

31 to 41
guilt/innocence

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
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REPORTER'S RECORD

VOLUME 31 OF 53

Trial Court Cause No. 380-80047-00

THE STATE OF TEXAS * IN THE 380TH DISTRICT COURT

V.

IVAN ABNER CANTU * OF COLLIN COUNTY, TEXAS

REPORTER'S RECORD

GUILT/INNOCENCE PHASE OF JURY TRIAL

VOLUME 31

COPY

On the 3rd day of October, 2001, From 9:22 a.m. to 5:07 p.m. the Trial on the Merits came on to be heard in the presence of a jury, in the above-entitled and -numbered cause; and the following proceedings were had before the Honorable Charles F. Sandoval, Judge Presiding, held in McKinney, Collin County, Texas:

Proceedings reported by Computerized Stenotype Machine; Reporter's Record produced by Computer-Assisted Transcription.

LISA M. RENFRO, Texas CSR #4534

Official Court Reporter - 380th Judicial District Court

210 S. McDonald Street, McKinney, Texas 75069

(972) 548-4661

FILED

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DISTRICT CLERK
COLLIN COUNTY, TEXAS

BY [Signature]

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1 CHRONOLOGICAL MASTER INDEX
 2 October 3, 2001
 3 Guilt/Innocence
 4 Volume 31

	PAGE
5 Defendant's Motion to Quash Indictment and declare the death penalty unconstitutional	5
6 Jury sworn by the Court	6
7 Court's instructions to the Jury	6
8 Indictment read in open court	9
9 Defendant pleads not guilty	10
10 Open statement by the State (Ms. Falco)	11
11 Defendant reserves right to open STATE'S	16
12 WITNESSES Direct Voir Dire Cross Redirect Recross	
Kitchen, 16, 32 31 33	
13 Jerry Kitchen, 60, 63 62, 83 88 94 96	
14 Bernadine Snowden, 86 106 121	
15 George Ciszewski, 127	
16 David Maxwell, 136 144 159 162	
17 Barry	
	PAGE
18 Rule of Sequestration invoked	166
19 STATE'S WITNESSES Direct Voir Dire Cross Redirect Recross	
Whitsitt, 168, 196 205	
20 Donald	
	PAGE
21 Sub Rosa hearing on admission of exhibits	177
22 STATE'S WITNESSES Direct Voir Dire Cross Redirect Recross	
Whitsitt, 196 204	
23 Donald	
	PAGE
24 Reporter's Certificate	207
25 End of Volume 31.	

EXHIBITS INDEX

1		
2	STATE'S	
3	EXHIBITS	Description Offered/Admitted
4	SX-1	Photograph 29/32
5	SX-2	Photograph 29/32
6	SX-3	Photograph 29/32
7	SX-4	Photograph 29/32
8	SX-5	Photograph 29/32
9	SX-7	Drawing of layout of home 86/86
10	SX8-11	Photographs 112/112
11	SX12-13	Photographs 117/117
12	SX-14	Photograph 133/133
13	SX-15	Photograph 160/160
14	SX16-18	Photographs 176/176
15	SX19-24	Photographs 177/196
16	SX27-56	Photographs 177/196
17		
18		
19		
20		
21		
22		
23		
24		
25		

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 2 THE COURT: This is Cause Number 380-80047;
 3 State of Texas versus Ivan Abner Cantu. Is the State ready?
 4 MS. FALCO: State's ready.
 5 THE COURT: Is the Defense ready?
 6 MR. GOELLER: Yes, Your Honor.
 7 THE COURT: Is there anything for me to take up
 8 before we bring the jury in?
 9 MS. FALCO: No, sir.
 10 MR. GOELLER: Judge, at this time I'd urge, on
 11 behalf of my client the Defendant's Motion to Quash the
 12 Indictment and Declare the Texas death penalty statutes and
 13 laws unconstitutional. The Court has previously addressed
 14 that motion, and at this time I'd ask the Court to reconsider.
 15 THE COURT: All right. The request is denied.
 16 MR. GOELLER: Yes, Your Honor.
 17 THE COURT: Say, and I really don't know, it
 18 just occurred to me. Did you file -- is he eligible for
 19 probation?
 20 MR. GOELLER: Yes, Your Honor, he is.
 21 THE COURT: And did you file an election?
 22 MR. GOELLER: Yes, Your Honor, I believe
 23 it's --
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 25 MR. GOELLER: -- jury --

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 7 SX-4 Photograph 29/32
 8 SX-5 Photograph 29/32
 9 SX-7 Drawing of layout of home 86/86
 10 SX8-11 Photographs 112/112
 11 SX12-13 Photographs 117/117
 12 SX-14 Photograph 133/133
 13 SX-15 Photograph 160/160
 14 SX16-18 Photographs 176/176
 15 SX19-24 Photographs 177/196
 16 SX27-56 Photographs 177/196
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 CHRONOLOGICAL MASTER INDEX
 2 October 3, 2001
 Guilt/Innocence
 3 Volume 31
 4
 PAGE
 Defendant's Motion to Quash Indictment and 5
 5 declare the death penalty unconstitutional
 6 Jury sworn by the Court 6
 7 Court's instructions to the Jury 6
 8 Indictment read in open court 9
 9 Defendant pleads not guilty 10
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 11 Defendant reserves right to open 16
 STATE'S
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 Kitchen, 16, 32 31 33
 13 Jerry
 Kitchen, 60, 63 62, 83 88 94 96
 14 Bernadine 86
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 16 David
 Maxwell, 136 144 159 162
 17 Barry
 PAGE
 18 Rule of Sequestration invoked 166
 STATE'S
 19 WITNESSES Direct Voir Dire Cross Redirect Recross
 Whitsitt, 168, 196 205
 20 Donald
 PAGE
 21 Sub Rosa hearing on admission of exhibits 177
 STATE'S
 22 WITNESSES Direct Voir Dire Cross Redirect Recross
 Whitsitt, 196 204
 23 Donald
 PAGE
 24 Reporter's Certificate 207
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 23 it's --
 24 THE COURT: I don't know; you probably did.
 25 MR. GOELLER: -- jury --

1 THE COURT: I just don't know.

2 MR. GOELLER: (Nods head.)

3 THE COURT: We're fine?

4 MR. GOELLER: We're fine.

5 THE COURT: All right. Let's bring the jury

6 in.

7 THE BAILIFF: Yes, Your Honor. All rise.

8 (The jury enters the courtroom at 9:22 a.m.)

9 THE COURT: Please be seated.

10 Good morning, Ladies and Gentlemen. At this time I
11 would ask you to rise, and I'll administer the juror's oath to
12 you. Please raise your right hands.

13 (Jury sworn by the Court at this time.)

14 THE COURT: All right. Please be seated.

15 Ladies and Gentlemen of the Jury, by the oath you've
16 just taken as jurors, you became officials of this court and
17 active participants in the public administration of justice.
18 If at any time you cannot clearly hear the proceedings, please
19 do not hesitate to let it be known to me or to any member of
20 the Court's staff. No one may discuss this case with you
21 during your service as a juror. Likewise, do not feel
22 offended if the lawyers in this case do not communicate with
23 you. To maintain the integrity of the jury system, the law
24 prohibits them from speaking with you until you are released
25 from duty on this case. If someone does contact you or tries

1 presented in the form of physical objects or documents called
2 exhibits.

3 During the trial, the attorneys may make
4 objections. This is a necessary procedure during the trial.
5 When any objection is made, I must rule on it. There may be
6 times when I must send you to the jury room to allow the
7 parties to argue before me in the courtroom. You must not
8 concern yourself with the objections or with my rulings. You
9 must not consider testimony or exhibits to which an objection
10 was sustained, or that I instruct you to disregard. Some
11 testimony or exhibits may be introduced for a very limited
12 purpose. If that occurs, I will instruct you to consider this
13 evidence only for an express limited purpose, and you must do
14 so under your oath.

15 Each of you must determine the facts as you see
16 them. To do so you must evaluate the credibility of each
17 witness and decide the weight and value to be given to that
18 testimony. In considering the weight and value of the
19 testimony of a witness, you may consider the person's
20 appearance, attitude and behavior, the person's interest in
21 the outcome of the case, his or her relationship to the
22 defendant or with the State of Texas, the inclination of the
23 witness to tell the truth, the probability or improbability of
24 the witnesses' statements, the reasonable inferences from
25 those statements, and all other factors which you feel will

1 to contact you, report that fact to the Bailiff at once.

2 Do not discuss the evidence in this case with your
3 fellow jurors until you are instructed to deliberate, or with
4 your spouse or anyone else until you have been discharged
5 finally from jury service. You are not permitted to read any
6 newspaper articles about this trial, or watch any television,
7 or listen to any radio reports that discuss the trial.

8 Do not go to any of the locations referred to by the
9 witnesses in this case or perform any type of individual
10 investigation of the facts in this case. You will receive all
11 the evidence here in the courtroom. Do not look in books,
12 encyclopedias, or dictionaries, or go to the library, or
13 review courthouse records in order to obtain information over
14 and above what is presented to you during the trial.

15 Please listen carefully to the testimony. No
16 testimony will be read back to you unless you disagree about a
17 specific statement made by a witness during the trial. The
18 lawyers may choose to give opening statements. These
19 statements are not evidence, but are made to help you
20 understand the nature of the case and the evidence. Your oath
21 states that you will render a verdict only on the evidence
22 submitted to you under my rulings. The evidence you may
23 consider will consist of the testimony of the witnesses,
24 either in person or through written transcripts of their
25 testimony called depositions. Evidence will also be

1 help you in giving the testimony of that witness the degree of
2 credibility you feel it deserves.

3 The trial will proceed as follows: The prosecutor
4 may make an opening statement. The Defense may do so as well,
5 or at a later time. The prosecutor will then offer evidence
6 through witnesses. The Defense may cross-examine each
7 witness. When the prosecutor has finished presenting the
8 State's case, the Defense may or may not present his
9 evidence. The Defendant is never required to prove his
10 innocence. The prosecution may cross-examine each defense
11 witness, if any. When the Defense is finished presenting its
12 witnesses, the prosecutor may put on rebuttal witnesses, and
13 the defense may then do the same. At the conclusion of the
14 presentation of all the evidence, I will read you the Court's
15 charge and each side will present closing arguments. You will
16 then be permitted to deliberate.

17 Ms. Falco, would you like to read the indictment to
18 the jury?

19 MS. FALCO: Yes, Your Honor.

20 True Bill of Indictment. In the name and by
21 authority of the State of Texas, the Grand Jury of Collin
22 County, State of Texas, duly organized at the January term,
23 A.D., 2001 in the 366th District Court of said county, in said
24 court at said term, do present that Ivan Abner Cantu,
25 hereinafter called Defendant, on or about the 4th day of

1 November in the year of our Lord 2000, in said county and
 2 state did then and there intentionally cause the death of an
 3 individual, James Mosqueda, by shooting James Mosqueda with a
 4 firearm; and said Defendant was then and there in the course
 5 of committing and attempting to commit the offense of robbery
 6 of James Mosqueda;

7 Intentionally cause the death of an individual,
 8 James Mosqueda, by shooting James Mosqueda with a firearm, and
 9 the said Defendant was then and there in the course of
 10 committing and attempting to commit the offense of burglary of
 11 James Mosqueda;

12 Intentionally cause the death of an individual,
 13 James Mosqueda, by shooting James Mosqueda with a firearm and
 14 did then and there intentionally cause the death of an
 15 individual, Amy Kitchen, by shooting Amy Kitchen with a
 16 firearm, and both murders were committed during the same
 17 criminal transaction.

18 Against the peace and dignity of the State. Signed
 19 by the Foreman of the Grand Jury.

20 THE COURT: All right. Mr. Goeller, to this
 21 indictment how does your client plead?

22 MR. GOELLER: Your Honor, Ladies and Gentlemen
 23 of the Jury, we plead Ivan Abner Cantu not guilty.

24 THE COURT: Ms. Falco, would you like to make
 25 an opening statement?

1 MS. FALCO: Yes, Your Honor.

2 May it please the Court, defense counsel.

3 MR. GOELLER: Ma'am.

4 MS. FALCO: Ladies and Gentlemen of the Jury,
 5 Amy Kitchen and James Mosqueda spent every night and every day
 6 side by side, but it's not how they planned it. They were
 7 engaged to be married, planning to live their life together,
 8 not as they are, six feet under the ground. They didn't die
 9 by accident. They didn't die of natural causes, but they died
 10 because of a man who had absolutely no regard for human life,
 11 a man who had a gun. This man, Ivan Cantu, who callously shot
 12 and killed his own cousin, James Mosqueda, and James' fiance,
 13 Amy Kitchen.

