

copy

EIGHTH JUDICIAL DISTRICT COURT
CIVIL/CRIMINAL DIVISION 11 15 AM '07
CLARK COUNTY, NEVADA

CLERK OF DISTRICT COURT

THE STATE OF NEVADA,)
)
)
Plaintiff,)
)
)
vs.)
)
)
KIRSTIN BLAISE LOBATO,)
)
)
Defendant.)

CASE NO. C177394

DEPT. NO. II

Transcripts of
Proceedings

BEFORE THE HONORABLE VALORIE J. VEGA, DISTRICT COURT JUDGE

"ROUGH DRAFT"

JURY TRIAL - DAY 6
VOLUME VI

MONDAY, SEPTEMBER 18, 2006

COURT RECORDER:

LISA LIZOTTE
District Court

TRANSCRIPTION BY:

NW TRANSCRIPTS, LLC.
1027 S. RAINBOW BLVD., #148
LAS VEGAS, NEVADA 89145-6232
(702) 373-7457
nwtranscripts@msn.com

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

APPEARANCES:

FOR THE PLAINTIFF: BILL KEPHART
 Chief Deputy District Attorney
 200 South Third Street
 Las Vegas, Nevada 89101
 (702) 455-3482

SANDRA K. DIGIACOMO
 Deputy District Attorney
 200 South Third Street
 Las Vegas, Nevada 89101
 (702) 455-6450

FOR THE DEFENDANT: DAVID M. SCHIECK
 Special Public Defender
 333 South Third Street, 2nd Floor
 Las Vegas, Nevada 89155
 (702) 455-6265

SHARI L. GREENBERGER, ESQ.
 SARA ZALKIN, ESQ.
 506 Broadway
 San Francisco, California 94133

VI-2

1 LAS VEGAS, NEVADA MONDAY, SEPTEMBER 18, 2006
 2 **PROCEEDINGS**
 3 PROCEEDINGS BEGAN AT 10:45:28
 4 (Jurors are present)
 5 THE BAILIFF: All rise, please. Department 2 is now
 6 in session, the Honorable Valorie J. Vega presiding. Please be
 7 seated.
 8 THE COURT: Good morning. The record shall
 9 reflect that we're resuming trial in State versus Kirstin Lobato
 10 under case number C177394. The record shall further reflect
 11 that the defendant is present together with her three counsel.
 12 The two prosecuting attorneys are present, as are all of the
 13 ladies and gentlemen of the jury.
 14 Proceeding forward with the State's case in chief.
 15 The Court has a couple of things to advise the jury at this
 16 time. Tomorrow morning we will not be in session. We will
 17 start trial at 1:00 p.m. tomorrow. We will start at 10:30 a.m.
 18 on Wednesday, and that's as far as I know at this juncture.
 19 And I will keep you apprized on the future dates as I get more
 20 information about the upcoming calendars later in the week.
 21 The witness that we had on the stand on Friday,
 22 Dixie Tienken, is not available this morning. She will be
 23 returning to the courtroom this afternoon. So we are gonna
 24 take the next witness out of order in the State's case in chief,

VI-4

INDEX

NAME	DIRECT	CROSS	REDIRECT	RECROSS
<u>STATE'S WITNESSES</u>				
Stephen Pyszkowski	5	23	37/40/49	39/51
Michele Austria	55	74	89/104/108	103/111
Paul Brown	113	125	133	--
Jeremy Davis	144	168	170	170

* * * * *

EXHIBITS

DESCRIPTION:	ADMITTED
<u>STATE'S EXHIBITS</u>	
180-181	13
196-197	100
106-108	149
<u>DEFENDANT'S EXHIBITS</u>	
C	37
JJ	78

* * * * *

VI-3

PYSZKOWSKI - DIRECT

1 and the State may call forth that witness at this time.
 2 MR. KEPHART: Thank you, Your Honor.
 3 State would call Stephen Pyszkowski.
 4 THE COURT: The Bailiff is calling the hall.
 5 THE CLERK: Please come all the way forward.
 6 Remain standing, raise your right hand.
 7 **STEPHEN PSYZKOWSKI, STATE'S WITNESS, SWORN**
 8 THE CLERK: Thank you. Please be seated.
 9 State your name and spell it for the record, please.
 10 THE WITNESS: My name is Stephen Pyszkowski,
 11 S-T-E-P-H-E-N Pyszkowski, P-Y-S-Z-K-O-W-S-K-I.
 12 THE COURT: State may proceed.
 13 MR. KEPHART: Thank you, Your Honor.
 14 **DIRECT EXAMINATION**
 15 BY MR. KEPHART:
 16 Q Mr. Pyszkowski?
 17 A Pyszkowski.
 18 Q Pys --
 19 A Pys -- go ahead.
 20 Q Pyszkowski. Okay. I want to draw your attention
 21 back to the year 2001 and ask you if you were living here in
 22 Las Vegas then?
 23 A Yes, sir.
 24

VI-5

PYSZKOWSKI - DIRECT

/SZKOWSKI - DIRECT

1 Q Okay. Do you know an individual -- did you know an
 2 individual by the name of Kirstin Blaise Lobato?
 3 A Yes.
 4 Q Okay. Is she in the courtroom now, just so we know
 5 you're talking about?
 6 A Yes, sir.
 7 Q Can you point to her and describe what she's
 8 wearing for the record?
 9 A In the defendant's seat, maroon dress or blouse, I'm
 10 not sure. I can't really tell. Long blonde hair.
 11 MR. KEPHART: I'd ask the record reflect that -- I
 12 guess he said in the defendant's seat.
 13 BY MR. KEPHART:
 14 Q Where's she seated? There's three women sitting
 15 there.
 16 A The middle.
 17 Q The middle?
 18 MR. KEPHART: Let the record reflect that he has
 19 identified the defendant.
 20 THE COURT: The record shall so reflect.
 21 MR. KEPHART: Thank you.
 22 BY MR. KEPHART:
 23 Q How is it that you know the defendant?
 24 A I met her through a worker of mine, a co-worker.

1 A Yes.
 2 Q And you said Jeremy Davis?
 3 A Yes.
 4 Q Okay. Did the defendant ever work with you?
 5 A She rode around with me on occasion, yeah. When
 6 she moved in with me she offered to help me out --
 7 Q Okay.
 8 A -- and so she came out with me on the job --
 9 Q Okay.
 10 A -- maybe a week or two.
 11 Q And what was the area that you -- what kind of
 12 work did you have?
 13 A I service portable fire extinguishers. I had a
 14 franchise. And my territory was basically from Charleston on
 15 the north side to Tropicana on south side, Rainbow on the
 16 west, and roughly the interstate --
 17 Q Okay.
 18 A -- would be the east side.
 19 Q You said that she helped with you, she worked --
 20 she worked that area with you?
 21 A Yes.
 22 Q Okay. Did she ever drive your vehicle?
 23 A Once or twice, yeah.
 24 Q Was she familiar with that area, as far as you knew?

VI-6

VI-8

PYSZKOWSKI - DIRECT

PYSZKOWSKI - DIRECT

1 His name was Jeremy Davis.
 2 Q Okay. Do you remember when it was that you met
 3 her?
 4 A Not the exact date. It was early in 2001.
 5 Q Okay. Was there a period of time in 2001 that she
 6 actually moved in and lived with you?
 7 A Yes.
 8 Q And who were you living with at that time when she
 9 moved in with you?
 10 A Cathy Reininger. Cathy Reininger.
 11 Q Okay. Can you spell the last name?
 12 A I'm really not sure on the exact spelling. R-E-I-N-I-
 13 N-G-E-R, I believe.
 14 Q Okay. And do you remember when it was that she
 15 moved in with you?
 16 A The month of June I would say.
 17 Q June of 2001?
 18 A Yes.
 19 Q Okay. And how long did she live with you there?
 20 A Three or four weeks. It wasn't a continuous time.
 21 She was there, then she left, then she came back, then she
 22 left again.
 23 Q Okay. Now you said that you met her through
 24 somebody that you worked with, is that right?

1 A Yeah. We just drove on the main streets from
 2 business to business, so it was -- it was pretty easy driving,
 3 and I would be navigating. I would give her the address and it
 4 was just up the street to the right or something.
 5 Q Okay. So the streets that we're talking about from
 6 the east -- I mean -- sorry, from the south would be
 7 Tropicana --
 8 A Right.
 9 Q -- then the next street would be Flamingo --
 10 A Flamingo was a major street.
 11 Q -- Desert Inn?
 12 A Spring Mountain, Desert Inn, yeah.
 13 Q On down all the way to Charleston?
 14 A Charleston. All the -- up to Charleston and Sahara,
 15 right.
 16 Q Okay. And it was on the west side of the freeway?
 17 A Yes.
 18 Q Okay.
 19 A The -- it was marked by zip codes 89102 and 103.
 20 Those zip codes was my territory.
 21 Q Okay. But that was the west side in that area that
 22 you just described?
 23 A Mm-hmm.
 24 THE COURT: Is that a yes?

VI-7

VI-9

PYSZKOWSKI - DIRECT

THE WITNESS: Yes, sir -- yes, ma'am.

BY MR. KEPHART:

Q Okay. Now you indicated that she lived with you for -- during the month of June. Did there come a point in time where she moved out and moved in with somebody that you knew?

A Yes.

Q And who was that?

A His name was Doug, and I don't know his last name -- didn't know his last name.

Q Okay. Do you remember when it was that she moved out to move in with Doug?

A It was before the 4th of July, I remember that. We had talked about doing something on the 4th of July weekend and she had moved out sometime before the 4th of July. And then it -- a couple days before the 4th of July, around the 1st of so, she had come back with Doug and told us that she was moving back up to Pioche.

Q Okay. Now you actually gave a statement to the police in reference to this case on the 23rd of July, is that correct?

A Yes.

Q Okay. Do you remember anywhere in your statement that you told the police that she was moving back to

VI-10

SZKOWSKI - DIRECT

Q Okay. And while she lived with you, did she have any transportation?

A Yes, she had a personal car.

Q Okay.

MR. KEPHART: May I approach, Your Honor?

THE COURT: Yes.

BY MR. KEPHART:

Q Showing you what's been shown to defense as State's Proposed Exhibits 180 and 182. I'm sorry, let me make sure I have the numbers right. 181. 180 and 181. Can you -- have you seen that vehicle before?

A Yes, this looks like her car.

Q Okay.

A Yeah, the sunroof I remember, the pop up lights, yeah.

Q Okay. A Fiero, red Fiero?

A Small red Fiero.

Q Do you remember telling the police it was a red Fiero?

A Yeah, I do.

Q Okay. Does this -- do these photos accurately depict as you recall that vehicle to be when you seen it?

A Yes.

MR. KEPHART: Move to admit Exhibits 180 and 181.

VI-12

PYSZKOWSKI - DIRECT

Panaca or Pioche?

A Yes, I probably mentioned it to them.

Q Okay. Can you -- do you have that statement with you?

A Yes, I do. And what was the question?

Q The question is is where in this statement did you tell the police that she told you that she was moving back to Panaca or Pioche?

A In this, I don't know if I mentioned that. I may have -- this is from the part they recorded, and I talked with the police for about an hour.

Q Okay.

A They only recorded about 15 minutes of the end of the conversation, so --

Q Okay. So it's your testimony here today that during the whole conversation that you had with the police they only recorded a portion of it?

A Yes.

Q And in that portion is the part that you say that she said that she was moving back to Panaca?

A Yes.

Q Okay. Now there's a portion of your statement where you talk about she moved in with Doug, is that correct?

A Yes.

VI-11

PYSZKOWSKI - DIRECT

MS. GREENBERGER: No objection.

THE COURT: Granted.

(State's Exhibit Nos. 180 and 181, admitted)

BY MR. KEPHART:

Q See on the --

(Pause in the proceedings)

THE COURT: One of the improvements that we have in the regional justice center as compared to the old courthouse is that we have a lot more technological devices available to assist us in evidence presentation. But the down side of that is that sometimes there are little glitches. And I know the system was up and working earlier this morning, so I'm not sure why it's not at this time.

(Pause in the proceedings)

MR. KEPHART: Okay. That's better.

THE COURT: Okay.

BY MR. KEPHART:

Q You see that on the screen, Mr. Pyszkowski?

A Yes.

Q Okay. That's the vehicle that you've just identified as being the defendant's?

A Yes.

Q And that's the back of it --

MR. KEPHART: And that's 180, Your Honor.

VI-13

PYSZKOWSKI - DIRECT

SZKOWSKI - DIRECT

1 BY MR. KEPHART:
 2 Q And this is the front of it, is that correct?
 3 A Yes.
 4 Q Okay. You don't know where it's parked there, do
 5 you?
 6 A No. But I -- just when you put it up here I
 7 recognized the license plate.
 8 Q Okay. So the license plate is -- has some identifiable
 9 features to it --
 10 A Yeah.
 11 Q -- is that correct?
 12 A Yes.
 13 Q Let's see if we can tell what it says right here. That
 14 better?
 15 A Yes.
 16 Q Okay. So you recognize the car not only by the car
 17 itself but by the license plate?
 18 A Yes, because that -- we made light of it before.
 19 Q You made light of it?
 20 A Yeah, it's funny, "fornicated".
 21 Q Okay. Now you said that she had that car when she
 22 was living with you, is that correct?
 23 A Yes.
 24 Q Okay. Did she use the car while she was living with

1 moved in with Doug. Did you do anything to help her move?
 2 Did you take clothing or furniture or anything like that to help
 3 her move?
 4 A No. She didn't have much -- many personal items
 5 with her, so a suitcase would be the most she would have to
 6 move.
 7 Q Okay. So she could take pretty much anything that
 8 she needed in maybe one trip?
 9 A Yeah.
 10 Q Okay. And you said personal items in reference to a
 11 suitcase of clothing?
 12 A Yeah.
 13 Q Was there any furniture, television, or anything like
 14 that?
 15 A No.
 16 Q Okay. And she lived with you approximately three
 17 weeks?
 18 A Yes.
 19 Q During that time that you lived with her, or she lived
 20 with you, you lived with Cathy Reininger?
 21 A Yes.
 22 Q During that time were you aware that she was using
 23 methamphetamine?
 24 A Yes.

VI-14

VI-16

PYSZKOWSKI - DIRECT

PYSZKOWSKI - DIRECT

1 you?
 2 A Yeah.
 3 Q It ran?
 4 A Yes.
 5 Q You didn't do anything with -- help her fix anything
 6 on the car, did you?
 7 A A headlight one time is the only thing I --
 8 Q Okay. But for purposes of driving it around, you
 9 didn't do anything to help her --
 10 A No.
 11 Q -- with that? Okay. Now while she was living with
 12 you, do you recall any time where she actually left and went to
 13 Panaca?
 14 A There was times when she said she was going back
 15 home and she would be gone for the weekend or something
 16 like that, yes.
 17 Q So you knew her to travel between Las Vegas and
 18 Panaca pretty regularly?
 19 A Yes.
 20 Q Okay.
 21 A Yeah.
 22 Q And she used that car?
 23 A As far as I know, yes, mm-hmm.
 24 Q Okay. Now you indicated that she left and she

1 Q Matter of fact, did you do methamphetamine with
 2 her?
 3 A Yes.
 4 Q Matter of fact, right now you're a convicted felon for
 5 methamphetamine, is that right?
 6 A Yes.
 7 Q Okay. Here in Las Vegas?
 8 A Yes, sir.
 9 Q Okay. When you would do methamphetamine at
 10 your house and the defendant was present, do you recall
 11 where the methamphetamine would come from?
 12 A Not specifically, no. I mean different people would
 13 show up with it.
 14 Q Okay. Did she ever show up with
 15 methamphetamine?
 16 A She may have, I don't know for sure.
 17 Q Did you ever see her with any type of weapon --
 18 A Yes.
 19 Q -- specifically a knife?
 20 A Yes.
 21 Q Okay. Can you tell me if she did anything particular
 22 with that knife that you recall?
 23 A She would pull it out of her pocket on occasion --
 24 Q Okay.

VI-15

VI-17

PYSZKOWSKI - DIRECT

1 A -- to show people she had it.
 2 Q Okay. Did she ever do anything with it to give you
 3 an idea of what kind of knife it was?
 4 A It seemed -- it seems like yeah, she would pull it out
 5 and flip it open, flip the switchblade -- not a switchblade but a
 6 pop out blade open.
 7 Q Okay. And what kind of knife do you know that to
 8 be? Have you ever heard the term "butterfly knife"?
 9 A Yeah, I've seen those, yeah.
 10 Q Okay. And it's something that has to be flipped
 11 open?
 12 A Yeah. I guess the two handles fold around the
 13 blade or something like that, yeah.
 14 Q Okay. And you can open it with one hand though?
 15 A I guess, yeah. I've seen people do it, yeah.
 16 Q You've seen her do that?
 17 A I think so, yes. I -- I believe so.
 18 Q Did you see her do that while she was living at your
 19 house?
 20 A Yes. That's the only time I could've seen it.
 21 Q Okay. Now how well did you know Doug?
 22 A Not real well. He was a mutual contact. I met him
 23 through Cathy.
 24 Q Okay.

VI-18

SZKOWSKI - DIRECT

1 THE COURT: How's it marked?
 2 MR. KEPHART: 194, Your Honor.
 3 THE COURT: Thank you.
 4 BY MR. KEPHART:
 5 Q Do you have that, Mr. Pyszkowski?
 6 A Yes, I believe I do.
 7 Q Is that a copy of the statements that we gave you?
 8 A Yes, sir.
 9 Q Okay. And we talked to you last week, is that right?
 10 You came to our office?
 11 A Yes.
 12 Q Okay. And before -- at least before the last
 13 proceeding I spoke to you on the telephone, is that correct?
 14 A Yes.
 15 Q Okay. How many pages is the one that you have?
 16 A 18.
 17 Q Okay. And on the front page does it have a date of
 18 when you -- turn it to the front page.
 19 A There's two of them together. Okay.
 20 Q Okay. The front page down there, it says after the
 21 dark line, see at the bottom --
 22 A Mm-hmm.
 23 Q -- actually has a date of when you gave the
 24 statement and what --

VI-20

PYSZKOWSKI - DIRECT

1 A He was Cathy's friend.
 2 Q Did you know him well enough to where you actually
 3 had phone numbers for him?
 4 A Yes.
 5 Q And you were asked in a previous proceeding to
 6 actually tell us the phone numbers, do you recall that?
 7 A Yes.
 8 Q Okay. And you actually told the police the phone
 9 numbers as well?
 10 A Yes.
 11 Q Do you recall doing that?
 12 A Yes.
 13 Q And do you recall the numbers?
 14 A No.
 15 Q Okay.
 16 A I could refer back to them, but --
 17 Q I'd ask you to take a look at page 10 of your
 18 statement and ask you to read down, to yourself, about 5 lines
 19 down, and I'm gonna ask you if that refreshes your memory as
 20 to whether or not you knew the numbers of Doug -- Doug's
 21 cell phone and his home number?
 22 THE COURT: Do we have a copy we can mark for
 23 identification purposes?
 24 MR. KEPHART: Oh, okay, yeah.

VI-19

PYSZKOWSKI - DIRECT

1 A Mm-hmm.
 2 Q -- detectives were present, is that correct?
 3 A Yes.
 4 Q Okay. Has your name on it up at the top with it
 5 underlined?
 6 A Yes.
 7 Q Do you see that?
 8 A Right here?
 9 Q Yeah.
 10 A Yes.
 11 Q Okay. If you'd turn to page 10. Do you have that?
 12 A Yes.
 13 Q About 1, 2, 3, 4, 5 lines down, you actually -- you
 14 give an answer. There's an A before it --
 15 A Mm-hmm.
 16 Q -- and then you say -- do you remember the
 17 question, can you tell me what they were?
 18 A Mm-hmm.
 19 Q And then you said yeah. And then you read off
 20 Doug's cell phone number and then the home phone number,
 21 is that correct?
 22 A Yes.
 23 Q Does that refresh your memory as to your
 24 conversation, at least in that regard, to the police?

VI-21

PYSZKOWSKI - DIRECT

1 A Yes.
 2 Q Okay. Can you tell me what the phone numbers
 3 are, his cell number?
 4 A Okay. It's 275-9271.
 5 Q And his home number?
 6 A 436-5847.
 7 Q Okay. Now you're just reading that from the
 8 statement, is that correct?
 9 A Yes, sir.
 10 Q You don't have any independent recollection of
 11 those phone numbers, do you?
 12 A I can't, no. I have no idea.
 13 Q Okay. When is the last time that you actually spoke
 14 to Doug?
 15 A The last time was probably July 1st or July 2nd of
 16 2001.
 17 Q Okay. Back in 2001?
 18 A Yes.
 19 Q Okay. Would you characterize Doug as a friend of
 20 yours?
 21 A No, an acquaintance.
 22 Q Did you ever do methamphetamine with him and the
 23 defendant together?
 24 A Probably, yes.

VI-22

'SZKOWSKI - CROSS

1 Q What about in 2001 when --
 2 A 2001, I saw her when she was leaving with Doug to
 3 -- they said they were -- Doug was helping her move back to
 4 Pioche -- Panaca to go back with her dad. She didn't want to
 5 stay in Vegas anymore.
 6 Q Do you recall that time period being early July, July
 7 1st or July 2nd --
 8 A Yeah.
 9 Q -- 2001?
 10 A Yeah. Because earlier in the month leading up to
 11 the 4th of July, we had made plans for the 4th of July, and we
 12 were hoping Blaise would be there for that and --
 13 Q So the July 4th holiday of 2001 --
 14 A Yes.
 15 Q -- is a point of reference?
 16 A Yeah. And we even talked with her as she was
 17 leaving that we wanted her to stay 'till then, but she said no,
 18 she wanted to go home, so we ended up cancelling out plans,
 19 I think, for that weekend for the 4th of July.
 20 Q During the time period that she was living with you,
 21 can you explain to us what type of work you were doing?
 22 A Servicing portable fire extinguishers, annual service.
 23 Q What size were the extinguishers?
 24 A Anywhere from 5 pound to 10 pound. They were

VI-24

PYSZKOWSKI - CROSS

1 Q Well --
 2 A Yes.
 3 Q -- do you remember?
 4 A Well, yes.
 5 MR. KEPHART: Court's indulgence, Your Honor.
 6 THE COURT: Yes.
 7 MR. KEPHART: Judge, here's the statement.
 8 THE COURT: Thank you.
 9 (Off-record colloquy)
 10 MR. KEPHART: I'll pass the witness, Your Honor.
 11 Thank you, Mr. Pyszkowski.
 12 THE COURT: Cross-examination.
 13 MS. GREENBERGER: Thank you.
 14 **CROSS-EXAMINATION**
 15 BY MS. GREENBERGER:
 16 Q Good morning, Mr. Pyszkowski.
 17 A Morning.
 18 Q My client, Blaise Lobato, lived with you during what
 19 time period?
 20 A The month of June 2001. Probably most of the
 21 month.
 22 Q Do you remember the last time you saw her,
 23 approximately?
 24 A 2002, I saw her one time.

