
 23 argument here today is give you that big picture so that you
 24 know when you're looking at all the pieces how they're gonna

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1 2001 is when the defendant goes back to Panaca. And
 2 sometime in the month of June 2001 she's living with either
 3 Steve and Cathy or she goes to stay with Doug. But on June
 4 [sic] 2, 2001 she goes back to Panaca. She drives her own red
 5 Fiero to get there.

6 What do we know from the evidence next? July 5,
 7 2001, the defendant goes to the doctor. And how do you
 8 know that, because you have State's Exhibit 133. These were
 9 admitted into evidence without the custodian of records
 10 testifying. And you're gonna have these when you go back
 11 there.

12 And when you look at these records and you see the
 13 handwritten notes from the doctor on the 5th of July that's one
 14 full page, and then he even flips over to a back page. You're
 15 gonna notice that nowhere, nowhere in these handwritten
 16 notes by the doctor regarding the exam, regarding while she
 17 was there, said she claims she was depressed or suffering
 18 from any anxiety. She strictly went there because she was
 19 suffering or she thought she was being poisoned with
 20 phelantin [sic] sulfate.

21 And in fact, there's followup notes on the back
 22 where after he got the results back, which are in here as well,
 23 called mom and talked to her about it and said that because
 24 patient is doing well at present with unremarkable physical

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1 exam, there's really no need for a followup.
 2 And then your next notes you're gonna have are for
 3 July 13, 2001. And you're gonna see there's a telephone call
 4 from mom. Patient is having restlessness and anxiety. Has
 5 appointment for 7/16/01 on Monday. Told to start Alevium
 6 [sic] as directed. If you remember, she testified she got the
 7 prescription from the doctor that day and went and got it
 8 filled, and to visit the ER if symptoms worsen.
 9 We know July 5th she goes to the doctor strictly for
 10 poisoning. She's not having any problems with anxiety or
 11 depression. And also you know on this date, July 5th, from
 12 Chris Carrington through his grandmother, the defendant's
 13 mom and the defendant are fighting, and that's why Chris
 14 Carrington came home and told his grandmother I'm coming
 15 home 'cause they're fighting down there.
 16 July 6, 2001. Defendant's mother testified that she
 17 took off that day to stay home with her daughter. And you
 18 know Chris Carrington was down there again that day, and
 19 they were fighting again over the defendant going back to Las
 20 Vegas. And he came back and he told his grandmother that
 21 they're fighting over her going back to Las Vegas. And if you
 22 recall, the grandmother didn't believe he went back down
 23 there because she wasn't there, she was back in Las Vegas.
 24 MR. SCHIECK: Objection, Your Honor, that

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1 misstates the evidence. There was no testimony to that.
 2 THE COURT: The jury shall use their collective
 3 recollections. The Court will overrule.
 4 MS. DIGIACOMO: And at this point the defendant
 5 has been off of drugs since she's come home July 2nd. And
 6 you'll notice when she did the blood work up for her July 5th
 7 office visit, there's no methamphetamine in her system. So at
 8 this point she's needing drugs again. And you know that from
 9 the testimony of Jeremy Davis as well because when she was
 10 doing drugs she wanted to do it all the time. She'd been a
 11 couple of days without, she's fighting with her mom, she's
 12 used drugs in the past to deal with her family problems, deal
 13 with her issues, and so she's craving it and she wanted to go
 14 back to Las Vegas.
 15 And there's a lot of talk in this case about phone
 16 records, but look at the phone records. There's another way
 17 that you can interpret those phone records, other than what
 18 you heard from the witnesses on the stand, it was Blaise and
 19 Doug talking to each other. If you look at the phone records
 20 for Friday afternoon, it could also be that mom is home and
 21 she's looking for Blaise calling Doug, calling the police, calling
 22 her father at work. Looking not for Doug, looking for her
 23 daughter.
 24 On July 7, 2001, the defendant's down in Las Vegas

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1 and mom doesn't know where she's at, so mom goes back to
 2 work on that Saturday. Now Chris Carrington says that he was
 3 down there and saw her on that Sunday, but if you recall, he
 4 testified he would've gone over there after he had finished
 5 with his yard work. It was about that time that his
 6 grandfather had the heat stroke and he ended up driving his
 7 grandmother to the hospital, was with her the rest of the day,
 8 or was going to pick up the sister -- her sister at the lake and
 9 bring her back. Chris Carrington could not have been there on
 10 July 7th.
 11 And also look at who he said was present on July 7th.
 12 He says that when he would've been there in the afternoon
 13 that mom would've been home. No, she was at work that day.
 14 Chris Carrington was not down there on the 7th. He was down
 15 there on the 6th but not the 7th.
 16 On this morning of the 7th on her way to work she
 17 did drop off the urine sample that was collected on the 6th,
 18 what she had of it. She testified that there wasn't a lot and so
 19 she woke up her daughter to get one last sample. State
 20 submits to you, the reason there wasn't a lot in that urine
 21 sample is 'cause Blaise took off the day before, so she only
 22 completed part of the urine sample, the 24 hour urine sample,
 23 when she was there the morning of the 6th, or possibly in the
 24 afternoon of the 6th.

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1 And again, look at the phone records on the 7th as
 2 well. Be interpretive that not only is mom looking --
 3 MR. SCHIECK: Objection to what they interpreted,
 4 Your Honor.
 5 THE COURT: Sustained.
 6 MS. DIGIACOMO: But it can be interpreted. I'm
 7 sorry, I couldn't hear you?
 8 THE COURT: You may rephrase.
 9 MS. DIGIACOMO: When you look at the phone
 10 records, those -- when you look at them there's phone calls
 11 back and forth, but it could be again Doug and the parents
 12 looking for Blaise.
 13 On July 8, 2001, time of death. The big window
 14 comfort of comfort for the coroner is between 8 and 24 hours
 15 before the body was pronounced dead, which was at 3:50
 16 a.m. So the State submits to you, because of the fact that the
 17 defendant was down there partying since 7/6, the night of the
 18 7/7, she says her attack occurred early morning hours, late
 19 evening -- or late night hours, that it was sometime before
 20 sunup on July 8th that she killed Duran Bailey.
 21 We know from the defense witness and Diane Parker
 22 that Duran Bailey had sold drugs before and he had traded sex
 23 for drugs before. He traded sex before with Diane Parker.
 24 This murder was committed by the defendant.

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1 Again, you have the testimony of Jeremy Parker [sic] that she
 2 liked to do drugs and she wanted to do it over and over again.
 3 She never had to buy drugs, but she always knew where to
 4 get it. And she told Jeremy I have a source, but she never
 5 knew -- he never knew who that was. But she even tells the
 6 detectives, in Las Vegas I know where to get drugs.
 7 So she's down there and somehow she comes into
 8 contact with Duran Bailey. And somehow they end up back at
 9 his place, the trash dumpster where he would stay sometimes
 10 on the weekend.
 11 The first stab wound to Duran Bailey was to the
 12 scrotum, and how do you know that? Because his pants were
 13 down around his ankles when he was found. But also think
 14 about it, that's a stab wound that was before he died, it
 15 would've bled. If you look at his pants, there's no stab wound
 16 through the pants, there's no blood in the groin or crotch area.
 17 State submits to you that what happened was
 18 somehow the defendant hooked up with Duran Bailey for
 19 drugs, but he obviously wasn't gonna want money in exchange
 20 for it, he's gonna want sex in exchange for drugs. But the
 21 defendant's not gonna have anything to do with this smelly old
 22 guy. He goes back there, drops his pants, she probably acted
 23 like she was gonna go down and give him fellatio, boom, first
 24 stab wound was to the scrotum.

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1 At that point what's any guy gonna do that's in pain
 2 here? Cup themselves. They're vulnerable, they're gonna be
 3 crouched over. But she doesn't stop stabbing him at that
 4 point. And think about it. You have the injuries to the left
 5 palm, and there's only on the right hand one on the back, as if
 6 he's cupping himself here, she's still stabbing. He's got this
 7 hand up because now she's stabbing at his face. She stops
 8 and somehow she goes back to her car and she gets a bat.
 9 And think about it. She told Dixie that she left --
 10 told the police she left after she stabbed him or tried to cut his
 11 dick, and saw him stumbling or laying on the ground crying.
 12 She saw that vision because that's when she went back to the
 13 car and she got a bat and she came back, and that's when the
 14 blunt force trauma occurred. She probably hit him in the
 15 mouth, kicked him over, punched him with the bat, punched
 16 him with her fist. We know she can knock out a guy who's
 17 6'6" from Chris Carrington.
 18 MR. SCHIECK: Objection. There was no evidence
 19 the guy was 6'6", Your Honor.
 20 MS. DIGIACOMO: 6 foot, excuse me.
 21 THE COURT: Sustained.
 22 MS. DIGIACOMO: We know that she can knock over
 23 a guy that's 6'6" from a punch in the mouth.
 24 He goes down. The skull fracture occurs when he

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1 falls. And Doc Simms told you that the head trauma itself, the
 2 blunt force trauma to the head is gonna render him
 3 unconscious. And at that point it's very easy to go for the
 4 calculated stab wound to the carotid artery.
 5 But she's not done at that point. After he bleeds
 6 out, and Doc Simms told you it would've been within a matter
 7 of minutes. What did she do, stabs him a couple of times in
 8 the abdomen, makes sure he's dead. Stabbing him, just to
 9 see is he moving. He's not. And at that point she, after he is
 10 dead, she takes her knife and rips through his rectal area and
 11 his anus, and then she pulls up that penis and amputates it at
 12 the base. If you see the pictures, the pubic hair, everything is
 13 still attached to the penis.
 14 And also too, keep in mind that that stab to the
 15 carotid artery, it went down approximately inches to get to the
 16 carotid artery. I believe it was two inches to get down there.
 17 And he finally expires.
 18 At this point, what does she do? We know there's
 19 drag marks on the curb away from the big pool of blood.
 20 MR. SCHIECK: I'm gonna object, Your Honor.
 21 There was no testimony they were drag marks. They were
 22 transfer marks.
 23 MS. DIGIACOMO: Actually there was several
 24 witnesses --

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1 THE COURT: Overruled.
 2 MS. DIGIACOMO: Thank you.
 3 On the curb where all the blood spatter is, if you
 4 keep in mind it's all low as if he was down on the ground when
 5 he was getting these blows or the final stab wound that he
 6 probably bled down. There's no arterial spurting up high. And
 7 you can see the drag mark of the blood on the curb where he
 8 was probably pulled by his right arm -- 'cause it's found like
 9 this and his left arm is found down by his side -- towards the
 10 dumpster. But she's not strong enough to get him in the
 11 dumpster, so then she just throws trash over on top of him.
 12 And then what does she do? She gets in her car
 13 and she high tails it out of there and she gets back to Panaca,
 14 and the freeway's right there. And she even told Dixie that
 15 she didn't think anyone saw her with her attacker, if you want
 16 to call it that. She knew no one saw her commit this crime.
 17 She was only worried about somebody seeing her very
 18 distinctive car. Because think about it, her license plate,
 19 something out of the normal, it's not usual. It's not, you
 20 know, "I sell for you" like a real estate person, it's something
 21 very unusual that would stick in somebody's mind 'cause it's
 22 not a license plate that you see often in that kind of sexual
 23 context.
 24 Defendant says that -- to the police that I

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1 committed, I did this, but it was in a different area of town.
 2 But it's very possible she was just jumbling her two different
 3 stories, the story of the car was to Jeremy getting defecated,
 4 and this alleged attack.

5 Just think about it. When they first tell you look,
 6 your car is very distinctive, is that it outside? Her first thought
 7 is somebody borrowed my car. And this isn't about these
 8 Mexicans that live in Diane Parker's apartment complex either.
 9 Think about that. She doesn't know their names, knows what
 10 apartment they live in, but they're gonna go and attack this
 11 person with scissors and in revenge for this rape of Diane
 12 Parker, a person that they don't know that well. When the
 13 police told you that they tried to followed up with these
 14 people, they learned from the apartment complex they were
 15 hard working people, and when they ran them they had no
 16 criminal history whatsoever. That doesn't make sense. It was
 17 the defendant.

18 And her attack did not happen in May 2001, it didn't
 19 happen a couple of months before. If it did, why on July 18th
 20 are they -- with Dixie are they checking the Internet then?
 21 Because Dixie had the frame of mind it had just happened,
 22 based upon how upset the defendant was. Why was she
 23 going to the Y to get a paper right after she talked to Laura if
 24 it wasn't recent? Why would she want that day's paper?

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1 same incident.

2 Now there's been a little bit of testimony too about a
 3 crime like this where there's sexual mutilation postmortem,
 4 that this is usually male on male. That doesn't mean a woman
 5 couldn't have done this. Think about it, defendant carried a
 6 knife for her protection, for protection. Even though she had a
 7 knife collection, she did carry it for protection.

8 When Dixie talked to her for those first couple hours;
 9 do you recall what she said that they did? They did the first
 10 part of one of her anger management classes. The defendant
 11 needed anger management when she talked to Dixie.

12 She knew the area where this crime occurred,
 13 because you know that from Steve Pyszkowski, because that
 14 was within his territory. Tropicana to Rainbow, I believe it was
 15 Sahara and I-15, right smack in the middle of his territory.

16 And also Jeremy Davis told you when she was on
 17 drugs she was not the same person. In fact, that was what
 18 led to their breakup, because drugs were number 1 to the
 19 defendant and Jeremy was number 2.

20 And think about her conversation with the police on
 21 the ride home. She's still talking about the horror that she
 22 went through when she was 5 years old when she was
 23 sexually molested, and she's still upset because nothing really
 24 happened. She still has this anger 12 years later, 13 years

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1 And also look at why would the defendant be
 2 suffering from anxiety and depression on the 13th after the
 3 murder and not on the 5th unless, as she told Michele Austria,
 4 her conscious is getting to her.

5 And also too, you have no security reports from the
 6 Budget Suites for May, June, or July regarding any sort of
 7 attack by the office or by the fountain on in that parking area,
 8 no blood found on the ground, no penises severed, no penises
 9 slashed. You have Duran Bailey in July that was found with his
 10 penis severed.

11 And again. look at her statement to the police. Go
 12 through it carefully. Detective Thowsen told you it is not
 13 uncommon for somebody who's been on drugs to jumble their
 14 stories around, not uncommon at all. And she's jumbling the
 15 incident with Jeremy and the incident with Duran Bailey.

16 And think about too, Dixie made clear, as the one
 17 thing she definitely made clear when she was on the stand,
 18 when she talked to the defendant on July 18th that it was two
 19 separate incidents. There was the attack incident and then
 20 there was this thing that happened with her car where
 21 somebody defecated, urinated, and vomited in it, and they
 22 were two completely separate incidents. It's not until she gets
 23 to the police two days later where the defendant is jumbling
 24 these. She made clear two days before they were not the

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1 later. And when the police ask her, what about her past would
 2 make her particularly emotional about the situation, she tells
 3 them in her statement about being tortured every day for a
 4 year when she was 5 years old by her mother's boyfriend, and
 5 that her mother knew about it and let it happen. She has
 6 some deep seeded issues and anger, not only from this, but
 7 then she was raped again at 13, and the police were no help
 8 apparently, told her don't worry about even reporting it, raped
 9 again when she was 18 by her -- or excuse me, 17 by her best
 10 friend's father.

11 It's very clear the defendant's someone who
 12 committed this murder. No proof of any prior attack, no
 13 evidence that Diane Parker, her neighbors committed it. And
 14 when you listen to her statement, listen to all the times she
 15 uses past tense in it. She knew she killed her victim.