14 The evidence will show that on Friday, November 3rd,
 15 2000, Amy Kitchen and James Mosqueda went to dinner with Amy's
 16 dad, Jerry Kitchen. They met him down in Dallas for dinner,
 17 and they had dinner. It was approximately 10:30 at night when
 18 they were headed home. They headed home. They were in James
 19 Mosqueda's Corvette. They were going north up the Tollway to
 20 go home. That was the last time Jerry Kitchen saw his
 21 daughter alive.

22 The evidence will show that Amy's mom, Bernadine
 23 Kitchen, talked to Amy on the phone at approximately 11:20
 24 that Friday night to make plans for the next day because she
 25 and her daughter, Amy, and her granddaughter were going to go

1 shopping together. And the plan was for Mrs. Kitchen to call
 2 Amy at 9:00 in the morning to make sure she was awake, and
 3 they'd begin their day together. And Mrs. Kitchen did that.
 4 She called at 9:00, she called at 9:30, and she continued to
 5 call all morning and all afternoon with no response.
 6 Finally at about 3:00 in the afternoon that
 7 Saturday, November 4th, she went over to the house to see what
 8 was going on. She knocked on the door. She tried opening the
 9 doors. All the doors were locked. The shades were drawn; she
 10 got no answer. She went to the fire department -- the closest
 11 fire department to James and Amy's house, and this is in far
 12 north Dallas, Frankford and the Tollway area. She got the
 13 fire department to come to the house to help her.

14 When the fire department went to the house, they
 15 tried the doors and tried the windows, and they were able to
 16 look in the master bedroom window just a crack, and in that
 17 master bedroom window they saw a pair of feet on the bed. So
 18 they broke into the house, broke a window and made entry into
 19 the house where they found the dead bodies of Amy Kitchen and
 20 James Mosqueda.

21 The evidence will show that the defendant lived less
 22 than a mile away from them right across the Tollway. He lived
 23 in a one-bedroom apartment with his girlfriend, Amy Boettcher.
 24 The evidence will show that at approximately 11:15 that Friday
 25 night, November 3rd, he called the victims and told them he

1 needed to come over there and talk to them, and he left.

2 About an hour later he came home, blood in his hair, blood on
 3 his jeans, blood on his socks, driving Amy Kitchen's Mercedes
 4 and wearing James Mosqueda's shirt and James's shoes.

5 He came in; he was ready to go out. He wanted to go
 6 to clubs. He wanted to go to a party. He took a shower, told
 7 his girlfriend to go straighten out the Mercedes because he
 8 parked it crooked. He took a shower, and they were headed
 9 out. But before they went to the club, he wanted to take her
 10 by the victims' house. He wanted to show her those dead
 11 bodies to show her what happens when somebody messes with him.

12 He had the gun, and he took Amy Boettcher inside the
 13 house, showed her those bodies. He also picked up his shirt,
 14 that he had left over there, and his shoes that he had left
 15 over there, and his cell phone and put them in a trash bag.

16 When they left, he put the Mercedes in the garage,
 17 and the police eventually fingerprinted that Mercedes and his
 18 fingerprints in the Mercedes. He had Amy Boettcher, his
 19 girlfriend, drive his Honda, and he took Jame's corvette.
 20 They went back to their apartment, and when they got to the
 21 apartment, the Defendant put on Jame's bracelet, his necklace,
 22 his watch, and then he proposed to his own girlfriend, Amy
 23 Boettcher, by giving her the engagement ring that had been on
 24 Amy Kitchen's finger and then they went out.
 25 They went to clubs. They went to parties. People saw them

1 out that night, saw them in the Corvette. They stayed out all
2 night.

3 The next day about noon that Saturday, they left for
4 Arkansas. This is a trip that had already been arranged
5 because Amy Boettcher's parents lived in Arkansas, and they
6 had been talking about getting married, and this trip was
7 arranged so Amy Boettcher's parents could meet the Defendant.
8 They got to Arkansas Saturday night and stayed there until
9 approximately Tuesday.

10 While they were in Arkansas, the police located the
11 Corvette, which was still parked outside the defendant's
12 apartment. They executed a search warrant on his apartment,
13 and they found the bloody jeans and the bloody socks in the
14 trash can in the kitchen. They sent those bloody jeans and
15 those bloody socks to a forensics lab to perform DNA
16 analysis. The DNA analysis will show that the blood on the
17 jeans is James Mosqueda's. The blood on the socks are James
18 and Amy Kitchen's blood. They also found Amy Kitchen's car
19 keys, found a key to the Mercedes, found a box of bullets and
20 another set of keys that contained the victims' house key.

21 The Defendant came back into town approximately
22 Tuesday night. This is November 7th, and they spent the night
23 at an old girlfriend of the defendant's named Tawny Spahovick.
24 The next day the Defendant was arrested, Wednesday, November
25 8th, 2000. When Amy Boettcher, his girlfriend, found out he

1 had been arrested, she wanted to go home. She wanted to go
2 back to her parents. Tawny took her to the airport. When
3 they were at the airport, Amy said you might want to check
4 your
5 apartment and see if the Defendant left anything there. Amy
6 got on the plane, and she went to her parents and called
7 Dallas Police Department to let them know where she was.
8 Tawny went home.

9 When Tawny got home, she looked under the couch
10 cushion where the Defendant had been, and she found the gun.
11 She called the police. The police came and seized the gun.
12 The gun was loaded -- fully loaded. When they printed the
13 gun, the Defendant's fingerprint was on the magazine in that
14 gun. They also sent that gun to the forensics lab to have DNA
15 analysis performed on it. James Mosqueda's blood is in the
16 barrel of that gun.

17 Autopsy report, Dr. Rohr, the Medical Examiner, will
18 testify James Mosqueda was shot twice; once in the left neck,
19 once in the right temple. Both shots were at close range.
20 Amy Kitchen was shot four times. One time it went in her arm,
21 exited her arm and lodged in her breast. One time she was
22 shot in her shoulder. One time she was shot in her back. The
23 final shot was to the top of her head.

24 The evidence will show beyond a reasonable doubt on
25 November -- sometime between November 3rd and November 4th of

1 2000, this Defendant, Ivan Cantu, shot and killed his cousin,
2 James Mosqueda, and James' fiance, Amy Kitchen.

3 THE COURT: Thank you, Ms. Falco.

4 Mr. Goeller, would you like to open at this time?

5 MR. GOELLER: Your Honor, we'll reserve.

6 THE COURT: All right. Ms. Falco, would you
7 like to call your first witness?

8 MS. FALCO: Jerry Kitchen.

9 THE COURT: All right. Raise your right hand,
10 please, sir.

11 (Witness sworn by the Court.)

12 THE COURT: Put your hand down. Have a seat
13 right here, please, sir. Ms. Falco.

14 MS. FALCO: Thank you.

15 Whereby,

16 JERRY KITCHEN,

17 a witness called by the State, sworn to testify to the truth,
18 testified under oath as follows:

19 DIRECT EXAMINATION

20 BY MS. FALCO:

21 Q. Mr. Kitchen, could you state your name for the jury?

22 A. Jerry Kitchen.

23 Q. What do you do for a living, Mr. Kitchen?

24 A. Automotive repair work.

25 Q. How long have you been doing that?

1 A. 23 years.

2 Q. Mr. Kitchen, what city do you live in?

3 A. Arlington.

4 Q. And how are you related to Amy Kitchen?

5 A. Father.

6 Q. Do you have any other children?

7 A. Yes.

8 Q. Who else?

9 A. Mark --

10 Q. And how --

11 A. -- son.

12 Q. I'm sorry.

13 A. Mark.

14 Q. How old is Mark?

15 A. 29.

16 Q. How old was Amy November 3rd, 2000?

17 A. 22.

18 Q. Where was Amy living back in November of 2000?

19 A. Plano.

20 Q. Far North Dallas?

21 A. Yes.

22 Q. Who was she living with?

23 A. James, her fiance.

24 Q. What's James's last name?

25 A. I have a hard time pronouncing it. Masquele (sic).

- 1 Q. Mosqueda?
 2 A. Yes.
 3 Q. Mr. Kitchen, I want to take you to the evening of
 4 November 3rd, 2000. Do you recall that evening?
 5 A. Yes.
 6 Q. Did you make plans to eat dinner with your daughter
 7 and her fiance?
 8 A. Yes.
 9 Q. What time did you meet them?
 10 A. Seven -- approximately 7 p.m.
 11 Q. And where did you meet them?
 12 A. At Luby's, Fort Worth Avenue.
 13 Q. And where is that, what city?
 14 A. Dallas.
 15 Q. And why did you meet them at the Luby's?
 16 A. That's where we decided to meet since I was coming
 17 from Arlington.
 18 Q. Did you actually eat there at the Luby's?
 19 A. No. We thought we might, but we didn't.
 20 Q. Where did you go once you met up with Amy and James?
 21 A. To -- to a rent house.
 22 Q. A rent house?
 23 A. Yes.
 24 Q. Whose rent house was that?
 25 A. James'.

- 1 Q. Were there actually renters in the rent house?
 2 A. No.
 3 Q. What was the status of the rent house?
 4 A. It was being refurbished.
 5 Q. And why did you go to that rent house?
 6 A. To -- for one, to see it, and, two, to get an old
 7 stove out of the kitchen for him.
 8 Q. And were you going to take possession of that old
 9 stove?
 10 A. Yes.
 11 Q. Is this something that you had talked with him about
 12 previously?
 13 A. Yes.
 14 Q. How long were you there at the rent house?
 15 A. Approximately an hour, hour and 15 minutes.
 16 Q. And while y'all were there, was it you, your
 17 daughter and James?
 18 A. Yes, and a lady friend of mine.
 19 Q. And while y'all were there, did anyone show up
 20 there to pay rent to James?
 21 A. Yes.
 22 Q. Do you know who that was?
 23 A. No.
 24 Q. Did you see this person pay rent to James?
 25 A. Yes.

- 1 Q. How did they pay the rent? Was it cash? Was it a
 2 check?
 3 A. Cash.
 4 Q. Approximately how much cash?
 5 A. 800 dollars.
 6 Q. And did you see James take possession of that 800
 7 dollars?
 8 A. Yes.
 9 Q. While you were there, did he also go collect rent
 10 from another renter?
 11 A. Yes.
 12 Q. And when he went to do that, did he take anything
 13 with him?
 14 A. He took his receipt book.
 15 Q. To write a receipt for the rent?
 16 A. Yes.
 17 Q. Did the person that you saw him -- someone pay rent
 18 to, did he give that person a receipt as well?
 19 A. I'm sorry, repeat that.
 20 Q. The first person that gave him the cash for the
 21 rent, did you see --
 22 A. Yes.
 23 Q. Did you see James give him a receipt?
 24 A. Yes.
 25 Q. Do you know how much rent he got from the second

- 1 renter?
 2 A. Approximately 800 dollars. I think it was 875
 3 dollars. I'm not positive. I think they was each 850, 875.
 4 Q. Was this from another location, other than the
 5 actual rent house you were in?
 6 A. Yes.
 7 Q. How close was the other rent house?
 8 A. Next door.
 9 Q. So at that point James had approximately 1,600
 10 dollars cash on him?
 11 A. Yes.
 12 Q. Did you take possession of the stove?
 13 A. Yes.
 14 Q. Once he got his rent and you took possession of the
 15 stove, did you then leave the rent house?
 16 A. Yes.
 17 Q. And where did you go?
 18 A. We went to have dinner.
 19 Q. What car were James and Amy in?
 20 A. The black Corvette, convertible.
 21 Q. And whose car was that?
 22 A. James'.
 23 Q. When you -- first of all, where did y'all go eat?
 24 A. We went to a Mexican restaurant, El Rancho.
 25 Q. And where is that located?