VI-23

PYSZKOWSKI - CROSS

1 the small extinguishers, the ones you see everywhere in
 2 hallways, the ones required by law.
 3 Q Did Blaise assist you on an infrequent basis?
 4 A Yeah. I think when she was staying with me she
 5 offered to help me out to help pay for -- or cover her share of
 6 the living expenses. And her offering to help was -- I accepted
 7 it and took her out. And she also wanted to learn the
 8 business, the trade, and you know, see if it was something
 9 that she wanted to do for work, and so I showed her.
 10 Q So is it fair to say she helped you a few times?
 11 A Yeah.
 12 Q During those times that you worked together you
 13 were familiar with the territory that you covered?
 14 A Right. I've been doing it for years, yes.
 15 Q You actually were the one that was navigating
 16 around Las Vegas, is that correct?
 17 A Yeah. I was driving most of the time too. If she
 18 drove then I would tell her, you know, it's 3 or 4 blocks up on
 19 the right hand side, something like that, pretty simple
 20 directions. And they're businesses. I was servicing
 21 extinguishers at businesses, so it was just from business to
 22 business. They would have a big sign up too usually, you
 23 know, to make it convenient. So it wasn't hard driving. The
 24 traffic is the worst part.

VI-25

PYSZKOWSKI - CROSS

1 Q Was -- can you quantify the mileage within your
 2 territory in terms of is it -- was it a 20 mile span or --
 3 A Well, it's probably -- it's not more than 10 miles
 4 square. It's pretty much of a square. And I would say
 5 between 5 and 10 miles at most, yeah.
 6 Q The police came to interview you in July of 2001, is
 7 that correct?
 8 A Yes.
 9 Q You mentioned on direct examination that you spoke
 10 with them initially before they recorded you, is that accurate?
 11 A Yes.
 12 Q How long did that conversation occur when you
 13 spoke to the police without the recording?
 14 A We talked totally for over an hour, I'm pretty sure,
 15 well over an hour, hour, 10, 20 minutes probably.
 16 Q Did it concern you that that portion was not
 17 recorded for an hour?
 18 A Not at the time. They just questioned me, took
 19 down some notes and everything, and then asked if it would
 20 be all right to record, you know, some more questions, or to
 21 basically to go back over. They were condensing the whole
 22 interview down to a few questions that they wanted recorded
 23 on tape, I think.
 24 Q The police were the ones asking the questions?

VI-26

'SZKOWSKI - CROSS

1 BY MS. GREENBERGER:
 2 Q You relayed information to the police when they
 3 came to interview you in July, is that correct?
 4 A They didn't interview me -- oh, in July, yes. Right.
 5 Q The information that you relayed to the police was
 6 derived, came from information you learned during the time
 7 period of June 2001, is that correct?
 8 A They were asking me about --
 9 MR. KEPHART: Judge --
 10 THE COURT: That calls for a yes or no.
 11 THE WITNESS: Okay. Please ask the question
 12 again. I'm sorry.
 13 BY MS. GREENBERGER:
 14 Q Certainly. The information that you discussed with
 15 the police --
 16 A Mm-hmm.
 17 Q -- was information that came from June 2001, is that
 18 correct?
 19 A Yes.
 20 Q Were the police suggesting to you that you might be
 21 mistaken on your time period?
 22 MR. KEPHART: Your Honor, I'm gonna object as to
 23 hearsay.
 24 THE COURT: Sustained.

VI-28

PYSZKOWSKI - CROSS

1 A Yes.
 2 Q During the recorded portion of the statement when
 3 the police interviewed you, and your prior testimony, you told
 4 them their timeline was off, is that correct?
 5 A Yes, I mentioned that to them.
 6 Q What did you mean by that?
 7 A Well, they were asking me questions about -- about
 8 Blaise -- Blaise staying over at the house, and they had
 9 mentioned something that had happened on a certain date.
 10 And I said well, you know, Blaise was living with me the month
 11 before that happened. And I had mentioned that those two
 12 dates didn't line up, that --
 13 Q The police came to talk to you about an incident that
 14 happened July 8, 2001, the murder of Duran Bailey, is that
 15 correct?
 16 A Yes.
 17 Q You told the police you had heard about an attack
 18 on Blaise the month before, correct?
 19 MR. KEPHART: Your Honor, I'm gonna object on
 20 hearsay grounds.
 21 THE COURT: Counsel approach.
 22 (Off-record bench conference from 11:13:00-11:15:06 a.m.)
 23 THE COURT: The objection is sustained.
 24 ///

VI-27

PYSZKOWSKI - CROSS

1 BY MS. GREENBERGER:
 2 Q You've had an opportunity to review the statement
 3 you made to the police, is that correct?
 4 A Yes.
 5 Q Are there portions missing from that statement that
 6 you told the police?
 7 A Yes. I don't believe everything we talked about is in
 8 here.
 9 Q Part of what you're basing your recollection on the
 10 time period is from a tow receipt when my client, Blaise's car
 11 was towed, is that correct?
 12 A Yes.
 13 Q Do you remember what date the car was towed?
 14 A Yeah, I believe it was June 6th.
 15 Q Would it refresh your recollection to look at your
 16 prior statement?
 17 A Yes.
 18 Q If it would, you may. I would direct you to page 3
 19 at the bottom.
 20 MS. GREENBERGER: May I approach, Your Honor?
 21 THE COURT: Yes.
 22 THE WITNESS: Yeah, it's 6/6/01, yes.
 23 BY MS. GREENBERGER:
 24 Q So on June 6, 2001, can you describe what

VI-29

PYSZKOWSKI - CROSS

/SZKOWSKI - CROSS

1 occurred?
 2 A I was heading off to work and as I'm leaving my
 3 street, about a half a block away, I make a turn. Right there
 4 there's an apartment complex across the street from that
 5 intersection, and there was a tow truck pulling out and it had
 6 Blaise's car hooked on the back of it. I was able to stop the
 7 tow truck operator and told him that it was a car that belonged
 8 to a roommate or a person staying at my house, and I was
 9 gonna try to get him not to tow the car.
 10 Q Were you successful in that endeavor?
 11 A Yes. Yes. We had to go back and get Blaise from
 12 the house, come back and prove ownership, and we also had
 13 to pay for it. We still had to pay for it being towed.
 14 Q So during the time period that Blaise was living at
 15 your house, her car was towed?
 16 A Yes.
 17 Q And from the time period that you left on July 4th,
 18 you recall that because you had plans on July 4th?
 19 A Mm-hmm.
 20 Q She was gonna leave --
 21 A Before that.
 22 Q -- and she left before that?
 23 A Right. Yes.
 24 Q Did this vehicle have mechanical problems, if you

1 explain that?
 2 A Well, Blaise and I --
 3 MR. KEPHART: Your Honor, I'm gonna object as to
 4 his speculation as to whether or not that was a defense
 5 mechanism.
 6 THE COURT: Overruled.
 7 BY MS. GREENBERGER:
 8 Q You can answer.
 9 A That was my opinion of what she was doing. I didn't
 10 take her serious, and it was never directed towards me. And it
 11 was -- it was never a big deal made out of it, and the knife
 12 went back in her pocket right away. And it was -- it was a
 13 show basically. I had had conversations with Blaise earlier.
 14 MR. KEPHART: Your Honor, I'm gonna object to any
 15 conversations that she had as hearsay.
 16 THE COURT: Sustained.
 17 BY MS. GREENBERGER:
 18 Q During the time period that Blaise lived with you, did
 19 she share various stories with you?
 20 A Yes.
 21 Q On a number of occasions?
 22 A Yes.
 23 Q Did you have a personal opinion that those stories
 24 were exaggerated?

VI-30

VI-32

PYSZKOWSKI - CROSS

PYSZKOWSKI - CROSS

1 know?
 2 A The only ones I know of were the headlights. One
 3 of the headlights wouldn't stay open. They had pop up
 4 headlights.
 5 Q Did you previously tell the police that a friend of
 6 hers, Mitch, may have fixed the car for maintenance problems?
 7 A Yes.
 8 Q You don't know the specifics of what they were?
 9 A Right. Right. I'm not a mechanic, right.
 10 Q You mentioned that Blaise carried a knife around?
 11 A Yes.
 12 Q You testified that she would pull it out of her pocket
 13 on occasion and show people. Can you explain that a little bit?
 14 A She would just flip it out and say don't mess with
 15 me or I'll cut you, or something like that, and put it away. It
 16 was --
 17 (CD malfunction from 11:20:18 to 11:20:32)
 18 A -- putting up like a wall, acting tough, more so than
 19 she -- she was actually -- I don't believe she was very scary,
 20 she was just trying to act that way.
 21 Q Did this happen on a common occurrence during the
 22 time period she lived with you?
 23 A Yes, I would say two, three times, at least.
 24 Q You state it was a defense mechanism. Can you

1 MR. KEPHART: Your Honor, I'm gonna object. He'd
 2 asked to his opinion and also speculation. How could he make
 3 that determination, Your Honor, based on what, just -- I think
 4 it's certainly speculating as to whether or not any of the stories
 5 are correct or not.
 6 MS. GREENBERGER: I'll rephrase it.
 7 THE COURT: Withdrawn.
 8 BY MS. GREENBERGER:
 9 Q On the number of occasions my client spoke --
 10 MR. KEPHART: Your Honor, I'm gonna object as to
 11 foundation as well. She's talking about on a number of
 12 occasions. I mean what are we talking about? He spent three
 13 weeks with her.
 14 THE COURT: Sustained.
 15 BY MS. GREENBERGER:
 16 Q Based on what you know of my client's character,
 17 did she exaggerate?
 18 A I believe so, yes.
 19 Q Can you explain?
 20 A She had talked about her past, going all the way
 21 back --
 22 MR. KEPHART: Your Honor, I'm gonna object to
 23 hearsay.
 24 THE COURT: Sustained.

VI-31

VI-33

PYSZKOWSKI - CROSS

1 BY MS. GREENBERGER:
 2 Q Based on what you observed was true, my client
 3 would tell tall tales?
 4 A Yes.
 5 Q During the time period she lived with you, do you
 6 have any personal knowledge of an attack that occurred on
 7 her on June 2001?
 8 A No.
 9 Q When you were interviewed by the police, you told
 10 the police you heard about an attack in June 2001, correct?
 11 MR. KEPHART: Your Honor, I'm gonna object as to
 12 the characterization heard, that's hearsay.
 13 THE COURT: Sustained.
 14 MR. KEPHART: And I'm gonna ask that that be
 15 stricken, that question.
 16 THE COURT: Motion granted, so stricken.
 17 BY MS. GREENBERGER:
 18 Q Why did you tell the police their timeline was off?
 19 MR. KEPHART: Your Honor, I'm gonna object as to
 20 -- can we approach?
 21 THE COURT: Yes, counsel may approach. Off-
 22 record--
 23 (Off-record bench conference from 11:24:42-11:25:50 a.m.)
 24 ///

VI-34

'SZKOWSKI - CROSS

1 BY MS. GREENBERGER:
 2 Q Can you indicate for the ladies and gentlemen of the
 3 jury -- and you can actually touch the screen, it will put an
 4 arrow on it -- where the date of the request on the tow receipt
 5 is?
 6 MR. KEPHART: Your Honor, objection, foundation.
 7 THE COURT: The record shall reflect that the
 8 question came from Tai Anderson in the number 2 chair. Your
 9 objection as to --
 10 MR. KEPHART: Foundation. Could I see the tow
 11 receipt? I don't think it's been admitted.
 12 THE COURT: You may see it. I don't believe it has
 13 been.
 14 MR. KEPHART: Okay. Thank you.
 15 MS. GREENBERGER: Your Honor --
 16 THE COURT: It's been marked. I can see that
 17 there's an evidence sticker on it but I don't know how it's been
 18 marked.
 19 MS. GREENBERGER: That's correct. It's been
 20 previously marked as Defense Exhibit C.
 21 THE COURT: C as in cat?
 22 MS. GREENBERGER: C as in cat.
 23 THE COURT: Okay.
 24 MS. GREENBERGER: And Mr. Pyszkowski has

VI-36

PYSZKOWSKI - CROSS

1 BY MS. GREENBERGER:
 2 Q You mentioned that in June -- June 6, 2001, you
 3 stopped the tow truck driver when he was towing Blaise's car.
 4 Did you actually bring a copy of that receipt with you at a prior
 5 proceeding?
 6 A Yes.
 7 MS. GREENBERGER: May I approach, Your Honor?
 8 THE COURT: Yes.
 9 BY MS. GREENBERGER:
 10 Q Does this appear to be the receipt you were
 11 provided with that day?
 12 A Yes, it does.
 13 Q Can you tell the ladies and gentlemen of the jury
 14 what day it's dated?
 15 A 6/6/06 -- '01, I'm sorry. 9:00 a.m. -- 9:20 a.m.
 16 JUROR TAI ANDERSON: I'm sorry, I can't -- I'm
 17 having trouble hearing him. Number 2.
 18 THE COURT: Okay. He said June 6th --
 19 THE WITNESS: Yeah.
 20 THE COURT: -- 2001. And would you repeat what
 21 else you said, please?
 22 THE WITNESS: It was 9:20 a.m. on there.
 23 MR. KEPHART: Yeah.
 24 ///

VI-35

PYSZKOWSKI - REDIRECT

1 testified this is the receipt he recognizes as his own.
 2 May I move its admission into evidence?
 3 MR. KEPHART: No objection.
 4 THE COURT: Motion granted. It's admitted.
 5 (Defendant's Exhibit C, admitted)
 6 BY MS. GREENBERGER:
 7 Q Can you now please point to the ladies and
 8 gentlemen of the jury where on the receipt it indicates this tow
 9 request was made?
 10 A In the upper lefthand corner.
 11 Q Can you actually -- okay. How long do you recall
 12 Blaise had been living with you at the time that the tow receipt
 13 came into your possession?
 14 A A week. 5 days, 2 weeks, something like that.
 15 MS. GREENBERGER: I don't believe I have anything
 16 further.
 17 THE COURT: Redirect.
 18 **REDIRECT EXAMINATION**
 19 BY MR. KEPHART:
 20 Q Mr. Pyszkowski, where you were living, you were
 21 living at this time of June 6th, you were living in a house, is
 22 that correct?
 23 A Yes.
 24 Q And you testified that you saw that her car was on

VI-37

PYSZKOWSKI - REDIREC

1 the tow hook. Do you have knowledge of where the car was
 2 picked up from when it was towed?
 3 A It was in an apartment complex and it was just
 4 coming out of the parking lot.
 5 Q It was down the street from where you were?
 6 A Yes.
 7 Q She wasn't living in the apartment complex, was
 8 she?
 9 A No.
 10 Q She was living with you?
 11 A Yes.
 12 Q And is it an adjoining parking lot to your house?
 13 A My street would have continued straight into their
 14 parking lot.
 15 Q Okay. Her car was parked in an apartment complex
 16 where she wasn't living?
 17 A Yes.
 18 Q And it was towed away?
 19 A Yes.
 20 Q Now you said that she had pulled this knife out on
 21 occasion while she was living with you. Do you remember
 22 using the terminology "fast draw"?
 23 A Yeah.
 24 Q Okay.

VI-38

PYSZKOWSKI - FURTHER REDIRECT

1 A Somewhat, yes.
 2 Q When -- or prior to the tow incident, do you know
 3 why Blaise was keeping her car parked in the parking lot?
 4 MR. KEPHART: Your Honor, I'm gonna object as to
 5 speculation, and it calls for a hearsay answer as well.
 6 THE COURT: Overruled. The question calls for a
 7 yes or no answer and you may answer it as such.
 8 THE WITNESS: Yes.
 9 BY MS. GREENBERGER:
 10 Q Was she afraid someone might recognize her
 11 vehicle?
 12 A Yes.
 13 Q What time period was that?
 14 A Before June 6th.
 15 Q Before June 6, 2001?
 16 A Yes.
 17 MS. GREENBERGER: Court's indulgence.
 18 THE COURT: Yes.
 19 MS. GREENBERGER: Nothing further.
 20 THE COURT: Redirect.
 21 MR. KEPHART: Thank you, Your Honor.
 22 **FURTHER REDIRECT EXAMINATION**
 23 BY MR. KEPHART:
 24 Q Okay. Steve, the defendant was dating an individual

VI-40

PYSZKOWSKI - RECROSS

1 A Yes.
 2 Q She pulled it out real quick and tried to open it real
 3 quick, didn't she?
 4 A Yeah.
 5 Q Okay.
 6 A Showing off like, yeah.
 7 Q One handed?
 8 A Yeah.
 9 Q Obviously she knew how to use it, meaning open it
 10 up?
 11 A That part, yeah.
 12 Q Okay.
 13 MR. KEPHART: Court's indulgence, Your Honor.
 14 THE COURT: Yes.
 15 MR. KEPHART: I have nothing further.
 16 Thank you, Mr. Pyszowski.
 17 THE COURT: Recross.
 18 **RECROSS EXAMINATION**
 19 BY MS. GREENBERGER:
 20 Q During the time period you knew Blaise, you had the
 21 impression she was a show off?
 22 A I don't know really a show off. Maybe somewhat,
 23 yeah. That's not a good description I don't believe, no.
 24 Q Crying for attention?

VI-39

PYSZKOWSKI - FURTHER REDIRECT

1 by the name of Jeremy Davis, is that right?
 2 A When I first met her, right?
 3 Q Okay. That's how you met her?
 4 A Right.
 5 Q And you know Jeremy Davis?
 6 A He worked for me.
 7 Q Okay. And prior to June the 6th of 2001, her and
 8 Jeremy broke up?
 9 A Yes.
 10 Q Okay. And when the defense asked you whether or
 11 not she was worried about her car being recognized, she didn't
 12 want Jeremy to find it, did she?
 13 A That's what I heard, yes.
 14 Q Matter of fact, you went -- went with her and she
 15 picked it up from Jeremy's, didn't you?
 16 A Yes.
 17 Q She drove it to this parking lot?
 18 A I drove her to pick up the car and she drove it back,
 19 yeah.
 20 Q Something was wrong with the car?
 21 A One headlight didn't work, it was at nighttime, and
 22 we had to prop that one headlight open. And the car had
 23 been trashed on the inside.
 24 Q On the inside of the car?

VI-41

PYSZKOWSKI - FURTHER REE JT

1 A Right.
 2 Q And you don't know if Jeremy did this or not, do
 3 you?
 4 A No.
 5 Q You don't know if something happened by the
 6 defendant's own hand, do you?
 7 A Right. I just --
 8 Q And then the inside of her car is trashed you're
 9 saying, dirty?
 10 A Yeah.
 11 Q Stuff was put in there? Did she clean -- oh, did you
 12 say yes?
 13 A Yes.
 14 Q Okay. Did she clean it out?
 15 A I didn't witness -- I don't know, I mean --
 16 Q Did she drive it again?
 17 A I believe she was still using her car, yeah.
 18 Q Do you know an individual by the name of Shoddy
 19 Gallaher [phonetic]?
 20 A Yes.
 21 Q Was she ever with you in the presence of the
 22 defendant?
 23 A Yes.
 24 Q So is it safe to say that the defendant has met

VI-42

1 You may recall that I kind of explained to you the
 2 way in which a witness is called to the stand. And what the --
 3 the first lawyer that calls a witness to the stand will ask
 4 questions, that's called the direct examination of the witness.
 5 And after the direct examination the witness is passed to the
 6 opposing counsel and the opposing counsel then does the
 7 cross-examination. And then it passes back to the original
 8 attorney who does redirect examination, and back to opposing
 9 counsel who does recross, and back and forth and back and
 10 forth until all of the questions have been exhausted by the
 11 attorneys.
 12 It is at that point where the jury may ask written
 13 questions to any of the witnesses, only after the attorneys
 14 have exhausted all of their questions because the questioning
 15 is the primary responsibility of the lawyers. However, if the
 16 lawyers have completed all of their examination of a witness
 17 and you still have any lingering questions that remain
 18 unanswered at that time, you may ask them. You need to put
 19 it in writing. You need to put your badge number and your
 20 name -- and sign your name at the bottom of your question,
 21 and then it gets turned over to the bailiff.
 22 The Court also advised you that if you want to ask a
 23 question before I let the witness get down from the stand and
 24 out the door, it's best to raise your hand to draw our attention

VI-44

1 Shoddy Gallaher?
 2 A Yes.
 3 Q Do you know whether or not Shoddy Gallaher has
 4 also used that vehicle?
 5 A I believe that she did use it, yeah.
 6 MR. KEPHART: Pass the witness, Your Honor.
 7 MS. GREENBERGER: Nothing further.
 8 THE COURT: You may step down.
 9 JUROR: I have a question, Your Honor.
 10 THE COURT: Okay. Please remain seated.
 11 Counsel approach.
 12 (Off-record bench conference from 11:36:13-11:45:14 a.m.)
 13 THE COURT: I have four slips out from four
 14 different jurors. The first one reads as follows.
 15 "Your Honor, I'm confused as to when we are able
 16 to pose a question to the witness. Could you clarify? Please
 17 excuse my spelling." The Court will clarify.
 18 At the conclusion of the selection of the jury the
 19 Court had some opening remarks for the ladies and gentlemen
 20 of the jury, and that included the information about when and
 21 how questions can be posed. I know Ms. Anderson had some
 22 confusion about that earlier and now we have another juror
 23 that's requesting some clarification, so I'm gonna go back over
 24 that with the ladies and gentlemen of the jury at this time.