16 But you know what she's gonna have to do? She's
 17 gonna have to minimize when she wants to get this off her
 18 chest. Think about it. She has a lot of guilt, her conscious is
 19 getting to her, she's suffering from anxiety and restlessness by
 20 the 13th, 5 days after or 6 days after this happened. She
 21 needs to talk, she needs to get it off her chest. So what is she
 22 gonna do to do that? She's gonna minimize. She's gonna
 23 make the listener have some sympathy for her. That's why
 24 she's gonna say I was attacked, I defended myself, just so she

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1 can start to get it off her chest, but that's not what happened.
 2 Dixie even told you, if she had come to me and told
 3 me yeah, I killed this guy and then I cut off his penis, she
 4 would've called the police. But she had concern for Blaise
 5 because she thought Blaise had been attacked. In order for
 6 Blaise to talk about this and start to get it off her chest, like
 7 she did with even Michele Austria, she's gotta minimize her
 8 own actions. And Detective Thowsen told you that's very
 9 common even when giving confessions. They want to talk
 10 about what they did but they need to kinda justify it in their
 11 own mind, and that's what she was doing.
 12 Now after the murder -- back to the time line -- she
 13 high tails it back to Panaca. And people see her from 11:30
 14 a.m. through the night. You have multiple witnesses that
 15 came in and marked on the little calendar. And look too, the
 16 phone call from the house to her mother to her cell phone
 17 'cause she's at work is about 10:00 a.m. That's probably when
 18 the defendant got home.
 19 Later that night she goes back to Las Vegas with
 20 Doug. Early in the night to, I believe he said to lay low so that
 21 Steve and Cathy wouldn't bother them. But I submit to you
 22 that it was to lay low to see is this being reported? Because
 23 you remember she told Dixie that she'd been looking in the
 24 paper? Doug told you that they did watch a news report the

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1 July 16th, this is when the defendant goes back to
 2 the doctor and gets Prozac prescribed to her. Her mother
 3 went and got this prescription filled as well. This was for the
 4 depression. The Lorazepam was for anxiety from the 13th.
 5 Then you have between -- sometime between July
 6 16th and the 20th, that's when the defendant's conscious is
 7 really weighing heavy on her about what she did. And if you
 8 remember when she talked to Michele about cutting a guy's
 9 dick or cutting it off, which is what Paul Brown heard, she told
 10 her I've already been going to a doctor because of how I'm
 11 feeling about this. My conscious is weighing on me. When
 12 she goes to see Dixie as well, it's weighing on her. And she
 13 tells Michele that she's gone to the doctor and she's on
 14 medication for it, for her depression and her anxiety.
 15 So her conversation with Michele, even though she
 16 says it was before July 4th, it had to have been after the 13th
 17 and/or the 16th because she had been to the doctor regarding
 18 it and was on medication. She didn't get on medication until
 19 the 13th.
 20 Then July 18th, this is when the defendant goes to
 21 her safe house. She goes, she wakes up Dixie, she gives her a
 22 hug and she says I did something bad. And she also tells Dixie
 23 at that time she's not driving a new car, and I believe she said
 24 something to the effect that I'm not driving it again, I don't

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1 next day or the following day regarding a murder, but nothing
 2 was said about it.
 3 And she's leaving her car behind because she
 4 doesn't want it to be seen. It's a unique car. Yes, it's sitting in
 5 front of her parent's house 'cause she's not driving it, she's not
 6 taking it back to Las Vegas. She doesn't want any connection
 7 to it and that's why she's going to Doug's for the weekend,
 8 she's gonna lay low. And look, there are no phone calls from
 9 her parent's house to Doug's where they knew she was.
 10 There's no contact with even her parents 'cause she's laying
 11 low.
 12 July 13th, this is when her father comes to pick her
 13 back up and takes her back to Panaca. It's when her mom
 14 calls the doctor and we have those medical records because
 15 she's more anxious. And this is when she's getting on her
 16 medication as well. She gets on Lorazepam.
 17 Now on July 14th and 15th, that's probably when the
 18 defendant went four-wheeling with Michele and got the
 19 injuries to her abdomen. Because you remember Michele
 20 testified it's very possible we went that weekend too. And her
 21 father when he picked her up on the 13th, there was no
 22 injuries on her. And I don't -- I believe Chris Carrington even
 23 when he says he saw her on the 13th there was no injuries on
 24 her as well.

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1 want to even be near that car or I don't want anyone seeing
 2 me driving that car. And she's driving her dad's truck at that
 3 time. And she also tells Dixie, I swear this time I'm getting off
 4 drugs because she did get out of control. She's getting off
 5 drugs.
 6 Now Dixie, keep in mind she wasn't a pro-
 7 prosecution witness. I think that was clear. But the State did
 8 not reverse that testimony, and I think that's pretty apparent
 9 because she was not very cooperative with the State. But the
 10 conversation that she had with Dixie is crucial in this case
 11 because before they even knew up there that this body had
 12 been found with a severed penis, a homeless guy that, as the
 13 defendant said, smelled like old socks that hadn't been washed
 14 in two weeks. She goes to Dixie and she tells her that it was
 15 on a hotel street just west of I-15. She tells her it happened
 16 between buildings or in an alley or something like that. She
 17 tells her that she cut the guy's penis off and tossed it. Do you
 18 remember Dixie making that motion, tossed it. And the penis
 19 is found right next to the body.
 20 The defendant was so upset, she gave the
 21 impression to Dixie it had just happened. She thought within a
 22 couple of days, but recently. And the defendant was afraid
 23 that somebody had seen her very distinctive car license plate,
 24 and she told Dixie I'm not driving that car, I don't want

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1 anybody to see it.
 2 She told Dixie I'm afraid I may have killed him,
 3 that's why her conscious was weighing on her. She needed to
 4 talk to somebody, she needed to get this off her chest that she
 5 had killed somebody. And Dixie then got on the computer and
 6 tried to help her look to see if there was anything reported in
 7 the news agencies. And remember what Dixie told you she
 8 put in for that search? Severed penis. Not got penis, not
 9 slashed penis, severed penis was the search engine -- or the
 10 search terms that they used. And that's why Dixie went to her
 11 friend Laura because she was concerned and she wanted to
 12 find out if this really happened and to help Blaise.
 13 But there are a few points that Dixie was trying to
 14 minimize. First of all, she tried to expand the time line. She
 15 tried to deny that she thought it had just happened. And
 16 throughout direct examination she brought up that she had
 17 looked in the papers back to July 1st.
 18 MS. GREENBERGER: Misstates the evidence, June
 19 1st.
 20 MS. DIGIACOMO: No, Your Honor, it doesn't. I said
 21 direct. It wasn't until cross-examination she changed that.
 22 THE COURT: Overruled.
 23 MS. DIGIACOMO: During the State's direct
 24 examination it was July 1st. Three separate times, pointed out

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1 It's very clear that Dixie cares a lot about Blaise, the
 2 defendant, and wants to help her. However, she got pulled
 3 into this because that's who the defendant confessed to and
 4 that's what got this ball rolling.
 5 Now on July 20th, that's when Laura finally gets a
 6 hold of somebody in homicide down in Metro, gets a hold of
 7 Tom Thowsen. And she told you that within talking to them
 8 three hours later they were at her door taking a statement.
 9 They interviewed her, she warned them not to go
 10 see Dixie first, and then they go to the defendant's house.
 11 They take a statement from her, and that was fairly quick.
 12 They arrested her, they take her outside. She's allowed to say
 13 goodbye to her parents, tells her dad I told you I did
 14 something awful, tells mom I did it and I gotta do what I gotta
 15 do, and she leaves.
 16 July 21st, this is when Becky starts creating this alibi.
 17 You have the witnesses that told you that they talked to her
 18 the day after Blaise's arrest about the date July 8th and how
 19 important it was. Jo Dennert, the next door neighbor came
 20 over and talked to Becky the day after she was arrested. She
 21 talked to her cousin -- or her niece Shayne the next day after
 22 about the July 8th date. She talked to other people. She tried
 23 to go to find Chris Carrington in the supermarket and found his
 24 grandmother and told her you're not talking to my son -- or

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1 to her, you never said that before. Not in her statement to the
 2 police, not the two times she had previous testified.
 3 On cross-examination the first time it was July 1st.
 4 The second time defense counsel said don't you mean June
 5 1st? And that when Dixie goes oh, yeah, yeah, you're right, it
 6 was June 1st. And now it goes back to June 1st, which again
 7 was never told previously to the police. There were not parts
 8 where it was stopped, the tape was stopped and turned off.
 9 She never testified to it before.
 10 Also she said that the attacker that Blaise described
 11 was very, very big, and compared it to some other students.
 12 Again, this was new information that we heard for the first
 13 time. It was not in her prior testimonies, it was not in her
 14 statement to the police. And in fact, Laura even told you that
 15 a couple of days before they came down to testify Dixie was
 16 trying to convince her that I did tell you she said it was big --
 17 he was big.
 18 But keep in mind too, something else Dixie added,
 19 which again was knew, was that first all she remembered is
 20 the defendant saying that she stabbed up, and she thought
 21 into the stomach. State submits to you that first stab up was
 22 to the testicle, to the scrotum.
 23 And again, Laura told the detectives, don't go talk to
 24 Dixie before you go talk to Blaise because she will tip her off.

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1 my grandson, you're not gonna confuse him about these
 2 dates. She ends of talking to Chris anyway. She talks to Doug
 3 multiple times, she talks to Clint, Ashley's friend, she talks to
 4 all the witnesses in this case. And now we have an alibi. Even
 5 though she claims she didn't know about the July 8th date until
 6 after it came out in the paper July 25th.
 7 Keep in mind that the only people that really see
 8 Blaise between July 5th and July 8th are related to her. You
 9 have her mother, you have her father, you have her sister who
 10 basically tells you I don't remember not seeing her, but none
 11 of them can specifically tell you until the 8th.
 12 And then you have John Kraft. John and Ashley and
 13 her father are all new. They did not testify previously. The
 14 come in here and they say that she was there the morning of
 15 July 8th at 7:00 a.m. That's new.
 16 And keep in mind too that the witnesses that talked
 17 about her car not being moved, recall that? Everyone says no,
 18 it stayed there from July 2nd till the police got it on July 20th.
 19 Well, Mrs. McCroskey thought that it was closer to the property
 20 line, a little bit over, and so did Ashley as well. When you look
 21 at the photographs from the police you'll see it's dead smack in
 22 the middle of their yard. It's not even close to the McCroskey's
 23 property line. That car was moved.
 24 Now these are the two things that the State has to

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1 prove. We have to prove every material element of the
 2 offense as charged and what crime was committed, and we
 3 also have to tell you who committed it. Well, that's been
 4 established, it was Blaise Lobato.

5 So now your instructions on murder. Murder is the
 6 unlawful killing of a human being with malice of forethought,
 7 either expressed or implied. It's gotta be an unlawful killing,
 8 which means it can't be self defense, which would be not
 9 justified, not excusable. Killing must be with malice of
 10 forethought, and that can be either express or implied.

11 In this case it's not justified, meaning this is not self
 12 defense. And when you look at the instructions on self
 13 defense you'll see it's a reasonable person standard. It has to
 14 be somebody, a reasonable person in that situation would've
 15 reacted in that way. And also the person killing must act
 16 under the influence of those fears alone and not in revenge.

17 Look at the photographs in this case of the body.
 18 This is revenge. This is anger. Even the defense expert said it
 19 was directed anger.

20 Defendant's actions again are inconsistent with self
 21 defense. If you look at Instruction Number 26, that's your --
 22 what we call the flight instruction, and that tells you that, first
 23 of all, somebody fleeing the scene. That can be viewed, if you
 24 interpret it that way, as consciousness of guilt. Somebody

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1 who has just been attacked and reacting in self defense
 2 doesn't normally flee the scene. She didn't call the police in
 3 this case either.

4 She told the detectives that she drove off because
 5 she didn't think anyone would care. It wasn't because she was
 6 afraid of her attacker, it was because she didn't think anyone
 7 would care. She knew that there was no fear about her
 8 attacker seeing her because she knew that he was dead, and
 9 that's all the past tense that you have in your -- in her
 10 statement.

11 Also what did she do after her self defense? She
 12 ditched the car, she got rid of the evidence, she got rid of the
 13 clothes she was wearing that she said had blood on them, she
 14 got rid of the knife that she used. It's not something that
 15 somebody who's just been attacked and reacted in self
 16 defense does. Why would you worry about somebody seeing
 17 your car if you had just been attacked?

18 You had to protect yourself. Why do you go to Dixie
 19 and say I did something bad? Why did you tell your mom I
 20 did it and need to do what I gotta do? Why leaving a note for
 21 Jeremy that says that I've gotta leave -- oh, sorry. Not
 22 Jeremy. Why when the police tell you that they've got a
 23 distinctive car, do you say somebody borrowed the car if you
 24 acted in self defense and you were truly attacked?

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1 Now manslaughter. Again, it's a reasonable person
 2 standard. It's your average everyday person. It's not
 3 somebody who's on a methamphetamine binge when you look
 4 at the reaction. It's gotta be an irresistible impulse. Well, in
 5 this case you've got multiple instrumentalities of death, you've
 6 got the blunt force trauma, you've got all the incised wounds
 7 and you've got a calculated infliction of injury. After he was
 8 down you have the carotid artery. This is more in line with
 9 malice of forethought, which is murder. That injury right there
 10 to the carotid artery, that was calculated.

11 Malice of forethought, expressed malice, it's the
 12 deliberate intention which is unlawfully to take away the life of
 13 a fellow creature which is manifested by external
 14 circumstances capable of proof. There's also implied malice,
 15 which can be implied when no considerable provocation
 16 appears or when all the circumstances of the killing show an
 17 abandon and malignant heart.

18 First degree murder. There are three things that the
 19 State has to prove beyond a reasonable doubt. That it was
 20 willful, that it was with deliberation, and it was with
 21 premeditation and deliberation.

22 Second degree murder is all murder which is not first
 23 degree murder. So if we don't prove those three things, then
 24 it falls down to second degree.

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1 Willful, this is the intent to kill. In this case you have
 2 multiple stab wounds, with the last one being a very calculated
 3 injury. You also have a lot of blunt force trauma used. That
 4 suggests to you her intent to kill. Wasn't to wound him. She
 5 wounded him with the stab to the scrotum when she knocked
 6 him vulnerable. It was an intent to kill.

7 You have to have expressed malice, which we talked
 8 about. There needn't be no appreciable space and time before
 9 forming the intent to kill and the act of killing.

10 Deliberation, the process of determining upon a
 11 force of action to kill. Here you get two different
 12 instrumentalities of death, a blunt force trauma and the knife
 13 wounds. This is when you have a chance to reflect upon your
 14 decision to use such force. And it can be done fairly quickly.
 15 All you have to do is weigh the consequences for and against.