- 1 A. **It's in Oak Cliff.**
 2 Q. And was it just the four of you; you, your friend,
 3 James and Amy?
 4 A. **Yes.**
 5 Q. And how long were you there?
 6 A. **Hour and a half.**
 7 Q. While you were there, was there a discussion about
 8 what Amy's plans for the next day were going to be?
 9 A. **Yes. Yes.**
 10 Q. And you and Amy's mom are divorced; is that correct?
 11 A. **Yes.**
 12 Q. Was it your understanding that she was going to go
 13 shopping with her mom?
 14 A. **Yes.**
 15 Q. And knowing she was going to go shopping, did you
 16 give her some money?
 17 A. **Yes.**
 18 Q. How much money did you give her?
 19 A. **I give her 500 dollars, but it wasn't all for**
 20 **shopping. It was --**
 21 Q. What else?
 22 A. **-- expenses and some for shopping.**
 23 Q. Was Amy still in school?
 24 A. **Yes.**
 25 Q. Where was she going to school?

- 1 A. **The Texas Women's University in Plano.**
 2 Q. What was she studying to be?
 3 A. **A nurse.**
 4 Q. While she was still in school, would you help her
 5 out with her finances?
 6 A. **Would I?**
 7 Q. **Yes.**
 8 A. **Yes.**
 9 Q. Did you help her?
 10 A. **Yes. Yes.**
 11 Q. What type of car did Amy drive?
 12 A. **A Mercedes.**
 13 Q. And did you help purchase that Mercedes for her?
 14 A. **Yes.**
 15 Q. While y'all were at the table, did you see it -- the
 16 cash that James had?
 17 A. **No. Not at the table, no.**
 18 Q. And you gave Amy 500 dollars?
 19 A. **Yes.**
 20 Q. Did you see what she did with the 500 dollars?
 21 A. **She put it in her purse.**
 22 Q. Approximately what time did y'all get done eating
 23 dinner?
 24 A. **10:15.**
 25 Q. Was there any discussion of you spending the night

- 1 with them in their house?
 2 A. **Briefly.**
 3 Q. Had you done that on previous occasions?
 4 A. **Yes, a few times.**
 5 Q. And were you going to spend the night with them that
 6 night?
 7 A. **No.**
 8 Q. Had they asked you if you wanted to?
 9 A. **Yes.**
 10 Q. And why did you not spend the night that night?
 11 A. **I was opening the shop at 7:00 Saturday morning, and**
 12 **it was about an hour's drive and didn't really come fully**
 13 **prepared to spend the night, and I had a little -- a cold, a**
 14 **little cold -- you know, just -- you know, thought it best I'd**
 15 **go back to Arlington.**
 16 Q. And when you left for Arlington, were James and Amy
 17 headed home?
 18 A. **Yes.**
 19 Q. And they were in James's Corvette?
 20 A. **Yes.**
 21 Q. Approximately what time was it when they were headed
 22 home?
 23 A. **10:30.**
 24 Q. Did they live just off of the Tollway?
 25 A. **Yes.**

- 1 Q. Would that have been the route they would have gone
 2 from where you were eating dinner home?
 3 A. **I would say yes.**
 4 Q. Was that the last time you ever saw your daughter
 5 alive?
 6 A. **Yes.**
 7 Q. The next day did you try calling over at James and
 8 Amy's house?
 9 A. **Yes.**
 10 Q. Why did you try calling over there?
 11 A. **Good morning, wake-up call.**
 12 Q. Did you typically do that?
 13 A. **Yes.**
 14 **Love you, love you both, enjoyed dinner, looking**
 15 **forward to the following weekend, the next weekend.**
 16 Q. Did you have plans to stay with them that weekend?
 17 A. **I had plans that weekend, but they was changed to**
 18 **the following -- the next following weekend.**
 19 Q. You were going to stay with them?
 20 A. **Yes.**
 21 Q. When you called over there, did anyone answer the
 22 phone?
 23 A. **No.**
 24 Q. Did you call on more than one occasion?
 25 A. **Yes.**

1 Q. Do you remember, approximately, how many times you
2 called?

3 A. Three, maybe four that day.

4 Q. At that time, did you think it was unusual that
5 they -- that nobody ever answered the phone?

6 A. I was -- yes. Yeah, later on that day, yes.

7 Q. And why later on that day?

8 A. Well, Amy hadn't called me back yet.

9 Q. At some point in the day, did you ever hear from
10 your ex-wife or from your son?

11 A. No. I'm sorry, ask that again. Did --

12 Q. That afternoon did you ever hear from your ex-wife
13 or your son?

14 A. That evening I did. That evening I heard from my
15 son.

16 Q. About what time was that?

17 A. Oh, 5:30.

18 Q. Where was your son calling you from?

19 A. At their house.

20 Q. James and Amy's house?

21 A. Yes.

22 Q. And why was he calling you?

23 A. To let me know I needed to come over there, stop
24 doing whatever I was doing, wherever I was going and come over
25 there.

1 Q. And did you go?

2 A. Yes.

3 Q. Is that when you found out about James and Amy?

4 A. Yes. That's when I -- well, after talking to my son
5 and asking a couple of questions, put two and two together is
6 when I found out, you know -- I mean, I found out before I got
7 there.

8 Q. And you went ahead and went to their house?

9 A. Yes.

10 Q. When you got to their house, was your ex-wife and
11 your son there?

12 A. Yes.

13 Q. Were there other people there as well?

14 A. Yes.

15 Q. Was the police department there?

16 A. Yes.

17 Q. And did you stay at that house until they let you go
18 inside?

19 A. Yes.

20 Q. For a while they made you stay outside while the
21 police was (sic) in there?

22 A. That's correct.

23 Q. Do you know what time it was when they let you
24 finally go inside the house?

25 A. Approximately 11:30.

1 Q. At night?

2 A. Yes.

3 Q. And this is on Saturday, November 4th?

4 A. Yes.

5 Q. When you went in the house, obviously Amy and James
6 were no longer in the house?

7 A. That's correct.

8 Q. Did you look around for any missing property, or did
9 you notice if anything was missing?

10 A. No, no. Well, I knew the Corvette was missing.

11 Q. And that was the same Corvette you had seen them in
12 the night before?

13 A. Yes.

14 Because when we got to go in, we went -- you know,
15 walked through the garage into the kitchen and, of course, the
16 Corvette was missing. And -- but as far as anything else, no.

17 Q. Was Amy's Mercedes in the garage?

18 A. Yes.

19 MS. FALCO: Your Honor, may I approach the
20 witness?

21 THE COURT: Yes.

22 Q. BY MS. FALCO: Mr. Kitchen, I show you what's been
23 marked as State's Exhibit Number 1, and there's also a picture
24 on the back side. Do you recognize those pictures?

25 A. Yes.

1 Q. What is that a picture of?

2 A. James and Amy.

3 Q. And on the back side that's also James and Amy?

4 A. Yes.

5 Q. Is that a fair and accurate depiction of what they
6 looked like back in November of 2000?

7 A. Yes.

8 Q. I also show you what's been marked as State's
9 Exhibit Number 2. Do you recognize that photograph?

10 A. Yes.

11 Q. What is that a photograph of?

12 A. Amy's car.

13 Q. Is that the Mercedes?

14 A. Yes.

15 Q. And that's the one you helped pay for?

16 A. Yes.

17 Q. That's the one that was in her garage that night,
18 November 4th?

19 A. Yes.

20 Q. Is that a fair and accurate depiction of what the
21 Mercedes looked like?

22 A. Yes, it is.

23 Q. I show you State's Exhibit Number 3. Do you
24 recognize that photograph?

25 A. Yes.

1 Q. And what's that a picture of?
 2 A. **The kitchen entry hall from the garage and her**
 3 **Mercedes sitting there.**
 4 Q. And that's the way it was parked when you saw it on
 5 November 4th? Was it in the garage?
 6 A. **Yes. It was in the garage.**
 7 Q. Is that a fair and accurate depiction of their
 8 kitchen leading into the garage where the Mercedes was parked?
 9 A. **Yes.**
 10 Q. I show you what's been marked as State's Exhibits 4
 11 and 5. Do you recognize those two pictures?
 12 A. **Yes.**
 13 Q. And what's contained in those two pictures?
 14 A. **James' Corvette, or -- you know --**
 15 Q. Is that a fair and accurate --
 16 A. **-- one identical to it.**
 17 Q. Is that a fair and accurate depiction of what his
 18 Corvette looked like?
 19 A. **Yes. Convertible, black on black.**
 20 MS. FALCO: Your Honor, at this time we'd
 21 offer State's Exhibits 1 through 5.
 22 MR. GOELLER: May I take the witness briefly on
 23 voir dire?
 24 THE COURT: Yes.
 25 (No omissions.)

1 VOIR DIRE EXAMINATION
 2 BY MR. GOELLER:
 3 Q. Mr. Kitchen, you identified these photographs here
 4 as the Mercedes and Mr. Mosqueda's garage, correct?
 5 A. **Yes.**
 6 Q. Do you know when these photographs were taken?
 7 A. **No, sir.**
 8 Q. Okay. So you're not telling the jury that's the way
 9 the cars were parked the evening -- did you go back to the
 10 house after dinner, at Mr. Mosqueda's house?
 11 A. **After that Friday night dinner?**
 12 Q. Yeah.
 13 A. **No, sir.**
 14 Q. Okay. So you're just saying these are what her car
 15 looked like, but you're not saying this is where it was
 16 parked, or you don't know anything about where it was
 17 positioned that evening after dinner, correct?
 18 A. **Well, she normally parked on the left side of the**
 19 **garage.**
 20 Q. Okay. But that's it?
 21 A. **Yes, sir.**
 22 Q. Okay. Same thing with these pictures of this black
 23 Corvette, do you know where those pictures were taken?
 24 A. **No.**
 25 Q. You're just saying that's either the Corvette, or

1 one that looks just like it?
 2 A. **Yes, sir.**
 3 Q. Okay, okay.
 4 MR. GOELLER: No objections, Your Honor.
 5 THE COURT: 1 through 5 for the State are
 6 admitted.
 7 MS. FALCO: Your Honor, at this time we'd ask
 8 to publish State's Exhibit Number 1 to the jury.
 9 THE COURT: All right.
 10 MR. GOELLER: Judge --
 11 THE COURT: Yes.
 12 MR. GOELLER: -- may we approach sidebar for
 13 just a moment?
 14 THE COURT: Sure.
 15 (Discussion had outside the hearing of the jury and
 16 court reporter.)
 17 THE COURT: Let me ask, are there any witnesses
 18 in this case present in the courtroom at this time?
 19 (No response.)
 20 THE COURT: All right, apparently not. All
 21 right. Ms. Falco, go ahead.
 22 MS. FALCO: Thank you, Your Honor.
 23 Q. BY MS. FALCO: Mr. Kitchen, did you and your family
 24 make arrangements for the funerals for James and Amy?
 25 A. **My family?**

1 Q. Did you and your ex-wife and your son make
 2 arrangements --
 3 A. **For Amy, yes.**
 4 Q. And was it a double funeral with James Mosqueda?
 5 A. **Yes.**
 6 Q. And did you have viewings and rosaries leading up to
 7 the funeral?
 8 A. **Yes.**
 9 Q. Do you remember what days those occurred?
 10 A. **It was on Tuesday -- Tuesday or Wednesday. Are you**
 11 **asking for a date or a day?**
 12 Q. Either one, either the date or the day.
 13 A. **Hum, 7th or 8th.**
 14 Q. And there was a viewing and then following that, the
 15 next day, was the funeral?
 16 A. **Yes.**
 17 Q. Did you ever see the Defendant, Ivan Cantu, at
 18 either the viewing or the funeral?
 19 A. **No.**
 20 MS. FALCO: Thank you, Mr. Kitchen. Pass this
 21 witness.
 22 THE COURT: Mr. Goeller.
 23 CROSS-EXAMINATION
 24 BY MR. GOELLER:
 25 Q. Mr. Kitchen, I have a few questions for you. Did

1 you make any statements to anybody in connection with this
2 case?