VI-43

1 to the fact that you are gonna do a question, and then you can
 2 write it out and turn it over to the bailiff.
 3 The Court also instructed you that questions cannot
 4 be posed to the Court and questions cannot be posed to the
 5 ladies and gentlemen who are seated at either the plaintiff or
 6 the defendant's table. The questions can only be posed to the
 7 witness who is on the stand, and should be written out as if
 8 you are directly asking that question to the witness.
 9 After the bailiff has picked up your question, the
 10 question will be turned over to the Court and the Court and
 11 counsel will review it at sidebar to determine whether it would
 12 result in an unfair trial or if it's legally proper or improper, and
 13 no inference should be drawn if the Court does not allow a
 14 particular question. If the Court determines that the question
 15 may be properly asked, the Court will ask it. And no emphasis
 16 should be placed on an answer to the question merely because
 17 the question came from the juror and from the jury box area
 18 rather than from one of the lawyers out in the audience.
 19 After the Court reads the question from the juror
 20 and the witness answers the question then counsel for each
 21 side will be given the opportunity to pose followup questions if
 22 they believe those to be appropriate.
 23 That particular question will be marked as the
 24 Court's next in number.

VI-45

1 THE CLERK: Number 8.
 2 THE COURT: The next question is a question that's
 3 directed to Court and counsel rather than to the witness. But
 4 it's not objectionable, so the Court will accommodate it.
 5 And the question is, "Can I see the picture of the
 6 front of the Fiero and zoom in on the front license plate?" That
 7 will be marked as Court's number 9. And Mr. Kephart will
 8 accommodate that at this time.
 9 MR. KEPHART: Judge, for the record, the rear of
 10 the Fiero, this one here, is Exhibit 180, and this is 181.
 11 THE COURT: 181 is the front.
 12 MS. DIGIACOMO: It might be better to pass it.
 13 MR. KEPHART: Maybe I'll just pass it around, Judge,
 14 if that would be better.
 15 THE COURT: You want to publish it to the ladies
 16 and gentlemen of the jury? That'd be fine.
 17 MR. KEPHART: I'll give them both, that way --
 18 THE COURT: 180 and 181 may be published to the
 19 jury.
 20 MR. KEPHART: Thank you.
 21 (Pause in the proceedings)
 22 THE COURT: Okay. The jury is indicating that the
 23 two exhibits have been reviewed by all of them and they're
 24 now returned to Mr. Kephart who's returning them to the clerk.

VI-46

1 vehicle. I guess one of the tenants or maintenance workers or
 2 someone there noticed that the car hadn't been moved for
 3 several days, and they were short on parking there, so they
 4 probably watched it for a couple days, probably put a note on
 5 it, and then towed it for that reason, being an abandoned
 6 vehicle or an unused vehicle. And it probably wasn't
 7 registered with the apartment complex as one of the residents.
 8 The tow truck -- that's what the tow truck driver told us that
 9 that was the reason. The apartment management called it in.
 10 THE COURT: "Why did you stop it from being
 11 towed?"
 12 THE WITNESS: I've had my vehicle towed before
 13 and it's a hassle to go across town to pick it up and pay the
 14 tow charge, the storage charge. For convenience, basically, so
 15 we didn't have to go across town to pick up her vehicle. And I
 16 was gonna try to see if there was a reduced tow charge for
 17 not having to take it across town, so I was able to stop the
 18 tow truck driver. I may have pulled out in front of him or
 19 something and talked to him and then he pulled over to the
 20 side of the street and explained that if we had the owner there
 21 to sign for the car and we payed for the tow charge we could
 22 get it there and it would save us the storage fees.
 23 THE COURT: That juror's note will be marked as
 24 Court's number 11.

VI-48

1 The next paper has two questions on it. The Court's
 2 gonna ask that if you do wish to ask multiple questions would
 3 you please put each question on a separate piece of paper so
 4 that I can annotate it for the record properly. That would be
 5 helpful. Thank you.
 6 The first question is, "Does Stephen know what type
 7 of 'trash', quote unquote, was in the quote unquote 'trashed'
 8 car?"
 9 THE WITNESS: I can't say for sure. I mean there
 10 was like garbage and maybe beer.
 11 THE COURT: Was it feces or urine?
 12 THE WITNESS: It could've been. I wasn't around
 13 the car and examining it close enough to know exactly what it
 14 was.
 15 THE COURT: That note will be marked as Court's
 16 number 10.
 17 The next note has four questions. The first one is,
 18 "Did she move in with Doug or move to Pioche?"
 19 THE WITNESS: Well, she went from our house and
 20 stayed at Doug's, and then Doug helped her move back up to
 21 Pioche Panaca.
 22 THE COURT: "Why was car towed?"
 23 THE WITNESS: It was -- in the apartment complex
 24 it was towed because it was as -- noticed as an abandoned

VI-47

PYSZKOWSKI - FURTHER REDIRECT
 1 Followup questions by the State?
 2 MR. KEPHART: I don't have any, Judge.
 3 THE COURT: Followup questions by the defense?
 4 MS. GREENBERGER: Thank you. Just a couple.
 5 JUROR TAI ANDERSON: I'm sorry, can I ask one
 6 more question in a followup to those? Is that possible.
 7 THE COURT: The record shall reflect that that's --
 8 you need to raise your hand to tell us that you wish to ask a
 9 question and then we can do that. The bailiff will be
 10 approaching you.
 11 Counsel may approach.
 12 (Off-record bench conference from
 13 11:58:15 a.m.-12:01:09 p.m.)
 14 THE COURT: Court's number 12. And the Court
 15 reminds the ladies and gentlemen of the jury that you cannot
 16 direct questions to the Court nor to the ladies and gentlemen
 17 at the tables. The questions can only be posed to the witness
 18 and need to be framed as if the question is being asked
 19 directly of the witness that's on the stand.
 20 Followup by the State?
 21 **FURTHER REDIRECT EXAMINATION**
 22 BY MR. KEPHART:
 23 Q Mr. Pyszkowski, when -- you indicated that you went
 24 with her to pick up her car from Jeremy's --

VI-49

PYSZKOWSKI - FURTHER RECROSS

1 A Right.
 2 Q -- is that right? And she drove her car from
 3 Jeremy's?
 4 A Yeah.
 5 Q She drove it to the parking lot of the apartment
 6 complex down the street?
 7 A Yes.
 8 Q And sometime later you saw that it was being
 9 towed?
 10 A Yeah, about a week.
 11 Q When they unhooked it from the tow truck did she
 12 drive it to your house then?
 13 A Yes.
 14 Q Okay. So it ran?
 15 A Yes.
 16 Q Okay. It was just not parked, as far as you know
 17 from what you were told, in a proper place, is that right?
 18 A Yes.
 19 Q Okay. It certainly wasn't parked at your house and
 20 she wasn't registered as living in that apartment complex, was
 21 she?
 22 A No.
 23 Q Okay.
 24 (Off-record colloquy)

VI-50

PYSZKOWSKI - FURTHER RECROSS

1 A Yes.
 2 Q Subsequent to that, she headed back to Panaca, and
 3 that would've been on July 2nd, is that correct?
 4 A Yes.
 5 Q You remember that clearly as you sit here today
 6 because you never followed through on your plans for July 4th,
 7 that's why it sticks out clearly in your mind, is that correct?
 8 A Yes.
 9 Q And that was the last time you spoke to my client in
 10 2001?
 11 A Yes.
 12 Q In addition to feces and urine in the vehicle, could
 13 there have been vomit as well?
 14 MR. KEPHART: Your Honor, I'm gonna object. He's
 15 testified he didn't know what was in that car. He didn't look in
 16 the car, he didn't -- he couldn't testify what it was. He wasn't
 17 around the car. And when her pose her question in addition to
 18 feces and urine could there be vomit as well, I think that's
 19 misstating the evidence.
 20 MS. GREENBERGER: I'll rephrase --
 21 THE COURT: There's a lack of foundation for this
 22 question as well, so the Court sustains the objection.
 23 BY MS. GREENBERGER:
 24 Q Do you know if there was vomit in the vehicle? Did

VI-52

PYSZKOWSKI - FURTHER RECROSS

1 BY MR. KEPHART:
 2 Q After that, after she -- it was unhooked from the tow
 3 hook and she drove it to your house, do you recall her
 4 continuing to drive the vehicle after that point?
 5 A Yes.
 6 Q And as a matter of fact, you already testified that
 7 you believe, even after that point, Ms. Gallaher may have
 8 driven the car?
 9 A Yes.
 10 MR. KEPHART: Nothing further.
 11 THE COURT: Followup questions by the defense?
 12 MS. GREENBERGER: Thank you, Judge.
 13 **FURTHER RECROSS EXAMINATION**
 14 BY MS. GREENBERGER:
 15 Q Is it fair to say that she drove the vehicle while she
 16 lived with you infrequently?
 17 A Infrequently, yes.
 18 Q Infrequently?
 19 A Yes.
 20 Q To clarify the timeline of when Blaise lived with you
 21 and moved to Doug's, is it true she lived with you from late
 22 May into the third week of June? Is that about accurate?
 23 A Yes.
 24 Q Thereafter, she moved in with Doug Twining?

VI-51

PYSZKOWSKI - FURTHER RECROSS

1 you ever smell it?
 2 A It smelled trashy, nasty. I can't really describe it
 3 exactly. And most of what I know was -- I was told from other
 4 people.
 5 Q By stopping the tow truck driver, did you save
 6 money? Did you get a reduced charge?
 7 A It saved at least \$25, plus the time of going across
 8 town, waiting in line, and paying for it and then driving it back.
 9 So -- and the time to me at that time was a lot more valuable
 10 than the money, the actual money savings. But the
 11 convenience was the big savings.
 12 MS. GREENBERGER: Nothing further.
 13 MR. KEPHART: We have nothing further, Your
 14 Honor.
 15 THE COURT: You may step down from the stand.
 16 THE WITNESS: Okay. Thank you.
 17 THE COURT: We'll be taking our lunch recess at this
 18 time, resuming at 1:15.
 19 Ladies and gentlemen, please be in the hallway at
 20 1:15 and the bailiff will meet you there to return you to your
 21 seats in the courtroom. During the lunch recess you're
 22 admonished not to talk or converse among yourselves or with
 23 anyone else on any subject connected with this trial. You're
 24 not to read, watch, or listen to any report or commentary on

VI-53

PYSZKOWSKI - FURTHER REC S

1 the trial or any person connected with the trial by any medium
 2 of information, including without limitation, newspaper,
 3 television, radio, and internet. And you're not to form or
 4 express any opinion on any subject connected with the trial
 5 until the case is finally submitted to you.
 6 Court will be in recess until 1:15.
 7 THE BAILIFF: All rise.
 8 (Jurors are not present)
 9 (Court recessed at 12:06:17 p.m. until 1:26:03 p.m.)
 10 (Jurors are present)
 11 THE BAILIFF: Department 2 is back in session.
 12 Please be seated.
 13 THE COURT: The record shall reflect that we're
 14 resuming trial in State versus Kirstin Lobato under case
 15 number C177394, in the presence of the defendant together
 16 with her three counsel. The two prosecuting attorneys are
 17 present as are the ladies and gentlemen of the jury.
 18 Would counsel please approach.
 19 (Off-record bench conference from 1:26:29-1:29:05 p.m.)
 20 THE COURT: The record shall reflect that the
 21 Court's received a note from the juror in chair number 2, Ms.
 22 Anderson, that Court and counsel have reviewed, and a letter
 23 is being prepared for your convenience. This will be marked
 24 as Court's number 12?

VI-54

AUSTRIA - DIRECT

1 Q And does Paul go by a nickname?
 2 A Rusty.
 3 Q How long have you lived with Paul and your two
 4 kids?
 5 A 8 years.
 6 Q Now is there anyone else that lives with you at the
 7 residence at this time?
 8 A No.
 9 Q What about back in July of 2001?
 10 A My sister.
 11 Q What's your sister's name?
 12 A Paula Gilmore [phonetic].
 13 Q And do you know a person by the name of Blaise
 14 Lobato?
 15 A Yes, I do.
 16 Q How do you know her?
 17 A I met her through my boyfriend, Rusty.
 18 Q Do you see her in the courtroom here today?
 19 A Yes, I do.
 20 Q Would you please point to her and describe an
 21 article of clothing she's wearing?
 22 A She's wearing a -- light a pink and padded colored
 23 blouse. She's sitting right over there.
 24 Q Which person? There's --

VI-56

AUSTRIA - DIRECT

1 THE CLERK: 13.
 2 THE COURT: 13. Okay.
 3 Proceeding forward with the State's case in chief.
 4 The State may call their next witness.
 5 MS. DIGIACOMO: Thank you.
 6 The State calls Michele Austria.
 7 THE CLERK: Please come all the way forward.
 8 Remain standing and raise your right hand.
 9 **MICHELE AUSTRIA, STATE'S WITNESS, SWORN**
 10 THE CLERK: Thank you. Please be seated.
 11 State your name and spell it for the record, please.
 12 THE WITNESS: Michele Dawn Austria. It's
 13 M-I-C-H-E-L-E-A-U-S-T-R-I-A.
 14 THE COURT: State may proceed.
 15 MS. DIGIACOMO: Thank you.
 16 **DIRECT EXAMINATION**
 17 BY MS. DIGIACOMO:
 18 Q Where do you live?
 19 A I live in Panaca, Lincoln County.
 20 Q How long have you lived there?
 21 A Oh, about 8 years now.
 22 Q And who do you live with?
 23 A I live with Paul Brown and my two children, Justin
 24 and Melanie.

VI-55

AUSTRIA - DIRECT

1 A She's in the middle.
 2 MS. DIGIACOMO: Your Honor, would the record
 3 reflect identification of the defendant.
 4 THE COURT: The record shall so reflect.
 5 BY MS. DIGIACOMO:
 6 Q Now you said you met her through Rusty?
 7 A Yes.
 8 Q Would you say you're good friends with her?
 9 A Yeah.
 10 Q Okay. How long were you pretty good friends with
 11 her?
 12 A Well, I knew her for about 3 years.
 13 Q Now during the summer of 2001 did you hang out
 14 with her at all?
 15 A Yes, I did.
 16 Q How often?
 17 A Occasionally. She lived across the street from me.
 18 She used to come over and babysit my kids for me while I was
 19 working.
 20 Q And you said across the street. How far -- how
 21 many houses away?
 22 A It's -- from my house it's straight across, so I'd say 2
 23 houses a way, a street away.
 24 Q Okay. Now back in June 2001 was Blaise living in

VI-57

AUSTRIA - DIRECT

1 Panaca?
 2 A Yes.
 3 Q And what about July 2001?
 4 A Yes.
 5 Q Did you ever know her to live -- spend part of her
 6 time in Las Vegas?
 7 A Yeah.
 8 Q When was that?
 9 A That was about the same time, in July.
 10 Q Okay. In July?
 11 A She was trying to get a job down in Vegas at that
 12 time.
 13 Q And what about June 2001?
 14 A June, July. I'm not sure. Probably.
 15 Q Okay. Is it fair to say that she would go back and
 16 forth between Vegas and Panaca at that time?
 17 A Yes.
 18 Q Now did she ever tell you about a job she had
 19 regarding fire extinguishers down there?
 20 A Yes.
 21 Q What did she tell you?
 22 A That's pretty much it, that she worked for a
 23 company that dealt with fire extinguishers.
 24 Q Did she tell you how she got the job?

VI-58

AUSTRIA - DIRECT

1 day of the week -- do you have the calendar to take judicial
 2 notice of what day of the week 4th of July in 2001 was?
 3 THE COURT: Yes. The Court takes judicial notice
 4 that in the year 2001 the 4th of July was on a Wednesday.
 5 MS. DiGIACOMO: Thank you, Your Honor.
 6 BY MS. DiGIACOMO:
 7 Q Now did you see her any other time other than on
 8 the 4th of July that Wednesday?
 9 A Any other time? You mean before -- are you talking
 10 about the same day?
 11 Q When she was up in Panaca?
 12 A Well, I'd seen her earlier in the day.
 13 Q Okay. What about the rest of that week?
 14 A I seen her after the 4th of July, that weekend after.
 15 Q Okay. What did you see her -- when did you see
 16 her after that weekend?
 17 A Let's see, I seen her after the 4th of July weekend --
 18 or that weekend, I know because we went four-wheeling that
 19 weekend. And then after that I can't remember anything.
 20 Q Do you remember what day of the week you went
 21 four-wheeling with her?
 22 A It was a weekend.
 23 Q Okay. Do you know if it was Saturday or Sunday?
 24 A I couldn't tell you if it was a Saturday or a Sunday.

VI-60

AUSTRIA - DIRECT

1 A Through her boyfriend, Jeremy --
 2 Q Okay.
 3 A -- or friend.
 4 Q Jeremy -- what's his --
 5 A I don't know his last name.
 6 Q Okay. And you said boyfriend. How long did they
 7 date?
 8 A Oh, for about a year or so. I couldn't really tell you.
 9 Q Do you know when they broke up?
 10 A I don't.
 11 Q Okay. When was it that the defendant came back to
 12 Panaca from Vegas going back and forth?
 13 A Well, probably the first part of July.
 14 Q And how do you know that?
 15 A Well, because it was around the 4th of July is the
 16 only date that I can really specify that she was actually there.
 17 She -- like we talked in the beginning, you know, she would go
 18 to Vegas and come back and --
 19 Q But you do recall her being up there the week of 4th
 20 of July?
 21 A I do.
 22 Q Did you see her on the 4th of July?
 23 A I did.
 24 MS. DiGIACOMO: Your Honor, do you know what

VI-59

AUSTRIA - DIRECT

1 Q All right. What about the weekend before the 4th of
 2 July, did you see her then?
 3 A I did.
 4 Q What day would you have seen her then?
 5 A It was either a Saturday or a Sunday. I can't
 6 specify, it's been too long.
 7 MS. DiGIACOMO: And Your Honor, could you look
 8 and see what the dates for the Saturday and the Sunday
 9 before the 4th of July were, and please take judicial notice?
 10 THE COURT: The Court takes judicial notice that the
 11 Saturday proceeding the 4th of July was June 30th, and the
 12 Sunday proceeding the 4th of July was the 1st of July.
 13 MS. DiGIACOMO: Thank you.
 14 BY MS. DiGIACOMO:
 15 Q And did you go four-wheeling again that weekend
 16 before?
 17 A We did.
 18 Q Now did there come a time when you had a
 19 conversation with the defendant regarding an incident that
 20 happened to her in Vegas?
 21 A Yes.
 22 Q Do you remember where that conversation took
 23 place?
 24 A On my back patio.

VI-61

AUSTRIA - DIRECT

1 Q And that's at the residence you describe that's two
 2 houses down from where she lived?
 3 A Yes, my home.
 4 Q And do you know when this conversation took place?
 5 A I don't have a specific date. It was in the vicinity of
 6 those two weeks surrounding the 4th of July.
 7 Q Okay.
 8 A I couldn't specify a time, date.
 9 Q And who was present when this conversation took
 10 place?
 11 A Just me and her.
 12 Q Okay. Just so you know, we can't talk on top of
 13 each other because she's recording everything. So just let me
 14 finish the question and then you can answer, okay?
 15 A Okay.
 16 Q So just the two of you were present?
 17 A Yes.
 18 Q Do you know when it took place, what time of the
 19 day?
 20 A It was -- I want to say probably in the early
 21 afternoon. I think I had just gotten off work.
 22 Q Do you know what the time when you were working,
 23 what days?
 24 A I don't remember the days I was working. I know I

VI-62

AUSTRIA - DIRECT

1 A No.
 2 Q Do you recall giving a taped statement to the police?
 3 A Yes, I do.
 4 Q And that was on July 26, 2001?
 5 A As far as I know. I'm not positive.
 6 Q Okay. Well, if I --
 7 A Yes, if you say so.
 8 Q Okay. You wouldn't dispute that that's the date
 9 that's on this --
 10 A Right.
 11 Q -- transcription? And do -- if I was to show you --
 12 MS. DIGIACOMO: -- page 9, counsel --
 13 BY MS. DIGIACOMO:
 14 Q -- of your statement would that refresh your
 15 recollection whether or not she told you when it occurred?
 16 A Sure.
 17 MS. DIGIACOMO: May I approach, Your Honor?
 18 THE COURT: You may approach the clerk and have
 19 it marked.
 20 MS. DIGIACOMO: Oh. Thank you.
 21 THE COURT: 120?
 22 THE CLERK: 195.
 23 THE COURT: Oh, 195. Okay. Proposed.
 24 MS. DIGIACOMO: Okay.

VI-64

AUSTRIA - DIRECT

1 used to work the morning shift, that was from 9:00 to 4:00, I
 2 think.
 3 Q You're not positive of the date that this occurred?
 4 A I do -- no.
 5 Q But you believe it was sometime around the 4th of
 6 July, that's your --
 7 A Yes.
 8 Q And what was the conversation that you had with
 9 Blaise?
 10 A Well, she talked to me about going down to Vegas.
 11 She was in Vegas and she had been attacked by somebody,
 12 and she proceeded to grab onto him and slash at his penis.
 13 Q Did she say how she got a knife?
 14 A She had it on her.
 15 Q And she said this happened in Las Vegas?
 16 A Yes.
 17 Q Do you get more specific about where it happened?
 18 A No.
 19 Q Did she give more specifics about what happened,
 20 how she was attacked?
 21 A Just that this guy came onto her and attacked her.
 22 It's -- I believe in a parking lot. That's all the information I
 23 have. We didn't go into detail about this.
 24 Q Did she tell you when it happened?