16 And when I say it could be done quickly, the easiest
 17 example is when you're driving your car and you're doing
 18 about 50 in a 45 and you're getting close to a light that's
 19 green. As you get about 100 feet from the intersection the
 20 light turns yellow. At that point what do you do? You go
 21 through the thought process in your mind in a matter of
 22 seconds to decide, do I stop at the light or do I try and
 23 accelerate and run through it? And in that matter of seconds
 24 you'll think, okay, are there other cars around me that are

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1 going? If I slam on my brakes right now can I stop in time?
 2 Does it look like there's any traffic coming from the other
 3 direction? Within a matter of seconds you make the decision,
 4 weighing th consequences for and against, to either slam on
 5 the brakes and stop for that red light or to accelerate and go
 6 through it.
 7 It doesn't have to be a long period of time. It can
 8 be a very short period of time. You don't have to go home
 9 and make a list. Here's the list for using this force, here's the
 10 list against. No, it's just a matter of going through in your
 11 mind, considering your actions and weighing them.
 12 But the key here is it must not be formed in passion.
 13 If it's formed in passion it must be carried out after there's
 14 been time for the passion to subside and deliberation to occur.
 15 It can't be like with voluntary manslaughter, the -- when we
 16 talk about the heat of passion. The basic example is husband
 17 comes home, finds wife in bed with another man and just
 18 doesn't react, just you know, kills him. Doesn't have time to
 19 think, just does it. And that's what this means. You've gotta
 20 have that time to deliberate. It can't just be a reaction, you
 21 have to actually weigh the consequences.
 22 Premeditation. This is the determination to kill
 23 formed in the mind by the time of the killing. And this again
 24 doesn't have to be a very long period of time. When she first

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1 coffee cups had her DNA on it, would that mean she was the
 2 killer? No, because there's probably hundreds of people's DNA
 3 at that crime scene. What does it mean? It means she was
 4 there. That's all it means.
 5 So the reverse or the inverse doesn't mean it
 6 excludes her because her DNA was not on the chewing gum,
 7 because her DNA was not on the cigarette butt, does that
 8 mean she didn't do it? No, it doesn't. It just means we didn't
 9 find her DNA there.
 10 The tire impressions, because they didn't match her
 11 car, does that mean she didn't do it? No. We don't even
 12 know when those tire impressions were left. It just means
 13 that those tire impressions weren't left by her car.
 14 Think about the garbage at the scene and the white
 15 paper towels. Is her DNA -- you know, we didn't test every
 16 piece, which probably wasn't physically possible anywhere with
 17 the resources that the police department have, does it mean
 18 that she didn't do it because we didn't find anything? No. Just
 19 like if we have found a hundred different people's DNA there,
 20 does that mean they're all the killer? No. All it can tell you is
 21 that somebody left their biological matter there.
 22 The footwear impressions, does that mean she
 23 wasn't the killer? No. The CSAs told you that the footprints
 24 were partially wet. The thicker ones in the back were partially

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1 shoves the knife into his scrotal sack, she's made her plan, her
 2 determination, she's started. And again, it may not be for a
 3 day, an hour, or even a minute. It may be as instantaneous as
 4 successive thoughts of the mind. And there's the injury to the
 5 scrotal sack, the first one the State submits to you. Again, if
 6 any one of these elements of willfulness to premeditation or to
 7 deliberation are missing, then you're at second degree murder.
 8 And then you've got sexual penetration of a dead
 9 human body. That's Count 2. This is a little simpler. Your
 10 elements are any intrusion, however slight, into the anal
 11 opening of the victim, and here you have the stab wound that
 12 goes all the way through and into the rectum, then you're
 13 guilty. That's it. It doesn't matter what the motive was or if it
 14 was sexually motivated, it doesn't. If you penetrate a sexual
 15 organ after the person's dead, however slight, you're guilty of
 16 the crime. And right there you had, you can see that the cut
 17 wound went all the way into the rectum.
 18 Now in opening, defense counsel argued all physical
 19 evidence excludes the defendant in this case. And that's very
 20 misleading. It doesn't exclude the defendant. It doesn't mean
 21 she could not have killed this crime. No, all it means is there
 22 was no evidence found at the scene that she left behind that's
 23 physically tied to her. Her DNA is not at the scene.
 24 Think about it in the reverse. If like one of those

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1 wet and then they walked off. Well, that body had been there
 2 for quite some time, it had decomposition on it, it had been
 3 there for a matter of hours. If the killer had left those
 4 footprints, wouldn't they have been dry?
 5 It's more consistent with the dumpster diver, like we
 6 had Richard Shott that came after the fact. He didn't even
 7 report for a couple of hours because he was afraid that they
 8 were gonna think it was him or, you know, then he was more
 9 afraid after he didn't report that oh, what if somebody saw me,
 10 then I could really be in trouble. No. It's very possible there
 11 were other people in and out of that dumpster and that they
 12 could've stepped in the blood that was wet in the back and left
 13 it.
 14 Think about it. The footprint that's on the cardboard
 15 box, it was flipped over, it was facing the victim's body. I
 16 mean the defense wants you to believe, yeah, that had to
 17 have been the killer because it was flipped over. But we don't
 18 know when all that trash was put there. We don't know when
 19 that cardboard was flipped over. If you look at it, what you
 20 can see in the picture, there's blood pooled in the corner as if
 21 it had been sitting in the pool of blood on the other piece of
 22 cardboard. So we don't know when that happened.
 23 None of these things exclude her, they don't. If we
 24 had any of these things that matched her, all it would do is

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1 confirm for us that she's the one that did it. She told us she
 2 did, it would just confirm yes, she was there. It does not
 3 exclude her. It does not mean she didn't do this.
 4 Look at all that trash. Tons of people's DNA there.
 5 Doesn't mean whoever's DNA was found there was the killer.
 6 Even with the things closest to the body, we don't know how
 7 they got there. Don't know that that's the killer either. That's
 8 trash. The plastic bag that's found around the victim looks just
 9 like the other plastic bags that you see in this picture. It
 10 would've been nice to have her DNA there, but we don't need
 11 it because we know she was there because she told us she
 12 was there.

13 Also the scissors theory that their doctor testified to,
 14 it's not plausible in this case. First of all, there's no blunt force
 15 lacerations on the body to the face and everything as the
 16 doctor testified. Clearly, according to Doc Simms, those were
 17 incised wounds, there was no tissue bridging. It's impossible
 18 to snip the carotid artery without taking out half the neck. It's
 19 too far down in there. It's impossible to like stick the scissors
 20 in there and snip it or whatever his theory was. It's not
 21 plausible.

22 And think about it. If somebody's gonna -- to do
 23 this kind of crime or murder, are they gonna bring scissors to
 24 that fight? No. And if they are they're gonna use it like a

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1 got the porous on the bottom, and it's harder to clean blood
 2 out of a porous surface than a nonporous surface.
 3 That does give you some physical evidence that links
 4 her to the crime, that's blood. The fact that they couldn't
 5 confirm the DNA doesn't matter. You're not gonna get both of
 6 those positive tests with presumptive tests for luminol and
 7 phenolphthalein without there have been clean blood there.
 8 It's not --

9 MR. SCHIECK: Objection, Your Honor, that
 10 misstates the testimony. They said they both could be false
 11 positives.

12 THE COURT: Sustained.

13 MS. DIGIACOMO: It's not reasonable that you're
 14 gonna get a positive for luminol, a positive reaction for
 15 phenolphthalein where it's not sparkly, it's like what you see
 16 here, a constant illumination and have a false positive. It's not
 17 copper salts. If it was copper salts, why isn't it everywhere if
 18 Panaca is so inundated with copper salts?

19 In this case keep in mind you have a real insight into
 20 whether or not defendant really was the one there. Look at
 21 what she says. Look closely at her statements. And think
 22 about this. She knew the street location, she knew the area
 23 where the crime was committed when she told Dixie, not what
 24 she told the officers, by then she was jumbling her stories.

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1 stabbing weapon. They're not gonna use -- they're not gonna
 2 change their hand three different ways to a certain possible
 3 where the handles are between these two fingers and stabbing
 4 and then turning it around into blunt force where -- think
 5 about that. When the handles are like this and the blades are
 6 facing the wrist, would somebody -- if you're gonna punch
 7 somebody, you don't punch with a straight arm, you punch
 8 curving, and the scissors would've cut the person. And then
 9 they're gonna switch it around again to be able to snip, it
 10 doesn't make sense. It's not plausible.

11 You do have physical evidence that links the
 12 defendant to that crime scene. You have it with her car. The
 13 positive luminol test and the positive phenolphthalein test tell
 14 you there was blood in that car. And it wasn't a false positive
 15 because you heard Dan Ford and you heard Louise Renhard
 16 testify that it causes a flashing, kind of like a sparkle when you
 17 get a false positive, not like what you got on this car door.

18 These are clearly finger marks. And look at where
 19 they are. You have finger marks here, you have a drag mark
 20 here. And if you remember, the emergency brake is right
 21 here, right next to that seat where this drag mark is, and
 22 there's some more here. There's a very faint spot right here,
 23 but it stops right here where there's this pore -- excuse me, a
 24 nonporous material for the top part of the door where you've

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1 But she told Dixie she knew the area. She was able to tell her
 2 it was some sort of parking lot or alley, you know, some more
 3 secluded place. She had a good idea what the victim smelled
 4 like, odor of alcohol and dirty diapers. That's a pretty distinct
 5 smell. And even Detective Thowsen told you that this victim
 6 had a distinct smell.

7 She knew what major injury that this victim had. It
 8 had not been released to the public that his penis had been
 9 severed, but she knew. And she also knew that somebody
 10 had moved the body, trying to possibly put him in the
 11 dumpster. She told that to the police when they said, well, is
 12 there a dumpster nearby? She's like well, no, well I don't think
 13 I could've put him in the dumpster. I don't think I could have
 14 done that. That's what she says. She knew that somebody
 15 had tried to move that body.

16 And the only person -- and think about too, she
 17 knew what the dumpster enclosure looked like. When she got
 18 to that jail cell at CCDC when she's being booked in, she's like
 19 yeah, it was just like this except for I could see through the
 20 roof --

21 MR. SCHIECK: Objection, misstates the testimony.
 22 She said it was uncovered, according to Detective Thowsen.

23 THE COURT: Overruled.

24 MS. DIGIACOMO: She said that she could see

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1 through and see the car awning. And you saw the trash
 2 dumpster enclosure. Three concrete walls, curbing around the
 3 side, chainlink fence on the top that you could see through and
 4 see the car awning right there.
 5 The only way that she was able to describe the
 6 place, the body, the injuries, the you know, where it
 7 happened, how it looked, the only way she knew that, 'cause
 8 she was there. That's not coincidence, not coincidence at all.
 9 Is it coincidence that the only recorded penis severing or
 10 cutting of a penis was this man? There's no other reported for
 11 that year. Is that coincidence? No.
 12 The reason she could describe all those things to
 13 Dixie and even the police, 'cause she was there. And we're
 14 gonna ask you to convict her because she's guilty of the
 15 charges.
 16 THE COURT: Who will be doing the closing
 17 argument for the defendant?
 18 MR. SCHIECK: I will, Your Honor.
 19 THE COURT: Mr. Schieck, you may proceed.
 20 **DEFENDANT'S CLOSING ARGUMENT**
 21 MR. SCHIECK: Good afternoon, ladies and
 22 gentlemen. I'm gonna try not to be too long up here. But I'm
 23 sure you can understand the importance --
 24 MS. DiGIACOMO: Sorry.

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1 MR. SCHIECK: -- of making whatever points need to
 2 be made in this case. And after listening to that closing
 3 argument you can be assured there are a number of points
 4 that need to be made in this case.
 5 However, rather than go directly into those, rest
 6 assured I will get to those. I'm going to focus on what my
 7 argument was planned to be before we listened to that story.
 8 As I was sitting there I was counting some
 9 interesting language used by the prosecutor in her closing.
 10 And quite frankly I lost track after awhile of how many times
 11 she said it's possible it happened this way. Somehow this
 12 came to pass. Somehow Blaise came into contact with Mr.
 13 Bailey. Somehow they ended up at the dumpster. Somehow
 14 they think Mr. Bailey had drugs when he was a homeless
 15 person. Somehow they believe there's evidence that there
 16 was a sex for drugs thing going on. Somehow, somehow,
 17 somehow, somehow. It goes on and on and on.
 18 And then there's a switch later on, and it's sort of
 19 like well, look at this, there's nothing to disprove this, therefore
 20 it must be true.
 21 You have to remember when we come into a
 22 criminal case, any criminal case, whether it's a murder case,
 23 whether it is a drug case, whatever type of criminal case in the
 24 United States, the State has the burden. And in this case their

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1 burden is to convince you beyond a reasonable doubt of every
 2 element of the crime charged.
 3 This case has been sort of different than a lot of
 4 cases in that it seems like it's been presented in such a fashion
 5 that the prosecution is actually defending themselves from the
 6 lack of evidence and trying to convince you that somehow
 7 they've proven anything in this case.
 8 The theory of this case --
 9 MR. KEPHART: Your Honor, I'm gonna object to
 10 that. There is absolutely nothing to suggest that except for I
 11 know it's argument, but when he's doing that he's disparaging
 12 the State with regards to that type of argument. That's
 13 inappropriate and he knows better than that.
 14 THE COURT: The Court's gonna overrule the
 15 objection.
 16 MR. SCHIECK: How many times in this case are
 17 examination of witnesses, whether it was their witness, Dr.
 18 Simms, the expert, the coroner that came in, or Dr. Laufer or
 19 Mr. Turvey, how many times were questions posed with this,
 20 isn't it possible it happened this way? Isn't it possible that
 21 Blaise was there? Isn't it possible that it was a 4 inch knife?
 22 Well, actually it's much more likely it's a 6 inch blade. Well
 23 wait a minute, that doesn't fit our facts in this case. Isn't it
 24 possible it was a 4 inch knife? And the doctor, Dr. Simms was,

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1 well, it's more likely it was a 6 inch blade to do this damage.
 2 And then they showed him the picture and said well maybe it
 3 was two cuts. You see where there's kind of a little thing up
 4 there at the top of the cut, maybe it was two cuts with a 4
 5 inch knife. And on cross he said well, the way that the penis
 6 was being held could very well account for that mark, not the
 7 fact that it was a 4 inch blade.
 8 And if you do go back and listen to Blaise's
 9 statement, which I urge you to do because there's no evidence
 10 in that statement that's gonna convict her in this case, she
 11 indicates to the detective how large -- or how long the blade
 12 was on her knife. And Detective Thowsen said you're holding
 13 up your fingers, about 3 and a half inches. So she didn't even
 14 say it was a 4 inch blade. Detective Thowsen estimated she
 15 was showing him a 3 and a half inch blade. Which again, their
 16 expert says wasn't used in this case.
 17 Well, isn't it possible? I suppose anything's possible.
 18 That's their case against Blaise Lobato. Isn't it possible, and
 19 somehow this happened.
 20 Sometimes you have to wonder why we're here in a
 21 case like this. And if you think about it and you've had, lord
 22 knows, almost four full weeks now to think about why we're
 23 here with the evidence that doesn't exist in this case. And the
 24 answer will come to you if you sit back and take a look at the

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1 way this case went from the very beginning.
 2 State wants you to focus in on a couple of things
 3 that happened at the beginning and then forget everything
 4 else in the case as if it doesn't matter, it's not important. The
 5 lack of physical evidence, not important. The last of
 6 corroboration, not important. The fact that there's an alibi, not
 7 important. Why isn't it important? Well, it's important
 8 because it was never investigated in this case by the people
 9 that were assigned to investigate homicide cases in Clark
 10 County.

11 What happened in this case is that snap judgment
 12 was made to arrest Blaise Lobato in Panaca, Nevada and for
 13 the next 5 years the State and the detectives have attempted
 14 to prove their case after they made the arrest, instead of doing
 15 it the right way and getting your facts right before you arrest
 16 someone and charge them with murder.

17 Let's look at some of the things that happened at
 18 the beginning of this case. There's a body found by Mr. Shott,
 19 and it's found sometime on the evening of July 8th. He's not
 20 sure exactly what time he found it. He says he didn't call the
 21 police right away. He didn't want to get blamed for this. But
 22 indeed, he did call the police and Officer Testa responded at
 23 10:36 p.m. on the 8th of July, 2001.