3 A. Statements, no.

4 Q. Any oral statements, did you give any to
5 investigators, anybody like that, detectives?

6 A. When you -- at the scene? Are you asking at the
7 scene when it happened?

8 Q. At any time, investigators, police officers,
9 district attorneys, anybody like that?

10 A. When -- after I arrived, you know, they questioned
11 me --

12 Q. Okay.

13 A. -- the Dallas detective.

14 MR. GOELLER: May I have just a moment, Judge?

15 THE COURT: All right.

16 MR. GOELLER: Judge, can I have just a couple
17 of minutes to review this?

18 THE COURT: Sure.

19 (Brief pause in proceedings.)

20 Q. BY MR. GOELLER: Are you on probation for trying to
21 kill somebody?

22 MS. FALCO: Objection, Your Honor. That's a
23 misstatement of what the offense is.

24 Q. BY MR. GOELLER: I'm sorry. Are you on probation
25 for deadly conduct?

1 A. (Shakes head.)

2 Q. Correct?

3 A. No.

4 Q. I mean, I'm correct there wasn't a soul in that
5 house?

6 A. Right. It was --

7 Q. It was being -- what did you say, refurbished?

8 A. Yes.

9 Q. It was dilapidated, wasn't it?

10 A. No, sir.

11 Q. You don't think it was pretty trashed out?

12 A. No, sir.

13 Q. Okay. But did you ever make the statement, "an

14 unknown Latin male showed up who Mosqueda said was the
15 next-door renter"?

16 A. No, sir.

17 Q. You never said that to -- I don't know -- I guess a
18 Dallas detective? Never said that?

19 A. I didn't say that, no.

20 Q. Come on, Mr. Kitchen. You know Mosqueda was down
21 there collecting dope money, right?

22 A. No, sir, I don't.

23 Q. So he's at this "house," but there's no renter in,

24 but an unknown -- in your words, "an unknown Latin male shows
25 up" and hands him over cash at what time of night was this?

1 A. Yes.

2 Q. How many years probation you on?

3 A. Five.

4 Q. What county?

5 A. Dallas County.

6 Q. When did you go on probation for deadly conduct?

7 A. '97.

8 Q. Okay. Since 1997 you've purchased illegal drugs,
9 haven't you?

10 MS. FALCO: Objection, Your Honor --

11 A. No.

12 MS. FALCO: -- improper impeachment.

13 THE COURT: Sustained.

14 Q. BY MR. GOELLER: You've purchased drugs from James
15 Mosqueda, haven't you?

16 A. No, sir.

17 Q. Okay. Now, you testified -- you told the jury that
18 you went to a rent house that Mr. Mosqueda owned, correct?

19 A. Yes.

20 Q. Okay. And where was that rent house?

21 A. It was in Oak Cliff.

22 Q. Okay. And the house was abandoned; there was nobody
23 living in it, correct?

24 A. Yes, sir.

25 Q. Not a soul in that house?

1 A. Approximately 8:00.

2 Q. Okay. And did -- did y'all go down there in the
3 same vehicle, you and Mr. Mosqueda and Amy?

4 A. No.

5 Q. Did you follow them?

6 A. Yes.

7 Q. What were you driving?

8 A. '99 Ford truck.

9 Q. Okay. Did you make the statement that Mosqueda and
10 this unknown Latin male spoke for a while, and then Mosqueda
11 said he had to go next door for a few minutes?

12 A. After he wrote him a receipt for the deposit rent
13 money, then a little bit later, before we left, he took his
14 receipt book and went next door.

15 Q. Now, you testified that there was another -- James
16 went to another location in Oak Cliff to get rent?

17 A. Yes.

18 Q. Okay. Cash again? I think you said 800 --

19 A. Well, I -- I didn't see that transaction, but I was
20 under the impression it was cash.

21 Q. Wait a minute. You just told her, not a few minutes
22 ago, you saw cash money. In fact, she went into great detail;
23 800 and this hundred and 1,500 and 1,600, so you didn't see
24 the cash?

25 A. Well, later I did.

- 1 Q. When he pulled out the whole wad in a bar, right?
- 2 Right?
- 3 A. Yeah. He just pulled it up a little bit. He didn't
- 4 really pull it out. He just says, you know, I --
- 5 Q. I mean, did you make the statement "an unknown white
- 6 male in the restaurant watched Mosqueda pulling cash out of
- 7 his pocket and paid for the drinks -- took the whole wad of
- 8 money out and paid for the drinks?" Did you tell the
- 9 detective that?
- 10 A. No.
- 11 Q. You're the father of Amy, right?
- 12 A. Yes, sir.
- 13 Q. Did you tell the detective that you met them that
- 14 evening and had dinner with them?
- 15 A. Yes.
- 16 Q. Okay. Did you tell the detective you first met in
- 17 the Luby's parking lot at 7:30 p.m. on Friday, November 3rd of
- 18 2000?
- 19 A. Yes.
- 20 Q. Told him that, right? Then y'all went to an unknown
- 21 street in Oak Cliff, right?
- 22 A. Yes. I don't remember the address, but it was --
- 23 Q. Right.
- 24 A. -- it was the second rent house.
- 25 Q. And there was an empty house and wood-burning stove,

- 1 which you were going to get, right?
- 2 A. No. It was an electric stove.
- 3 Q. Okay. Not a wood-burning stove; you never said
- 4 that?
- 5 A. No.
- 6 Q. Okay. What detective were you giving this
- 7 information to?
- 8 A. Well, I was on -- under the impression it was
- 9 Detective Winn.
- 10 Q. Okay, okay. What did he look like, the detective?
- 11 Was he white, black, Hispanic?
- 12 A. Well, I thought he was a white man.
- 13 Q. Detective Winn?
- 14 A. Yeah.
- 15 Q. Why --
- 16 A. Well, I just got them mixed up and never did see
- 17 them again, and found out later that he was a black man.
- 18 Q. Okay. When did you first meet with the detective
- 19 that you gave this information to?
- 20 A. That evening at the house, at James and Amy's house
- 21 after I arrived.
- 22 Q. Okay. Did you tell the detective you stayed at the
- 23 house where the stove was for a while. Then, an unknown Latin
- 24 male showed up, who Mosqueda said was the next-door renter?
- 25 A. No that --

- 1 Q. You never said that to the detective?
- 2 A. No, not like that. No.
- 3 Q. How did you say it?
- 4 A. The -- the male that showed up was the male that was
- 5 renting this second house. I never did see the people next
- 6 door.
- 7 Q. Hum?
- 8 A. And he was supposedly there to -- with the, you
- 9 know, deposit money, that they had it rented, and then when
- 10 they -- you know, in a matter of a week or so when they had
- 11 it ready, well, then, you know, it was rented -- a rented
- 12 house.
- 13 Q. Hum. Did you find it odd that somebody just shows
- 14 up and hands Mosqueda 800 and 75 dollars in cash at 8:00 on
- 15 a -- that night?
- 16 A. No, sir, I didn't.
- 17 Q. Okay. Had you ever been with him before when he
- 18 made his rounds, collecting his dope money?
- 19 MS. FALCO: Your Honor, I'm going to object to
- 20 speculation and improper questioning.
- 21 THE COURT: Sustained.
- 22 Q. BY MR. GOELLER: Well, you knew Mosqueda was a dope
- 23 dealer, don't you?
- 24 A. No, sir.
- 25 Q. Never even suspected it?

- 1 A. No, sir.
- 2 Q. Okay. So, let me get this straight. The unknown
- 3 Latin male comes into the house that's under, what did you
- 4 say, it's being refurbished?
- 5 A. Yeah. They'd done quite a bit to it.
- 6 Q. Who's "they?"
- 7 A. Well, James, Amy, a couple of construction workers,
- 8 whoever was doing --
- 9 Q. Were you down there with them during that?
- 10 A. No.
- 11 Q. So, when the unknown Latin male comes in, you say,
- 12 in your words, I guess he just showed up. Did he give the
- 13 cash right then and there?
- 14 A. No. You know, James told me who he was and, you
- 15 know, why he was there. I don't remember his name or nothing,
- 16 but --
- 17 Q. What did he look like? What did this unknown Latin
- 18 male look like?
- 19 A. Just a Mexican, 5'7", stocky.
- 20 Q. How old --
- 21 A. -- short hair.
- 22 Q. How old a man do you think he was, Mr. Kitchen?
- 23 A. Mid, early 30's.
- 24 Q. Mid to early 30's, okay.
- 25 Did he have a woman with him, children?

- 1 A. **No, I didn't see anyone else.**
 2 Q. Did you see what he was driving?
 3 A. **It was also raining.**
 4 Q. It was also what?
 5 A. **Raining.**
 6 Q. It was raining out?
 7 A. **Yes. We had on and off rain, and it was a little**
 8 **heavy and light at times.**
 9 Q. Well, what would that have to do with anything?
 10 A. **Well, you asked me if I had seen anybody else that**
 11 **was -- I think it was a white car sitting out front, but I**
 12 **didn't see nobody else.**
 13 Q. Oh, okay.
 14 A. **It might have been somebody in there, and I didn't**
 15 **see them.**
 16 Q. Okay. So you don't see the cash transaction there
 17 in this rent house?
 18 A. **I seen that one.**
 19 Q. Okay.
 20 A. **I mean, I wouldn't stand there staring at them,**
 21 **but --**
 22 Q. Yeah.
 23 A. **-- yeah, he seen --**
 24 Q. So you never told --
 25 A. **But he paid him, and he wrote him out a receipt.**

- 1 Q. So you never told the detective that they, being
 2 James Mosqueda and the unknown Latin male, talked for a while,
 3 and then Mosqueda said he had to go next door and pick up the
 4 rent. You never said that, did you?
 5 A. **Well, after this man left -- you know, prior to us**
 6 **leaving, he made the comment he was, you know, going to go**
 7 **next door and get the rent.**
 8 Q. Get the rent. So when you told Mrs. -- and did you
 9 go next door with Mosqueda with the unknown Latin male?
 10 A. No.
 11 Q. So when you told Ms. Falco you saw him hand over the
 12 cash, that wasn't exactly true, was it now, Mr. Kitchen?
 13 A. **Repeat that again.**
 14 Q. When you told Ms. Falco and you told this jury that
 15 you saw the cash transaction go down for the rent, you -- that
 16 wasn't true?
 17 A. **I seen one of them. I didn't see the second one.**
 18 Q. Did you ever tell the detective that Mosqueda came
 19 back a few minutes later and showed Kitchen, I guess that
 20 being you, 875 dollars in cash?
 21 A. No.
 22 Q. Never said that?
 23 A. No.
 24 Q. You know, I'm holding the detective's report. You
 25 know that, right?

- 1 A. **I assume that.**
 2 Q. Okay. But that would be a lie; that either you're
 3 lying or the detective is lying about that?
 4 A. **I don't remember that, sir.**
 5 Q. So the detective has got to be lying if he wrote it
 6 down?
 7 A. **I don't remember saying that.**
 8 Q. Okay. Did you ever say "you thought James ought to
 9 be more careful carrying that much cash around"?
 10 A. **I would say that I said that.**
 11 Q. Okay. And, obviously, you were concerned because
 12 you told the detective about bringing out the big wad of cash
 13 in some bar?
 14 A. **I don't -- I don't remember saying it like that, no,**
 15 **sir.**
 16 Q. You never said --
 17 A. **James didn't --**
 18 Q. -- Kitchen --
 19 A. **-- bring out --**
 20 Q. -- when he paid for the drinks, he took the whole
 21 wad of money out of his pocket and paid for the drinks. You
 22 also noticed an unknown, white male in the restaurant watched
 23 the complainant pulling the money out of his pocket and pay
 24 for the drinks?
 25 A. **Well, that's not how it happened. He might have**

- 1 **wrote it down like that, but this white male was behind him**
 2 **off to his right.**
 3 Q. So let's talk about the second cash transaction.
 4 You leave this first house. This rental, whatever this place
 5 was, the house under refurbish with nothing in it but a stove,
 6 nobody living in it. We know the unknown Latin male comes
 7 in. There's a conversation between him and Mosqueda.
 8 Mosqueda tells you he's got to go next door with the unknown
 9 Latin male.
 10 A. No, sir.
 11 Q. Well, did Mosqueda leave the residence with the
 12 unknown Latin male?
 13 A. No, sir.
 14 Q. Never did?
 15 A. **(Shakes heads.)**
 16 Q. Are you sure about that?
 17 A. **Yeah, because he -- I don't remember him leaving**
 18 **with him, no, sir.**
 19 Q. All right. Okay.
 20 A. **I remember the man leaving but --**
 21 Q. You --
 22 A. **-- James didn't leave.**
 23 Q. You never specifically told any law enforcement
 24 officer any time in the last year, "They spoke for a while.
 25 The complainant, James Mosqueda, said he had to go next door

1 to pick up the rent. He came back a few minutes later and
2 showed Kitchen the 875 dollars in cash." You're telling this
3 jury that never happened, you never said it, either Winn is a
4 liar or not very good at being a detective writing down what
5 you're saying, right?