VI-63

AUSTRIA - DIRECT

1 BY MS. DIGIACOMO:
 2 Q Michele, I'm gonna show --
 3 THE COURT: You may approach the witness.
 4 MS. DIGIACOMO: Oh, I'm sorry.
 5 BY MS. DIGIACOMO:
 6 Q Michele, I'm gonna show you what's been marked as
 7 State's Proposed Exhibit 195, just for identification purposes
 8 only. Do you want to read through that page and let me know
 9 if it gives you some idea of -- or refreshes your recollection
 10 whether or not Blaise gave you any indication when this
 11 happened.
 12 A Okay.
 13 Q Does that refresh your recollection?
 14 A Pretty much. It's what I just told you.
 15 Q Right. But you told me that she didn't indicate when
 16 this had happened prior to her coming back to Panaca. After
 17 reviewing your statement on page 9, does that refresh your
 18 recollection whether or not she did give you an indication of
 19 when it happened?
 20 A I was pretty much guessing on a time because that's
 21 when -- in there it says I specify nighttime, that's because she
 22 was out and about, so that's --
 23 Q Well --
 24 A -- why I specified night.

VI-65

AUSTRIA - DIRECT

1 Q Okay. Didn't the police ask you, "did she say how
2 long ago it happened prior to her returning to Panaca?"
3 A Okay.
4 Q "And you answered like within the first couple of
5 weeks or sometime around that before she had returned, you
6 know".
7 A Right.
8 Q Okay. Is that what she told you?
9 A Yes.
10 Q Okay. But you said that you were kind of assuming
11 that that's when it happened?
12 A Yeah.
13 Q But she didn't give you a definite date?
14 A Right.
15 Q Now did she tell you what kind of knife that she
16 used to slash at this man?
17 A A butterfly knife.
18 Q Okay. And did you know her to carry a butterfly
19 knife?
20 A Yes, I did.
21 Q How often would she carry the knife?
22 A She always had her knife on her.
23 Q Okay. In fact, she had a collection?
24 A Yes.

VI-66

AUSTRIA - DIRECT

1 with her emotions and stuff. She was going through a rough
2 time, she was very depressed.
3 Q Okay. And didn't she -- wasn't she specifically
4 depressed after this incident where she was attacked?
5 A Blaise would go through a period of times where she
6 would be depressed. I mean she was having a hard time
7 living with her family, you know, trying to get out on her own,
8 trying to get things situated for herself, so --
9 Q Do you recall testifying at a previous hearing in this
10 case?
11 A Yes.
12 Q And that was approximately May 2002, does that
13 sound about right?
14 A Yeah.
15 Q And if I showed you your prior testimony, would that
16 refresh your recollection regarding specifically why she said
17 she was going to a doctor at that time?
18 A I can answer that question. I've read over it.
19 Q Okay.
20 A I have my testimony.
21 Q Okay. And what did -- why was she going to a
22 doctor?
23 A Specifically because she was having a hard time
24 dealing with her conscious.

VI-68

AUSTRIA - DIRECT

1 Q How many knives did she have, approximately?
2 A About 10 or so. I couldn't give an exact number.
3 Q Now it's not unusual for somebody from Panaca to
4 have a collection of knives, is it?
5 A No, there's no.
6 Q Now did she tell you whether -- why she carried the
7 knife all the time?
8 A For protection, in case --
9 Q In case?
10 A If she needed protection or -- it's not an uncommon
11 thing.
12 Q Okay. And did you know where she would normally
13 carry her -- or carry her knife?
14 A If she didn't have a purse on her she would carry it
15 in her pocket or in her back, you know.
16 Q Okay. Was this all that she said about the attack?
17 A Yes, it is.
18 Q Did you talk about something else during that
19 conversation as well?
20 A Not that I can recall.
21 Q Do you recall anything about her seeing a doctor?
22 A Yes.
23 Q Okay. Tell me what you recall about that.
24 A Well, she was going to see a doctor about dealing

VI-67

AUSTRIA - DIRECT

1 Q Okay. Over this incident?
2 A Over this incident.
3 Q And she also told you that she was depressed?
4 A Yes.
5 Q And possibly a little suicidal?
6 A Yes.
7 Q Okay. But it's your testimony that you've seen her
8 depressed before?
9 A Yes.
10 Q But she did tell you specifically that it was this
11 incident that was causing the depression this time?
12 A Yes.
13 Q Okay. Did she also tell you whether or not she was
14 on any medication?
15 A Supposedly the doctor was going to be prescribing
16 her on a medication, but I don't have the name of it or
17 anything.
18 Q Okay. But she did tell you at the time you talked to
19 her that she was on medication?
20 A Yes.
21 Q 'Cause she'd already been to the doctor?
22 A Yes.
23 Q Now when you were talking about how she was
24 depressed and possibly suicidal, do you recall her saying why

VI-69

AUSTRIA - DIRECT

1 she was so upset about the attack?
 2 A Yes.
 3 Q And what was that?
 4 A That she didn't know if this person was dead or alive
 5 or how bad the situation was.
 6 Q She actually had some fear that maybe she might've
 7 killed him?
 8 A Yes.
 9 Q How was her demeanor? How was she acting when
 10 she was expressing this to you?
 11 A Very upset, withdrawn.
 12 Q Okay. Did she appear to be somewhat depressed or
 13 down to you?
 14 A Yeah.
 15 Q Now you live approximately 2 houses away from
 16 where she lives? In fact, your house faces hers but there's a
 17 small street in between?
 18 A Right.
 19 Q Okay.
 20 A Right.
 21 Q Now did you see the police when they came to her
 22 door?
 23 A No, I had no idea they were there until I went over
 24 to talk to her and her mom told me that --

VI-70

AUSTRIA - DIRECT

1 BY MS. DIGIACOMO:
 2 Q Now when she was down in Vegas, would Blaise tell
 3 you where she was staying?
 4 A I know of a guy named Doug. I don't know if she
 5 was living with him or not. I cannot remember.
 6 Q Did she tell you who Doug was?
 7 A He was a good friend of hers, a bodyguard.
 8 Q It was her bodyguard?
 9 A Mm-hmm.
 10 Q Is that a yes?
 11 THE COURT: Is that a yes?
 12 THE WITNESS: Yes.
 13 BY MS. DIGIACOMO:
 14 Q Did she tell you anything about their relationship?
 15 A That they were just good friends.
 16 Q Okay. Did she say whether or not he had feelings
 17 for her, more than friends?
 18 A I don't remember.
 19 Q Would it refresh your recollection if you looked at
 20 your statement given to the police?
 21 A Yeah.
 22 Q Okay.
 23 A Yes. Sorry.
 24 MS. DIGIACOMO: Page 5, counsel.

VI-72

AUSTRIA - DIRECT

1 Q Okay. So --
 2 A -- they were there.
 3 Q So there's not like marked patrol units outside her
 4 house or anything?
 5 A No, it was just a plain old car, I didn't even
 6 recognize it.
 7 Q Okay. Did you actually speak to her parents about
 8 this incident later?
 9 A Not until after she had been arrested and taken
 10 away.
 11 Q Well, what are you parents' names?
 12 A Larry and Becky Lobato.
 13 Q Okay. How many times did you talk to them about
 14 what had happened?
 15 A Once or twice.
 16 Q Did -- when you talked to her parents, did they ever
 17 tell you dates of when things had happened?
 18 A No, they had no idea of anything happening until it
 19 happened, her being arrested.
 20 Q How do you know they had no idea?
 21 A Because that's their -- that was their reaction.
 22 Q Okay.
 23 A That's how they appeared to me about it.
 24 MS. DIGIACOMO: Court's indulgence.

VI-71

AUSTRIA - DIRECT

1 May I approach, Your Honor?
 2 THE COURT: You may.
 3 MS. DIGIACOMO: Let me make sure I have the right
 4 one.
 5 BY MS. DIGIACOMO:
 6 Q Okay. I'm gonna show you page 5 of what's been
 7 marked for purposes of identification as State's Proposed
 8 Exhibit 195. And read this and let me know if that refreshes
 9 your recollection.
 10 A Okay. I wasn't sure if it was either her or him.
 11 Q Okay.
 12 A That's why --
 13 Q All right. So does that refresh your recollection?
 14 A It does.
 15 Q Okay. And so what was the relationship between
 16 Doug and Blaise?
 17 A Basically I guess he was very involved in her,
 18 wanted to be very involved with her and she wasn't interested
 19 in that kind of a relationship.
 20 Q So she told you he liked her as more than friends
 21 but she didn't want that?
 22 A Right.
 23 Q Okay. And did she tell you why she needed a
 24 bodyguard?

VI-73

AUSTRIA - CROSS

1 A She wanted to get into strip dancing.
 2 MS. GREENBERGER: Objection, relevance.
 3 THE COURT: Sustained.
 4 BY MS. DIGIACOMO:
 5 Q So it wasn't for protection needing a bodyguard
 6 while she was in Vegas --
 7 A I don't know how to --
 8 Q -- if you know?
 9 A I don't know.
 10 Q Okay.
 11 MS. DIGIACOMO: Pass the witness, Your Honor.
 12 MR. SCHIECK: Your Honor, could we approach for a
 13 second?
 14 THE COURT: Yes.
 15 (Off-record bench conference from 1:49:38-11:50:44 p.m.)
CROSS-EXAMINATION
 17 BY MS. GREENBERGER:
 18 Q Good afternoon.
 19 A Hi.
 20 Q Can you recall exactly when you met my client,
 21 Blaise Lobato?
 22 A Exactly when?
 23 Q Approximately 3 years before July 2001?
 24 A Let's see, we moved to Panaca at the end of '98.

VI-74

AUSTRIA - CROSS

1 babysat for you?
 2 A Actually it was only -- I'd say from the time she got
 3 arrested, probably 4 to 5 months, throughout that time.
 4 Q Okay. Back, so basically --
 5 A Back.
 6 Q -- February or so --
 7 A Yeah.
 8 Q -- through July?
 9 A Yeah.
 10 Q Did she babysit at your house?
 11 A She did.
 12 Q Did you become aware that she graduated from high
 13 school approximately May of 2001?
 14 A Yes. I don't -- I'm not sure if she graduated. I
 15 know she got her GED. She went to adult education.
 16 Q Through a school teacher? We've heard from Dixie
 17 Tienken.
 18 A Yes.
 19 Q Do you recall her heading down to Las Vegas to try
 20 to make it on her own during that time period --
 21 A Yes.
 22 Q -- directly following her graduation?
 23 A I don't know when she graduated.
 24 Q Okay.

VI-76

AUSTRIA - CROSS

1 Rusty was working with her and that's how I met her. So I
 2 would have to say the beginning of '99 is when I met her.
 3 Q Was she living in Panaca at the time?
 4 A Yes, she was.
 5 Q Was she living with her parents?
 6 A Yes.
 7 Q Were you neighbors with them from that time period
 8 up through July 2001?
 9 A I was.
 10 Q You testified that she actually babysat your kids.
 11 What time period was that?
 12 A Well, I worked the day shift at the bar from 9:00 in
 13 the morning 'till 4:00 in the afternoon, I believe, so at that
 14 time. It was -- I worked 5 days a week, so --
 15 Q Did she babysit your kids throughout the time you
 16 knew her?
 17 A She babysat them when they were home from
 18 school in the afternoon for a couple of hours. They get out of
 19 school at 2:30, so I get home about 4:35 from work, so in that
 20 period.
 21 Q How old are your children?
 22 A Now? My son is -- will be 15 in January and my
 23 daughter is 12.
 24 Q And during the time period of '98 through 2001 she

VI-75

AUSTRIA - CROSS

1 A Well, yes, I'd have to say about in that time.
 2 Q Is it far to say May 2001 she ventured down to Las
 3 Vegas?
 4 A I'd say more or less in June, beginning of June.
 5 Q All right. Did you see her during the June time
 6 period in Panaca, or was she primarily down in Vegas, if you
 7 know?
 8 A Well, I seen her in Panaca, but primarily she'd be
 9 down here in Vegas, so yes.
 10 Q You recall her coming back home prior to July 4th, is
 11 that correct?
 12 A Yes.
 13 Q You actually saw her the weekend prior to July 4th, is
 14 that correct?
 15 A Yes.
 16 MS. GREENBERGER: Your Honor, may I approach
 17 the witness?
 18 THE COURT: Do you have a motion?
 19 MS. GREENBERGER: I want to move to admit our
 20 next in order, the calendar, which I want this witness to
 21 reference and identify some things.
 22 THE COURT: And it's proposed --
 23 THE CLERK: JJ.
 24 THE COURT: -- JJ?

VI-77

AUSTRIA - CROSS

1 MS. GREENBERGER: Yes, Your Honor.
 2 THE COURT: No objection?
 3 MS. DIGIACOMO: No, Your Honor.
 4 THE COURT: Granted.
 5 (Defendant's Exhibit JJ, admitted)
 6 THE COURT: The calendar is admitted and you may
 7 approach.
 8 MS. GREENBERGER: Thank you. Let me just share
 9 my pen with you.
 10 BY MS. GREENBERGER:
 11 Q Can you put your initials on the weekend when you
 12 first saw Blaise when she returned to town? [unintelligible].
 13 A That's June 2nd, so I think it would've been June
 14 30th.
 15 Q Oh, okay. We're down here. Sorry.
 16 A That's okay. You got it.
 17 Q Okay. I think it's June 30 -- sorry, June 30, 2001.
 18 A Okay.
 19 Q June 30, 2001.
 20 A Okay. That would've been the first weekend. Why
 21 don't you just circle it.
 22 A Okay.
 23 Q -- and then put a line through the other
 24 [unintelligible].

VI-78

AUSTRIA - CROSS

1 Q Do you remember if you took her out that first
 2 weekend that she came back to Panaca?
 3 A Yes.
 4 Q Did you both ride the four-wheeler?
 5 A Yes.
 6 Q Is it something you can ride together or did you take
 7 turns?
 8 A Well, we rode together mostly and then we took
 9 turns.
 10 Q Did you take it -- where did you take it out?
 11 A Well, we took it -- behind where I live it's -- there's a
 12 desert area, it's called Pete's Track. There's the Panaca
 13 Springs, which is a warm springs. We have Condor Canyon,
 14 which is a -- there's a road that goes all the way through the
 15 canyon. You can cross the creek and go on it if you have a
 16 four-wheel drive or an ATV. There's the sand dunes, there's --
 17 there's a lot of areas. That's -- mostly those areas are the
 18 ones that we went to.
 19 Q At that time did you also go rock climbing together?
 20 A Yes.
 21 Q You guys were pretty energetic and physical?
 22 A We were just messing around.
 23 Q Did you have an accident when you were rock
 24 climbing that -- at that time?

VI-80

AUSTRIA - CROSS

1 Q So you recall distinctly speaking to Blaise that
 2 weekend? The reason why you recall it is because you saw
 3 July -- you saw her July 4th?
 4 A Yes.
 5 Q And even though you periodically may have seen her
 6 in June, this weekend before July 4th was the first time you
 7 guys had a chance to catch up, shall we say?
 8 A Yes.
 9 Q You testified that you went four-wheeling. Had you
 10 recently bought a four-wheeler?
 11 A Yes.
 12 Q And what exactly is that?
 13 A A four-wheeler? It's an ATV. We have a Bear
 14 Tracker 2000 and we bought it for Christmas for ourselves.
 15 Q Is it something -- an entertainment type --
 16 A It is. You go out in the desert, you go riding and
 17 stuff in the hills. There's four-wheeler trailers.
 18 Q Is Panaca a good place to do something like that?
 19 A It is. There's lots of areas that you can -- lots of
 20 trails.
 21 Q And it's something that gets you pretty dirty?
 22 A It can.
 23 Q Did you take Blaise out four-wheeling that summer?
 24 A Yes, I did.

VI-79

AUSTRIA - CROSS

1 A Well, Blaise was climbing onto a rock and slipped
 2 and scratched her belly.
 3 Q You could see the scratches?
 4 A Yes.
 5 Q And that was from rock climbing?
 6 A Mm-hmm. Yes.
 7 Q How about on the four-wheeler, any accidents on
 8 that?
 9 A Just -- no major accidents. She tipped it over once,
 10 but that was it.
 11 Q Do you remember having a conversation with her
 12 during that same period about her being attacked down in
 13 Vegas?
 14 A Yes, I do.
 15 MR. KEPHART: Your Honor, I'm gonna object as to
 16 foundation when she says "same period". She's spoke about
 17 two different dates at this time now.
 18 THE COURT: Sustained.
 19 BY MS. GREENBERGER:
 20 Q The time period I'm referring to is that first weekend
 21 when Blaise came back to Vegas, you two were catching up
 22 and you went four-wheeling.
 23 A It was --
 24 Q That's the time period I'm speaking about.

VI-81

AUSTRIA - CROSS

1 A Throughout that -- from the beginning before July
 2 4th or the beginning after July 4th, I cannot give you a specific
 3 time or date on that.
 4 Q You do remember, however, that as indicated by the
 5 prosecutor's question, that when you talked about when this
 6 attack happened, she told you within the first couple weeks or
 7 sometime before she had returned, correct?
 8 A Correct.
 9 Q So if we look at Defendant's JJ, you took that to
 10 mean sometime in June 2001 she was the victim of a prior
 11 attack?
 12 A Yes.
 13 Q That's accurate?
 14 A Yes.
 15 Q Did she also tell you that she defended herself?
 16 A Yes.
 17 Q And she got away?
 18 A Yes.
 19 Q Isn't it true that she never told you that she actually
 20 stabbed him?
 21 A It is true.
 22 Q It is true that she never told you --
 23 A She never specified --
 24 Q -- that she actually stabbed him?

VI-82

AUSTRIA - CROSS

1 A -- that she actually stabbed him.
 2 Q She never told you that she punched someone, did
 3 she?
 4 A No.
 5 Q She never told you that she stabbed someone in the
 6 carotid artery, did she?
 7 A No.
 8 Q She never told you that she brutally beat a man and
 9 gave him two black eyes, did she?
 10 A No.
 11 Q She never told you that she cut someone's penis off
 12 after the man was dead, did she?
 13 A No.
 14 Q She never told you that she slashed the man's rear
 15 that attacked her?
 16 A No.
 17 Q She never told you that she hit the man that
 18 attacked her with a baseball bat, did she?
 19 A No.
 20 Q You would remember these things, would you?
 21 A Yeah, I would remember all of those things.
 22 Q And as you sit here today, you can tell the ladies
 23 and gentlemen of the jury with certainty that she never told
 24 you any of those things, isn't that true?

VI-83

AUSTRIA - CROSS

1 A Yes, it is.
 2 Q With regard to a butterfly knife in Panaca, pretty
 3 common?
 4 A Yes.
 5 Q In fact, you yourself carry a knife, true, or at the
 6 time?
 7 A At the time. I mean pocketknife.
 8 Q For what reason?
 9 A Just to have on you in case you need it, you know.
 10 When you're out four-wheeling, you know, you never know if
 11 you're gonna need it for something or -- it's just not a -- it's a
 12 common thing to have a knife on you.
 13 Q Is it equally common for men and women, as far as
 14 you know?
 15 A Yes.
 16 Q Do many girlfriends of yours, or at the time, carried
 17 knives?
 18 A As far as I know, yeah.
 19 Q So it's not unusual to you --
 20 A No, it's not unusual.
 21 Q -- that someone would be walking around with a
 22 knife?
 23 A No.
 24 Q For the time period that you knew Blaise, those

VI-84

AUSTRIA - CROSS

1 three years when you met her up until July, is it your
 2 testimony that she suffered from bouts of depression during
 3 that entire time period?
 4 A Yes.
 5 Q That was something that was also common?
 6 A For her it was.
 7 Q And in your mind you had the impression that this
 8 attack that had occurred sometime in June of 2001, you had
 9 the impression it was weighing heavily on her?
 10 A Yes, I did.
 11 Q What gave you that impression?
 12 A Because of how depressed she was, just withdrawn,
 13 not herself.
 14 Q She was really scared that she might've hurt
 15 someone, even though it was a person that attacked her?
 16 A Yes.
 17 Q She expressed that fear to you?
 18 A In a manner, not in detail.
 19 Q She never told you specifically, I think I might've
 20 killed him, that was your impression?
 21 A It was my impression. Can you back up on that one
 22 because I mean she had specified that she did not know if she
 23 had killed him or not.
 24 Q She was concerned?

VI-85

AUSTRIA - CROSS

1 A She was concerned.
 2 Q When the police came to speak with you, did they
 3 talk to you for a period of time before they recorded you?
 4 A Briefly.
 5 Q Then they did a recording?
 6 A Yes.
 7 Q Do you feel, as you sit here today, that any of the
 8 information you gave them or your words were twisted at all?
 9 A No.
 10 Q You saw my client on July 4th?
 11 A Yes, I did.
 12 Q Did you celebrate the 4th of July?
 13 A Yes, I did.
 14 Q Where was that?
 15 A Down in Caliente. They have fireworks every year.
 16 Q Did you proceed to see Blaise the weekend after the
 17 4th of July?
 18 A Yes, I did.
 19 Q Can you indicate that with your initials on the
 20 calendar, and tell us what dates those would be?
 21 A That would be July 7th and July 8th.
 22 Q You also went four-wheeling again the second
 23 weekend --
 24 A Yes, we did.