24 Detective -- excuse me. Officer Testa determines

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1 impounded. Did you log in what tests you did on those items
 2 that you discarded? No, there's no record of that. Did you
 3 make a list of the things you threw away? No, we didn't make
 4 a list of anything that we threw away. What you have are the
 5 few things that we decided to collect that might have some
 6 value in this case.

7 While they were at the scene they obviously saw the
 8 footprints. We've seen the photographs where they came in
 9 and put the camera with the tripod over the top of the
 10 footprint in order to take a one on one photograph. Which
 11 while I was talking to Mr. Geller, cross-examining him, he
 12 referred to is how we did it in the olden days. So at least in
 13 2001 we were still in the olden days and that's how they did it.
 14 Because they felt of all the evidence that they discarded in the
 15 case, that those footprints had evidentiary value. Why else
 16 would they have photographed that? Why else would they
 17 have gone to Mr. Shott and said, could we take a look at your
 18 feet, at your shoes to see whether or not it's you that left
 19 those footprints, and they eliminated him as being the person
 20 that left the footprint.

21 So in this case of the one person other than police
 22 officers that has been shown to have been in the dumpster,
 23 we know it wasn't him that left those footprints, because he
 24 was eliminated when they examined his feet.

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1 that, in fact, he has a dead body here and does the correct
 2 thing, backs out of the scene. He's positive the footprints were
 3 there. At least Officer Testa is able to tell us that so we don't
 4 have to listen to, isn't it possible that one of the many crime
 5 scene analysts or officers or other people that were inside the
 6 crime scene tracked blood around in there? Officer Testa was
 7 clear, those prints at 10:36 were there when I got there.

8 It's not clear when they finally got around to
 9 photographing those footprints because they were at the
 10 scene for an awful long period of time doing a variety of
 11 things, collecting evidence, discarding evidence, things of that
 12 nature.

13 Crime scene analysts arrived. We heard from Crime
 14 Scene Analyst Ford. We heard from Crime Scene Analyst
 15 Renhard testified. They get there and their job is now to
 16 preserve the crime scene, to collect evidence. And what do we
 17 hear from Mr. Ford about how they collected evidence,
 18 because there was a lot of garbage there at the scene. He
 19 says decisions were being made to put things in bags and that
 20 those bags were later transported and looked at back at the
 21 lab, and if they felt it wasn't important they discarded it.

22 You'll recall that we got into that on cross-
 23 examination. And I asked him, I said did you log in even what
 24 you impounded? No, there's no record of what we

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1 From that the State gets back to their isn't it possible
 2 that it was someone else? Well, it's possible someone beamed
 3 in there, left those footprints and beamed out too. But there's
 4 no evidence of that. And what the State has to do in a
 5 criminal case to convict someone is to prove the facts, to prove
 6 it happened, not come in here and say isn't it possible. Isn't it
 7 possible that they're prosecuting an innocent person? Isn't
 8 that a possibility in this case if they want to talk about
 9 possibilities?

10 So they're at the scene for a long time. Coroner
 11 Investigator Shelley Pierce-Stauffer is called from the coroner's
 12 office because the coroner's office is the one that makes the
 13 declaration of death and then transports the body to the
 14 morgue -- or to the medical examiner's office for the autopsy.
 15 And she declares death, according to Detective Thowsen's
 16 testimony, at 3:50 a.m. on the 9th of July, so the next morning.
 17 So we know the police are there from 10:36 when Officer
 18 Testa arrives until at least 3:50 when Shelley Pierce-Stauffer
 19 declares death, indicating full rigor mortis, which we'll get back
 20 to the importance of that declaration at 3:50 a.m.

21 Shelley Pierce-Stauffer tells us that when she's there
 22 she actually is in the crime scene helping remove some of the
 23 debris from the body. She's not a crime scene analyst, she's a
 24 coroner investigator, but she's helping out apparently. And

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1 she physically sees these paper towels stuffed in the opening
 2 of where the penis was removed from. She is clear on that.
 3 She didn't even want to see her report when she testified to
 4 refresh her recollection, because she said that's not gonna
 5 refresh my recollection. If it's in my report, it's in my report.
 6 That doesn't refresh what I remember. But I remember those
 7 towels and I remember them taking those paper towels and
 8 putting them into a paper bag. And I held up one of the bags,
 9 and you'll get all of this evidence when you got back into the
 10 jury room to deliberate.

11 But you'll see these bags are designed to document
 12 items that you take so that you can take them back to the lab
 13 with the name of the person who impounded the evidence and
 14 sealed it and they put their number on there. And that way
 15 we know what evidence is impounded in the case.

16 The evidence of paper towels that are stuffed into
 17 the wound, it's fair to assume would've been put there by
 18 someone that was involved in the death. What a ripe source
 19 of information to have to test to see if there's fingerprints.
 20 Someone would've had to touch those towels to put them in
 21 there, for DNA, for hair, for other materials that might've been
 22 on those, yet those disappear. Those were discarded at the --
 23 apparently at Metro they were looked at and discarded, one of
 24 the things that Mr. Ford talked about.

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1 whatever they decided they were gonna collect and not
 2 discard. They take some fingerprints. And we had testimony
 3 that they found one on the beer can and one on the surge
 4 suppressor. If those fingerprints had come back to Blaise
 5 Lobato, you can be sure that the State would be standing up
 6 and saying slam dunk guilty, she was there, she did it, case
 7 over, case closed.

8 But because it's not hers, don't worry about that.
 9 That's not important, that someone else was there and
 10 touched the beer can and touched the surge suppressor that's
 11 over the body. Don't worry about that, because it's possible
 12 that she was there and didn't leave any fingerprints, didn't
 13 touch a thing in there.

14 Or then again, isn't it possible that they wasn't there
 15 and that's why they have no evidence? Isn't that more likely
 16 from a scientific standpoint to say the lack of evidence speaks
 17 volumes in this case. The lack of physical connection to the
 18 scene speaks volumes that they've got the wrong person and
 19 haven't proven their case?

20 But it's possible that she was there and that she did
 21 this, didn't touch anything, didn't get blood on her hands and
 22 touch anything, didn't leave a single fingerprint behind
 23 anywhere. They've talked about Mr. Ford getting into the
 24 dumpster and looking around and there was a lot of garbage

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1 And she recalled that they were under the plastic.
 2 And you've got the photographs. You look at those
 3 photographs and decide whether or not you can see that the
 4 plastic that is wrapped around the sides, and you can see that
 5 in the photographs, is not over those paper towels.

6 Now that plastic you'll see in the picture gets pulled
 7 back, and the papers towels are gone. There's no more paper
 8 towels. You see a picture over, pulled back, towels gone. You
 9 can see the penis has been amputated, which means the
 10 towels had to be moved in order to see the penis was
 11 amputated because they were shoved in the holes. Those
 12 towels are lost. The plastic is put back on the body because
 13 we see it. It appears at the morgue, along with some loose
 14 cigarettes that were on the body, according to the pictures at
 15 the scene, that were just laying in the body bag.

16 Now that plastic is in evidence. The plastic that
 17 you'll see was molded, as if with hands, around the body of
 18 the deceased person. To this day has never been tested by
 19 anyone. It's in evidence. Look at the bag. We had testimony
 20 on it. I had them look and said is there any tape on here
 21 showing that any of this has been tested? Never tested.
 22 Something that in all likelihood had to be touched by the
 23 perpetrator, never tested.

24 They finish up at the crime scene, collecting

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1 in the back, and it appeared that maybe someone had gotten
 2 in the dumpster and thrown the garbage out to cover the
 3 body. There's no prints inside the dumpster. There's no prints
 4 on anything that match to Blaise Lobato. But it's possible
 5 under the State's burden of proof in this case that she did.
 6 Well, the burden of proof is beyond a reasonable doubt. It's
 7 not it's possible.

8 The detectives get finished up and they return to the
 9 homicide department, and apparently there's still police
 10 officers on the scene with the tape up and Mr. Ford is still
 11 there. Because low and behold, on that Sunday morning --
 12 excuse me, that Monday morning, Diane Parker walks up and
 13 says, you know, I might know who that guy is. I was a victim
 14 of a rape a week ago and that's the guy that did it, and I want
 15 to know if it's the guy.

16 Well, Mr. Ford, according to Detective Thowsen, calls
 17 him and gives him this information. And homicide Detective
 18 Thowsen gets his partner LaRochelle, who we didn't hear from
 19 in this case, and I think he said Sergeant Manning went with
 20 him and they went out and talked to Diane Parker at her
 21 apartment. Now her apartment is fairly close to the scene.
 22 You heard him describe that. It's over the wall in the next
 23 apartment complex. Not quite on the aerial photograph but
 24 very close. He said it's easily within walking distance. And he

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1 goes over there and he talks to her to find out, you know,
 2 what she knows. He's invited in apparently and they look
 3 around. They see some knives in the kitchen, they ask to look
 4 at the footwear and they look at the footwear. Thank you very
 5 much, and they leave. They don't take a taped statement and
 6 they leave.

7 In fact, at one point in his testimony I think there
 8 was a question from the jury that talked about well, why didn't
 9 you do more checking into the other people that were there in
 10 the apartment complex that had witnessed the altercation
 11 between Mr. Bailey and Ms. Parker. And he said well, it was a
 12 long day and we were getting tired and at some point you just
 13 gotta, you know, call it a day.

14 MR. KEPHART: Your Honor, objection. And may we
 15 approach, please?

16 THE COURT: Yes.

17 (Off-record bench conference from 4:54:02-4:56:35 p.m.)

18 MR. KEPHART: Judge, I'm gonna withdraw that
 19 objection.

20 THE COURT: All right.

21 MR. SCHIECK: I think we were talking about Diane
 22 Parker and that Detective Thowsen had been over there and
 23 talked with her and gotten some preliminary information from
 24 her. He further testified that he went back and took a taped

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1 statement from her on July 23rd and showed her a photograph
 2 of Mr. Bailey and Mr. Bailey -- excuse me, Ms. Parker was able
 3 to identify Mr. Bailey, and that's when she gave her taped
 4 statement.

5 Now let's just contrast that scenario. You have an
 6 individual at the crime scene who lives in the neighborhood,
 7 who says she knows or thinks she knows the person that's
 8 been killed, and that she's been a victim within the last week
 9 of a sexual assault by this person. That's the information that
 10 Detective Thowsen gets when he goes over to talk to her the
 11 first time. Doesn't take a crime scene analyst, doesn't record a
 12 statement, doesn't spray luminol around and look for any
 13 blood evidence at that point in time. And this is still -- the
 14 blood is still fresh. Doesn't do anything other than look
 15 around, kick the tires in the apartment and say I'm moving on,
 16 and goes back to the homicide office.

17 Contrast that now, someone who knows the victim,
 18 has a motive, lives in the area, and is at the scene asking
 19 about it, to the next information he gets on the case, which is
 20 two weeks later because nothing happens during the next two
 21 weeks. He gets a phone call from Laura Johnson in Panaca,
 22 Nevada, 170 miles away, who tells him that someone told her
 23 what someone else told the other person. So we have third
 24 hand hearsay now. Someone told Dixie who told Laura, and

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1 this information now comes to Detective Thowsen. What does
 2 he do? He gets a crime scene analyst, and Maria Thomas
 3 testified when she got the assignment to go up there, she
 4 thought that she was going to impound a car. She takes all of
 5 her crime scene analyst materials with her, apparently
 6 including a camera, because we have photographs that she
 7 took when she got there.

8 And Detective Thowsen grabs his partner and they
 9 immediately rush up to Panaca 170 miles away, talk to Laura
 10 Johnson, go and talk to 18 year old Blaise Lobato at her house.
 11 And in the very first parts of the conversation reveal to her
 12 that he knows that she's been the victim of a sexual assault as
 13 a small child, that she'd been hurt in the past, causing her to
 14 break into tears because he had checked that out when he
 15 was back in Las Vegas and had the reports -- or had the
 16 information that she had been a victim in the past. Uses that
 17 to get her emotional, takes a 30 minute statement from her,
 18 gets a consent to search and impounds a pair of black high
 19 heel shoes, and you've seen photographs of those. Ask
 20 yourself whether those shoes match the footprints you see at
 21 the scene of the crime.

22 But he impounds them, he takes them, and they
 23 have a small spot of Blaise's blood on the big toe area, as I
 24 recall the testimony. No blood from the scene, nothing to tie

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1 those shoes to the scene. Takes photographs of Blaise, takes
 2 photographs of her hands, takes photographs of her car, seals
 3 her car up, puts it on a tow truck that's already been arranged,
 4 and loads her in the car and zips her back to Las Vegas. Just
 5 based on the thirdhand hearsay from Laura Johnson and the
 6 contents of the interview he does with her.

7 He does not get a statement from the parents, he
 8 does not ask Larry Lobato, who is called and does come home
 9 and sees Blaise before she's taken away, does not say, you
 10 know, where was she at on the 8th, you know? Was she in Las
 11 Vegas, was she here? No questions. Doesn't ask Rebecca
 12 Lobato, the step-mother, any questions. Doesn't talk to Ashley
 13 who lives there in the house, doesn't ask her any questions,
 14 doesn't go next door and knock on the door and say, you
 15 know, we're investing a homicide and we have a suspect who's
 16 Blaise, what can you tell us? It happened on July 8th. Maybe
 17 we should check this out and do some investigation before we
 18 arrest someone.

19 No, they arrest her, load her in the car, drive her
 20 170 miles back to Las Vegas. Don't put the tape recorder back
 21 on, have further conversations with her, during which she
 22 volunteers that now she remembers that her father had given
 23 her that -- the particular knife that she was talking about.
 24 At her house she had signed a consent to search

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1 card, had waived her Miranda Rights. At the jail she gives up
 2 her shoes. They take a buccal swab from her. She's
 3 cooperating with them every step of the way.
 4 Now they have the 18 year old girl down from
 5 Panaca without her parents at the jail, in a holding cell. Do
 6 they take another interview with her? Maybe she's calmed
 7 down now. Maybe they could get more information. Maybe
 8 they're gonna followup on her statement that this happened
 9 over 30 days ago. Gee, Detective Thowsen, might that not be
 10 a fact you want to ask about, is that she's talking about
 11 something that happened more than 30 days ago, which
 12 would've put it way before July 8th?
 13 No further questions. Click, machine goes off, no
 14 further questioning. We solved our case. We have someone
 15 in custody. We submitted to the DA to prosecute. Well,
 16 maybe we should do some investigation now. Now that we've
 17 already made up our minds, let's do the investigation to justify
 18 the arrest we've made. And that's what happens throughout
 19 the rest of the investigation. It's pointed in one direction and
 20 one direction only. What could we do to come up with
 21 something to convict Blaise Lobato? Because we've made up
 22 our mind, because she said the magic word penis, that this is
 23 the same case that she's talking about. Let's ignore everything
 24 else.