6 **A. Well, he's evidently not very good because that's**
7 **not exactly how it happened.**

8 Q. Okay. He wasn't the detective that busted you for
9 deadly conduct, was he?

10 **A. No, sir.**

11 Q. Okay. Was that a Tarrant County detective that put
12 the collar on you for that?

13 **A. No. It was Dallas -- Dallas County.**

14 Q. Dallas Police Department or Dallas Sheriff's
15 Office? The DPD guys, the regular DPD white patrol car,
16 Dallas police?

17 **A. I was picked up in Arlington and took into custody**
18 **in Grand Prairie.**

19 Q. Okay.

20 **A. Then later, you know, when this thing went to**
21 **trial -- no, Dallas arrested me.**

22 Q. Okay. It don't matter.

23 But Winn, or any of the detectives involved in this
24 case, they weren't involved --

25 **A. No.**

1 Q. -- in your deadly conduct felony case, were they?

2 **A. No, sir.**

3 Q. Okay, all right. Who was the -- who was the alleged
4 victim in your deadly conduct case? Well, I guess no more
5 alleged. Who was the victim?

6 **A. Supposedly an Alice Ann Cain.**

7 Q. I'm sorry?

8 **A. Alice Ann Cain.**

9 Q. Female?

10 **A. Uh-huh.**

11 Q. Is it anybody that's involved in this case at all?

12 **A. No.**

13 Q. Okay. All right. I want to get back to the second
14 cash transaction. Now, where did that take place?

15 **A. To my knowledge, it took place next door at the**
16 **first rent house.**

17 Q. Okay. So it didn't take place in front of you then?

18 **A. No.**

19 Q. Mosqueda goes -- he does leave and goes somewhere?

20 **A. Next door.**

21 Q. How do you know he went next door?

22 **A. Well, I seen him walk over there.**

23 Q. Okay. Did you see who was part of that cash
24 transaction?

25 **A. No, sir.**

1 Q. Okay. Was that -- was it your understanding that
2 was a different person, other than the -- what you described
3 as the unknown Latin male showing up?

4 **A. Yes.**

5 Q. Some other guy?

6 **A. Yes.**

7 Q. Okay.

8 **A. Because this -- you know, that first man, he left.**

9 Q. The Mercedes that was spoken about, what year was
10 that car?

11 **A. '99.**

12 Q. Okay. Was it purchased new?

13 **A. Yes.**

14 Q. Who -- who purchased it? Who actually --

15 **A. James and Amy.**

16 Q. Was it financed or paid for in cash?

17 **A. No. It's financed with a trade-in.**

18 Q. With who?

19 **A. A trade-in --**

20 Q. Oh, a trade-in.

21 **A. -- and some cash.**

22 Q. What's a Mercedes like that cost brand new? And the
23 only reason I'm asking, you said you helped her get the car, I
24 thought, or maybe I misheard that?

25 **A. Yes.**

1 Q. So obviously, you'd be intimately familiar with the
2 financial arrangements?

3 **A. No. I wasn't that familiar with it, no.**

4 Q. What vehicle was traded for that Mercedes?

5 **A. A Chrysler LXI?**

6 Q. Okay. Did your daughter put down 16,000 cash
7 against it, too?

8 **A. Fifteen.**

9 Q. Fifteen cash.

10 Now, she wasn't working, was she?

11 **A. No. Not at that time, no.**

12 Q. Okay. Would you say that everything you told the
13 detective was the absolute truth?

14 **A. Yes.**

15 Q. Okay. Is there anything about your testimony here
16 today -- because you know the detective is going to be up
17 here. You've probably figured that one out, right?

18 **A. I hadn't really thought about it, but I guess so.**

19 Like I said there a minute ago, I know -- I know what took
20 place and what happened and how, and I'm surprised to hear
21 that it's worded like it's worded.

22 Q. Yeah.

23 **A. I'm not calling nobody a --**

24 Q. Me, too.

25 **A. Yeah, I'm not calling nobody a liar.**

- 1 Q. I know, I know.
 2 A. **But --**
 3 Q. Anything you want to change about --
 4 A. **A little misleading.**
 5 Q. Anything you want to change about any statement
 6 you've given in connection with this case going way back to
 7 November of this last year, all the way up through and
 8 including your testimony here today? Now that you reflect,
 9 would you like to change anything?
 10 A. **No.**
 11 Q. The deadly conduct felony, is that the only arrest
 12 you've ever had?
 13 A. **No. I had another one.**
 14 Q. When was that?
 15 A. **'96, probably.**
 16 Q. What was the charge?
 17 A. **It was public -- what they call public -- called PI.**
 18 Q. That's the only one?
 19 A. **That -- I had another one, but it was -- it was**
 20 **dismissed, dropped. I wasn't charged anything.**
 21 Q. Oh, the charge was dropped --
 22 A. **Yeah.**
 23 Q. -- the indictment? Were you charged with an
 24 information or indictment; do you know?
 25 A. **No, sir.**

- 1 Q. Okay. What is the status of your felony deadly
 2 conduct probation right now? Are you subject to any motion to
 3 revoke that probation?
 4 A. **No.**
 5 Q. Do you have an attorney in that case?
 6 A. **No. Well, I'm -- I'm sorry. I did, yeah.**
 7 Q. Okay.
 8 A. **I don't --**
 9 Q. Do you have any --
 10 A. **I lack approximately 13, 14 months out of five**
 11 **years.**
 12 Q. Do you have any pending charges right now that you
 13 know about?
 14 A. **No.**
 15 Q. Okay. Now, there were times throughout -- well, how
 16 long would you say that Mr. Mosqueda was -- had relations with
 17 your daughter? How long a period of time had they been either
 18 going out and then moved to fiance and started living
 19 together? How long a period of time are we talking about?
 20 A. **Four -- four years.**
 21 Q. Okay.
 22 A. **Four and a half.**
 23 Q. Did they live together that entire four years?
 24 A. **No.**
 25 Q. Did she maintain her own apartment in November of

- 1 last year?
 2 A. **No.**
 3 Q. She -- her residence was at Mosqueda's home there?
 4 A. **Yes.**
 5 Q. Now, you used to get pretty upset when you found out
 6 he was thumping her a little bit, didn't you?
 7 A. **Well, enough to go check in on the matter and**
 8 **call --**
 9 Q. Would you --
 10 A. **-- call the police.**
 11 Q. Did you call the police?
 12 A. **Yes.**
 13 Q. On James Mosqueda?
 14 A. **(Nods head.)**
 15 Q. Because the truth of the matter is he was
 16 throttling your daughter pretty good, wasn't he (indicates
 17 hitting)?
 18 A. **No.**
 19 Q. Good enough to call the police, though, right?
 20 A. **Well, there wasn't any marks. It was probably more**
 21 **or less a slap and a little scare, and she -- and she called**
 22 **me.**
 23 Q. Yeah. And you weren't there. I mean, you weren't
 24 in North Dallas, but she went to the hospital one time, didn't
 25 she?

- 1 A. **Not because of --**
 2 Q. Not because of James thumping on her a little
 3 bit, huh?
 4 A. **No.**
 5 Q. The truth of the matter is you didn't really approve
 6 of your daughter running with the likes of James Mosqueda;
 7 isn't that correct, Mr. Kitchen?
 8 A. **Not at first, not 100 percent, no, sir.**
 9 Q. But then the money seemed to get pretty good, didn't
 10 it?
 11 A. **Well, it got a little better.**
 12 Q. Yeah.
 13 A. **But, no, sir, the money didn't affect me. No, that**
 14 **wasn't -- that wasn't -- I wanted them to --**
 15 Q. I mean, after all, you know --
 16 A. **No, sir. The money wasn't the issue with me, to**
 17 **answer your question.**
 18 Q. I'm trying to figure out how a nursing student,
 19 apparently, comes up with 15,000 cash to buy a new Mercedes
 20 when she's in school. Have you ever thought about that?
 21 A. **Well, it's a little more than I thought they was**
 22 **going to have cash-wise. I know where -- I know where a few**
 23 **thousand of it came from.**
 24 Q. Mr. Kitchen, trust me. I'm not trying to -- I know
 25 you've had a great loss, and I'm sorry for that, but I'm

1 trying to get at the truth here. I'm trying to get at what
 2 the relationship was. If I hear you correctly, you know it
 3 was not a good relationship with Mosqueda, correct?
 4 **A. No, sir, I wouldn't. No, sir.**
 5 **Q.** So you can look at that jury and say, had to call
 6 the police on my future son-in-law. My future son-in-law used
 7 to beat my daughter.
 8 **A. It wasn't --**
 9 **Q.** Like to know a little bit more about where all the
 10 cash was coming from, but, hey, folks, it was a good gig.
 11 That's not what you're telling this 12 (sic), are you?
 12 **A. No. I'm not telling them that, no.**
 13 **Q.** Okay. I didn't think you were.
 14 **A. Well, I'm sorry. Would you mind running that by me**
 15 **again, please, the way you worded that, the way you said that?**
 16 **Q.** Sure.
 17 **A. Thank you.**
 18 **And I thank you for your condolence, too.**
 19 **Q.** Say it again?
 20 **A. I thank you for your condolence, also.**
 21 **Q.** I'm serious about that. I mean, what could I say,
 22 you know? This is not easy for me to have to ask you these
 23 kinds of questions, but I've got a job to do, and I know
 24 you're the kind of man that can appreciate that.
 25 **But the point I'm trying to make is, you're not**

1 telling this jury you were thrilled about the relationship
 2 that your daughter was in?
 3 **A. Like I said earlier, no, not 100 percent, you know.**
 4 **Q.** Let's go back to when you had to call the police.
 5 Your daughter calls you up and says my fiance is knocking the
 6 hell out of me, right?
 7 **A. No, sir. She just called me up and asked me if I**
 8 **would come over there; that there was a -- you know, a**
 9 **dispute, a -- you know, it's been a few years ago, and I don't**
 10 **remember exactly the words. But, yes, I got up and dressed**
 11 **and went over there and --**
 12 **Q.** Did you call the police --
 13 **A. -- she was crying and upset.**
 14 **Q.** -- went over there?
 15 **Did you call the police before you went over there?**
 16 **A. Well, to be honest with you, I don't think I had to**
 17 **call them.**
 18 **Q.** I thought you told this jury --
 19 **A. Well, I -- you know, I was thinking that I did. I**
 20 **know the police ended up there and --**
 21 **Q.** You have a son named Mark, right?
 22 **A. Yes.**
 23 **Q.** Mark -- Mark really didn't like Mosqueda thumping
 24 his sister, did he? In fact, he threatened to kill him on
 25 several occasions, didn't he?