VI-86

AUSTRIA - CROSS

1 (Off-record bench conference from 2:09:33-2:11:45 p.m.)
 2 BY MS. GREENBERGER:
 3 Q Do you have any specific memory of reading an
 4 article that came out regarding Blaise's arrest on July 25,
 5 2001, one day before the police came to talk to you?
 6 MS. DIGIACOMO: Objection, relevance.
 7 THE COURT: Overruled.
 8 THE WITNESS: Specific. I mean can you be more -
 9 - I'm not understanding what you're asking me.
 10 BY MS. GREENBERGER:
 11 Q Do you remember before the police came to
 12 interview you whether you had read anything in the paper
 13 about the case?
 14 A I don't remember. I think it was after they took her
 15 to trial is when the articles started coming out.
 16 MS. GREENBERGER: Court's indulgence. I don't
 17 believe I have anything further.
 18 THE COURT: Redirect.
 19 MS. DIGIACOMO: Yes. Thank you, Your Honor.
 20 May I approach the clerk?
 21 THE COURT: Yes.
 22 MS. DIGIACOMO: Thank you.
 23 ///
 24 ///

VI-88

AUSTRIA - CROSS

1 Q -- with Blaise? Did you go four-wheeling in the
 2 same area?
 3 A Pretty much, yes.
 4 Q Just the two of you?
 5 A Just the two of us.
 6 Q Do you recall four-wheeling with Blaise on July 8th,
 7 that afternoon, and her having a beer in her hand?
 8 A I couldn't recall that, no.
 9 Q You don't know one way or the other?
 10 A No.
 11 Q You just remember you went four-wheeling?
 12 A Yeah. Yes.
 13 Q Okay. When she confided in you about the prior
 14 attack in June 2001 in Vegas, was anyone else present?
 15 A Not that I am aware of.
 16 Q Isn't it true that when my client confided in you, she
 17 told you she had been attacked and she wasn't really sure all
 18 of the details?
 19 A No, she -- I -- yeah, that's what I'd say.
 20 Q Did you read any articles in the paper about this
 21 case prior to the homicide detectives talking with you on July
 22 26, 2001?
 23 A I have all the articles.
 24 THE COURT: Counsel approach.

VI-87

AUSTRIA - REDIRECT

REDIRECT EXAMINATION

2 BY MS. DIGIACOMO:
 3 Q Okay. Ms. Austria, you stated that you met Blaise
 4 because she worked with Rusty?
 5 A Yes.
 6 Q Okay. Did you also work with one of her parents?
 7 A Yeah. Yes.
 8 Q Which one?
 9 A Her father, Larry.
 10 Q And where did you work with him?
 11 A At the Hideaway Bar in Caliente.
 12 Q Did you meet Larry first or Blaise first?
 13 A I met Blaise first.
 14 Q Okay. And you talked about it, I got a little
 15 confused. How many four-wheeling treks were there in July?
 16 How many times did you go four-wheeling with Blaise in July?
 17 A I couldn't give you a specific number on that.
 18 Q Was it more than one, more than two, more than
 19 three?
 20 A Yeah, more than two.
 21 Q More than two times?
 22 A Yeah.
 23 Q Okay. And then when was this rock climbing?
 24 A It was in that period that I've marked on the

VI-89

AUSTRIA - REDIRECT

USTRIA - REDIRECT

1 calendar up here. I cannot give you if it was --
 2 Q I can't see from out there. So you've got the first
 3 weekend in --
 4 A I have June 30th and July 1st, and July 7th and July
 5 8th. That's the weekend before the 4th and the weekend after
 6 the 4th.
 7 Q Okay. So is it fair to say then the rock climbing
 8 incident would've had to be one of those two weekends?
 9 A Yes.
 10 Q Was that connected to a four-wheeling -- when you
 11 were four-wheeling with Blaise, or was rock climbing
 12 completely separate?
 13 A No, we were out on the four-wheeler out in the
 14 canyon and we were climbing on the rocks when she slid off
 15 the rock.
 16 Q And you said you saw an injury on her belly?
 17 A Yes, we took a picture of it.
 18 Q Okay. Why did you take a picture of it?
 19 A Just to take a picture.
 20 Q Were there any other injuries or marks on her?
 21 A No, not that I can recall.
 22 Q All right. So is it fair to say other than those two
 23 weekends that you've marked on -- I believe it's Defense
 24 Proposed Exhibit -- or Exhibit JJ?

1 Christmas? Was that 2000?
 2 A Yes.
 3 Q And do you recall the day you gave the taped
 4 statement to the police?
 5 A I don't recall the specific day.
 6 Q If I was to show you State's Proposed Exhibit 195,
 7 would that refresh your recollection?
 8 A I'd have to go by what it says in there, yes.
 9 Q Okay. And it's actually on the tape recording itself
 10 what the date is.
 11 A Okay. The 26th of --
 12 Q July.
 13 A -- July.
 14 Q And you wouldn't dispute that?
 15 A No.
 16 Q If you could go ahead and mark on the 26th of July
 17 your initials as well as the day you gave the taped statement.
 18 Thank you.
 19 MS. GREENBERGER: Your Honor, may we request it
 20 be with a different color so there's a distinction on what -- if
 21 she's just initialing it?
 22 MS. DiGIACOMO: Well, the record's clear what she's
 23 initialing on those dates.
 24 THE COURT: I think the record is clear, but it -- it

VI-90

VI-92

AUSTRIA - REDIRECT

AUSTRIA - REDIRECT

1 THE COURT: Yes.
 2 BY MS. DiGIACOMO:
 3 Q You didn't go four-wheeling or rock climbing with
 4 Blaise any other time during July?
 5 A I may have, yes. I can't specify a time or a day,
 6 though.
 7 Q Okay. Well, did you mainly go four-wheeling on the
 8 weekends?
 9 A Yes, 'cause those were my days off.
 10 Q Okay. The weekend of the 14th and the 15th of July,
 11 is it possible you went four-wheeling with her on that weekend
 12 as well?
 13 A It could be possible.
 14 Q I'd ask you to go ahead and put your initials on the
 15 14th and the 15th as well then.
 16 A When was she arrested? I don't remember the
 17 date.
 18 Q If I told you she was arrested July 20th, which is the
 19 following Friday after the 15th, does that make it more or less
 20 likely that you four-wheeled with her on the 14th and 15th?
 21 A No, it wouldn't make it less likely.
 22 Q Okay. So it's possible you did?
 23 A It's possible, yes.
 24 Q And this four-wheeler you actually got, you said for

1 wouldn't hurt anything if she circled it with a different color
 2 pen perhaps.
 3 MS. DiGIACOMO: Okay. Do you have a different
 4 color marker?
 5 THE COURT: You can approach the clerk.
 6 MS. DiGIACOMO: Thank you.
 7 May I approach the witness, Your Honor?
 8 THE COURT: Yes. The record shall reflect that the
 9 clerk has provided Ms. DiGiacomo with a blue marker.
 10 MS. DiGIACOMO: Yes, Your Honor.
 11 Michele, if you would just circle the dates that I
 12 asked you to put on there.
 13 THE WITNESS: Just your dates?
 14 MS. DiGIACOMO: Just my dates.
 15 THE COURT: The record shall reflect that the
 16 witness has complied.
 17 MS. DiGIACOMO: Thank you.
 18 BY MS. DiGIACOMO:
 19 Q Michele, this incident that Blaise talked to you about,
 20 this attack, and she said it was a couple of weeks before she
 21 came back to Panaca, or is that just -- that's what you
 22 assumed?
 23 A That's what I assume, it was before.
 24 Q Okay. And at the time that you spoke with her, she

VI-91

VI-93

AUSTRIA - REDIRECT

1 talked to you about the medication she was on?
 2 A She didn't -- if she gave me a name I don't
 3 remember the name of the medication, but yes, she did talk to
 4 me about medication.
 5 Q If I showed you your statement, would that refresh
 6 your recollection, possibly, as to what you told the police?
 7 A Yes.
 8 Q Okay. Page 7 and 8.
 9 A Okay.
 10 Q Okay. Does that refresh your recollection?
 11 A Yeah. Yes.
 12 Q Okay. When you talked to the police, could you
 13 recall the medication that she said she was presently on?
 14 A Prozac. Is that what it says in there?
 15 Q Okay.
 16 A Yes.
 17 Q Actually you said that she didn't give you the name
 18 of what she was currently on. You said you couldn't
 19 remember the name of it, it's a really complicated weird name
 20 I've never heard of before. But then she said she also talked
 21 to you about Prozac as an additional medication, do you recall
 22 that?
 23 A Yes.
 24 Q Okay. Is that what you told the police?

VI-94

AUSTRIA - REDIRECT

1 A She slashed at his penis, yes.
 2 Q Okay. But your exact words were "slashed the
 3 penis"?
 4 A Mm-hmm. Yes.
 5 Q But it's your testimony now that you don't know if
 6 she actually cut the penis?
 7 A That is my testimony.
 8 Q Okay. And you were talking about that you also
 9 carry a pocketknife, that was common back then?
 10 A It's common now. I have one in my purse.
 11 Q You got into the building --
 12 A Not here --
 13 Q Oh, I was gonna say --
 14 A -- but it's out in the car. I have a couple, I
 15 mean --
 16 Q I was gonna say, you got into the building with a
 17 knife?
 18 A No. No.
 19 THE COURT: Record shall reflect the Judge sat
 20 straight up in her chair.
 21 THE WITNESS: No, that's in my purse out in the
 22 car, but --
 23 BY MS. DIGIACOMO:
 24 Q Okay. But you described that you carry it in case

VI-96

AUSTRIA - REDIRECT

1 A That's what I told the police.
 2 Q Okay. But as you sit here today, do you recall what
 3 the medication was she said she was presently on when you
 4 talked to her?
 5 A I cannot recall.
 6 Q Okay. But you do recall something being mentioned
 7 about Prozac as well?
 8 A Based on reading that, that's the only thing -- the
 9 reason why. It's been too long ago. I don't remember all that
 10 stuff.
 11 Q Okay. And you were provided with a copy of your
 12 statement --
 13 A I was.
 14 Q -- in your prior testimony to refresh your memory
 15 before coming in?
 16 A I was.
 17 Q Okay. Now your testimony is that Blaise told you
 18 she slashed the penis, correct?
 19 A Slashed, yeah. Yes.
 20 Q Okay. She didn't tell you she stabbed the penis --
 21 A No.
 22 Q -- or cut it off?
 23 A No.
 24 Q But she did slash the penis?

VI-95

AUSTRIA - REDIRECT

1 you ever need it to, you know, cut boxes or work on
 2 something, is that correct?
 3 A That is correct.
 4 Q So you don't carry it mainly for protection?
 5 A Only if I'm out and about on the four-wheeler or
 6 something --
 7 Q Okay. But --
 8 A -- or out in the desert.
 9 Q But normal every day --
 10 A Normal every day thing. I have it on me at all times
 11 when I have my purse.
 12 Q All right. Now defense counsel was also asking you
 13 about whether or not Blaise knew what had happened. Do
 14 you recall her questioning?
 15 A Questioning the fact --
 16 Q About whether or not Blaise knew exactly what
 17 happened with her attack?
 18 A I don't know any -- I couldn't give you any answers
 19 on that.
 20 Q Okay. But do you recall Blaise telling you that she --
 21 or do you recall telling the police that Blaise was very scared
 22 about what happened?
 23 A She was unsure of the situation this person was in.
 24 Q What do you mean she was unsure?

VI-97

AUSTRIA - REDIRECT

1 A She was concerned 'cause she was unsure, you
 2 know, how hurt he was or if he had been killed or not.
 3 Q Okay. And she told you she didn't know what had
 4 happened?
 5 A Right.
 6 Q And she also told you though that she was scared
 7 that she might've killed somebody?
 8 A Yes.
 9 Q And she wasn't sure if she had killed him or not --
 10 A Correct.
 11 Q -- she told you that?
 12 A Correct.
 13 Q Now the defense counsel asked you about when the
 14 police came and talked to you, and you said that they talked to
 15 you first before they asked to record you?
 16 A Yes, they did.
 17 Q And then after they asked to turn on a tape
 18 recorder, what did they ask you at that point?
 19 A Are you asking me when the tape recorder was
 20 going or before?
 21 Q Before.
 22 A They basically went over some questions that they
 23 were gonna ask me when the tape was on.
 24 Q Okay. And then when they turned on the tape did

VI-98

JSTRIA - REDIRECT

1 way the scratches look after the rock climbing accident?
 2 A After she slid off the rock, yes.
 3 MS. DIGIACOMO: Your Honor, at this time I would
 4 move for admission of State's Proposed Exhibits 196 and 197.
 5 MR. SCHIECK: No objection, Your Honor.
 6 THE COURT: Granted.
 7 (State's Exhibit Nos. 196 and 197, admitted)
 8 MS. DIGIACOMO: May I publish, Your Honor?
 9 THE COURT: You may.
 10 MS. DIGIACOMO: Okay.
 11 BY MS. DIGIACOMO:
 12 Q I'm gonna show you -- hold on. Okay. Is that not --
 13 oh, sorry. Okay. Okay. I'm showing you on the screen, if you
 14 can see that, State's Exhibit --
 15 A I can see it.
 16 Q You can see it?
 17 A Mm-hmm.
 18 Q State's Exhibit 196. Is -- are these the scratch
 19 marks that you yourself took a picture of after she had her
 20 rock climbing accident?
 21 A Yes, it is.
 22 Q And then on State's Exhibit 197. If you can see her
 23 -- what portion of her belly is showing there. Do you also see
 24 those same scratch marks?

VI-100

AUSTRIA - REDIRECT

1 they ask you the same questions?
 2 A Pretty much, yes.
 3 Q Did you feel they left anything out?
 4 A No.
 5 Q Okay.
 6 MS. DIGIACOMO: Court's indulgence.
 7 May I approach the clerk, Your Honor?
 8 THE COURT: Yes.
 9 MS. DIGIACOMO: May I approach the witness?
 10 THE COURT: Yes, you may.
 11 BY MS. DIGIACOMO:
 12 Q I have here what's been marked for identification as
 13 State's Proposed Exhibits 196 and 197 that I've just shown
 14 defense counsel. Can you look at those and let me know if
 15 you recognize --
 16 A Yes.
 17 Q -- what's depicted there? What's depicted in those
 18 photographs?
 19 A What's depicted?
 20 Q What's in those photographs? What are they
 21 pictures of?
 22 A It's a picture of Blaise and the scratch on her belly
 23 from falling off the rock.
 24 Q Okay. And these fairly and accurately depict the

VI-99

AUSTRIA - REDIRECT

1 A Yes.
 2 Q Okay.
 3 MS. DIGIACOMO: Court's indulgence.
 4 BY MS. DIGIACOMO:
 5 Q Now with regard to the dates that you've put your
 6 initials on there, the 30th, the 1st of July, 7th, 8th, and then we
 7 have the 14th and 15th. Those are all dates that you believe
 8 you saw Blaise, correct?
 9 A Yes.
 10 Q Okay. Now did you also see her during the week?
 11 A Yes.
 12 Q How many days during the week would you see her
 13 each week?
 14 A I couldn't give you a direct answer on that.
 15 Q Did you see her more than once?
 16 A I may have -- I seen her after work a few times, you
 17 know. She'd come over and we'd have a couple beers.
 18 Q Okay. Did you -- excuse me. Did you ever hear her
 19 talk about going back down to Vegas?
 20 A Yes.
 21 Q While she was in Panaca?
 22 A Yes.
 23 Q Did you ever talk to her when she came back from
 24 Vegas?

VI-101

AUSTRIA - REDIRECT

AT IA - FURTHER REDIRECT

1 A Yes.
 2 Q Okay. And some of these times that you talked to
 3 her were during the week after work?
 4 MS. GREENBERGER: Objection, vague as to time.
 5 MS. DIGIACOMO: After she --
 6 THE COURT: Sustained.
 7 MS. DIGIACOMO: Okay.
 8 BY MS. DIGIACOMO:
 9 Q After she came -- well, strike that. For the month of
 10 July, when you saw her in Panaca, you saw her on the
 11 weekends and you also saw her possibly during the week as
 12 well?
 13 A Yes.
 14 Q Do you know approximately how many times total
 15 you saw her that month?
 16 A No.
 17 Q Okay. Are you positive from looking at this calendar,
 18 can you positively say which day it was you had the
 19 conversation with her regarding --
 20 A No. No, I cannot.
 21 Q Okay. And that's regarding her attack in Vegas?
 22 A Yes, it is.
 23 Q Okay.
 24 MS. DIGIACOMO: Pass the witness, Your Honor.

1 weekend before, the weekend after the 4th of July?
 2 A I'm pretty much going around the 4th date as far as
 3 seeing and talking with her. Other than that, I can't really
 4 specify a date or a time.
 5 Q You also recall that when she confided in you, she
 6 was discussing an incident that had happened several weeks
 7 prior, correct, the first couple weeks after she had gone to
 8 Vegas?
 9 A I don't know what -- I don't know what you're
 10 asking me.
 11 Q When she described when she had been attacked
 12 and you spoke to her during the beginning of July --
 13 A It was --
 14 Q -- you had the distinct impression it had happened
 15 several weeks before, correct?
 16 A Maybe not several weeks before, but sometime
 17 before that. I can't give you a specific answer on that.
 18 MS. GREENBERGER: Okay. Nothing further.
 19 MS. DIGIACOMO: I do, Your Honor, just briefly.
 20 THE COURT: You may, redirect.
 21 MS. DIGIACOMO: Thank you, Your Honor.
 22 **FURTHER REDIRECT EXAMINATION**
 23 BY MS. DIGIACOMO:
 24 Q You've testified that you kind of remember the

VI-102

VI-104

AUSTRIA - RECROSS

AUSTRIA - FURTHER REDIRECT

1 THE COURT: Recross.
 2 MS. GREENBERGER: Thank you.
 3 **RECROSS EXAMINATION**
 4 BY MS. GREENBERGER:
 5 Q Hello again.
 6 A Hi.
 7 Q Just want to clarify what you recall. You definitely
 8 remember seeing Blaise when she first came back from Las
 9 Vegas the last weekend in June, the beginning of July, correct?
 10 A Correct.
 11 Q And you remember talking with her, catching up on
 12 the time she had been gone?
 13 A Yes.
 14 Q Are you pretty certain as you sit here today that it
 15 was June 30th or July 1st that she told you about a prior attack
 16 in Las Vegas?
 17 A I'm not certain of that date.
 18 Q Are you certain it was the weekend of either before
 19 the 4th of July or after the 4th of July?
 20 A I am certain of that.
 21 Q So it definitely was not the weekend of July 14th and
 22 15th?
 23 A I could not be --
 24 Q What you remember. You remember it was the

1 weekend before the 4th of July and the weekend after the 4th
 2 of July as seeing Blaise?
 3 A Yes.
 4 Q If there was testimony by other witnesses that said
 5 she was actually in Vegas on June 30th and July 1st, how would
 6 that effect whether or not you believe you saw her the
 7 weekend before the 4th?
 8 A Because I know I saw her on that weekend 'cause
 9 we went four-wheeling on that weekend.
 10 Q Okay. And you also testified that you believe the
 11 conversation you had with her was the weekend before or
 12 after the 4th?
 13 A It was in that area --
 14 Q Okay.
 15 A -- in that time frame.
 16 Q But is it possible it could've also been either the 14th
 17 or the 15th, that weekend?
 18 A It could be possible, yes.
 19 MS. DIGIACOMO: Nothing further.
 20 THE COURT: Further cross?
 21 MS. GREENBERGER: No, Your Honor.
 22 THE COURT: May I have the blue marker?
 23 THE BAILIFF: We have a question.
 24 THE COURT: Yes, we do.

VI-103

VI-105

1 I'm relieved I don't have to have a discussion with
 2 the front gate bailiffs and the chief of security.
 3 MS. DIGIACOMO: Right.
 4 THE COURT: But we do have apparently some
 5 questions coming in from the jurors. I would ask counsel to
 6 approach.
 7 (Off-record bench conference from 2:31:37-2:42:16 p.m.)
 8 THE COURT: There's a number of questions that
 9 the jury has sent out to be asked of you, so the Court is going
 10 to ask those at this time.
 11 "Did you call the police when Blaise told you she
 12 slashed off a man's penis?"
 13 THE WITNESS: No.
 14 THE COURT: That will be marked as Court's
 15 Number 14.
 16 "Why did you or did you not call authorities for this
 17 alleged crime?"
 18 THE WITNESS: Because we were friends and she
 19 was reaching out to a friend about an incident about
 20 somebody attacking her.
 21 THE COURT: This will be marked as Court's Number
 22 15.
 23 The Court advises you that you are to answer this
 24 question with just a yes or a no.

VI-106

1 "Did Blaise ever tell you why she needed a
 2 bodyguard when she carried a knife for protection?"
 3 THE WITNESS: No.
 4 THE COURT: That will be marked as Court's
 5 Number 16.
 6 "You stated during the State's questioning that you
 7 couldn't remember if you saw Blaise on Saturday or Sunday
 8 before July 4th. But on defense questioning you readily
 9 marked on calendar the Saturday and Sunday before July 4th.
 10 What made you remember?"
 11 THE WITNESS: I was going by what I know from
 12 before, what I testified before.
 13 THE COURT: This will be marked as Court's Number
 14 17.
 15 "During defense questioning you stated that Blaise
 16 indicated attack happened within the first couple of weeks, but
 17 during State's questioning you stated she gave no indication to
 18 when attack happened and that you assumed when attack
 19 happened. Did you, in fact, assume, or did Blaise indicate
 20 when attack happened?"
 21 THE WITNESS: Blaise did not indicate when it
 22 happened, I just assumed.
 23 THE COURT: This will be marked as Court's Number
 24 18.

VI-107

AUSTRIA - FURTHER REDIRECT

1 "Many of your responses are I can't remember or I
 2 can't specify or I don't know. Do you suffer any medically
 3 diagnosed memory loss?"
 4 THE WITNESS: No, I don't. It's been five years
 5 since this incident --
 6 THE COURT: This will be marked --
 7 THE WITNESS: -- and I'm going based on my
 8 testimony that I gave five years ago.
 9 THE COURT: This will be marked as Court's Number
 10 19.
 11 "When going four-wheeling with Blaise, was it
 12 typically on both Saturday and Sunday, or was it one day or
 13 the other?"
 14 THE WITNESS: It was one day or the other. It
 15 wasn't specifically Saturday or a Sunday.
 16 THE COURT: This will be marked as Court's Number
 17 20.
 18 Followup questions by the State?
 19 MS. DIGIACOMO: Yes, Your Honor.
 20 **FURTHER REDIRECT EXAMINATION**
 21 BY MS. DIGIACOMO:
 22 Q With regard to when this conversation took place,
 23 you stated you were just going by what your prior testimony
 24 was from five years ago?