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1 scopes and we didn't -- we didn't see anything in there that
 2 would give us an indication that we need to investigate any
 3 further. Well, they ran Blaise and all they found out is she'd
 4 been a victim in the past. But they sure ran up there real
 5 quick to arrest her.
 6 Do they go knock on a door and say, you know, guy
 7 got killed over here behind a bank and it's the same guy that
 8 raped Diane Parker, and we understand maybe you witnessed,
 9 you know, some of that situation. Could you tell us what you
 10 know? Where were you at on July 8th, by the way? Those
 11 tennis shoes you're wearing, do you mind if we look at your
 12 tennis shoes? That would've been real easy to do, wouldn't it?
 13 No, because they've already got Blaise in custody.
 14 They've made their case. Let's forget looking at anything else
 15 that happens in this case. Let's forget about talking to
 16 anybody up in Panaca that wants to talk about the case and
 17 tell us what happened.
 18 Now Mr. and Mrs. Lobato's daughter has just be
 19 arrested in Panaca, whisked away in a car, and the detective
 20 doesn't even remember if he left his name and his card as to
 21 where he was taking their daughter. Panaca's a small town,
 22 and you can pretty much guess that when the out of town
 23 police rolled in in front of the Lobato house and the tow truck
 24 is hauling away Blaise's car, and Sheriff -- Deputy Sheriff Cary

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1 Well, okay, let's not ignore it, let's call it something
 2 else. Let's say, oh, if it doesn't fit she's minimizing, okay,
 3 because she said she was attacked by an old -- or excuse me,
 4 by a smelly black man, and that she defended herself and that
 5 she cut his penis or tried to cut his penis off. Listen to the
 6 statement for the exact words. That's all that has to match in
 7 his mind to make this case. Forget everything else, that's
 8 enough in his mind.
 9 Well, she said it was at the Budget Suites on Boulder
 10 Highway, and that she could see the fountain. She doesn't say
 11 it was behind a dumpster, she said she had just gotten out of
 12 her car, it was next to her car. Well, she must be minimizing
 13 those facts because they don't fit. If it doesn't fit it's
 14 minimization. If it kinda sounds like something we can use,
 15 now she's telling the truth.
 16 They want you to convict Blaise solely on what's in
 17 that statement, and want you to ignore everything else that
 18 exists in this case. And that's why they have to go, isn't it
 19 possible, and somehow, maybe it happened this way, ignore
 20 everything else, because she said penis when she was
 21 interviewed by Detective Thowsen.
 22 Why didn't Metro investigate other suspects in this
 23 case? They talk about well, we talked to the manager of the
 24 apartment complex and we got some names and we ran

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1 Lee and Maribah Cowley are running around in their marked
 2 cars, that everybody in Panaca at one time was out watering
 3 their lawn to see what was going on. On July 20th, the very
 4 day she was arrested, you could bet that spread through the
 5 entire town in minutes. Over the fence, over the phone, down
 6 at the grocery store, you know that was the topic of
 7 conversation, that Blaise had been arrested and her red Fiero
 8 with her "fornicator" license plate had been towed away by
 9 homicide out of Las Vegas.
 10 What are reasonable parents to do? Just do nothing
 11 and sit there and wonder what's going on, or do you try to
 12 figure out what happened? Do you talk to people? They knew
 13 Blaise had been there from the 2nd to the 9th. At that point it's
 14 the 20th, it's just a matter of going back and doing things to
 15 refresh your recollection as to where you were and what you
 16 did. Things such as phone records, things such as medical
 17 bills, you know. We took her to the doctor, what day was
 18 that? Let's look at the bill, it's July 5th. You don't make that
 19 up. You don't make up phone calls. You don't make phone
 20 calls during that week trying to set up an alibi for Blaise.
 21 But Mr. Bailey wasn't killed until the 8th, so why
 22 would anything that happened on the 2nd, 3rd, 4th, 5th, 6th, or 7th
 23 have any relation with trying to set up this alibi? These
 24 witnesses came in and recollected to the best of their ability as

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1 to what was transpiring that week. We gave them a calendar
 2 and had them write their names, put their initials down as to
 3 what they could remember. If they didn't remember we didn't
 4 have them mark it down on there. Nobody wants them to
 5 make things up in this case.
 6 Jo Anne Dennert, the next door neighbor, doesn't
 7 really even socialize with the Lobatos. But she remembers it's
 8 her -- it was her long time friend Dale Towery's birthday on
 9 the 8th, and that when she was doing her dishes, looking out
 10 into her front yard, that Blaise whipped a big turn in the
 11 middle of the street in front of her house riding a four-wheeler.
 12 She must've been doing her dishes because that's where the
 13 window's at that she saw her through. And she recalls that
 14 she sent her friend an e-mail that day because it was his
 15 birthday and she knows his birthday is July 8th.
 16 Those are facts you can't make up. You can't make
 17 up somebody's birthday. It was her breakfast dishes and she
 18 indicated she's not sure of the exact time, but she knows when
 19 she does her dishes, it's when the kids are taking their nap,
 20 and she knows when the kids take their nap, it's usually
 21 between 11:00 and 1:00. It's not a fact that Becky Lobato
 22 went over there and said Jo Anne, don't you remember you
 23 were doing your dishes looking out and saw this, and it just
 24 happened to be Dale's birthday? That's not a made up --

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1 Becky Lobato forced her to say that? Is that the State's
 2 position? I suppose that's possible, but it doesn't fit. There's
 3 too much corroboration for everything else in this case to say
 4 Jo Anne Dennert is making that up.
 5 You saw Mr. and Mrs. McCroskey. Is it reasonable
 6 for you to believe that Becky Lobato is putting the strong arms
 7 on the McCroskeys to say, Mrs. McCroskey, I know you've lived
 8 here for 75 years, but could you go ahead and give an alibi for
 9 Blaise and say that car never moved when she came back?
 10 Could you do that for me? Do you think Mrs. McCroskey would
 11 do that for her? Or Mr. McCroskey, who every morning would
 12 go for a walk and the car was right there on the street, and if
 13 it wasn't there he would've noticed it wasn't there?
 14 Yet the State in their closing argument come up here
 15 and put a slide up that says on July 6th Blaise Lobato got in her
 16 red Fiero with "fornicator" plates, went to Las Vegas and got
 17 on a three day binge, culminating in the death of Mr. Bailey,
 18 and then high tailed it back to Panaca. But somehow no one
 19 ever saw that car move.
 20 And you've seen the photographs of where the car
 21 was located at. And Mr. and Mrs. McCroskey sat right there
 22 and the State asked them well, couldn't it have been a little bit
 23 further the other direction? And both of them, to my
 24 recollection, and it's your recollection that counts, said no, that

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1 looks about where it was at the whole time, it didn't move,
 2 was parked right there.
 3 Well, if it was parked there how did Blaise drive it to
 4 Las Vegas? And if she didn't drive it to Las Vegas then why
 5 would all this stuff about cleaning the car have any relevance
 6 at all in this case because the car wouldn't have been a the
 7 Nevada State Bank because it didn't move. And so if the car's
 8 not there, there's no reason to need to hide the car. There's
 9 no reason to clean the car out, the car wasn't even there at
 10 Nevada State Bank.
 11 Now we could probably expect this, it's possible that
 12 she took someone else's car and went to Las Vegas for those
 13 three days. I don't remember where my car was at back then,
 14 maybe she took my car too. But there's no evidence of that.
 15 There's no one that came in here and said she took my car,
 16 she ever drove my car, my car was missing, my car was gone.
 17 That's not even their theory. Their theory is it was the red
 18 Fiero. The problem is they can't get past the point that the car
 19 never moved. All the witnesses that came in here, not one
 20 said that car moved, and certainly not for three days.
 21 Well, they hadn't made the left on July 6th argument
 22 at the point in time when they asked Mrs. McCroskey. But
 23 they said Mrs. McCroskey, what time do you go to bed? Well,
 24 I go to bed at, 11 o'clock I think she said, whatever you recall.

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1 And then I get up the next morning at 7:00 or 7:00'ish. Well,
 2 isn't it possible the car left, you know, while you were asleep?
 3 She said yeah, it's possible, I was asleep. How would I know
 4 the car left? All I know is every time I looked out my window
 5 the car was there, and every time during that time period the
 6 car was there.
 7 On cross-examination I asked her well, do you
 8 usually sleep between 9:50 in the morning and 3:50 in the
 9 afternoon on a Sunday? She gave me a little look like what
 10 the heck is that? She said no.
 11 Well, why did that question have any relevance at
 12 all? It's because Dr. Simms, the State's doctor, came in here
 13 and told you the time of death, to his best estimation. And
 14 doctors can pinpoint the exact second someone died without a
 15 stopwatch and being there and observing it happen, so he can
 16 only give you a range of time. And his testimony was, to a
 17 reasonable medical certainty, it was 12 to 18 hours. It
 18 could've been longer and it could've been shorter. And he said
 19 he would be more certain if you went to 10 to 24 or 8 to 24,
 20 because that's a wider range of time. But to a reasonable
 21 medical certainty, it was 12 to 18 hours, which is 3:50 in the
 22 afternoon to 9:50 in the morning, or 9:50 in the morning to
 23 3:50 in the afternoon.
 24 For the car to have been gone and Ms. McCroskey

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1 not see it, she would've had to have been taking a nap. She
 2 wasn't taking a nap and the car wasn't gone when Mr. Bailey
 3 was killed to a reasonable medical certainty.
 4 Now a reasonable medical certainty is a different
 5 standard than a reasonable doubt. But you have to take that
 6 testimony and decide whether or not reasonable medical
 7 certainly, Blaise was in Panaca between 9:50 in the morning
 8 on Sunday until 3:50 in the afternoon. She could not have
 9 committed this crime.
 10 The State wants you to go back to the 24 hour time
 11 frame, which is not -- which is to a greater probability. But as
 12 the doctor described, it's a bell curve. This is the bigger
 13 probability. As you get out toward the edges it flattens out.
 14 I'm sure you're all familiar with bell curves.
 15 I tried to draw one, sort of like that, a bell curve.
 16 And the greater probability is the major portion of it. And if
 17 she -- if you believe she was there during that period of time
 18 which the death occurred to a reasonable medical certainty,
 19 you must equip.
 20 Now I thought it would be great if I tried to put all
 21 the other testimony in that related to the alibi in order to cover
 22 the reasonable medical certainty time, as you can see, it's a
 23 little bit difficult to do. I'm gonna try to do that by arguing
 24 with you.

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1 morning in Sunday morning and Blaise answers the doors and
 2 appears that she was asleep, it's a two and a half to three
 3 hour drive from, according to the witnesses that testified and
 4 were asked those questions, from Las Vegas back to Panaca,
 5 because it's 170 miles with three speed zones in there. You
 6 have to slow down when you go through Alamo, and you have
 7 to slow down when you go through Caliente, and you have to
 8 slow down to make the turn as you're coming into Panaca.
 9 We heard that from Mr. Boucher who has no ax to
 10 grind in this case. Worked for the Department of
 11 Transportation for how many ever years he said, a long time,
 12 lived in the area for a long time. He knows how long the drive
 13 is. So you have to go back from 7 o'clock back even earlier
 14 than that for her to drive back, get her jammies on and get
 15 into the futon. Takes us back -- if you take a three hour drive
 16 to 7 o'clock, it takes you back to 4 o'clock in the morning,
 17 which is only 10 minutes away from the time frame the doctor
 18 said is the outside of the possibility of time of death.
 19 And you have testimony from Rebecca Lobato who
 20 has a routine that she follows when she goes to work in the
 21 morning. She gets up at 5:45, walks out of the bedroom they
 22 sleep in, past where Blaise was sleeping during that week,
 23 goes out, starts the coffee, goes to the garage and has a
 24 cigarette, 'cause that's the first thing that she does in the

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1 We know that -- we have testimony from Mr. Kraft
 2 that he went over to the Lobato house at 7:00 a.m. in the
 3 morning, and that Mr. Kraft had an assignment that he was
 4 gonna be taken away to Minnesota, away from his family and
 5 his pregnant wife, and he was sure it was that day because it
 6 was that day he fell asleep on the couch and got the crick in
 7 his neck and had to go to the doctor the next day, and we had
 8 the medical bills that show, in fact he did go to the doctor on
 9 the 9th. Corroborates his recollection that it was the 8th that he
 10 went and saw Larry, went home, fell asleep, got the crick.
 11 And we know from his wife that she was over there
 12 later that evening at 6 o'clock, and he remembers that day too
 13 because he had to go get his wife to come home to make
 14 dinner and that the chicken fried steak that she made wasn't
 15 so good. You know, whether that had anything to do with the
 16 fact that he was in pain from his neck, we know that the next
 17 day he went to the doctor 'cause we had the medical bills.
 18 Larry Lobato remembered that Mr. Kraft came over
 19 and saw him at 7 o'clock in the morning. Now the 7 o'clock in
 20 the morning time relates to the further out time period, the 24
 21 hours that is absolute comfort as the time frame of possibility
 22 for the time of death. But you have to remember also that
 23 you've got the drive time from Las Vegas back to Panaca.
 24 If John Kraft knocks on the door at 7 o'clock in the

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1 morning is have that cigarette. And that Blaise was there at
 2 5:45 a.m. on Sunday morning, because she worked on that
 3 Sunday. That was the last day before she does her double
 4 back on Mondays.
 5 She says Blaise was there, Blaise was asleep. That
 6 corroborates John Kraft saying at 7 o'clock when he knocked
 7 on the door he woke her up. Mrs. Lobato says she usually
 8 leaves a little bit after 7:00 to go to work to make it to Caliente
 9 for her 8 o'clock shift, and she's usually early.
 10 So now you've got 5:45 Blaise is at home in bed
 11 asleep. Three hours to drive to Las Vegas from 5:45 in the
 12 morning, now we're back to 2 o'clock in the morning. This is
 13 outside the possible range given to us by the State's doctor,
 14 Dr. Simms. So Blaise couldn't be there to kill Duran Bailey,
 15 and perhaps that explains why there's no physical evidence at
 16 the scene that ties her to Duran Bailey's death. That's why
 17 there's no blood on her shoes. That's why her feet don't
 18 match the footprints. That's why her fingers don't match the
 19 fingerprints. That's why her car doesn't match the tire tracks
 20 at the scene because it wasn't her car.
 21 Well, we already knew it wasn't her car because
 22 everybody in Panaca, including the McCroskeys, say the car
 23 was in Panaca. How could it leave the skid marks?
 24 MR. KEPHART: Your Honor, I'm gonna object to the

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1 term "everybody in Panaca".
 2 THE COURT: Sustained.
 3 MR. SCHIECK: I'll rephrase, Your Honor. That's
 4 incorrect.
 5 Everybody in Panaca that testified in this case said
 6 the car was there.
 7 MR. KEPHART: Your Honor, I'm gonna object to
 8 that too. McCroskeys never said that they remember seeing it
 9 on specific days.
 10 THE COURT: Sustained.
 11 MR. SCHIECK: Now the McCroskeys -- and I'm not
 12 gonna go over this in detail, but they said the car never
 13 moved.
 14 If the tire tracks didn't look fresh, the skid marks
 15 that went up over the curb didn't look fresh, why did they take
 16 the time to document them, to photograph them so that they
 17 could compare it to other tires? Did they have so much time
 18 on their hands that they said let's check out these tire tracks?
 19 Or is it because they looked fresh and could be associated with
 20 the crime, and was important enough to document, important
 21 enough to check against the red Fiero and get a negative
 22 result that excluded her car as leaving those.
 23 Is it possible that those tire tracks weren't related to
 24 Duran Bailey's death? Yes. Is it possible they were? Yes.