1 **MS. FALCO:** Your Honor, I'll object to
 2 speculation, improper questions and hearsay.
 3 **THE COURT:** Sustained.
 4 **MS. FALCO:** Ask the jury to disregard.
 5 **THE COURT:** I'll advise the jury to disregard
 6 that last question.
 7 **Q. BY MR. GOELLER:** Did your son, Mark, threaten to
 8 kill James Mosqueda for beating the hell out of your daughter?
 9 **A. Not to my knowledge, no.**
 10 **Q.** Okay. So you never had conversations with your son,
 11 Mark, about how his sister was getting treated?
 12 **MS. FALCO:** Objection, Your Honor. That calls
 13 for hearsay.
 14 **THE COURT:** Overruled.
 15 **Q. BY MR. GOELLER:** You can answer that, sir.
 16 **A. Okay.**
 17 **THE COURT:** The only -- did you ever have a
 18 conversation, that was the question, with your son?
 19 **A. About?**
 20 **Q. BY MR. GOELLER:** James.
 21 **A. No.**
 22 **THE COURT:** All right.
 23 **THE WITNESS:** Can I say something?
 24 **THE COURT:** Sir, you can only answer the
 25 questions that are asked.

1 **THE WITNESS:** Okay.
 2 **THE COURT:** All right. Ask your next question.
 3 **Q. BY MR. GOELLER:** What would you like to say?
 4 **A. Thank you.**
 5 **If that -- if it was that much of a --**
 6 **THE COURT:** Say, excuse me, sir. Here's the
 7 thing. In this country we've got a system where the lawyers
 8 ask questions, and when Mr. Goeller said, what would you like
 9 to say, that is not a proper question. So, if you have a
 10 question ask a question.
 11 **MR. GOELLER:** Yes, sir, my fault.
 12 **THE COURT:** And I'll certainly advise him to
 13 answer any proper question. All right. Go ahead.
 14 **Q. BY MR. GOELLER:** That's my fault, Mr. Kitchen. The
 15 Judge is being very kind to me.
 16 **Do you have something you want to say about the**
 17 **relationship -- about what your son thinks about how James was**
 18 **treating Amy?**
 19 **A. No.**
 20 **Q.** Okay. Okay. Just so I'm absolutely straight on
 21 this point here, you have never purchased illegal narcotics
 22 from James Mosqueda?
 23 **A. No.**
 24 **Q.** And would you say that you have had absolutely no
 25 knowledge whatsoever, not even a thought, that James Mosqueda

1 was a dope dealer?

2 **A. That's correct, yes.**

3 **Q.** Okay. When you talked a little while ago about
4 you'd like to have known a little bit more about where that
5 15K came up for the new Mercedes, what were you thinking?
6 What were your thoughts on that, like you'd like to know the
7 source of that money?

8 **A. No, no. I was --**

9 **Q.** What hospital was your daughter in? Remember, I
10 had asked you did James ever actually have to put her in the
11 hospital he beat her so bad? And you said, no, she was there
12 for other reasons. Were the other reasons the only reasons
13 she was there, or did it have something to do with (indicates
14 hitting)?

15 **A. Randol Mill in Arlington, but I don't know of any
16 other -- I don't know of any physical abuse.**

17 **MR. GOELLER:** Mr. Kitchen, thank you, sir.
18 Pass the witness.

19 **MS. FALCO:** One moment, please.

20 **THE COURT:** All right.

21 **MS. FALCO:** We have no further questions, Your
22 Honor.

23 **THE COURT:** All right. Sir, you may step down.

24 And, Ladies and Gentlemen, we've been at it for
25 about an hour and a half. Let's take about a ten-minute

1 recess, and then we'll come back. There's something I want to
2 admonish you about. Sir, you may go ahead and leave. You are
3 not permanently excused, but you may leave the courtroom at
4 this time.

5 Let me tell you something I will tell you
6 throughout the trial. Please be seated. Here's what I want
7 to tell you, and I'll use the words that are recommended by
8 the State of Texas. You are instructed that it is your duty
9 not to converse among yourselves or with anyone else on any
10 subject connected with the trial or to form or express any
11 opinion thereon until the cause is finally submitted to you.
12 All right. Let's take a ten-minute recess.

13 **THE BAILIFF:** All rise.

14 (Jury exits the courtroom at 10:45 a.m.)

15 (Recess taken.)

16 **THE BAILIFF:** All rise.

17 (The jury enters the courtroom at 11:00 a.m.)

18 **THE COURT:** Please be seated. Ms. Falco, call
19 your next witness, please.

20 **MS. FALCO:** Bernadine Kitchen.

21 **THE COURT:** All right. Raise your right hand,
22 please.

23 (Witness sworn by the Court.)

24 **THE COURT:** Put your hand down and please be
25 seated. Ms. Falco.

1 **MS. FALCO:** Thank you, Your Honor.

2 Whereby,

3 **BERNADINE KITCHEN,**

4 a witness called by the State, sworn to testify to the truth,
5 testified under oath as follows:

6 **DIRECT EXAMINATION**

7 **BY MS. FALCO:**

8 **Q.** Ms. Kitchen, could you state your name for the jury?

9 **A. Bernadine Marie Kitchen.**

10 **Q.** And what do you do for a living?

11 **A. I'm an underwriting correspondent for TransAmerica
12 Insurance in Bedford, Texas.**

13 **Q.** How long have you been doing that?

14 **A. A year.**

15 **Q.** What city do you live in?

16 **A. Grand Prairie, Texas.**

17 **Q.** Are you divorced from Mr. Jerry Kitchen?

18 **A. Yes.**

19 **Q.** Do y'all have children together?

20 **A. Yes.**

21 **Q.** Who are your children?

22 **A. Mark Kitchen, Amy Kitchen.**

23 **Q.** How old is Mark?

24 **A. 29.**

25 **Q.** How old was Amy in November of 2000?

1 **A. 22.**

2 **Q.** Where was Amy living in November of 2000?

3 **A. Dallas, Texas.**

4 **Q.** And where -- what major intersection did she live
5 close to?

6 **A. Frankford and Dallas Tollway.**

7 **Q.** And how long had she been living there?

8 **A. Since '98.**

9 **Q.** And who did she live there with?

10 **A. James Mosqueda.**

11 **Q.** And what was Amy and James' relationship in November
12 of 2000?

13 **A. It was great.**

14 **Q.** Were they engaged?

15 **A. Yes. They were engaged.**

16 **Q.** When did they get engaged?

17 **A. July of 2000.**

18 **Q.** Tell me about the engagement. How did they get
19 engaged?

20 **A. Well, it was a secret. Everyone knew except Amy,
21 and they went to the Bahamas, and it was a Friday evening or
22 Friday night. She called me, and she was so happy she was in
23 tears. She was real excited.**

24 **Q.** Very excited to be engaged?

25 **A. Right.**

- 1 Q. And you said at that point by November of 2000,
2 their relationship was very good?
- 3 A. Yes.
- 4 Q. Was there ever a situation that caused you concern
5 in the beginning of their relationship?
- 6 A. No.
- 7 Q. Were you ever aware of a time where James might have
8 hit her?
- 9 A. Yes.
- 10 Q. How many -- on how many different occasions?
- 11 A. Once.
- 12 Q. And what type of fight was that? What was the
13 physical contact?
- 14 MR. GOELLER: Judge, I'm going to object. It's
15 either hearsay or speculation, or in the alternative, take her
16 on voir dire.
- 17 THE COURT: All right. Take her on voir dire.
- 18 VOIR DIRE EXAMINATION
- 19 BY MR. GOELLER:
- 20 Q. Ma'am, Ms. Falco asked you a question about some
21 physical violence, apparently between Mosqueda and your
22 daughter. Were you present during that violence?
- 23 A. No, sir.
- 24 Q. Were you in the same city?
- 25 A. No, sir.

- 1 MR. GOELLER: Renew my objection, Your Honor.
- 2 THE COURT: Sustain the objection to that
3 question.
- 4 Q. BY MS. FALCO: Did you talk to Amy the day that the
5 event occurred?
- 6 A. Yes.
- 7 Q. Did you see her?
- 8 A. No.
- 9 Q. When was the next time you saw her?
- 10 A. I don't remember.
- 11 Q. Did you ever see any bruises on Amy?
- 12 A. No.
- 13 Q. Did you ever see any signs of physical violence on
14 Amy?
- 15 A. No.
- 16 Q. Did she go to the hospital because of anything James
17 ever -- because of any assault he ever did to her?
- 18 A. No.
- 19 Q. When you talked to her on the phone, was it right
20 after the incident happened?
- 21 MR. GOELLER: Objection, Your Honor. That
22 calls for pure speculation. How would she know? She can't
23 know. It's hearsay.
- 24 THE COURT: Overruled. You may answer the
25 question.

- 1 Q. BY MS. FALCO: Was it immediately after the incident
2 occurred between her and James?
- 3 A. I don't remember.
- 4 Q. Was Amy upset when she was talking to you?
- 5 A. No.
- 6 Q. There was one instance where Amy went to the
7 hospital while she was dating James; is that correct?
- 8 A. Yes.
- 9 Q. Was that due to gynecological reasons?
- 10 A. Yes, it was.
- 11 Q. Not because James beat her or hit her?
- 12 A. No.
- 13 Q. Now, with regard to -- other than that one incident
14 that you're aware of, how would you describe Amy and James'
15 relationship?
- 16 A. It was a good relationship.
- 17 Q. And leading up to the time they were engaged, how
18 would you describe their relationship?
- 19 A. It was a good relationship.
- 20 Q. Were they in love?
- 21 A. Yes.
- 22 Q. Could you tell that just by looking at them?
- 23 A. Oh, yes.
- 24 Q. And how could you tell that?
- 25 A. Every time they were seen together, Amy just had

- 1 this great smile, and James always had his arm around her.
- 2 Q. Was Amy happy being with James?
- 3 A. Yes.
- 4 Q. Did you want your daughter to be happy?
- 5 A. Yes, I did.
- 6 Q. How old was Amy when she first met James?
- 7 A. Nineteen.
- 8 Q. And what type of business, at that time, did James
9 have?
- 10 A. In the tanning salon business.
- 11 Q. And at the time of November 2000, what type of
12 business was James in?
- 13 A. The mortgage business.
- 14 Q. Did he own his own company?
- 15 A. Yes.
- 16 Q. At some time prior to them moving in that house near
17 Frankford and the Tollway, had they ever lived with the
18 defendant, Ivan Cantu?
- 19 A. Yes.
- 20 Q. Who-all lived with James and Amy and the Defendant?
- 21 A. The defendant's wife.
- 22 Q. Was her name Michelle?
- 23 A. Yes.
- 24 Q. And how long did they live together?
- 25 A. I don't remember.

- 1 Q. Was that in an apartment or in a house?
 2 A. **In an apartment.**
 3 Q. When was the last time you saw the Defendant, Ivan
 4 Cantu, prior to today?
 5 A. **Christmastime of '98.**
 6 Q. And where was that?
 7 A. **James and Amy's house.**
 8 Q. Did they have everyone over for Christmas?
 9 A. **Yes.**
 10 Q. And did everyone go to church together for
 11 Christmas?
 12 A. **Yes.**
 13 Q. Including the Defendant?
 14 A. **Yes.**
 15 Q. And James and Amy welcomed the Defendant into their
 16 home to celebrate Christmas with them?
 17 A. **Yes.**
 18 Q. They exchanged gifts with the Defendant?
 19 A. **Yes.**
 20 Q. I want to take you to that week of November 2000.
 21 How many grandchildren did you have at that time?
 22 A. **One.**
 23 Q. And what's her name?
 24 A. **Tabatha Lynn Marie Kitchen.**
 25 Q. How old is Tabatha?