VI-108

AUSTRIA - FURTHER REDIRECT

1 A Yes.
 2 Q Okay. Now would you agree with me, because
 3 you've had a chance to review it, that when the State first
 4 asked you --
 5 MS. DIGIACOMO: -- page 148, counsel --
 6 BY MS. DIGIACOMO:
 7 Q -- when -- if you recalled when the conversation
 8 took place. Isn't it true you stated that you knew it was in the
 9 afternoon but you couldn't recall if it was a weekend or if it
 10 was after work?
 11 A Correct.
 12 Q Okay. But then later when questioned by the
 13 defense, on page 157, you stated that you knew it was the
 14 weekend before the 4th of July or the weekend after, and you
 15 specifically stated June 30th, July 1st or July 7th or July 8th, do
 16 you recall that?
 17 A Aren't those basically the same questions? I may
 18 have -- are you saying that I answered them differently?
 19 Q Well, I'm just saying that when the State first asked
 20 you, you knew it was during the week sometime between July
 21 2nd and July 8, do you recall that?
 22 A Yes.
 23 Q Okay. But then when the defense questioned you at
 24 the prior hearing you stated it was either June 30th, July 1st, or

VI-109

AUSTRIA - FURTHER REDIRECT

1 July 7th, July 8th, do you recall that?
 2 A I was specifying in between those two weekends.
 3 Q Okay. So do you know if it was on the weekend or if
 4 it --
 5 A No, I don't.
 6 Q Is it possible it was during the week?
 7 A I was more or less specifying the times that I seen
 8 her that I knew she was in Panaca.
 9 Q Okay. So when you say July [sic] 30th and July 1st,
 10 you knew she was in Panaca but she wasn't -- you didn't
 11 necessarily see her or --
 12 A I seen her. I don't remember exactly what day it
 13 was I seen her. She was going back and forth to Vegas from
 14 Panaca.
 15 Q During the month of July?
 16 A During the month of June. And I don't want to say
 17 -- I'm assuming that's what she was doing. I don't
 18 remember.
 19 Q In June?
 20 A I know in June, but in July, I mean --
 21 Q You don't know if she went back to Vegas or not --
 22 A I don't.
 23 Q -- during that time?
 24 A I don't remember, so --

VI-110

AUSTRIA - FURTHER RECROSS

1 A That was in Panaca.
 2 Q Isn't it true that you have never testified that Blaise
 3 told you she cut someone's penis off?
 4 A I never have testified that, that she but the penis
 5 off. I testified that she slashed the penis.
 6 Q Do you recall seeing her vehicle in Panaca during the
 7 time that she first came back to Panaca on the 30th and 1st
 8 through the weekend of the 7th and 8th?
 9 A Yeah, because she had it packed out front -- outside
 10 her house in the yard.
 11 Q And you are her neighbor?
 12 A Well, she's right across the street from me, I can see
 13 her house, see the cars.
 14 Q Is part of the reason you believed she was staying in
 15 Panaca because you saw her car everyday during that time
 16 period?
 17 A Yeah. I seen her more or less, I mean --
 18 Q Her and her car?
 19 A Yeah.
 20 MS. GREENBERGER: I don't believe I have anything
 21 further.
 22 MS. DIGIACOMO: Nothing further.
 23 THE COURT: Anything further by the State?
 24 MS. DIGIACOMO: No, Your Honor.

VI-112

AUSTRIA - FURTHER RECROSS

1 Q Okay. Is it fair then just to say that you know that
 2 you saw her multiple times between June 30th and July 20th?
 3 A That would be fair.
 4 MS. DIGIACOMO: Court's indulgence.
 5 Nothing further.
 6 THE COURT: Followup questions by the defense.
 7 MS. GREENBERGER: Thank you. Just a few quick
 8 ones.
 9 THE WITNESS: Okay.
 10 **FURTHER RECROSS EXAMINATION**
 11 BY MS. GREENBERGER:
 12 Q When my client came back to Panaca in early July,
 13 each time you saw her thereafter it was in Panaca, correct?
 14 A Yes.
 15 Q Not Las Vegas?
 16 A No.
 17 Q You distinctly recall seeing her either Saturday or
 18 Sunday the last weekend of June or the first weekend of July,
 19 correct?
 20 A Yes.
 21 Q And you also distinctly recall seeing her the weekend
 22 of the 7th and 8th, correct?
 23 A Yes.
 24 Q And that was in Panaca?

VI-111

BROWN - DIRECT

1 THE COURT: You may step down from the stand.
 2 Would counsel approach?
 3 (Off-record bench conference from 2:51:58-2:52:56 p.m.)
 4 THE COURT: The State will be calling their next
 5 witness out of order at this time.
 6 MS. DIGIACOMO: Your Honor, the State calls Paul
 7 Brown.
 8 THE CLERK: Please come all the way forward.
 9 Remain standing and raise your right hand.
 10 **PAUL BROWN, STATE'S WITNESS, SWORN**
 11 THE CLERK: Thank you. Please be seated.
 12 State your name and spell it for the record, please.
 13 THE WITNESS: Paul Russel Brown, P-A-U-L
 14 R-U-S-S-E-L-B-R-O-W-N.
 15 THE COURT: State may proceed.
 16 MS. DIGIACOMO: Thank you.
 17 **DIRECT EXAMINATION**
 18 BY MS. DIGIACOMO:
 19 Q Mr. Brown, is there a name that you go by normally?
 20 A Rusty.
 21 Q Rusty. Okay. And your girlfriend, is that Michele
 22 Austria?
 23 A Yes.
 24 Q Is that the same person that just left the courtroom?

VI-113

BROWN - DIRECT

1 A Yes.
 2 Q And how long have you known Michele?
 3 A Nine years.
 4 Q Directing your attention back to June, July of -- or
 5 excuse me, of 2001, where were you living?
 6 A Panaca, Nevada.
 7 Q Where specifically within Panaca?
 8 A On the corner of Gentry and Lee.
 9 Q Okay. And who did you live with?
 10 A My girlfriend, Michele Austria.
 11 Q Did you live with anyone else at that time?
 12 A I had her sister living with us.
 13 Q And what's her name?
 14 A Paula Gilmore.
 15 Q And do you have any kids?
 16 A Yes, we have two.
 17 Q And they were living there as well?
 18 A Yes.
 19 Q Okay. How long had you lived in Panaca?
 20 A Off and on all my life.
 21 Q And did you know a Blaise Lobato?
 22 A Yes.
 23 Q How do you know her?
 24 A Through her parents. I used to work at a restaurant

VI-114

BROWN - DIRECT

1 Q How long have you lived -- excuse me. Strike that.
 2 As of 2001, how long had you lived in that residence?
 3 A We've been there about 7 years.
 4 Q Total?
 5 A Yes.
 6 Q Okay. Now do you recall a conversation between
 7 Blaise and Michele that happened during that summer 2001?
 8 Is that a yes?
 9 A Yes.
 10 Q You need to answer out loud for the court recorder,
 11 okay? So you recall a conversation?
 12 A Yes.
 13 Q Do you recall approximately when it happened or
 14 when it took place?
 15 A No.
 16 Q All right. Do you know what the conversation was
 17 about?
 18 A Just about someone -- or her cutting a man's dick
 19 off.
 20 Q Okay. Who's her?
 21 A Blaise Lobato.
 22 Q Okay. So Blaise and Michele were talking and
 23 having this --
 24 A She wasn't -- it was just in the house, just talking to

VI-116

BROWN - DIRECT

1 there in Panaca, and that's where we first met.
 2 Q Do you see her in the courtroom here today?
 3 A Yes, I do.
 4 Q Would you please point to her --
 5 A Right there.
 6 Q -- and describe what she's wearing?
 7 A She's wearing purple -- purple shirt with the plaid
 8 kinda --
 9 MS. DIGIACOMO: Your Honor, would the record
 10 reflect identification of the defendant.
 11 THE COURT: The record shall so reflect.
 12 MS. DIGIACOMO: Thank you.
 13 BY MS. DIGIACOMO:
 14 Q And you said you met through her parents. Who did
 15 you work with?
 16 A Becky Lobato.
 17 Q Is that her mom or step-mom?
 18 A Yes.
 19 Q Did you also live nearby them?
 20 A Down the street.
 21 Q Yeah.
 22 A Yes.
 23 Q Okay. Could you see their house from your house?
 24 A Yes.

VI-115

BROWN - DIRECT

1 everybody that was there.
 2 Q Okay. So who all was there?
 3 A Me and Michele and Paula Gilmore.
 4 Q Okay. Now do you recall giving a statement to the
 5 police back in July of 2001?
 6 A Yes.
 7 Q And did you tell them that you actually had
 8 overheard the conversation between Blaise and Michele?
 9 A Yes.
 10 Q Okay. So you weren't taking place in the
 11 conversation?
 12 A No.
 13 Q All right.
 14 A I was --
 15 Q What -- where was this conversation that Blaise and
 16 Michele were having take place?
 17 A Just right on our back porch.
 18 Q Okay. And what specifically did Blaise say?
 19 A That she had cut a man's dick off.
 20 Q All right. Do you recall anything more specific?
 21 A No.
 22 Q Okay. If I were to show you the statement that you
 23 gave to the police, would that refresh your recollection?
 24 A Sure.

VI-117

BROWN - DIRECT

1 Q Okay.
 2 MS. DIGIACOMO: Your Honor, may I approach the
 3 clerk?
 4 THE COURT: Yes.
 5 MS. DIGIACOMO: And may I approach the witness?
 6 THE COURT: Yes.
 7 BY MS. DIGIACOMO:
 8 Q Okay. I have here what's been marked for
 9 identification purposes only as State's Proposed Exhibit 198.
 10 THE COURT: You may approach the witness.
 11 MS. DIGIACOMO: Thank you.
 12 BY MS. DIGIACOMO:
 13 Q I'm gonna show you page 4. If you could read
 14 these first few lines and let me know if after reading that that
 15 refreshes your recollection as to what specifically you heard
 16 Blaise say?
 17 MS. GREENBERGER: What page, counsel?
 18 MS. DIGIACOMO: Page 4.
 19 THE COURT: 4.
 20 BY MS. DIGIACOMO:
 21 Q Does that refresh your memory?
 22 A Yes.
 23 Q Okay. What specifically did you hear her say?
 24 A She'd reached down and cut a man's penis off.

VI-118

BROWN - DIRECT

1 happened?
 2 A No.
 3 Q Do you recall telling the police where she said it
 4 happened?
 5 A Oh --
 6 Q Would it refresh your recollection if I was to show
 7 you her statement?
 8 A Yes.
 9 Q Okay.
 10 MS. DIGIACOMO: Page 3, counsel.
 11 BY MS. DIGIACOMO:
 12 Q Okay. I'm gonna show you what's been marked for
 13 identification purposes only as State's Proposed Exhibit 198. If
 14 you could read this last bit to yourself and let me know when
 15 you're done. Okay. Does that refresh your recollection?
 16 A Yeah.
 17 Q Okay. Where did Blaise say it happened?
 18 A In Las Vegas, Nevada.
 19 Q Did she say when it had happened?
 20 A No.
 21 Q Do you recall why she had to grab -- or cut a guy's
 22 dick off or why she grabbed her knife, do you recall that?
 23 A No.
 24 Q Okay. If I was to show you your statement, would

VI-120

BROWN - DIRECT

1 Q Okay. Did she say grabbed her knife as well?
 2 A I can't remember that far back.
 3 Q Okay. But did you tell the police that she reached
 4 down, grabbed her knife and cut the guy's dick off?
 5 A Yes.
 6 Q That's what you told the police? Is that a yes?
 7 A Yes.
 8 Q Is that what you actually overheard Blaise say?
 9 A In 5 years ago, yes, I'd go by that.
 10 Q Okay. Well, is it true -- or is it fair to say that your
 11 memory was better back in 2001 when you gave this
 12 statement?
 13 A Oh, yes.
 14 Q Okay. And actually you told the police that this
 15 conversation had not occurred too much earlier than when you
 16 spoke to them, do you recall that?
 17 A Yes.
 18 Q Okay. Do you recall specifically when you told the
 19 police the conversation occurred?
 20 A I think it was about a week before she was arrested.
 21 Q Okay. And that's your recollection as you sit here as
 22 well today?
 23 A Yes.
 24 Q Do you recall Blaise saying where this attack

VI-119

BROWN - DIRECT

1 that refresh your recollection?
 2 A You know, I think I just read that before. She had
 3 been attacked by someone.
 4 Q Okay. And so she stated she was defending herself
 5 with a knife?
 6 A Yes.
 7 Q Did she happen to describe the person at all that she
 8 had to ward off?
 9 A No.
 10 Q Did she say anything about what she did after she
 11 cut his dick off?
 12 A No, she did not.
 13 Q Now did you hear the entire -- excuse me. Did you
 14 overhear the entire conversation?
 15 A I did not.
 16 Q Why not?
 17 A I was on my way out the back porch to go for a
 18 four-wheeler ride.
 19 Q Okay. Now you said you lived in Panaca pretty
 20 much off and on all your life, is that --
 21 A Yes.
 22 Q Okay. How would you describe Panaca?
 23 A Small town. Everybody knows everybody.
 24 Q Okay. And what about talk in the town?

VI-121

BROWN - DIRECT

1 A Small town, a lot of talk. Yeah.
 2 Q Okay. Was there a lot of talk about Blaise after this?
 3 A Yes, there was.
 4 Q Did you actually see when she was arrested?
 5 A Yes.
 6 Q Okay. How did you do that?
 7 A Out my window, my front yard.
 8 Q And you said that people talked about Blaise?
 9 A Yes.
 10 Q Okay. And as people talked about it, did you hear
 11 information that you didn't know before?
 12 A Yes.
 13 Q Okay. And how was -- what's your opinion of all the
 14 information that was going around?
 15 MR. SCHIECK: Objection, relevance, Your Honor.
 16 THE COURT: Counsel approach.
 17 (Off-record bench conference from 3:03:25-3:04:18 p.m.)
 18 THE COURT: The objection's being withdrawn and
 19 you may answer the question.
 20 THE WITNESS: I'd like to hear it again.
 21 BY MS. DIGIACOMO:
 22 Q Okay. You know, talking about like all the talk that
 23 goes on in a small town, everything that you hear going
 24 around, is it always accurate?

VI-122

BROWN - DIRECT

1 A No, I was not.
 2 Q When would you guys normally go four-wheeling?
 3 A Where?
 4 Q When?
 5 A When? Well, I had just bought it, so we went all the
 6 time.
 7 Q Did you work during the week normally?
 8 A Yes.
 9 Q And would you go after work as well?
 10 A Yes.
 11 Q Where would you go four-wheeling?
 12 A Out in the desert, down towards Panaca Springs,
 13 Condor Canyon, around in there.
 14 Q Now actually where you live at the end of the street,
 15 or these two streets where they join, is there desert on either
 16 side of you?
 17 A My back yard goes out into the desert.
 18 Q Do you go four-wheeling out there?
 19 A Yeah.
 20 Q Do you recall a time when Blaise got injured that
 21 summer?
 22 A Yes.
 23 Q Were you there?
 24 A No, I was at home when they come back from the

VI-124

BROWN - DIRECT

1 A No.
 2 Q Okay. What was going on with regard to Blaise? Do
 3 you have any opinion whether or not that was all accurate?
 4 A I had no reason to believe that it was.
 5 Q Okay.
 6 MS. DIGIACOMO: Court's indulgence.
 7 BY MS. DIGIACOMO:
 8 Q The four-wheeler that you went out on when you
 9 overheard this conversation, do you recall when you got that
 10 four-wheeler?
 11 A 2001. I would not know the month.
 12 Q Okay. Is it possible it was during the wintertime?
 13 A No, it was during the summer.
 14 Q During the summer. Do you -- do you have more
 15 than one four-wheeler?
 16 A No.
 17 Q Do you and Michele share that four-wheeler?
 18 A Yes.
 19 Q Okay. Did you ever go four-wheeling with Blaise?
 20 A Yes.
 21 Q How many times did you go four-wheeling with her?
 22 A Numbers of time.
 23 Q Okay. Were you ever there when she had an
 24 accident?

VI-123

BROWN - CROSS

1 four-wheeler ride.
 2 Q Okay.
 3 MS. DIGIACOMO: Nothing further.
 4 MS. GREENBERGER: Good afternoon.
 5 THE COURT: You may cross.
 6 MS. GREENBERGER: Thank you, Your Honor.
 7 **CROSS-EXAMINATION**
 8 BY MS. GREENBERGER:
 9 Q You first met Blaise through her family?
 10 A Yes.
 11 Q And do you know her whole family that lives up in
 12 Panaca?
 13 A I knew Larry and Becky Lobato and Blaise and their
 14 daughter --
 15 Q Ashley?
 16 A Ashley.
 17 Q Larry would be her father, Becky would be her step-
 18 mother?
 19 A I'm not sure how that goes.
 20 Q And you knew her sister, Ashley?
 21 A Yes.
 22 Q Did you work with Blaise also at Jan's Restaurant, or
 23 just her mother, Becky?
 24 A Blaise would come in and help, I mean clean the

VI-125

BROWN - CROSS

1 tables and --
 2 Q Was that while Blaise was in adult education
 3 schooling with Dixie, during that time period?
 4 A No, I think this was -- this was back further. It was
 5 back when she was 13 or 14.
 6 Q Blaise babysat for you and Michele's children?
 7 A Yes.
 8 Q What time period was that, if you recall?
 9 A About six years ago.
 10 Q Do you recall after Blaise graduated from her high
 11 school program with Dixie Tienken, her heading down to
 12 Vegas in the late May, early June time period?
 13 A She went to Vegas quite a few times. I wouldn't
 14 know -- I couldn't tell you dates.
 15 Q Do you recall her coming back to Panaca before the
 16 July 4th holiday that year of 2001?
 17 A It was in that vicinity. I couldn't say if it was before.
 18 Q Did you see her on the 4th of July, if you recall?
 19 A I'm pretty sure I did, yes.
 20 THE COURT: I didn't hear that, I'm sorry.
 21 THE WITNESS: Yes.
 22 BY MS. GREENBERGER:
 23 Q Do you recall seeing her vehicle sitting in front of her
 24 house during that time period?

VI-126

BROWN - CROSS

1 that that didn't prompt me to do that.
 2 Q Are these wild stories that you've heard from Blaise
 3 herself?
 4 A Yeah.
 5 Q Did this happen often --
 6 A Well --
 7 Q -- over the years you knew her?
 8 A She's always been a little wild, as in how she talked.
 9 She's a young lady, so --
 10 Q Fair to say an exaggerator?
 11 A Yes.
 12 Q You never heard Blaise tell Michele that she beat a
 13 man and stabbed him in the throat, did you?
 14 A No.
 15 Q You would've remembered that?
 16 A Yes, I would.
 17 Q You never heard Blaise tell Michele she knocked
 18 some man's teeth out, did you?
 19 A No.
 20 Q Would've remembered that?
 21 A I would've.
 22 Q You didn't hear Blaise tell Michele she punched this
 23 man and gave him two black eyes, did you?
 24 A No, she didn't.

VI-128

BROWN - CROSS

1 A Yes, I do.
 2 Q And that would be a red Fiero?
 3 A Yes.
 4 Q Do you recall seeing Blaise the weekend after the 4th
 5 of July, the 7th and the 8th, in Panaca?
 6 A Yes.
 7 Q Do you recall seeing her red Fiero still parked in
 8 front of her house during that time period?
 9 A Yes.
 10 Q When this conversation occurred, we just heard
 11 testimony from Michele that no one was present. How can
 12 you explain that?
 13 A I can't. Maybe she had gotten up to go get a drink
 14 or something. We were all sitting on the back porch and I was
 15 going to a four-wheeler ride, so I got up and left.
 16 Q You were not a participant in this conversation,
 17 correct?
 18 A No, I had -- when it started I was just getting ready
 19 to leave, so I had more things on my agenda.
 20 Q You didn't think it was significant enough what you
 21 heard to call the police, correct?
 22 A No.
 23 Q Why not?
 24 A 'Cause I've heard a lot of wild stories and stuff like

VI-127

BROWN - CROSS

1 Q What about dismembering him, cutting off his penis
 2 after death. Did she ever tell you that?
 3 A No.
 4 Q Would you remember that?
 5 A Yes, I would.
 6 Q What about slashing him in his rear? Ever heard
 7 that from Blaise?
 8 A Did not.
 9 Q Stabbing him in his scrotum, ever hear that from
 10 Blaise?
 11 A No, I did not.
 12 Q Never on any occasion?
 13 A No.
 14 Q In fact, when you spoke to Metro, isn't it true that
 15 you told them you couldn't even remember the words that she
 16 used?
 17 A No, I couldn't.
 18 Q Isn't it true when you spoke to Metro they talked to
 19 you for some time before recording your conversation?
 20 A Yes.
 21 Q Do you recall how long?
 22 A Just to tell me who they were and what they were
 23 there for.
 24 Q Isn't it true that you read an article about this

VI-129

BROWN - CROSS

1 incident prior to talking to the police?
 2 A Yes.
 3 Q Isn't it true that as you sit here today, you're not
 4 sure in your mind what you read in the paper versus what you
 5 overheard in Blaise's conversation?
 6 A Yes.
 7 Q You're not sure?
 8 A I'm not sure.
 9 Q It could've been material you learned in the paper?
 10 A Yeah. I remember my dad giving me that article at
 11 the gas station while we were having coffee that morning.
 12 That was before she was arrested.
 13 Q That was before you talked to the police for the first
 14 time, isn't that true?
 15 A Yes.
 16 Q You were talking about a small town, how things get
 17 mixed up what you hear and what actually happens gets
 18 screwed up in some ways. Is that an accurate statement?
 19 A Yes.
 20 Q Can you explain that to us a little bit more?
 21 A Just always a lot of gossip going around about a
 22 certain -- certain people and -- if you want to be in that crowd
 23 you can hear a lot of things about --
 24 Q Blaise didn't like guns, correct?