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1 You heard the testimony, I'm not gonna reiterate all
 2 of it. I've talked more than enough time on this. The gum
 3 that was someone else's DNA mixed with Bailey's, it excludes
 4 Blaise. The fingerprints, the ones they could match, exclude
 5 Blaise. The cigarettes exclude Blaise. The hair, which was
 6 tested just on the verge of trial, excludes Blaise. The hair from
 7 the pubic combing that has the DNA of another person in a
 8 crime that their doctor testified appeared to be sexually
 9 motivated. It includes an amputation of the penis and they
 10 find a hair someone's DNA that doesn't belong to the
 11 defendant. And the State wants you to think that that's not
 12 important, that it's possible it someone else's. They wouldn't
 13 be saying that if it came back to Blaise.
 14 And it's interesting to recall back to the testimony
 15 that even some of this evidence that was collected in the rape
 16 kit was sent to a Myriad Labs, and they did some additional
 17 testing on the penal and anal swabs where they detective
 18 spermatozoa. But they had the entire kit and didn't test that
 19 hair, the hair that was in the pubic combings. And I believe it
 20 was Mr. Wall that testified is because it costs too much money,
 21 and that's why they didn't test it with Myriad Labs. Well, they
 22 did test it before the trial actually started, but it excludes Blaise
 23 Lobato.
 24 And so perhaps we wouldn't even be here if

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1 And if they were, it excludes Blaise's red Fiero, which shoots
 2 down that she drove the car to back to Las Vegas for a quicky
 3 trip to do drugs and buy drugs or whatever else theory we're
 4 going to hear about. Is it possible? Anything's possible in this
 5 case.
 6 When the framers of the constitution got together
 7 and put together the Bill of Rights that apply to criminal cases,
 8 to every citizen in America, they didn't say, you know what, we
 9 think the prosecutors in order to convict have to prove that it's
 10 possible that someone committed a crime. They don't -- they
 11 didn't say well, let's say that if they can come up with a
 12 somehow she might've committed this crime, you should
 13 convict her. They didn't say if it's probable, they said beyond
 14 a reasonable doubt they have to prove their case. And in this
 15 case they haven't proven anything, other than they did a poor
 16 investigation, they discarded evidence, they didn't test
 17 evidence, they're still testing evidence. As of last week they
 18 were still testing the cigarette butts, trying to find that piece of
 19 evidence that they can come into court and say ah hah,
 20 physical evidence is important because now we've got some.
 21 Unfortunately, it came out the other way. If the trial would've
 22 lasted longer, maybe there would've been more testing done,
 23 but there hasn't been. And they haven't proven Blaise Lobato
 24 is guilty of anything in this case.

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1 Detective Thowsen had bothered to investigate this case
 2 before he made his arrest and charged the wrong person, and
 3 then tried to justify his arrest through piece by piece
 4 investigation and testing over a period of years.
 5 They've talked about well, you've -- you know,
 6 witnesses were listed in October of 2005 and that's the last
 7 time -- the first time they were listed. Well, that's a year ago.
 8 Go out and interview them. Detective Thowsen, go out and
 9 talk to them. Why are you listed as a witness? What do you
 10 got to say? Not one ounce of effort to check out anything in
 11 this case that was told to him by Blaise Lobato.
 12 He did swing by the Budget Suites and look around
 13 a little bit. Didn't take a crime scene analyst then. Really
 14 didn't care too much apparently because he had already made
 15 up his mind.
 16 They did call someone from Budget Suites to come
 17 in and testify, Zachary Robinson, which is kind of interesting
 18 because he didn't even work there at the time. I think they
 19 would've found someone to come in that actually had some
 20 knowledge of what was going on at Budget Suites during that
 21 period of time instead of somebody that was hired after the
 22 fact. That's the investigation they did on the Budget Suites.
 23 And listen to that tape. Blaise is telling them about
 24 an incident that happened at Budget Suites. And after it

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1 happened I took my car to Jeremy's, and Jeremy says yes, the
 2 car was here. Jeremy denies that he did anything to the car,
 3 but he verifies the car was there. It corroborates that Blaise
 4 was talking about something at Budget Suites more than a
 5 month ago when she talked to the detective. He didn't want
 6 to hear that. He wanted to hear that he had solved Duran
 7 Bailey's death, and that's all he focused on. Nothing else in
 8 this case.
 9 And they come in and criticize Dixie because she
 10 recalls that Blaise told her it was a larger man. And she was
 11 very specific about that, that in talking to Blaise for the three
 12 hours that she talked to her, that she said was he as big as --
 13 and I forget the name -- so and so? But finally he got to her
 14 grandson, as big as him? And Blaise said bigger, and she
 15 described how big he was.
 16 And when Blaise talked to Detective Thowsen back
 17 on July 20th, she said the guy towered over her, that he was
 18 much bigger than she was. Doesn't fit. It doesn't fit Duran
 19 Bailey in this case. And I questioned Detective Thowsen about
 20 that, she said it was a much bigger guy, and he said well, to
 21 her he probably seemed much bigger. He was 160 pounds.
 22 And I said well, at the autopsy he was hundred and something
 23 else, 136. Well, that was due to blood loss. And I said 24
 24 pounds of blood loss, and he kinda wavered on that.

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1 Duran Bailey was 70 inches tall and 133 pounds at
 2 the time of his death, according to the autopsy report. And we
 3 got that from Detective -- excuse me, from Dr. Simms. Is that
 4 someone that towers over you, someone who is much larger?
 5 Someone that matches the description told to Dixie?
 6 Blaise was talking about a different incident. And
 7 they say well, people that have done meth, when we take
 8 statements from them they jumble things up and they can't
 9 get things right and they -- and they're basically unreliable in
 10 what they tell you when you take their interview. But if they
 11 tell you something that we're interested in then, well, you
 12 gotta believe that, don't you, because that matches because a
 13 penis was involved. This must be the right person. Let's just
 14 arrest her and figure out the facts later, and that's what
 15 happened in this case.
 16 The State has not proven that Blaise committed any
 17 crime in this case. And the witnesses and evidence presented
 18 by the defense establish that she couldn't have committed this
 19 crime. And the defendant doesn't have the burden of
 20 establishing their alibi. The constitution says that if a person
 21 claims alibi and presents evidence of an alibi, an element of
 22 the offense is at issue, and that is who committed the crime.
 23 And the State has the burden of disproving the alibi.
 24 Have they presented any evidence, other than

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1 speculation, conjecture, and is it possible to disprove that
 2 Blaise was in Panaca at the time Duran Bailey was killed? And
 3 the overwhelming answer has to be no, they have not done
 4 that. And you must, therefore, acquit in this case. Thank you.
 5 THE COURT: I'm gonna give the jury a 10 minute
 6 stretch break at this time.
 7 Ladies and gentlemen, in 10 minutes please be in
 8 the hallway, the bailiff will meet you there to return you to
 9 your seats in the courtroom.
 10 During the recess you're admonished not to talk or
 11 converse among yourselves nor with anyone else on any
 12 subject connected with the trial. And you're not to read,
 13 watch, or listen to any report of or commentary on the trial or
 14 any person connected with the trial by any medium of
 15 information, including without limitation, newspaper, television,
 16 radio, and internet. And you're not to form or express any
 17 opinion on any subject connected with the trial until the case is
 18 finally submitted to you.
 19 Court's in recess for 10 minutes.
 20 (Jurors are not present)
 21 (Court recessed at 5:35:07 p.m. until 6:00:40 p.m.)
 22 (Jurors are present)
 23 THE BAILIFF: All rise, please.
 24 Department 2 is back in session. Please be seated.

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1 THE COURT: The record shall reflect we're
 2 resuming trial in State versus Kirstin Blaise Lobato under case
 3 number C177394 in the presence of the defendant, together
 4 with her three counsel, the two prosecuting attorneys are
 5 present, and the ladies and gentlemen of the jury have been
 6 returned to their seats by the bailiff.
 7 I apologize that that 10 minute recess took a little
 8 bit longer than we thought, but I think it will all work out in
 9 the long run.
 10 We're proceeding forward with the closing
 11 arguments. The State now has the opportunity to make a
 12 rebuttal closing.
 13 MR. KEPHART: Thank you, Your Honor.
 14 THE COURT: Mr. Kephart, you may proceed.
 15 MR. KEPHART: Thank you.
 16 **STATE'S REBUTTAL ARGUMENT**
 17 MR. KEPHART: Ladies and gentlemen, this case has
 18 been long. You've spent a long time here. Maybe some of
 19 you might think that there wasn't a lot of evidence presented
 20 during the time frame that we've been here. Maybe some of
 21 you might think that there was too much evidence, too much
 22 just statements that are being made and no corroborated,
 23 whatever.
 24 But let me tell you something. The State is in a

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1 situation where you get to look at direct evidence and
 2 circumstantial evidence. Circumstantial evidence is evidence
 3 which you learn basically from circumstances that happen
 4 where people tell you what you hear, commonsense that you
 5 may have. Direct evidence is something that the defense is
 6 talking about with whether or not you can directly say that
 7 Blaise Lobato was in that dumpster area.

8 Spent a lot of time with that. They spent \$12,000
 9 on an expert to come in here and tell us what we already
 10 knew. Tell us that we didn't have anything that said that she
 11 was in that dumpster in the form of blood, fingerprints, or
 12 anything in that -- hair or whatever.

13 But we have her words, ladies and gentlemen, her
 14 words. We're here -- they said why are we here? We're here
 15 because of her mouth, because of what she said. There's no
 16 one else, you heard no one else has said anything about
 17 cutting a man's penis off in the same vicinity and same time
 18 when -- from her -- other than her.

19 And what's interesting, Mr. Schieck spent over an
 20 hour talking about what he thought how the detectives just
 21 bundled the case, the detectives didn't do anything here,
 22 detectives didn't find anything here. And didn't talk about
 23 Dixie at all, except for the fact, the one time when Dixie came
 24 in here and changed her story about what was said about how

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1 our experts were right out there, looked at it, took samples of
 2 the footprints, and says it was not blood. You know, and then
 3 in the same breath says the luminol test in the car is not
 4 blood, even though we had two tests, presumptive tests that
 5 said that it's blood.

6 But he can look at a photo, kinda like the other
 7 expert with the scissors, just look at a photo. And you know
 8 what's interesting, you know why you heard that, you know
 9 why you heard that information, ladies and gentlemen? You
 10 know why they found that man to say that, is because they
 11 want you to believe that a person used scissors to kill him and
 12 not a knife. Because Blaise -- Blaise, herself, her words, told
 13 the detective she used a knife to cut the man's penis off.

14 You know, she told Michele she's depressed because
 15 she thought she'd killed him. She told -- Rusty heard the word
 16 "cut the penis off". She told Dixie. And you know, it just -- it's
 17 interesting that they want to basically tell you to completely
 18 disregard circumstantial evidence. There's an instruction that
 19 specifically tells you you can look at it, and you give it the
 20 same degree of weight you would give direct evidence. The
 21 law does not recognize a difference in them other than the
 22 way you get 'em. There's no difference in the value.

23 And it's interesting also when they talk to you and
 24 tell you well, we've proven an alibi, we've proven that she

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1 big this man was. It was never said before, never heard
 2 before until she comes in here after the defense had provided
 3 her with an autopsy report, and they had the audacity to ask
 4 her whether or not the State has rehearsed the statements
 5 with her.

6 Sometimes it gets pretty offensive, ladies and
 7 gentlemen, when we're in a situation what we have, what we
 8 gotta deal with. We're dealing with the evidence that is
 9 presented to us and we're presenting it to you. Do you think
 10 for a minute that if we wouldn't have tested any of those items
 11 that we'd be in here, be applauded? 'Cause what they'd be
 12 saying is just what they argued here, isn't it possible that if
 13 you would've tested those items it would've come back that
 14 our client didn't touch this item or didn't leave more hair or
 15 anything?

16 And they want to -- and there he is in the same type
 17 of argument and throwing it against us and saying, you know
 18 what, possibility is not reasonable doubt -- or is reasonable
 19 doubt. Well, ladies and gentlemen, you have to completely
 20 throw out all of the statements that the defendant made, let
 21 alone her own statement and what she told other people.

22 And you have to, I guess, just accept, just accept
 23 their word. Kinda like their expert says, those blood drops that
 24 I see in a photograph is blood is what he says. Even though

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1 wasn't here. Well, it's interest -- the interest in that is that
 2 when Dixie comes in here, you saw her, you saw what was
 3 going on with her. She did not want to be here, she did not
 4 want to point the finger at that lady right there. She changed
 5 her story, she fought with the State. And where's she from?
 6 She's from Panaca where Mrs. Lobato, who was in here earlier,
 7 was going around telling people, remember the 8th.

8 Well, you know what's also interesting, ladies and
 9 gentlemen, in a previous proceeding, the 8th was all that was
 10 testified about.

11 MR. SCHIECK: Objection, Your Honor.

12 THE COURT: Sustained.

13 MR. SCHIECK: There's no evidence of what was and
 14 wasn't.

15 MR. KEPHART: Oh, well, Ms. Lobato, I'll tell you.
 16 Ms. Lobato, when she testified before in her testimony here --

17 MR. SCHIECK: Objection, Your Honor.

18 THE COURT: Would counsel please approach?

19 (Off-record bench conference from 6:07:23-6:08:10 p.m.)

20 MR. KEPHART: And I want to apologize, I need to
 21 clear it up. I'm talking about Rebecca Lobato. Rebecca
 22 Lobato in her previous testimony --

23 THE COURT: Overruled.

24 MR. KEPHART: Thanks Judge.

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1 -- told -- testified before that at the times that she
 2 remembered seeing the defendant and testified about the day
 3 on the 8th, in the afternoon on the 8th, she went to work that
 4 day. She never said anything about seeing her before she
 5 went to work, getting up and seeing her laying on the floor or
 6 laying on the futon or whatever. She went to work, saw her in
 7 the afternoon.
 8 And for the first time -- and also we hear from Mr.
 9 Lobato. He comes in here and now he tells you that at 7
 10 o'clock in the morning John, who we hear from the first time,
 11 came over and woke me up and asked me on that particular
 12 day, when he was leaving a week later, to help out with
 13 checking with my family when I'm gone, the first time.
 14 And what's interesting as well is that Ashley Lobato,
 15 if you look at the time frame. The time frame is clear that
 16 what we're talking about with reference to when this occurred
 17 and how the defendant fits this story about driving back to Las
 18 Vegas and getting on her methamphetamine, she's -- she's in
 19 Panaca, ladies and gentlemen, for a weekend or a week with
 20 her family over the 4th of July. What is she doing? She's
 21 fighting with her mom. Her mom admits to that, that they're
 22 fighting. Her mom admits that she uses methamphetamine,
 23 her daughter, to get away from the problems that she has with
 24 her family, and the arguments that she has with her mom.

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1 And she leaves Panaca and goes back to Las Vegas,
 2 to do what? We're talking about a methamphetamine addict
 3 that has problems with methamphetamine, can't control her
 4 methamphetamine, wants to get it any time she can, breaks
 5 her boyfriend and girlfriend relationships up, can't -- says she's
 6 out of control, and she's just gonna sit around in beautiful
 7 Panaca and do nothing.
 8 Medical records say she didn't have any
 9 methamphetamine in her on the 5th. So what is she doing,
 10 just sitting around doing nothing. She just got a new
 11 boyfriend. You heard from Doug. She just moved in with him
 12 and she went -- Doug said they wanted to get together but
 13 there was a barbeque on the 4th. She went to the doctor the
 14 next day because apparently there was some kind of
 15 appointment. They went and made that.
 16 She left, came back to Las Vegas, according to her
 17 statement, and spent three days on a binge. You look at the
 18 phone records. You can see from the phone records that
 19 there's a lot of activity going on around that time where the
 20 mom's calling work, mom's calling Doug, mom's calling the
 21 sheriff's department, for what she says in a previous statement
 22 -- previous testimony, looking for a truck. Now she
 23 remembers because Larry Lobato came in here for the first
 24 time and says it was 'cause she was wearing a jumpsuit, or

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1 getting a jumpsuit.
 2 Well, there's another phone call later. Remember
 3 Larry said he went to summer camp like on the 22nd? Well,
 4 there's a phone call to the sheriff's on the 21st. Isn't it
 5 reasonable that's when he got called to get the jumpsuit?
 6 Well, it's interesting is that you have all these people
 7 come in here. And you know what's so cool about this is that
 8 her own sister, her own sister, when they asked about whether
 9 or not she saw her on the dates of the 5th, 6th and 7th in that
 10 area, I don't remember not seeing her. This is this young lady
 11 who's just starting her own career, and she's sitting in here
 12 under oath to tell the truth, and says I don't -- I can't
 13 remember not seeing her. Did she say oh, I saw her, we did
 14 this, this, this and this. No. The only ones you have marked
 15 in this area is Chris Carrington, Chris Carrington, Chris
 16 Carrington and Michele Austria. And you heard from Michele
 17 Austria that she didn't know if it was this weekend or this
 18 weekend.
 19 And Chris Carrington, I mean ladies and gentlemen,
 20 you saw his testimony, you saw him up here telling you what
 21 he believe had occurred. And you heard his grandma
 22 specifically come in here and tell you that she remembered it,
 23 she remembered the 5th because her sister was supposed to
 24 be there on the 4th but she was late and she came on the 5th.