- 1 A. **She's eight now.**
 2 Q. Is that your son's daughter?
 3 A. **Yes.**
 4 Q. And the weekend of November 4th and 5th, were you
 5 going to have Tabatha that weekend?
 6 A. **Yes.**
 7 Q. Was that common or standard for you to get her on
 8 weekends sometimes?
 9 A. **Yes, it was.**
 10 Q. Did you make arrangements with Amy to spend that
 11 Saturday, November 4th, together?
 12 A. **Yes.**
 13 Q. What were y'all going to do?
 14 A. **Go shopping and have dinner together.**
 15 Q. Who-all was going to be involved in that?
 16 A. **My son was going to be there, and his wife, also,
 17 and James and Tabatha, Amy and I.**
 18 Q. And had y'all been talking about that that week
 19 leading up to Saturday, November 4th?
 20 A. **Yes.**
 21 Q. On Friday night, November 3rd, did you try calling
 22 Amy?
 23 A. **Yes.**
 24 Q. Did you leave her a message?
 25 A. **Yes, I did.**

- 1 Q. Did she call you back?
 2 A. **Yes.**
 3 Q. Was that after she had gone to dinner with her
 4 father?
 5 A. **Yes.**
 6 Q. When you talked to her, approximately what time was
 7 that?
 8 A. **Approximately about 11:25.**
 9 Q. P.M.?
 10 A. **Yes.**
 11 Q. This is Friday, November 3rd?
 12 A. **Right, yes.**
 13 Q. How long did you talk to Amy?
 14 A. **Approximately ten minutes.**
 15 Q. When you talked to her, did you hear any voices in
 16 the background?
 17 A. **No, I didn't.**
 18 Q. Did you know whether or not she was at home at that
 19 time?
 20 A. **Yes.**
 21 Q. Was she at home?
 22 A. **Yes.**
 23 Q. Were you aware of whether or not anyone else was
 24 over there, other than James?
 25 A. **No.**

- 1 Q. When you hung up the phone with Amy, what was your
 2 understanding of what the plan was to be for Saturday?
 3 A. **I was to call her that morning about 9:30 so she
 4 could do some of her studying before Tabitha and I got there
 5 that afternoon.**
 6 Q. Studying for what?
 7 A. **For her nursing test. She was studying to be a
 8 nurse.**
 9 Q. How much school did she have left to go?
 10 A. **This was her first semester at TWU, so she had
 11 another semester and another year.**
 12 Q. And what time had you planned on getting together
 13 with Amy after she studied?
 14 A. **Sometimes (sic) that afternoon.**
 15 Q. After you spoke with Amy that Friday night, was that
 16 the last time that you talked to Amy?
 17 A. **Yes, it was.**
 18 Q. The next morning did you call her around 9 or 9:30?
 19 A. **It was between 9:30 and 10:00.**
 20 Q. Was there any answer?
 21 A. **No, there wasn't.**
 22 Q. What did you do after you tried calling her?
 23 A. **Well, I tried calling several times after that.**
 24 **There was no answer. I also called James, and there was no
 25 answer.**

- 1 Q. When you say James, which --
- 2 A. James Mosqueda.
- 3 Q. Okay. Was it his home, his cell, his work, where
- 4 did you try?
- 5 A. Cell phone.
- 6 Q. Did you try Amy on her cell phone as well?
- 7 A. Yes.
- 8 Q. Did you try all the numbers that you knew for the
- 9 two of them?
- 10 A. Yes, I did.
- 11 Q. Were you ever able to get an answer?
- 12 A. No answer.
- 13 Q. How long did you continue to try to call them?
- 14 A. Probably until the early part of that afternoon.
- 15 Then I called her brother, Mark, and he, himself, was getting
- 16 concerned.
- 17 Q. And why is that?
- 18 A. Because he had tried to call James earlier and there
- 19 was no answer.
- 20 Q. After you talked to your son, Mark, what did you do?
- 21 A. Shortly after that, I decided to go get this friend
- 22 of mine so -- I didn't want to go by myself because I had
- 23 Tabitha with me, and I asked her if she would like to go to
- 24 Dallas with me for a little bit, and she said yeah.
- 25 Q. How long a drive is that from your house to Dallas?

- 1 A. Oh, it takes at least 30 minutes or so.
- 2 Q. And did your friend go with you?
- 3 A. Yes, she did.
- 4 Q. Was it just the three of you?
- 5 A. Yes.
- 6 Q. Do you know about what time it was when you got to
- 7 James and Amy's house?
- 8 A. I'm going to say approximately 4:00.
- 9 Q. In the afternoon?
- 10 A. Yes.
- 11 Q. What did you do when you got to James and Amy's
- 12 house?
- 13 A. Well, I went to the front door and knocked, and
- 14 there was no response. And I rang the doorbell, and there
- 15 still was no response, but I could hear their dog barking
- 16 inside the house, and it seemed like it was rather strange.
- 17 Q. Why did that seem strange?
- 18 A. Because no one was coming to the door.
- 19 Q. Did you try to open the doors?
- 20 A. Yes. I even thought for a second to maybe break in,
- 21 but then somehow I guess that idea just vanished from my mind.
- 22 So, I had gone next door to see if anyone had seen them
- 23 outdoors that day, and the person said they didn't. So, I
- 24 told Treva, this friend of mine, I said, I believe I'll go
- 25 check at the back door. And it was all closed, and the lights

- 1 were on outside front and back, and all the blinds were
- 2 closed. So I came back --
- 3 Q. Did you notice that any of the windows were open or
- 4 broken?
- 5 A. No. No windows open or broken.
- 6 Q. And the front door and the back door were locked?
- 7 A. Yes.
- 8 Q. Did you try knocking on the back door?
- 9 A. Yes.
- 10 Q. And still no answer?
- 11 A. No answer.
- 12 Q. After you tried the doors -- both doors, what did
- 13 you do?
- 14 A. I came around to the front, and I asked my friend --
- 15 I said, do you think we should call the police, and she said
- 16 yes. Then I thought for a second, I said, well, you know,
- 17 there's a fire station right at the beginning of their street
- 18 when you enter. I said maybe we should go there and see if we
- 19 can get some help. So we got back in the car, and we went to
- 20 the fire station there at the beginning of Gibbons -- Gibbons
- 21 and Frankford, and each door I came to it was locked. So I
- 22 came back to the car, and we started back down the street down
- 23 Frankford and -- hoping to find a nearby police station, and
- 24 there to our left a policeman had somebody he had arrested.
- 25 So, I went to the next intersection and turned around hoping

- 1 that maybe by the time we got back there he would be finished
- 2 with whatever he was doing, the arrest.
- 3 But he wasn't, so we went into the shopping strip
- 4 there that was nearby, and I went into the dry cleaning there,
- 5 and I asked the lady, could she tell me where the nearest
- 6 police station was? And about that time a customer walked in,
- 7 and he said to me -- he said, well, I have a cell phone if you
- 8 have a flat tire. I said, no, it's not a flat tire. I said,
- 9 I was trying to get someone's attention at the fire station
- 10 there, and he -- about that time he looked over there, and he
- 11 said I believe there's someone there now.
- 12 So we proceeded -- we went back to the fire station,
- 13 and I told one of the firemen out front what was happening,
- 14 that I couldn't get anyone's attention at my daughter's house
- 15 there. He said, well, I think you need to speak to the
- 16 lieutenant. So I told him what I felt -- you know, that I
- 17 needed somebody to help me get in the house, and he asked for
- 18 the address.
- 19 Q. And what was the address?
- 20 A. 18663 Gibbons.
- 21 And I said, yes, I would wait for him there in front
- 22 of the house, and he said, well, just a moment and he would
- 23 have to call this in. So, me and my lady friend, Treva, and,
- 24 of course, Tabitha, the granddaughter, was asleep in the car,
- 25 and we went back to the house in front and parked. And by the

1 time I was getting out of the car, here came the fireman. And
 2 then they asked me, do you mind if I break a window to get in
 3 the house? I said no, do what you got to do. You need to get
 4 in and see what's going on. So they tried the front windows,
 5 but then they went around to the back.
 6 Q. When they went around to the back, where were you?
 7 A. In the front of the house. I believe they told me
 8 to stay in front of the house.
 9 Q. Where was your friend?
 10 A. In the car with Tabitha.
 11 Q. Were you just standing outside?
 12 A. Yes.
 13 And there shortly, I heard the breakage of glass,
 14 and probably ten minutes had gone by, maybe not even that
 15 long, and there was a lady fireman with them. And I was
 16 standing at the front of the house, and she comes over there,
 17 and she looked at me, and she said, we found them. They've
 18 been deceased several hours, and I just lost it. I started
 19 screaming and crying, and all the neighbors came running. And
 20 then the fireman came over there and he said, you're not going
 21 in the house, and I said oh, yes, I am. Just watch me. I'm
 22 going in this house. This is my baby daughter, and I'm going
 23 in the house.
 24 And then they asked me if there was any brothers or
 25 sisters, and I said, yes, her brother worked at North Central

1 Ford. And then he was called, and I talked to him on the
 2 phone. And he asked me, Mom, what's going on? And I said,
 3 Son, just get here now. I can't tell you. You just have to
 4 get here. I didn't want to tell him because I knew he had to
 5 drive a ways.
 6 Q. Did he come?
 7 A. Yes, he did.
 8 Q. Before he got to the house, did he know what had
 9 happened?
 10 A. No.
 11 Q. Did someone also call the police?
 12 A. They might have. I don't know.
 13 Q. You didn't call the police?
 14 A. I did not call the police.
 15 Q. But the police showed up?
 16 A. Yes.
 17 Q. Who showed up first; your son or the police? Do you
 18 remember?
 19 A. Well, when my son came there, as he got out of the
 20 truck and I met him, and he said, Mom, what are all these
 21 police cars and everything doing here? And that's when I told
 22 him.
 23 Q. And at that point, they weren't letting you go in
 24 the house?
 25 A. Right, no.

1 Q. And they made you wait outside?
 2 A. Yes.
 3 Q. What did you do with your granddaughter during this
 4 time?
 5 A. During most of the time, she was asleep in the back
 6 seat. I think she woke up when her dad got there, and he was
 7 asked -- Mark was asking, should we tell Tabitha? I said,
 8 yes, we need to tell her. She worshipped Amy.
 9 Q. Did other neighbors and other family members in
 10 James's family start showing up there?
 11 A. Yes, they did.
 12 Q. And did the police make everybody stay outside?
 13 A. Yes.
 14 Q. How long did they make y'all stay outside before
 15 they let you go in the house?
 16 A. I believe it was until about 11:30, approximately.
 17 Q. That night?
 18 A. Yes, that night.
 19 Q. This is Saturday, November 4th?
 20 A. Yes.
 21 Q. When they let you go in the house, James and Amy
 22 were already gone?
 23 A. Yes. Yeah, they made me go in the neighbor's house
 24 so I wouldn't even see what -- as they removed them from the
 25 house.

1 Q. Did you take Tabitha with you?
 2 A. She was with her dad at that time.
 3 Q. Did you eventually go inside the house?
 4 A. Yes, when we were told we could go in.
 5 Q. Did you talk to some policemen while you were there
 6 at the scene?
 7 A. Yes.
 8 Q. And, obviously, you were very upset and very
 9 distraught?
 10 A. Yes.
 11 Q. Do you remember telling them that Amy was engaged,
 12 and she had a very nice engagement ring?
 13 A. Yes.
 14 Q. When you went inside the house, initially was there
 15 anything that stuck out in your mind that was missing from the
 16 house?
 17 A. Well, the thing that we kind of recall is some items
 18 on her -- on Amy's -- she had a perfume tray there on the
 19 dresser that was sort of in a disarray.
 20 Q. Did you notice the Corvette missing?
 21 A. Yes.
 22 Q. Was Amy's Mercedes there?
 23 A. Yes.
 24 Q. And, obviously, you see your daughter on a very
 25 regular basis?