VI-130

BROWN - CROSS

1 THE WITNESS: Yes.
 2 THE COURT: Thank you.
 3 BY MS. GREENBERGER:
 4 Q You mentioned Michele and Blaise went four-
 5 wheeling and you were aware there was some kind of
 6 accident? A rock climbing accident?
 7 A Yeah, there was a few accidents on that four-
 8 wheeler.
 9 Q Do you recall seeing the injuries, scratches on
 10 Blaise's stomach from a rock climbing incident?
 11 A Yeah, I remember her showing them to me.
 12 Q Was that after they got back from four-wheeling?
 13 A Yes.
 14 Q And that was either on the last weekend in June or
 15 the first weekend of July?
 16 A Yeah, it was in that vicinity.
 17 Q Did the police ever suggest any dates to you in this
 18 case?
 19 A No, not dates.
 20 Q Did the police suggest anything to you?
 21 A No.
 22 MS. GREENBERGER: Court's indulgence for a
 23 moment.
 24 THE COURT: Yes.

VI-132

BROWN - CROSS

1 A No, she did not.
 2 Q She didn't like hunting, correct?
 3 A No, she did not.
 4 Q And she didn't like blood, did she?
 5 A No.
 6 Q How do you know that?
 7 A On occasion we would go out shooting rabbits, you
 8 know, and -- we were in a small town, that's what kids do
 9 when they're -- they gotta -- their dad buys them a new 22 or
 10 something and take 'em out shooting rabbits and spotlighting,
 11 and she would never want to go.
 12 Q You didn't take -- excuse me. You didn't take
 13 Blaise's stories too seriously, did you?
 14 A No.
 15 Q You don't now either?
 16 A I really don't -- it's been five years, I really don't
 17 know who she is from --
 18 Q Well, my question is your opinion about now taking
 19 her too seriously, that was your opinion in 2001 --
 20 A Yes.
 21 Q -- based on your knowledge of her then --
 22 A Yep.
 23 Q -- the stories she told?
 24 THE COURT: I didn't hear an answer.

VI-131

BROWN - REDIRECT

1 MS. GREENBERGER: I have nothing further. Thank
 2 you.
 3 THE COURT: Redirect.
 4 MS. DIGIACOMO: Thank you, Your Honor.
 5 **REDIRECT EXAMINATION**
 6 BY MS. DIGIACOMO:
 7 Q Now defense counsel just asked you about the last
 8 week in June and first weekend in July, do you recall that?
 9 Yes?
 10 A Yes, I do.
 11 Q Okay. And what specifically do those dates bring to
 12 mind for you?
 13 A The 4th of July weekend, Caliente, Nevada.
 14 Q Okay. What specifically with regard --
 15 A The fireworks and --
 16 Q Okay. So there was fireworks on the weekend?
 17 A I'm not sure if it was on a weekend that particular
 18 time. It's whenever the 4th of July comes around. They have
 19 the fireworks on that date.
 20 Q Okay.
 21 A They usually will have a race, motorcycle race on the
 22 weekend prior, after.
 23 Q Do you remember if that happened in 2001?
 24 A There was a race, yes.

VI-133

BROWN - REDIRECT :

1 Q Okay. And that was on the weekend?
 2 A Yeah.
 3 Q What day of the -- what day was that, Saturday or
 4 Sunday?
 5 A It's an all weekend thing, so I'm not sure when the
 6 race was.
 7 Q Okay. What --
 8 A I don't keep track of it.
 9 Q Okay. Which weekend, before or after the 4th?
 10 A I think it was before.
 11 Q Okay. And you said that you saw some scratches on
 12 Blaise back then? And I'm showing you State's Exhibit 196.
 13 Does that look familiar?
 14 A Yep.
 15 Q Okay. Now you weren't with her when she got
 16 those scratches?
 17 A No.
 18 Q So you're basing the fact that defense counsel said
 19 you saw scratches from rock climbing, you're basing that on
 20 what other people have said how she got 'em?
 21 A I'm basing that on what she had told me.
 22 Q Okay. So she told you that's how she got it, but you
 23 didn't see it?
 24 A No.

VI-134

BROWN - REDIRECT

1 a news article before you gave your statement to the police,
 2 when you gave your statement to the police, were you telling
 3 them what you had heard yourself or were you telling them
 4 just what other people had told you?
 5 A What I had heard myself.
 6 Q Okay. And so what you've testified here to today,
 7 it's what you actually heard back then?
 8 A Yes.
 9 Q And it's not what somebody else told you?
 10 A No.
 11 Q It's not what somebody had you read in the paper?
 12 A It's what I had heard.
 13 Q Okay. Now did you know if Blaise had a bodyguard?
 14 A Thinking back, I've heard about it but I didn't know
 15 for sure.
 16 Q Okay. But you didn't -- so you don't know for sure?
 17 A No.
 18 Q Now defense counsel also told you or stated that
 19 when you talked to the police that you said you can't
 20 remember -- you couldn't remember what words she used, do
 21 you recall that?
 22 A Yes.
 23 Q And that was just specifically talking about whether
 24 or not she said I cut off his dick or cut off his penis, is that

VI-136

BROWN - REDIRECT

1 Q Do you know when this accident happened with the
 2 rock climbing?
 3 A It had to have been midday. I wouldn't know a date
 4 or a time.
 5 Q Okay. So just middle of the day, but you can't say
 6 when?
 7 A [No audible response].
 8 Q Okay. And --
 9 THE COURT: I didn't hear an answer.
 10 THE WITNESS: No.
 11 THE COURT: Thank you.
 12 BY MS. DIGIACOMO:
 13 Q The conversation that you overheard, as you sit here
 14 today, can you recall whether or not you actually overheard
 15 her say she cut some guy's dick off?
 16 A You know, it's -- having a lot of kids around, they
 17 talk a lot, so you hear like I'm gonna cut someone's dick off or
 18 something like that. You just -- I shrugged it off like that, you
 19 know.
 20 Q No, no, I understand you shoved it off, but you
 21 actually heard her say "cut a dick off"?
 22 A Yes, I did.
 23 Q Okay. And despite the fact that you heard all these
 24 other people talking about the incident and even possibly read

VI-135

BROWN - REDIRECT

1 what you're referring to?
 2 A Yes.
 3 Q Okay. Now you've talked about, you know, the
 4 small town atmosphere and people after Blaise was arrested
 5 were talking about it, correct?
 6 A Yes.
 7 Q Even since the last time you've testified, people still
 8 have been talking about it?
 9 A Yes.
 10 Q But what you're testifying to here today is what you
 11 actually remember happening when you overheard that
 12 conversation?
 13 A Yes.
 14 Q And that was in July 2001?
 15 A Yes.
 16 Q You also mentioned on cross-examination that you
 17 knew that Blaise would go to Vegas, would go back and forth
 18 between Vegas and Panaca, does that sound fair?
 19 A Yes.
 20 Q And did you know she had a boyfriend in Vegas?
 21 A I've heard about it. Yeah, I heard about -- she told
 22 me she had a boyfriend in Vegas.
 23 Q Okay. But you never met him?
 24 A No.

VI-137

BROWN - REDIRECT

1 Q You don't know who he was?
 2 A No, I did not.
 3 Q And defense counsel asked you about seeing Blaise
 4 the weekend after the 4th of July, do you recall that?
 5 A Yes.
 6 Q When specifically did you see her?
 7 A Well she'd come over off and on. She lived right
 8 down the street, so she could just come over to our house.
 9 Q Do you recall specifically what dates?
 10 A No.
 11 Q Okay. Do you just recall when she was home she
 12 would come over?
 13 A Yeah.
 14 Q Okay. So you don't know if it was the first weekend
 15 in July, the second weekend in July?
 16 A No.
 17 Q Okay. But you do recall seeing her whenever she
 18 was home?
 19 A Yes.
 20 Q All right. And with regard to her car, did you know
 21 what kind of car she drove?
 22 A It was a -- like an '85 red Pontiac Fiero.
 23 Q And do you recall what her license plate was?
 24 A I think it said "fornicator" on it.

VI-138

BROWN - REDIRECT

1 During the recess you're admonished not to talk or
 2 converse among yourselves or with anyone else on any subject
 3 connected with the trial. You're not to read, watch, or listen to
 4 any report of or commentary on the trial or any person
 5 connected with the trial by any medium of information,
 6 included without limitation, newspaper, television, radio, and
 7 internet. And you're not to form or express any opinion on
 8 any subject connected with the trial until the case is finally
 9 submitted to you. The jury may exit at this time.
 10 (Jurors are not present)
 11 THE COURT: The record shall reflect that the jury
 12 has exited the courtroom. The Court got two notes out from
 13 juror in the 8th chair, Robert Graham, that were not questions
 14 to the witness but rather were to the Court.
 15 The first one was requesting a potty break. And --
 16 MS. DIGIACOMO: No objection.
 17 THE COURT: -- that one will be marked as the
 18 Court's next in number.
 19 THE CLERK: 21.
 20 THE COURT: And the second one was asking for a
 21 letter that would permit him to have a test that he has
 22 scheduled for Friday, September 22nd, rescheduled. So unless
 23 counsel has any objection, I'll go ahead and do him a letter
 24 that he's doing jury service.

VI-140

BROWN - REDIRECT

1 Q All right. And you testified that you had seen that
 2 parked in front of her parent's house?
 3 A Yes.
 4 Q Is -- was that in July 2001?
 5 A Yes.
 6 Q Did you ever see her drive it?
 7 A No, I've always seen it just parked there.
 8 Q Okay. When she's home it's parked there?
 9 A Yeah, right in front of the house.
 10 Q But you can't tell the jury whether or not it was
 11 moved at all during that time in July 2001?
 12 A No.
 13 MS. DIGIACOMO: Court's indulgence.
 14 Pass the witness.
 15 MS. GREENBERGER: Nothing further, Your Honor.
 16 MS. DIGIACOMO: May I approach the clerk?
 17 THE COURT: You may.
 18 (Pause in the proceedings)
 19 THE COURT: Mr. Brown, you may step down from
 20 the witness stand.
 21 Ladies and gentlemen, the Court's gonna ask that
 22 counsel remain, but we are gonna take a 10 minute stretch
 23 break. Please be in the hallway in 10 minutes. The bailiff will
 24 meet you there to return you to your seat in the courtroom.

VI-139

BROWN - REDIRECT

1 MS. DIGIACOMO: What time on Friday the 22nd?
 2 THE COURT: He didn't say.
 3 MS. DIGIACOMO: 'Cause that was the day that I
 4 have my plane -- oh, is that it?
 5 MR. KEPHART: He'd have to study, you'd think.
 6 MR. SCHIECK: Could be that he didn't have time to
 7 study too.
 8 MS. DIGIACOMO: Yeah, that's true.
 9 MS. GREENBERGER: That's what I'm thinking.
 10 MS. DIGIACOMO: Okay.
 11 THE COURT: Friday, December -- or Friday,
 12 December 22nd -- Friday, September 22nd is the day that you
 13 have --
 14 MS. DIGIACOMO: A flight at 3:00. So really the
 15 latest I have to be out of here by is 1:00.
 16 THE COURT: And I -- okay. So you have to leave at
 17 1:00 p.m. And I can't remember, were we gonna proceed
 18 forward with --
 19 MS. DIGIACOMO: no, Your Honor.
 20 THE COURT: We were gonna break for the
 21 weekend and resume --
 22 MR. KEPHART: Mm-hmm.
 23 MS. DIGIACOMO: Please. Yeah, I can't --
 24 THE COURT: -- on the Monday?

VI-141

BROWN - REDIRECT

1 MS. DIGIACOMO: Yeah.
 2 THE COURT: So I can let him know that I guess
 3 when we come back, and see if that makes a difference to him
 4 or not --
 5 MS. DIGIACOMO: Okay.
 6 THE COURT: -- because we would be breaking at --
 7 well, we could take a late lunch I guess and break at 1:00.
 8 Okay.
 9 I'll take us off the record.
 10 (Court recessed at 3:30:50 p.m. until 3:51:58 p.m.)
 11 (Jurors are present)
 12 THE BAILIFF: Department 2 is back in session.
 13 Please be seated.
 14 THE COURT: Record shall reflect we're resuming
 15 trial in State versus Kirstin Lobato under case number
 16 C177934. In the presence of the defendant, her three
 17 counsel, the two prosecutors, and the ladies and gentlemen of
 18 the jury.
 19 The last juror's note will be marked as the Court's
 20 next in number.
 21 THE CLERK: 22.
 22 THE COURT: We'll proceed forward with the State's
 23 case in chief.
 24 And before we proceed with the next witness, Court

VI-142

DAVIS - DIRECT

1 THE COURT: Very well.
 2 MS. DIGIACOMO: Thank you, Your Honor.
 3 THE COURT: You may proceed.
 4 **JEREMY DAVIS, STATE'S WITNESS, BY DEPOSITION**
 5 **DIRECT EXAMINATION**
 6 BY MS. DIGIACOMO:
 7 Q Stated by the clerk, please state your full name for
 8 the record and spell your first name, please.
 9 A Jeremy Joseph Davis, J-E-R-E-M-Y.
 10 Q Mr. Davis, where did you come from before you
 11 came to court today?
 12 A Work.
 13 Q Where do you work?
 14 A M.S. Concrete.
 15 Q And where -- what do you do for there?
 16 A R and R.
 17 Q What's that?
 18 A Remove and repair.
 19 Q Okay. So you just go off work?
 20 A Yes.
 21 Q And do you know Kirstin Blaise Lobato?
 22 A Yes.
 23 Q How long have you known her?
 24 A About seven years.

VI-144

BROWN - REDIRECT

1 and counsel have reviewed their calendars and so I have an
 2 update for you on the times that we will be commencing the
 3 rest of the week.
 4 On Thursday we will be starting at 1:15. And on
 5 Friday we will be starting at 10:00 a.m. Friday, however, will
 6 be an abbreviated day. We will be recessing by 11:45, and so
 7 you will have Friday afternoon open. So that is what the
 8 schedule for the rest of this week will consist of.
 9 So tomorrow would be Tuesday at 10:30 -- strike
 10 that. Tomorrow is Tuesday. Tuesday at 1:00, Wednesday at
 11 10:30, Thursday at 1:45, and then Friday from 10:00 to 11:45
 12 we'll be in session.
 13 The State will call their next witness out of order.
 14 MS. DIGIACOMO: Thank you, Your Honor.
 15 The State at this time has another witness'
 16 testimony that we'd ask to read in at this time. So the State
 17 has Christopher Pendelous [phonetic] of our office here to
 18 read. And the witness' testimony that we're gonna read in is
 19 Jeremy Joseph Davis.
 20 And just for the record, with regard to Mr. Davis'
 21 testimony and also with Richard Shott that we read in last
 22 week, both of them were sworn in by the clerk, and we were
 23 wrong on the date. Both of these testimonies are from May 8,
 24 2002.

VI-143

DAVIS - DIRECT

1 Q Do you see her in the courtroom here today?
 2 A Yes.
 3 Q Would you please point to her and describe an
 4 article of clothing she's wearing?
 5 A A green suit.
 6 THE COURT: We'll stipulate she identified the
 7 defendant.
 8 MS. DIGIACOMO: Thank you.
 9 BY MS. DIGIACOMO:
 10 Q What was your relationship with the defendant?
 11 A Boyfriend.
 12 Q And approximately how long were you her
 13 boyfriend?
 14 A Three years, two years, on and off.
 15 Q Okay. Do you recall telling the police five years?
 16 A Yes.
 17 Q Which is more accurate, five years on and off or
 18 three years on and off?
 19 A Three years together and then two years on and off.
 20 Q Okay. And when did this relationship end?
 21 A May of last year.
 22 Q May of 2001?
 23 A Yes.
 24 Q And during the seven year period that you knew the

VI-145

DAVIS - DIRECT

1 defendant, did you know her family?
 2 A Yes.
 3 Q Who did she live with?
 4 A Her mother or her father and step-mother.
 5 Q And do you know their names?
 6 A Larry and Becky.
 7 Q How well would you say you knew Larry and Becky?
 8 A Pretty good.
 9 Q And how would you describe Larry and Becky's
 10 relationship with the defendant?
 11 A Pretty good.
 12 Q Would Larry and Becky help her out when she
 13 needed it?
 14 A Yes.
 15 Q And how did you originally meet the defendant?
 16 A School.
 17 Q Where was the school?
 18 A Panaca, Nevada.
 19 Q And did you live in Panaca?
 20 A No, I lived in Caliente.
 21 Q What school, college, high school?
 22 A High school.
 23 Q And where did you move to -- and when did you
 24 move to Vegas?

VI-146

DAVIS - DIRECT

1 A Right after graduation.
 2 Q What year did you graduate?
 3 A '96.
 4 Q In May or December?
 5 A May.
 6 Q And where did you live when you moved down in
 7 May of '96?
 8 A With my mother.
 9 Q And where was that?
 10 A Trop and Nellis.
 11 Q And where were you living approximately a year ago
 12 last April to May or June of 2001?
 13 A In my grandfather's house.
 14 Q Where is that located?
 15 A Trop and Nellis.
 16 Q What is the address?
 17 A 4827 Meredith Avenue.
 18 Q Thank you. And when was the last time before
 19 today that you saw the defendant?
 20 A Middle of April last year.
 21 Q 2001?
 22 A Yes.
 23 Q Do you recall telling the police it might've been May
 24 of 2001?

VI-147

DAVIS - DIRECT

1 A I do not. I don't recall.
 2 Q But to your recollection it was April of 2001?
 3 A Yes, middle of April, end of April.
 4 Q And what were the circumstances of the last time
 5 you saw her?
 6 A She was down in Vegas and visiting.
 7 Q Visiting from where?
 8 A Panaca.
 9 Q How long was she here for?
 10 A Couple of days.
 11 Q Did she stay with you?
 12 A No.
 13 Q How often did you see her over that couple of day
 14 period?
 15 A Every day.
 16 Q And did she travel back and forth between Panaca
 17 and Vegas?
 18 A She had a car.
 19 Q Do you recall what the car was?
 20 A Yeah, a red Pontiac Firebird.
 21 MS. DIGIACOMO: Your Honor, may I approach?
 22 THE COURT: Yes.
 23 MS. DiGIACOMO: I've shown defense counsel
 24 previously.

VI-148

DAVIS - DIRECT

1 MS. ZALKIN: Stipulate.
 2 BY MS. DIGIACOMO:
 3 Q I'm gonna show you State's Proposed Exhibits 106,
 4 107, and 108. Can you just look at all three and tell me if you
 5 recognize what's depicted in these photographs?
 6 A Her red Firebird.
 7 Q Okay. Showing you -- well, are each one of these,
 8 are they fair and accurate depictions of the car the defendant
 9 drove, all three of these?
 10 A Yes.
 11 MS. DIGIACOMO: Your Honor, at this time the State
 12 would move for admission of State's Proposed Exhibits 106,
 13 107, and 108.
 14 MS. ZALKIN: No objection.
 15 THE COURT: Granted.
 16 (State's Exhibit Nos. 106, 107, and 108, admitted)
 17 BY MS. DIGIACOMO:
 18 Q And you said it's a Firebird. Is it a Fiero or a
 19 Firebird, if you know?
 20 A Actually it's a Fiero.
 21 Q Okay. And do you know approximately when she
 22 got this car?
 23 A Not approximately.
 24 Q Okay. Well, was it in 2000, 1999, 2001?

VI-149

DAVIS - DIRECT

1 A 2001.

2 Q It was? Was it before you broke up or after you

3 broke up?

4 A Before.

5 Q Okay.

6 MS. DIGIACOMO: Your Honor, may I publish these

7 to the jury?

8 MS. ZALKIN: No objection.

9 THE COURT: Yes.

10 MS. DIGIACOMO: This is number 106, 107, 108.

11 I'm putting up 106. This is 107, and 108.

12 BY MS. DIGIACOMO:

13 Q Is there anything unique about the defendant's red

14 Fiero?

15 A Her license plate.

16 Q What is her license plate?

17 MS. ZALKIN: Objection.

18 THE WITNESS: "Fornicator".

19 THE COURT: Overruled.

20 MS. DIGIACOMO: Thank you, Your Honor.

21 BY MS. DIGIACOMO:

22 Q When you last saw her in April 2001, did she have

23 this license plate on her car?

24 A Yes.

VI-150

DAVIS - DIRECT

1 Q Do you know how long she had it?

2 A No.

3 Q And do you know what kind of shape her car was in?

4 Was it driveable? Did it have engine problems?

5 A No, it was driveable.

6 Q Do you know approximately how many times she

7 used this car to travel back and forth to Panaca and Vegas?

8 A No.

9 Q Would you -- was it more than one time she came

10 down and saw you in April 2001?

11 A Yes.

12 Q Approximately how long of a period would you say

13 she lived in Panaca and you lived in Las Vegas for the duration

14 of your relationship?

15 A Can you repeat that? I'm sorry.

16 Q How long during your relationship with the

17 defendant as boyfriend girlfriend off and on, were you having

18 a long distance relationship where she lived in Panaca and you

19 lived in Vegas?

20 A Three years.

21 Q And approximately how often would you see her a

22 month?

23 A Twice.

24 Q Two times a month?

VI-151

DAVIS - DIRECT

1 A Yeah.

2 Q Would you say you went up there more or she came

3 down to Vegas more?

4 A I went up there more.

5 Q Have you ever driven with the defendant from Vegas

6 to Panaca or from Panaca to Las Vegas?

7 A No.

8 Q Okay. Do you know approximately how long of a

9 drive it is?

10 A Two hours.

11 Q Is there any shortcut or is it always two hours?

12 A There's a shortcut.

13 Q Where's the shortcut?

14 A Rainbow Canyon, halfway between here and Alamo.

15 Q And this shortcut through Rainbow Canyon, how

16 much time approximately would it chop off of the two hour

17 time period?