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1 She remembers the 5th. She remembers Chris coming home
 2 and saying I can't deal with the turmoil, they're fighting. Then
 3 she got a phone call and he went back up there.
 4 Then on the 6th he came home and said they're
 5 fighting 'cause she's going to Las Vegas. And he got in here
 6 and said no, that's not what was said. But grandma came in
 7 and said this is my grandson who's kinda brain dead, and told
 8 you about the defendant's --
 9 MR. SCHIECK: I'm gonna object, Your Honor. She
 10 didn't call him brain dead.
 11 MR. KEPHART: Oh, yes she did.
 12 MR. SCHIECK: She said lame brain.
 13 THE COURT: Sustained.
 14 MR. KEPHART: Okay.
 15 Anyway, and says I remember on the 7th he was
 16 with me because I had to have him take me to the hospital
 17 and he doesn't even remember that. But yet he remembers
 18 sitting with the defendant, working out, didn't seem like she
 19 was even -- anything wrong with her. But yet she's supposed
 20 to be going to the doctor and everyone else is saying oh, she's
 21 tired and she -- she's not herself and she's staying out of
 22 company with everybody else. And she says on the 7th he had
 23 to take me to the doctor. And then he had to drive to the lake
 24 and get my sister who was there and bring her to the doctor

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1 so we could all be at the hospital.
 2 And it just -- and what's interesting about their
 3 exhibit is no one else talks about that. The 4th, I mean I guess
 4 you could -- would give that to them. The 2nd everybody kinda
 5 put that -- it was also funny, you know, Chris Carrington says
 6 yeah, the 2nd, I was there on the 2nd. I got up on cross and I
 7 said well, you know, Chris, after the defense said you haven't
 8 changed anything and you've been consistent all along, and he
 9 said yes, and I got up and he goes oh, I gotta change it, I
 10 made a mistake, it was the 3rd.
 11 Who's talking about the dates of the 2nd? Who's
 12 rehearsing what? So he changed it, he said the 3rd. Well,
 13 that's fine. We don't deny that. I mean we've heard that from
 14 a lot of people that she was up there. And it's reasonable to
 15 believe that she went up there to see her parents on the 4th of
 16 July.
 17 But it's also reasonable to believe, ladies and
 18 gentlemen, that she went -- a person that's wanting
 19 methamphetamine, that would jeopardize relationships, would
 20 fight with her parents, would use methamphetamine to cope
 21 with her problems is just gonna sit out that week. She went
 22 back to Las Vegas, ladies and gentlemen, and did exactly what
 23 she told the police, a three day binge. You have the 6th, 7th,
 24 and 8th. And on the 8th day she killed Duran Bailey.

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1 Now let's talk a little bit about Duran Bailey. We're
 2 not here telling you that Duran Bailey is a saint. We've never
 3 denied that. Did he -- was he convicted of a sexual assault?
 4 No. He didn't have the opportunity to sit here and listen and -
 5 - sit here and listen to the State presenting a case against him.
 6 But for all intensive purposes, I guess we could accept that he
 7 raped Diane Parker. Did he take sex from her? Okay, he took
 8 sex from her. Did he trade sex for dope? Yes. Did he provide
 9 dope to her? Yes.
 10 Defendant -- you heard the defendant has been
 11 raped multiple times herself. Matter of fact, to the point where
 12 her dad has provided her with teaching her how to fight,
 13 giving her a weapon, teaching her how to use the weapon.
 14 He's a -- used to be a correction officer, knows tactical
 15 defense, is interested in weapons, and this is daddy's little girl
 16 that he wants to protect, that he cares about, and yes, he
 17 loves her.
 18 And he wants -- he knows she's going down to Las
 19 Vegas to do methamphetamine. He knows what the lifestyle is
 20 himself. She's going to Las Vegas to do that. Give her a knife.
 21 She said I got the knife Christmas from my dad. This knife
 22 that she no longer has, that she just happened to get rid of
 23 this present from my dad, that she threw her own clothes
 24 away. And she -- it's reasonable to believe that she knows

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1 how to use it.
 2 And let me give you a scenario of what happened
 3 behind that dumpster. Ladies and gentlemen, she went there,
 4 she knew where her connects were, she knew where to get
 5 dope. And I'm not even telling you that Duran Bailey was
 6 selling her dope. But he knew that he -- he was known to sell
 7 dope in the past, he was known to trade dope for sex in the
 8 past, and she is on her three day binge and she's out looking
 9 for dope. She finds him, believability that she had met him
 10 before.
 11 They got back into the back of this dumpster area,
 12 and is it unreasonable to believe, ladies and gentlemen, that
 13 he decided -- kinda like the scenario we pose their expert
 14 about being on the pier, where she wanted the dope, he
 15 decided he didn't want to trade it or sell -- I mean he didn't
 16 want to give her the dope, or he wanted sex for the dope.
 17 Well -- and then his pants are down around his
 18 ankles, and the blood stops after she gets down to the point
 19 where she's gonna give him fellatio, and she doesn't like the
 20 smell of dirty diapers. How else do you smell that unless
 21 you're right next to the person? Smells like dirty diapers, right
 22 there. And she doesn't want to do it anymore.
 23 But he's at the point he's got his pants down
 24 crumpled down below his knees, and he's standing there with

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1 his Johnson out and she doesn't want to do it now. She says
 2 in her statement the man's towering over me. Well, if she's on
 3 her knees he would be towering over her.
 4 And she's right there and he tries to now make her
 5 do it when she's not. That smell, that awful smell, no. You
 6 know, no one is gonna do this to me. No one. It's happened
 7 to me before, that's why I have a knife. She stabs him in the
 8 bottom of his scrotum and he bleeds. And what does he do?
 9 What's a manly man gonna do? They're gonna grab themselves.
 10 Continues to stab at him, fights at him.
 11 Well, you know what, what she told Dixie is what
 12 happened. She walked away and she looked back and saw
 13 him crying. Well, you know what's interesting about that, is
 14 she wasn't concerned about anything but her car because she
 15 went back and killed him. She got her bat and she went back
 16 in there.
 17 Now listen to the testimony with this. There was a
 18 question about kicking, whether or not a kick could do this as
 19 well. Remember the testimony? Doc Simms never said that
 20 she -- that he received that skull fracture with the bat. He
 21 never said that. He said that it was consistent with getting hit
 22 in the mouth that a bat would bust your teeth out. And he did
 23 say other trauma he would expect, and that would be on the
 24 side here and the head, that he would expect to see an

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1 indention. We never presented that.
 2 But we did present if he's standing there in a
 3 position where he's been stabbed at, he's been cut, he's
 4 defending himself off and he's crying, and he can identify her,
 5 she goes back -- and this is where you get to the first degree
 6 murder. She had that opportunity to leave, she had that
 7 opportunity to go for help, and she didn't exercise that
 8 opportunity. She went back 'cause no one's gonna do this to
 9 her, no one. Not anybody like this, especially somebody that
 10 she didn't think anybody would remember or anybody would
 11 miss. And when she went back and smacked him in the
 12 mouth with the bat where his teeth busted out, he fell back
 13 and he hit his head on that curb, and that's consistent with
 14 busting his skull.
 15 Now he's down and he's out and what does she do?
 16 She stabs him in the neck, and that's how you see all the
 17 blood on the side of the -- go about a foot up on the side of
 18 the wall there. And that's where all that blood collected in the
 19 one area right in the back. That's why his shirt's all covered.
 20 His pants wouldn't have been there because they were down
 21 out of where the blood collected.
 22 And then what does she do? What does she do
 23 then, ladies and gentlemen, she cuts his penis off and she cuts
 24 into his rectum, because no one's gonna do that -- that's from

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1 somebody that's been through that themselves. She can't
 2 come in here and tell you, give me some pity and let -- and
 3 find me not guilty of this murder because of self defense
 4 because this man attacked me, because you read the
 5 instructions, you'd have to find her guilty of the penetration of
 6 a dead human body. And that's from somebody -- a sexual
 7 penetration of a dead human body. That's from somebody
 8 herself that's been raped herself. She's not gonna accept that.
 9 So what happens? An alibi starts getting created
 10 about the 21st by her mom. And you don't tell me for a minute
 11 that her parents weren't talking to her from jail right away.
 12 And it's interesting, why does she tell her parents on a
 13 recorded statement -- don't say anything because we're
 14 getting recorded, snap at your father, we're getting recorded
 15 -- if she didn't do anything wrong?
 16 Now when you look at what they claim as an alibi,
 17 you have to also look at Jury Instruction Number 35 where it
 18 talks about -- it talks about the credibility and the believability
 19 of witnesses. And you have to determine whether or not you
 20 believe them is basically what it's telling you. And you look at
 21 -- one of the factors you look at is the relationships to the
 22 parties. And it's interesting, is the only people that came in
 23 here and talked about anything happening in this area,
 24 especially on the 7th, were family members, except for Chris,

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1 and you've heard about Chris' testimony. You have to
 2 determine the believability of that as well.
 3 Family members, the only people. I mean other
 4 people put her -- it's interesting that other people put her in
 5 Panaca in the afternoon or maybe noonish on the 8th, and
 6 that's not -- that's not outside the line of what Dr. Simms is
 7 talking about. And if she did exactly what she told Dixie, that
 8 all she wanted to do was get cleaned up and get the hell back
 9 to her dad's house, that's exactly what she did. And that puts
 10 her right back here on the 8th where you see all these people
 11 that are seeing her on the 8th coming back. And who's house
 12 did she go clean up at? Doug's?
 13 They talk about the lack of physical evidence of her
 14 at the scene, yet there's so much evidence with regards to
 15 what had occurred. You will never forget this trial. The
 16 reason why you'll never forget this trial is because of the
 17 circumstances that came under it. A man's penis was cut off.
 18 You heard about it once before probably with Lorena Bobbitt,
 19 a man's penis was cut off. You'll never forget that. That's a
 20 circumstance that they want you to stretch so far and say that
 21 this is a coincidence, that she happens to be talking about it
 22 right after it occurs, when after she is worried that the man is
 23 probably dead, knows that she cut a man's penis off, is taking
 24 Prozac because of the anxiety and depression she's under,

XIX-200

1 because it's causing her conscious -- she's having trouble with
 2 her conscious.
 3 Talk about the physical evidence and a time frame
 4 of when things were tested. It comes to a point where you
 5 have to just stop testing. Other times you will never stop
 6 testing. You've heard of cases even after people have went to
 7 prison, they continue doing testing. You've heard of some
 8 where they've been exonerated based on the testing and
 9 you've not heard of the ones where they're not exonerated.
 10 And so, you know, to point the finger at the State or
 11 the police officers and say you know what, you just didn't quit
 12 -- you quit testing and you tested right up to the last minute
 13 on that. It's like if we don't test, I mean they threw the plastic
 14 bag in our face on that. And you know what their words were,
 15 their words were conclusionary, just like their expert that they
 16 hired, that the evidence of the perpetrator was beyond that
 17 bag, on the bag, in the trash can.
 18 Where do you stop? What if you find the body in
 19 the dump? Where do you stop? Don't you give some
 20 credence to the people that are out there looking and trying to
 21 do what they can? They say that they -- they made -- they
 22 jumped to conclusions and they made the decision and they
 23 arrested Blaise and that was the end of it and they didn't do
 24 anything else.

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1 Well, you heard they talked to Diane Parker, they
 2 went over to her house, they looked at her clothes, they
 3 looked at her shoes, they looked at her knives, they discussed
 4 it with a roommate. There was nothing they gave a detective
 5 that's done over 400 homicides any kind of clue that she was
 6 even a suspect, knowing full well that she was a rape victim of
 7 the very man that was killed.
 8 And he looked at the -- he talked to the
 9 management, he investigated the individuals that didn't even
 10 know her. And that -- you know, Ms. DiGiacomo talked about
 11 that earlier. Do you think it's reasonable for somebody to see,
 12 maybe see somebody get slapped, another woman, and then
 13 you go out and kill 'em and you do that kinda stuff to them?
 14 That makes no sense.
 15 And then what do we -- what do we make of this?
 16 What are we supposed to do? I mean she said in her
 17 statement she'd gotten her car bloody. And they spent almost
 18 a day disputing that, talking about copper salts and things like
 19 that up in Panaca or the mine field of Pioche. She talked
 20 about taking her clothes off in the car because they were
 21 bloody and she threw them away. Her dad kind of admitted
 22 that he wiped the car out.
 23 And they don't tell you -- did they remind you of the
 24 fact that Dixie talks about -- remember Dixie when she was up

XIX-202

1 there and the questions were posed to her about what she told
 2 Laura about the defendant telling her she went back to hide
 3 her car out. And that's super consistent with the fact that
 4 when she leaves and goes back on the 9th she doesn't take her
 5 car. I mean she goes back down there to do what, you know,
 6 make a run at it and not have her own transportation to get
 7 away from that? Well, she has to later call her down. No,
 8 they're laying low, the car's not around her, they're down there
 9 watching TV to see if there's any other information about this.
 10 And she tells Dixie, she's up there hiding her car, her
 11 parents are gonna help her get it cleaned or maybe paint it
 12 and get rid of it. Dixie wouldn't tell you that. Dixie kept I
 13 didn't say that, I didn't say that, I didn't say that. When Laura
 14 came in, she said no, that's what she told me. Dixie said get it
 15 cleaned. Do you remember that? She said that like get it
 16 clean. And she wanted -- I think if she said it louder and
 17 louder and louder we'd believe it more. Get it clean.
 18 Well, what are they cleaning, something that
 19 happened on Memorial Day? This car with this compulsory
 20 clean person here, they drive the car back, the parents say
 21 that it reeked, but yet they leave the car rolled up -- the
 22 windows rolled up and parked in the July sun in Panaca and it
 23 reeked, and he just wiped it out.
 24 What did it reek from, the Memorial Day vomit and

XIX-203

1 stuff that's in the car. Doug Twining -- I mean not Doug, Mr.
 2 McCroskey says that he believed that she'd cleaned it before
 3 she brought it back over to the house.
 4 He talks about there's no physical evidence at the
 5 scene, no fingerprints, nothing. There wasn't a single
 6 fingerprint of hers in her own car. Are we supposed to just
 7 say then well, she was never in her car? It excludes her from
 8 being in her car, ladies and gentlemen, because she -- no
 9 fingerprints in there.
 10 They bring her back to Las Vegas -- oh, what about
 11 this, ladies and gentlemen, we're just supposed to ignore that?
 12 Are we just to ignore what's on these freshly laundered seat
 13 covers as the crime scene investigator talked about? Just
 14 ignore that? Well, that's not blood, but those spots on the
 15 ground in the photograph are.
 16 And when they bring her back to the jail cell and she
 17 talks about the inside of the jail cell looking like where this
 18 occurred. Well, the defense presented you this cave, and you
 19 have -- you can look at that too, that happened from the
 20 Budget Suites. Which, you know, the detective did go over
 21 there and tried to see whether or not -- you know, how do you
 22 investigate something that didn't happen? How do you do
 23 that?
 24 He talks about how he could look out of the inside of

XIX-204

1 something that looked like the inside of the jail cell and see
 2 the carport next door next to it. I mean unless you're out
 3 there and you're doing this, it's a pretty good imagination that
 4 you're making it up. It fits perfectly in the crime.
 5 You know what's interesting as well is that what she
 6 does say in her statement as we're talking about the past
 7 tense, how she talks about I didn't think anybody would miss
 8 him, I don't -- I didn't think I could put him in -- I didn't put
 9 him in and I don't think I could have, she's talking about the
 10 dumpster. Why do you need to say I don't think I could put
 11 him in it if he was alive? If he's dead, it'd be maybe throwing
 12 him in the garbage can, just throw him away. And you see
 13 that he's moved towards the dumpster. Somebody tried, she
 14 tried to put him in the dumpster, couldn't pick him up.
 15 And they ask, did you hit him with anything other
 16 than the knife? And her response was well, it's possible, I
 17 have a bat in the car. But you know, when I was on my
 18 flutters of the third day of my meth binge, everything went
 19 black.
 20 She tells Dixie that it was on north of I -- I mean
 21 west of -- east of I-15, and she gives hotel names of the
 22 streets, Flamingo and Tropicana. She didn't say anything
 23 about it being down at Budget Suites or anything.
 24 But are we supposed to just ignore that? Are we

XIX-205

1 supposed to just ignore that huge coincidence? She tells Dixie
 2 that she severed a man's penis in Las Vegas. She said the
 3 man tried to proposition her. The man put his penis in her --
 4 tried to put his penis in her mouth. Does that sound like what
 5 I was describing to you earlier, that she cut his penis off and
 6 threw it. She got ick all over her. Those are the words that
 7 Dixie used for what the defendant said. She said that he was
 8 old, smelly man, nothing else about size or anything.
 9 Happened on West Tropicana and West Flamingo.
 10 They were looking in the paper to see if any news
 11 about it at the time when they were there. As she was
 12 researching it, she had been researching it before. She
 13 believed it happened just recently. Wasn't talking about
 14 something earlier. And you kinda seen the exchange there
 15 when talking about the June and July.
 16 She said she was extremely upset and crying. She
 17 said after it was all done all she wanted to do was get back
 18 home to her dad's. She said she used her car and she was
 19 worried about her car being seen.
 20 And that gets me back to the point I was talking
 21 about earlier, that if she left after she killed him, he's certainly
 22 not gonna see her. And if she's in an enclosed area, like what
 23 you've seen in this, no one's gonna see that, see into there,
 24 unless you're up above or the doors are open. And -- but her

XIX-206

1 car would be seen, and that's what she was worried about.
 2 She wasn't worried about herself being seen, she was worried
 3 about her car being seen. A little red car. You'd have to
 4 disregard what Michele says, you'd have to disregard what
 5 Paul Rusty -- Rusty Brown says.
 6 And take a look at their phone records, ladies and
 7 gentlemen. And look at the time frames of when they are
 8 talking about when the phone calls are going from the mom to
 9 Doug's house or to Doug's cell, and when Doug is returning
 10 those calls. And look at the same time about when they're
 11 calling the highway looking for -- they're calling the sheriff's
 12 department. And then at a point in time when they know
 13 where she's at, when she's in Las Vegas, there's no phone calls
 14 going on anymore. There's a big amount of phone calls
 15 around -- on the early morning of the 8th into the 9th -- I mean
 16 late evening of the 8th into the 9th, because that's when Doug's
 17 coming up there to get her. And you don't see Doug really
 18 picking up on the phone calls again until after about 9 o'clock
 19 in the morning on the 8th.
 20 Well, in the realm of Mr. Schieck's bell curve, there's
 21 still that reality of the 24 hours. I mean you ask these experts
 22 to come in and say what they believe would fit, and they want
 23 -- and it's so interesting. They want to fit in the 18 to -- 10 to
 24 18 hours. The doc says that it's more reasonable -- I mean it's

XIX-207

1 more probable that it happened in the 24 hour span. But to a
 2 reasonable degree of medical certainty they'll give you the 10
 3 to 18 hours.
 4 And it's interesting that the defense is arguing that
 5 that's where we want it to be, when often times you find
 6 bodies in that interval and they want the doctors to spread it
 7 out to the outside of that time frame.
 8 And I -- you know, when we talked to you guys like
 9 four weeks ago and we're asking you to be jurors on this case,
 10 both sides was trying to get the fairest jurors that we could
 11 find. And part of that is because of the system of justice that
 12 the defense and the State are operating under and what all of
 13 you are entitled to. And part of that tells us that we want
 14 people that are -- have a stake in the community, people that
 15 have been around, people that care what happens in their
 16 community, people that care what the prosecutions are doing
 17 or what the defendants are doing.
 18 And we want people to realize that you don't come
 19 in here with blinders on. You don't leave your commonsense
 20 outside the door. You use your common everyday
 21 experiences to judge what you heard here and what you
 22 believe the verdict ought to be.
 23 And I ask you, using your commonsense, is it
 24 reasonable to believe that we have a pure coincidence here?

XIX-208

1 Is that reasonable to believe? And that's that step you have to
 2 get over as to reasonable doubt. Is it just a mere coincidence,
 3 probably one of the biggest ones you've ever heard, that this
 4 defendant just happened to be talking about the very thing
 5 that happened just days before she started talking about it?
 6 The defense started their closing argument talking
 7 about we were saying in our argument, well, it's possible, or
 8 it's possible it happened like that. You know what, ladies and
 9 gentlemen, that's because you, the jury, are the ones that
 10 make the reasonable inference and draw those inferences to
 11 determine the guilt or innocence of the defendant. You do
 12 that. You don't base it on sympathy, you don't -- it has --
 13 can't be influenced by sympathy. You make that decision as a
 14 sincere judgment, sound discretion that you're using in
 15 accordance with the law that you've been given.
 16 When the defense talks about possible, well my
 17 question to you is is it possible the defendant was confessing
 18 to a crime that happened in May of 2001? Is that possible,
 19 based on all the information that you heard what occurred
 20 here, that there wasn't any crime that happened in May of
 21 2001? No evidence of that. Is that possible? Is that
 22 something that you're really gonna pick up from that
 23 statement? I suggest that you won't.
 24 In this case, ladies and gentlemen, there's nothing

XIX-209

1 to support a self defense. And the reason why, as I explained
 2 earlier, is because there was a cooling down period. There
 3 was a point in time where the defendant had to make a choice
 4 as to whether or not to walk away from what she started or to
 5 finish it. She decided to finish it because she was gonna be
 6 identified.

7 That there is your premeditation, your deliberation.
 8 It went to a point where there was a directed wound to the
 9 carotid artery. There was a blunt force trauma to the head
 10 that knocks him down. Directed wound to the liver area.

11 And then what happened with the penis later, that's
 12 evidence of rage, that's evidence of anger, that's evidence of
 13 premeditation and deliberation. That's first degree. Defense
 14 didn't even argue that, didn't even argue that, that she's
 15 entitled to self defense.

16 Now when you look at the verdict you're gonna --
 17 this is what you're gonna get back there. I don't know if it's
 18 with those instructions that you have now. I think the Court
 19 gives you like in a little blue packet or something. But you
 20 have a series of things to determine. Can you all see that?
 21 You have a series of things you have to look at, and all the
 22 instructions will walk you through that.

23 You have to look at whether or not it was guilty of
 24 first degree murder with the use of a deadly weapon. Well, I

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1 injury to his rectum.

2 Now it's interesting when -- like real quickly when
 3 you talk about like the McCroskeys and the other individuals
 4 who talk about the car being moved or not being moved. And
 5 you heard te McCroskeys talk about how they -- they may not
 6 even have been there. But they do know when they were
 7 there and they saw the car that it hadn't been moved. And
 8 that's highly consistent with her coming up there after the --
 9 after the 8th, 'cause they were gone potentially the 4th of July
 10 where they drive to Fallon, Nevada and stay for just a couple
 11 days. They go there for a period of time and spend time with
 12 their family.

13 Now we showed you this in the beginning, Exhibit
 14 258. And this, ladies and gentlemen, is who we're talking
 15 about. We're not talking about this young lady that's sitting
 16 here now and has come in here with her dresses on and her
 17 hair back and a little longer than that. Matter of fact it's
 18 interesting, the very people that supposedly saw her up there
 19 that time could not say that she looked any different, other
 20 than older, than the way she looks right now. Well, you take a
 21 look at it and tell me if she looks any different. That's pretty
 22 distinct, wouldn't you say? And if they supposedly had seen
 23 her all this time when they're up there with her, you would
 24 expect that they'd seen that. And that's what we're talking

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1 submit to you a knife is a deadly weapon, and the manner it
 2 was used here is a deadly weapon. So you don't have to even
 3 look at any other crime that doesn't have a deadly weapon
 4 involved.

5 The argument here, what I just explained to you,
 6 supports the guilty of first degree with use of a deadly weapon
 7 because of the premeditation. Because of the multiple
 8 mechanisms of injury, the multiple mechanisms of -- you can't
 9 see?

10 THE COURT: My view of the jury was blocked.

11 MR. KEPHART: Oh, I'm sorry, Judge. Okay.

12 THE COURT: Thank you.

13 MR. KEPHART: And -- I'm gonna need that again.

14 THE BAILIFF: You're gonna need it?

15 MR. KEPHART: Yeah.

16 And you don't need to go any further with that. I
 17 mean your decision can't be one based on sympathy. You
 18 have to make the determination if you feel in this case that
 19 there's self defense there. But then there's arguments talking
 20 about at a point where she has an opportunity to abandon that
 21 and didn't do that.

22 And then the second one is pretty obvious, ladies
 23 and gentlemen, as to -- I mean there's certainly evidence that
 24 she's guilty of sexual penetration of a dead human body by the

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1 about in this case, ladies and gentlemen.

2 Happened in 2001 when she killed Duran Bailey.
 3 When she was the meth addict, when she was the knife toting
 4 individual, when she's the one that's moving around Las Vegas
 5 and getting out of control, when she's the one that would do
 6 anything for methamphetamine. That was in 2001, ladies and
 7 gentlemen. It's been long enough. It's long enough, that
 8 about time the jury says something about it. It's long enough.
 9 It's time to finish it. It's time to put an end to this. It's time to
 10 put an end to what happened to Duran Bailey.

11 He's entitled to a degree of respect from the State
 12 and from the people who represent the State and from this
 13 system. He didn't have an opportunity to go through deciding
 14 whether or not he was guilty or not, but did he deserve to die?
 15 Did he deserve to die at the hands of somebody that just
 16 made that decision?

17 And that's why we're here, ladies and gentlemen. In
 18 the beginning he asked why are we here. We're here because
 19 of what she did in July of 2001, what she did to Duran Bailey,
 20 that's why we're here. And it's about time we put a stop to it
 21 now, and it's time for you to mark it as I did, guilty of first
 22 degree murder with the use of a deadly weapon, and guilty of
 23 sexual penetration of a dead human body.

24 When you go back in there and you deliberate,

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1 ladies and gentlemen, look at the evidence. Look at what you
 2 have in there. Fumble through it if you want. Look and see if
 3 there's any stab wounds to the pants. Look if there's any
 4 blood in there if you want to do that. You can do that.
 5 But if you want to say that she's not guilty, consider
 6 that with regards to everybody that came in here and testified
 7 about what she said to them, what she said, came out of her
 8 mouth, and what was corroborated in the sense of she said
 9 she cut a man's penis off, corroborated. She said it was on
 10 West Tropicana or Flamingo. Corroborated. She said it was
 11 near a dumpster. Corroborated. She said she couldn't put him
 12 in the dumpster. Corroborated. Said that she was bloody and
 13 got in her car. Corroborated. Said she wanted to leave and
 14 get back -- her car back to her dad's house. Corroborated.
 15 If you don't think she did it, ladies and gentlemen,
 16 find her not guilty.
 17 MR. SCHIECK: I'm gonna object, Your Honor, that's
 18 not the burden of proof. The burden of proof is that they
 19 proved it beyond a reasonable doubt.
 20 THE COURT: Sustained.
 21 MR. KEPHART: If you don't think we've proved it
 22 beyond a reasonable doubt, find her not guilty.
 23 Thank you, ladies and gentlemen.
 24 Thank you, Your Honor.

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1 the courthouse to assume a seat in deliberations, or to advise
 2 you that you are relieved of jury services. So you will receive
 3 a phone call updating you and advising you of one of those
 4 two things.
 5 Until such time as you either go into the jury
 6 deliberation room or you are advised that you are relieved of
 7 services, you remain under the admonishment of the Court
 8 that you cannot talk or converse with anyone on any subject
 9 connected with the trial, nor read, watch, or listen to any
 10 report of or commentary on the trial or any person connected
 11 with the trial by any medium of information, including without
 12 limitation, newspaper, television, radio, and internet. And you
 13 cannot form or express any opinion on any subject connected
 14 with the trial until the case is finally submitted to you.
 15 If we do not see you back again, we thank both of
 16 you most sincerely for all of your time and your efforts here
 17 with this trial in doing this service for your community.
 18 If you would come out the gate and come around
 19 the front of the courtroom. Bring your stuff with you.
 20 We had arranged for dinner delivery at 5:30, and
 21 that was when we took our 10 minute recess. The rest of you
 22 will be taking -- will be taken into the jury deliberation room by
 23 the bailiff at this time. Would those of you in the front row
 24 please exit and go with Officer Burns, and then those of you in

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1 THE COURT: Okay.
 2 Ladies and gentlemen, alternate jurors are needed
 3 at trial who are prepared to assume a juror's seat should a
 4 juror become unable to or become disqualified from the
 5 performance of their duties. Before the time that the trial
 6 began it was stipulated that whomever became seated in the
 7 13th and 14th chairs would constitute the alternates for the
 8 purposes of this trial. That turned out to be Lacey Valdez as
 9 Alternate 1, and Joan McCormick as Alternate 2.
 10 In the event that a vacancy does occur on the jury
 11 during deliberation, the alternates will then be taken to the
 12 room to fill that vacancy.
 13 Dee Grimm has just entered the courtroom. She's
 14 the judicial executive assistant for Department 2 who works
 15 with the Court in the Court's offices and chambers. She, the
 16 bailiff, and the court recorder are going to be placed under
 17 oath to take charge of the alternates and the jury.
 18 **DEE GRIMM, BAILIFF & COURT RECORDER**
 19 **ARE SWORN**
 20 THE CLERK: Thank you.
 21 THE COURT: Shortly Ms. Valdez and Ms. McCormick
 22 will be going with Ms. Grimm and providing her with the phone
 23 numbers where they can be reached. You will be notified
 24 telephonically either to advise you that you need to return to

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1 the back row follow the front row.
 2 (Jurors are not present)
 3 THE COURT: Lisa, can you shut the door? Thank
 4 you.
 5 The record shall reflect that the jury has exited the
 6 courtroom, the Court's gonna ask that counsel approach the
 7 clerk to leave the numbers where you can all be reached. And
 8 we will go off the record at this time.
 9 Court Adjourned at 6:54:28 p.m., until the following day,
 10 October 6, 2006)
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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

5/10/07
Date

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CERTIFICATION

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

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Kari Riley
TRANSCRIBER

5/10/07
DATE

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