18 A An hour.

19 Q Are you aware if the defendant knew of this shortcut

20 through Rainbow Canyon?

21 A Yes.

22 Q Did she know?

23 A Yes.

24 Q Now after April of 2001, you said that it was the last

VI-152

DAVIS - DIRECT

1 time you actually saw the defendant. Did you see her car after

2 that time period?

3 A Yes.

4 Q And when was that?

5 A Middle of May.

6 Q What were the circumstances of when you saw her

7 car next?

8 A There was no circumstances, it was just parked in

9 front of my house.

10 Q So you came home one day and her car was

11 parked?

12 A Yes.

13 Q Was it parked in front of the house or in the

14 driveway, down the street?

15 A In the driveway.

16 Q And where were you living at this time?

17 A The 4827 Meredith Avenue.

18 Q Were you living there alone?

19 A No, I had roommates.

20 Q And where was -- where -- and where her car was

21 parked in the driveway, could others get in and out of the

22 driveway?

23 A Yes.

24 Q Did -- when did you first notice that her car

VI-153

DAVIS - DIRECT

1 appeared in your driveway?
 2 A When I came home from work.
 3 Q And was she around?
 4 A No.
 5 Q Did you notice anything unusual about the car?
 6 A No.
 7 Q Do you know why it was left there?
 8 A No.
 9 Q Did the defendant ever give you any indication why
 10 it was left there?
 11 A There was a note saying that she had to leave her
 12 car here and that she'd be back to get it.
 13 Q And you're familiar with her handwriting?
 14 A Yes.
 15 Q And you recognized the note was from her?
 16 A Yes.
 17 Q Where did she leave the note?
 18 A Above the steering wheel on the dashboard.
 19 Q Did you have to read it through the window?
 20 A No, the window was down enough to where I could
 21 reach in and grab it.
 22 Q And is that what you did?
 23 A Yes.
 24 Q Did she leave an extra key for you in case you had

VI-154

DAVIS - DIRECT

1 to move the car while it was there?
 2 A No.
 3 Q How long was that car in your driveway?
 4 A About five days.
 5 Q Okay. Do you recall what date it was left there?
 6 A 24th, 25th of May.
 7 Q And what are those dates significant for? How do
 8 you remember those dates?
 9 A It was a couple days before Memorial Day.
 10 Q And what were you doing over the Memorial Day
 11 weekend?
 12 A I was going out of town for a softball tournament.
 13 Q And where were you going?
 14 A Caliente.
 15 Q And do you recall what day you left, or do you recall
 16 what day of the week you left?
 17 A I believe it was the 26th -- 25th of 26th.
 18 Q What day of the week was it? Was it Monday,
 19 Tuesday?
 20 A Oh, Friday.
 21 Q It was a Friday?
 22 A Yes.
 23 MS. DIGIACOMO: Your Honor, if you could take
 24 judicial notice of the date of the Friday before Memorial Day

VI-155

DAVIS - DIRECT

1 weekend last year.
 2 THE COURT: The Court takes judicial notice.
 3 MS. DIGIACOMO: What was the date?
 4 THE COURT: 25th of May was a Friday in the year
 5 2001. The Court takes judicial notice of that. I cannot tell
 6 from the calendar when Memorial Day was, however.
 7 MS. DIGIACOMO: It is usually the last weekend, the
 8 Monday in May.
 9 THE COURT: The last Monday in May would have
 10 been the 28th.
 11 BY MS. DIGIACOMO:
 12 Q And you're nodding your head yes?
 13 A Yes.
 14 Q Does that sound about right?
 15 A Yes, that's correct.
 16 Q And if she left the car a couple of days before you
 17 left to go to Caliente on that Friday, approximately the 23rd
 18 sound about right?
 19 A Yes.
 20 Q What day did you come back from the softball
 21 tournament in Caliente? Or what day --
 22 A Was it Monday the 28th?
 23 Q Yes, that's what the Judge --
 24 A Yes, the Monday, the 28th.

VI-156

DAVIS - DIRECT

1 Q So you came back on that Monday after?
 2 A Yes.
 3 Q When you got home to the address on Meredith,
 4 was the defendant's car still in your driveway?
 5 A No.
 6 Q Are you positive it wasn't in your driveway when you
 7 came back on that date? What makes you remember?
 8 A Came home from the softball tournament and went
 9 home to unpack and it was gone.
 10 Q Okay. So it's not possible it was there for another
 11 week and a half?
 12 A No.
 13 Q When you came back on the 28th, were you going to
 14 continue residing in that location at that time on Meredith?
 15 A Yes, for that time.
 16 Q When was it that you moved?
 17 A Middle of June.
 18 Q Okay. Where did you move to?
 19 A 4750 Illustrious Avenue.
 20 Q And who did you move in with?
 21 A Kim Miller.
 22 Q Who is Kim Miller?
 23 A My girlfriend.
 24 Q And when did you and Kim Miller get together as

VI-157

DAVIS - DIRECT

1 boyfriend, girlfriend?
 2 A Over the Memorial Day weekend.
 3 Q In Caliente?
 4 A Yes.
 5 Q Did you see her when you got back to Vegas on the
 6 28th?
 7 A Who?
 8 Q Kim Miller?
 9 A Oh, yes.
 10 Q When was it that you saw her?
 11 A She came down to my house after I unpacked and
 12 everything on the 28th.
 13 Q And what did you do with her then?
 14 A Nothing.
 15 Q Okay. Now between the 28th of May until the middle
 16 of June when you moved in with her, would you say you were
 17 staying more at her house or you were staying more at your
 18 own place?
 19 A More at her house.
 20 Q Okay. Were you staying nights at her place?
 21 A Yes.
 22 Q Were you -- how many nights a week would you say
 23 you were staying at her place?
 24 A Twice.

VI-158

DAVIS - DIRECT

1 Q Okay. And up until the middle of June, and then
 2 you were only at her place, correct?
 3 A Correct.
 4 Q Okay. When the defendant's car was left in your
 5 driveway and you left to go to Caliente, do you remember
 6 what shape the car was in?
 7 A Yeah, it was in good shape.
 8 Q Okay. The outside was fine?
 9 A Yes.
 10 Q Did you ever look in the interior of the car?
 11 A No.
 12 Q Did you look at the interior of the car when you
 13 grabbed the note on the 23rd?
 14 A No. I was a little frustrated, so no, I didn't.
 15 Q You were a little frustrated because of what?
 16 A Because the car was there.
 17 Q You didn't want the car in your driveway?
 18 A No.
 19 Q At any time while that car was in your driveway, did
 20 you go inside her vehicle?
 21 A Only to grab the note.
 22 Q Other than grabbing the note, did you go inside the
 23 vehicle?
 24 A No.

VI-159

DAVIS - DIRECT

1 Q Did you cause any damage to the vehicle?
 2 A No.
 3 Q Did you take anything out of the vehicle that
 4 belonged to the defendant, such as CDs?
 5 A No.
 6 Q This is gonna sound a little weird, but did you ever
 7 urinate or defecate inside that vehicle?
 8 A No.
 9 Q Did you ever throw up inside the vehicle or vomit?
 10 A No.
 11 Q At the time the car was left in your driveway, would
 12 you consider yourself off and on with the defendant or was the
 13 relationship over at that point?
 14 A It was over at that point.
 15 Q Okay. What caused the ending of the relationship?
 16 MS. ZALKIN: Objection, relevance.
 17 THE COURT: Overruled.
 18 BY MS. DIGIACOMO:
 19 Q Do you remember the question?
 20 A No.
 21 Q What caused the breakup between you and the
 22 defendant?
 23 A Problems. Just having a bunch of problems.
 24 Q Do you recall discussing one of the problems with

VI-160

DAVIS - DIRECT

1 the detectives you spoke to and with the DA, with myself?
 2 A Yes.
 3 Q What was the main problem?
 4 A Drug use.
 5 Q And when you say drug use, what drug use are you
 6 referring to?
 7 A Methamphetamine.
 8 Q And who was using the methamphetamine?
 9 A Her and myself.
 10 Q Okay. When you and her would use the
 11 methamphetamine together, how often would you do that?
 12 A Once in awhile.
 13 Q Do you know approximately when? Do you recall
 14 when you first started doing methamphetamine with the
 15 defendant?
 16 A No, I don't.
 17 Q Okay. Was it more than a year of knowing her or
 18 was it towards the end of knowing her? Was it when you first
 19 met?
 20 A Towards the end.
 21 Q Towards the end. And what was so problematic
 22 about the drugs that caused the breakup?
 23 A Can you repeat that, please?
 24 Q What was the defendant's problem with

VI-161

DAVIS - DIRECT

1 methamphetamine that caused this breakup? Well, let me ask
 2 you it this way. What was her demeanor like when she was
 3 on the methamphetamine? How did she act?
 4 A Out of it.
 5 Q When you say out of it, can you be more specific?
 6 A Not focused, just wasn't herself.
 7 Q And how wasn't she herself?
 8 A Just wasn't the person that I knew. I can't really tell
 9 you, I guess.
 10 Q Okay. Well tell me, what was the person you knew
 11 when she wasn't on drugs?
 12 A Great.
 13 Q Can you be a little more specific?
 14 A Sweet, caring, just a great person to be around.
 15 Q And how did that change when she was on drugs?
 16 A Just accusing me of stuff that I did not do and
 17 getting mad over simple stuff.
 18 Q Was she pushing you away?
 19 A No.
 20 Q Okay. Do you recall telling the detectives that she
 21 just didn't care about anything when she was on drugs?
 22 A Yes.
 23 Q And do you recall telling them that, I can't
 24 remember your exact words, that she would try and get any

VI-162

DAVIS - DIRECT

1 THE COURT: Overruled. The answer stands.
 2 BY MS. DIGIACOMO:
 3 Q When you were doing drugs with the defendant, if
 4 you didn't bring them to the table, are you implying that the
 5 defendant brought them to the table to do?
 6 A Yes.
 7 Q Do you know where she got the methamphetamine
 8 from? Did she ever tell you?
 9 A No.
 10 Q Would she ever tell you anything about where the
 11 drugs came from?
 12 A No.
 13 Q Okay. Now do you recall telling me that all she
 14 would tell you is that she had sources?
 15 A Yeah. Yes.
 16 Q Is that true, she would tell you she had sources?
 17 A Yes.
 18 Q Do you recall her ever telling you the name of one of
 19 her sources, a first name?
 20 A No.
 21 Q Do you know what she was like when she was
 22 coming down off of them?
 23 A No.
 24 Q Why don't you?

VI-164

DAVIS - DIRECT

1 kind of drugs or get any kind of meth that she could get her
 2 hands on?
 3 A Yes.
 4 Q Are those true, both of those statements?
 5 A Yes.
 6 Q Okay. Would you -- if you had to write which was
 7 more important, the methamphetamine use, I mean getting
 8 more drugs, or being with you, how would you rate? Which
 9 would be number one, which would be number two?
 10 A Getting more drugs, number one.
 11 Q Is that part of the reason why it broke off because
 12 of the drugs?
 13 A Yes.
 14 Q Now when you would do drugs with the defendant,
 15 did you always supply the drugs?
 16 A No.
 17 Q Where did the methamphetamine come from then?
 18 A I don't know.
 19 MS. ZALKIN: Objection. And again, Judge,
 20 objection.
 21 THE COURT: I've lost the spot. Can you direct the
 22 Court?
 23 MS. DIGIACOMO: 136.
 24 MS. GREENBERGER: 99.

VI-163

DAVIS - DIRECT

1 A Because she'd usually be back in Panaca or
 2 somewhere else.
 3 Q So when you were done doing drugs together she
 4 would leave and go back to Panaca?
 5 A Leave my house, yes.
 6 Q Okay. Would she tell you where she was going, or
 7 you just knew she left your house?
 8 A She'd just leave.
 9 Q And approximately when you did drugs, would you
 10 do it for more than one day? Would you do it just one time
 11 over the weekend? What was the time frame?
 12 A Couple times a day.
 13 Q Okay. For more than one day in a row?
 14 A Yes.
 15 Q Let's change the subject. Did you ever know the
 16 defendant to have a knife or any knives?
 17 A Yes.
 18 Q How do you know this?
 19 A I seen them.
 20 Q Where did you see them?
 21 A At her house.
 22 Q And when you say her house, is that the one in
 23 Panaca?
 24 A Yes.

VI-165

DAVIS - DIRECT

1 Q How many did you see?

2 A Four or five.

3 Q Did you -- are you familiar with what a butterfly

4 knife is?

5 A Yes.

6 Q Have you ever seen the defendant with a butterfly

7 knife?

8 A Yes.

9 Q Okay. Can you explain exactly what a butterfly knife

10 is?

11 A It's a knife that can be concealed within itself and

12 opened by a flick of the wrist.

13 Q Okay. So flicking the wrist would open the knife out

14 exposed so the blade's exposed?

15 A Yes.

16 Q Did the defendant ever do this in front of you with a

17 butterfly knife?

18 A Yes.

19 Q So she knew how to fling it open, a butterfly knife?

20 A Yes.

21 Q Did you ever know her to carry a knife on her

22 person?

23 A Yes.

24 Q And where would she carry it?

VI-166

DAVIS - CROSS

1 Q Okay. So you don't recall?

2 A Right.

3 Q Have -- after the time when she left the car in your

4 driveway, did you ever speak to her?

5 A No.

6 Q Did you ever speak to anyone in her family?

7 A No.

8 Q Do you know if she covered -- excuse me -- if she

9 carried a cell phone? Did she have a cell phone?

10 A Yes.

11 Q And do you know what that cell phone looked like?

12 A They all look alike. I'm not sure.

13 Q Okay. Was it her cell phone, do you know?

14 A I believe it was her father's.

15 Q Okay.

16 MS. DIGIACOMO: Court's indulgence.

17 Pass the witness, Your Honor.

18 THE COURT: You may proceed.

19 MS. ZALKIN: Thank you, Judge.

CROSS-EXAMINATION

21 BY MS. ZALKIN:

22 Q Mr. Davis, you said the last time that you saw Blaise

23 was in April, correct?

24 A Yes.

VI-168

DAVIS - DIRECT

1 A Pocket, purse.

2 Q Did you ever see the knife she carried?

3 A Yes.

4 Q What did it look like, if you recall?

5 A Small pocketknife.

6 Q Okay. So small enough to conceal in her pocket or

7 her purse where she carried it?

8 A Yes.

9 Q Do you know why she carried the knife? Did she

10 ever tell you?

11 A Yes.

12 Q What did she tell you?

13 A Protection.

14 Q Okay. Now going back with regard to her car. Did

15 you ever drive inside her car with her, the red Fiero?

16 A Did I ever drive?

17 Q Inside the car with her?

18 A Yes.

19 Q Do you know if she had seat covers on the two front

20 seats?

21 A Can you repeat that, please?

22 Q Did the two front seats of her car have like slip

23 covers or seat covers over them?

24 A I don't -- I'm not sure, no.

VI-167

DAVIS - CROSS

1 Q And when you first saw her vehicle it was about May

2 23rd?

3 A No. First time I seen her vehicle would be at her

4 house in Panaca.

5 Q Okay. And this was a vehicle that she had

6 purchased in 2001?

7 A Yes, I believe so.

8 Q But the vehicle was not a brand new 2001 model,

9 was it?

10 A No.

11 Q It's about a 1984 model?

12 A Yes.

13 Q So it's a used car?

14 A Yes.

15 Q So the last time you saw that vehicle then was in

16 front of your house in your driveway, correct?

17 A Yes.

18 Q And that was around May 23rd of 2001?

19 A Yes.

20 Q And then you left for the softball tournament?

21 A Yes.

22 Q And that would've been around the 28th?

23 A No, that would be the 25th.

24 Q And you returned on the 28th?

VI-169

DAVIS - REDIRECT

1 A Yes.
 2 Q And when you returned on the 28th of May of 2001
 3 her vehicle was no longer there?
 4 A Yes.
 5 Q While it was there, the window was down?
 6 A Not all the way down.
 7 Q Far enough that you could reach in to get the note?
 8 A Yes.
 9 Q Far enough anybody could reach in?
 10 A Yes.

11 MS. ZALKIN: I have no further questions, Judge.
 12 MS. DIGIACOMO: I have just one question, Your
 13 Honor.

14 THE COURT: You may proceed.

REDIRECT EXAMINATION

15 BY MS. DIGIACOMO:

16 Q Do you know how she kept the car? Do you know
 17 how the defendant kept the car, clean, messy?
 18 A Clean.

19 MS. DIGIACOMO: Nothing further.

RECROSS EXAMINATION

20 BY MS. ZALKIN:

21 Q Mr. Davis, you said she kept her vehicle clean. How
 22 did she keep a 1984 old used vehicle clean?
 23
 24

VI-170

1 THE COURT: Okay. We are gonna take a 10
 2 minute stretch break. In 10 minutes please be in the hallway.
 3 The bailiff will meet you there to return you to your seats in
 4 the courtroom.

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

14 We'll be in recess for 10 minutes.
 15 (Jurors are not present)

16 (Court recessed at 4:21:45 until 4:52:51 p.m.)
 17 (Jurors are present)

18 MR. BARRETT: All rise, please. Department 2 is
 19 back in session.

20 Please be seated.

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

VI-172

1 A I don't know, kept it tidy, didn't make it messy.

2 Q Did she use any detergents?
 3 A I don't know.

4 Q Any cleaning solutions?
 5 A Don't know. I wasn't with her when she washed it.

6 Q Are you aware that she washed her car at least at
 7 some point during the time that she owned it?
 8 A Yes.

9 MS. ZALKIN: No further questions.

10 MS. DIGIACOMO: Nothing further.

11 THE COURT: You may step down.
 12 State may check the hall.

13 MS. DIGIACOMO: Thank you.
 14 May we approach, Your Honor?

15 (Off-record bench conference from 4:16:19-4:19:05 p.m.)

16 THE COURT: Ladies and gentlemen, we're gonna
 17 take another stretch recess. In 10 minutes please be in the
 18 hallway.

19 Time out. Record shall reflect that the prosecutor
 20 has stepped back to the hallway.

21 MS. DIGIACOMO: Your Honor, can we approach
 22 again?

23 THE COURT: Yes.
 24 (Off-record bench conference from 4:20:24-4:21:10 p.m.)

VI-171

1 Ladies and gentlemen, it was anticipated that the
 2 fifth witness called in the case, Dixie Tienken, would be
 3 returned here this afternoon to resume her testimony. She
 4 reportedly left the Panaca area this morning to travel down to
 5 Las Vegas but has not yet arrived. So unfortunately the Court
 6 had anticipated her being here to complete the day, but we
 7 will not have her available. So we will be taking our evening
 8 recess at this time.

9 The Court also advises you that on Wednesday -- it's
 10 Wednesday that we will be breaking a little bit early.

11 MS. DIGIACOMO: Wednesday?

12 MR. KEPHART: I thought it was tomorrow.

13 THE COURT: Wednesday.

14 MR. KEPHART: Oh, okay.

15 MS. DIGIACOMO: Oh, okay.

16 THE COURT: Wednesday. We'll be breaking a little
 17 bit early, about 4:30.

18 During this evening recess you're admonished that
 19 you are not to talk or converse among yourselves nor with
 20 anyone else on any subject connected with this trial. And
 21 you're not to read, watch, or listen to any report of or
 22 commentary on the trial or any person connected with the trial
 23 by any medium of information, included without limitation,
 24 newspaper, television, radio, and internet. And you're not to

VI-173

1 form or express any opinion on any subject connected with the
2 trial until the case is finally submitted to you.

3 You all have a good evening and we'll see you
4 tomorrow at -- tomorrow is Tuesday so it will be 1 o'clock.
5 The jury may exit.

6 (Jurors are not present)

7 THE COURT: I was working on the Tuesday
8 calendar, so my mind was already a day ahead, so sorry I
9 confused you about that. It's Wednesday that I need to leave
10 a little bit early

11 Is there anything that we need to make of record at
12 this time?

13 MR. SCHIECK: No, Your Honor.

14 MS. DIGIACOMO: Your Honor, actually I just have
15 one thing that I wanted to clarify.

16 We -- their -- one of their witnesses, Bodziak that we
17 had stipulated to the report last time. The only clarification
18 the State would have is within the report it mentioned two
19 photographs shown to the exert. It's Q-1 and Q-2. We would
20 only ask that those be admitted as well so that it's clear the
21 jury -- to the jury what he's talking about.

22 MR. SCHIECK: If they're not already admitted.

23 MS. DIGIACOMO: Yeah, I don't know if they are or
24 not.

VI-174

AFFIRMATION
Pursuant to C177894

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

Kari Riley
Transcriber

5/3/07
Date

* * * * *

VI-176

1 THE COURT: So I'm not sure which ones they are.
2 MS. DIGIACOMO: It's -- he did -- he's the one that
3 did the footwear and determined the size of the footwear
4 impression.

5 THE COURT: Okay.

6 MS. DIGIACOMO: And we looked at Q-1 and Q-2 in
7 his report. I guess question 1 and question 2, I'm not sure.
8 But we just want to make sure that those are a part of his
9 report --

10 THE COURT: So I guess --

11 MS. DIGIACOMO: -- when it comes in.

12 THE COURT: -- the defense will have to look into
13 that and see if they can determine which photographs those
14 are and we'll have to address that.

15 Okay. And we'll go off the record until tomorrow.
16 We'll see everybody at 1:00.

17 COURT ADJOURNED AT 4:57:01 P.M. UNTIL
18 THE FOLLOWING DAY, SEPTEMBER 19, 2006

VI-175

CERTIFICATION

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

**NW TRANSCRIPTS, LLC
NEVADA DIVISION
1027 S. RAINBOW BLVD., #148
LAS VEGAS, NEVADA 89145-6232
(702) 373-7457
nwtranscripts@msn.com**


FEDERALLY CERTIFIED MANAGER/OWNER

Kari Riley
TRANSCRIBER

5/3/07
DATE

* * * * *

COPY

VI-177