- 1 A. Yes.
- 2 Q. And you knew what kind of purse she carried?
- 3 A. Yes.
- 4 Q. And which purses she carried?
- 5 A. Yes.
- 6 Q. Did you go look in her purse?
- 7 A. Yeah.
- 8 Q. After looking in her purse, did you notice anything
- 9 missing?
- 10 A. Yes. Her driver's license was missing, and cash
- 11 money was missing.
- 12 Q. From her wallet?
- 13 A. Yes.
- 14 Q. Did you ever see her car keys?
- 15 A. Yes.
- 16 Q. You did see her car keys?
- 17 A. Yes.
- 18 Q. What else did you notice missing from the house?
- 19 A. Well, Amy's -- I don't remember.
- 20 Q. But you know her ID was missing, and you know the
- 21 cash was missing --
- 22 A. Yes.
- 23 Q. -- and the Corvette was missing?
- 24 A. Uh-huh.
- 25 Q. How long did you stay there at the house that

- 1 night?
- 2 A. It was almost mid-morning.
- 3 Q. Do you know who Sylvia Cantu is?
- 4 A. No.
- 5 Q. Was some of James' family inside the house as well?
- 6 A. Yes.
- 7 Q. You said that when you were knocking on the door you
- 8 heard the dog barking?
- 9 A. Yes.
- 10 Q. James and Amy had a dog?
- 11 A. Yes.
- 12 Q. What kind of dog was it?
- 13 A. Cocker Spaniel.
- 14 Q. And where was the dog when you went inside the
- 15 house?
- 16 A. He was in the kennel -- his cage-like kennel in the
- 17 kitchen area.
- 18 Q. Were you familiar enough with James and Amy and
- 19 their habit with their dog as far as when they went to sleep?
- 20 A. Yes.
- 21 Q. What did they do with their dog when they went to
- 22 sleep?
- 23 A. They usually put him in the kennel, the cage that
- 24 they had there in the kitchen.
- 25 Q. So when you went in the home, that's where the dog

- 1 was?
- 2 A. Yes.
- 3 Q. And that would have been part of their routine or
- 4 habit, if they were going to bed, they would have put him in
- 5 the kennel?
- 6 A. Yes.
- 7 Q. Did you spend the next several days going over
- 8 there retrieving Amy's stuff?
- 9 A. Yes.
- 10 Q. Did you and your family and James' family make
- 11 funeral arrangements for James and Amy?
- 12 A. Yes.
- 13 Q. And was it a double funeral?
- 14 A. Yes.
- 15 Q. Explain to the jury as far as the days -- it was
- 16 more than just a funeral. There was a visitation and rosary;
- 17 is that correct?
- 18 A. Yes --
- 19 MR. GOELLER: Judge --
- 20 A. -- that's correct.
- 21 MR. GOELLER: -- I'm going to object. This has
- 22 absolutely no relevance. Certainly at this stage of the
- 23 trial, as to funeral arrangements, it's only going to inflame
- 24 the jury. Has nothing to do with elements of this indictment.
- 25 MS. FALCO: Well, Your Honor, I'm going into

- 1 the days specifically and to ask her about certain people's
- 2 presence, if she saw anyone there.
- 3 THE COURT: All right. For that purpose, I'll
- 4 overrule the objection.
- 5 Q. BY MS. FALCO: So other than viewing -- I'm sorry.
- 6 First of all, the funeral, what day was the funeral?
- 7 A. Thursday.
- 8 Q. And that was for both James and Amy?
- 9 A. Yes.
- 10 Q. Prior to Thursday, was there any arrangements to pay
- 11 respect to James and Amy?
- 12 A. On Tuesday it was the viewing for the family, and
- 13 then on Wednesday, the viewing and the rosary that evening.
- 14 Q. And on Tuesday the viewing for the family, that
- 15 would be for your family, as well as James' family?
- 16 A. Yes.
- 17 Q. And was that all day, or was that during a certain
- 18 time period?
- 19 A. During -- I'm not for sure. I can't remember now.
- 20 Q. Was your family there?
- 21 A. Yes.
- 22 Q. Was some of James's family there?
- 23 A. Yes.
- 24 Q. Did you ever see the defendant, Ivan Cantu, on
- 25 Tuesday?

1 A. No.
 2 Q. Ms. Kitchen, you've been in James and Amy's house
 3 quite frequently; is that fair to say?
 4 A. Yes.
 5 Q. Do you know what their telephone looked like?
 6 A. Yes.
 7 MS. FALCO: Your Honor, may I approach?
 8 THE COURT: Yes.
 9 Q. BY MS. FALCO: Ms. Kitchen, I show you what's been
 10 marked as State's Exhibit Number 6. Do you recognize this
 11 phone?
 12 A. Yes.
 13 Q. Before you came in to testify this morning, the
 14 Caller ID still works on this phone; is that correct?
 15 A. Yes.
 16 Q. Did you and I go through the Caller ID?
 17 A. Yes.
 18 Q. Did you see both your home phone number and your
 19 cell phone number on there on numerous occasions?
 20 A. Yes, I did.
 21 Q. And would those correspond to the times that you
 22 called Amy and James' home?
 23 A. Yes.
 24 Q. So what you saw on the Caller ID is reflective of
 25 when you called either from your home or your cell phone to

1 A. I don't know.
 2 Q. Okay. When was the last time you saw -- Ms. Falco
 3 said that you and her looked, or talked, or discussed this
 4 phone. When was that?
 5 A. Today.
 6 Q. Today. When was the last time you saw this
 7 telephone prior to October 3rd of 2001?
 8 A. James and Amy's house.
 9 Q. So that would be November of 2000?
 10 A. Yes.
 11 Q. Or earlier?
 12 A. Yes.
 13 Q. Okay. You have no personal knowledge of the data,
 14 when it was made, how it was made. Is it your testimony that
 15 this was just simply the phone that was in the house?
 16 A. It was in the house.
 17 Q. Okay.
 18 A. Yes.
 19 Q. Do you have any personal knowledge of any of the
 20 data -- electronic data stored in this phone, whether there's
 21 been additions or deletions or alterations, either before or
 22 after the State came into possession of this phone?
 23 A. I don't know that.
 24 Q. Okay.
 25 MR. GOELLER: Your Honor, I have no objection

1 James and Amy's phone?
 2 A. Yes.
 3 Q. And with regard to the Caller ID, it recalls the
 4 last -- it records the last 60 calls; is that correct?
 5 A. Yes
 6 MS. FALCO: Your Honor, at this time we'd offer
 7 State's Exhibit Number 6.
 8 MR. GOELLER: May I take the witness on voir
 9 dire briefly, Judge?
 10 THE COURT: Yes.
 11 VOIR DIRE EXAMINATION
 12 BY MR. GOELLER:
 13 Q. Ma'am, this is whose phone again?
 14 A. Amy Kitchen and James Mosqueda.
 15 Q. Okay. Was it in their home?
 16 A. Yes.
 17 Q. So who -- your daughter didn't own that home,
 18 though, right?
 19 A. Well --
 20 Q. She was living there with James?
 21 A. She was living there.
 22 Q. I mean, is this her phone? Did she buy this phone?
 23 A. I don't know.
 24 Q. Okay. So you don't know who -- I guess you assumed
 25 this was James' phone?

1 to the offer of the telephone physically. Obviously, I have
 2 an objection to any data -- reference to data electronically
 3 stored. This witness has no personal knowledge. It would
 4 also be hearsay, I think, anything on it, but --
 5 MS. FALCO: Your Honor, first of all, it's not
 6 hearsay. Caller ID reflects an act, not a statement.
 7 Additionally, we'd ask the Court to take judicial notice of
 8 Caller ID and the common way it works in which, when you call,
 9 it's recorded on the phone. And Ms. Kitchen has testified
 10 that she knows the time, she knows from which phone she's
 11 called, and that's reflected on the times that she's called on
 12 this Caller ID, State's Exhibit Number 6.
 13 MR. GOELLER: In response, obviously object to
 14 the Court taking judicial notice of some technology.
 15 Secondly, they still haven't gotten past -- she hadn't seen
 16 this phone in almost a year. She doesn't know what's taken
 17 place with it. She can't testify before or after to the
 18 authenticity of any of the data contained in it. So, again, I
 19 renew my objection. No proper predicate has been laid. It's
 20 hearsay. She can't testify as to the authenticity. She can't
 21 testify as to the security of the data on there. But again,
 22 that's my objection as to data. Just offering the phone to
 23 say this is the phone, no objection.
 24 THE COURT: Well, I understand the testimony
 25 is that's the phone that was in the house. With regard to the

1 objection, the objection is sustained. Perhaps it will be --
2 the other information will be put on later.

3 MS. FALCO: Your Honor, may I approach the
4 witness?

5 THE COURT: Yes.

6 Q. BY MS. FALCO: Ms. Kitchen, having been in James
7 and Amy's home on numerous occasions, are you familiar with
8 the layout of their home?

9 A. Yes.

10 Q. I'm going to show you what's been marked as Exhibit
11 Number 7. Do you recognize this diagram as a diagram of their
12 home?

13 A. Yes.

14 Q. In fact, your son is actually the one that drew it?

15 A. Yes.

16 Q. And is this, though maybe not drawn exactly to
17 scale, is this a fair and accurate depiction of the rooms,
18 their locations, and proximities to each other?

19 A. Yes.

20 MS. FALCO: We'd offer State's Exhibit
21 Number 7.

22 MR. GOELLER: No objection.

23 THE COURT: State's Exhibit Number 7 is
24 admitted.

25 Q. BY MS. FALCO: Ms. Kitchen, using this diagram, you

1 living room?

2 A. Yes.

3 Q. Over here, with regard to the bedrooms, what's the
4 first bedroom?

5 A. The spare bedroom.

6 Q. Did they actually have a guest bed in there?

7 A. Yes.

8 Q. What else was in the spare bedroom?

9 A. A tanning bed.

10 Q. Okay. And then the second bedroom, what was that
11 bedroom used as?

12 A. Like, a home office with a computer in there and a
13 desk.

14 Q. And then the last bedroom, the one in the back of
15 the house, is that James and Amy's bedroom?

16 A. Yes.

17 Q. And the back door that you tried, where is that?

18 A. It's right here.

19 MS. FALCO: Thank you, Ms. Kitchen. Pass the
20 witness.

21 THE COURT: Mr. Goeller.

22 MR. GOELLER: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. GOELLER:

25 Q. Ma'am, my name is Matthew Goeller, and this is

1 explained to the jury -- first of all, the address is 18663
2 Gibbons; is that correct?

3 A. That's correct.

4 Q. Where is the front door to the house?

5 A. (Pointing.)

6 Q. And as you go in the front door, the formal dining,
7 living area is to the right?

8 A. Yes.

9 Q. And the kitchen is to the left?

10 A. Yes.

11 Q. Where is the -- this door right here leads into the
12 garage?

13 A. Yes.

14 Q. And where was the dog when you came in, in a kennel?

15 A. Right here (indicating).

16 Q. And this is a bar in the kitchen area?

17 A. Yes.

18 Q. And did they usually keep barstools at the bar on
19 the living room side?

20 A. Yeah, a couple right there.

21 THE COURT: Mr. Goeller, if you need to move
22 around you may.

23 MR. GOELLER: That's okay, Judge. Thank you,
24 though.

25 Q. BY MS. FALCO: And then this area would be their

1 Mr. Don High, and we represent Ivan.

2 Have you made any statements, either written, oral,
3 or those that were recorded to any person regarding this case?

4 A. Well, that Saturday I had spoken to an officer.

5 Q. Do you remember -- that Saturday that would have
6 been --

7 A. November the 4th.

8 Q. Okay. And who was that officer, ma'am?

9 A. If I remember correctly, it was Detective Winn.

10 Q. White, black or Hispanic man?

11 A. At this point, I can't even remember.

12 Q. That's okay.

13 All right. But was he taking notes, or --

14 A. Yes.

15 Q. -- did you write out a statement?

16 A. No. He was just taking notes.

17 Q. Okay. And when was the next time you spoke with
18 anybody in law enforcement, or any other person in connection
19 with this matter?

20 A. I guess the next time I spoke to anybody was at the
21 DA's office.

22 Q. When was that?

23 A. If I remember correctly, January.

24 Q. Okay. Was that in -- by telephone or in person in
25 the DA's office?

1 A. In person.
 2 Q. And who did you meet with?
 3 A. The lady from the victim's assistance office was
 4 there.
 5 Q. Okay. Did you fill out a statement?
 6 A. No. I didn't fill out a statement.
 7 Q. Did you fill out any -- did you write any
 8 documentation?
 9 A. No.
 10 Q. Nothing. Okay. Anything else? Any other times
 11 you've met?
 12 A. Well, there's been some times since then, but I
 13 can't remember the exact dates.
 14 Q. That's okay. I don't need exact dates.
 15 A. Probably a couple of times.
 16 MR. GOELLER: Judge, at this time I'd ask for
 17 production of memorialization of those interviews.
 18 MS. FALCO: Your Honor, my understanding of the
 19 rule, this witness did not make any written statements
 20 herself, nor has she reviewed any statements for her
 21 testimony, therefore there's no statements to turn over at
 22 this time.
 23 MR. GOELLER: If she made statements and the
 24 detective is writing it down, I'm entitled to look at that.
 25 Number one for Brady and Number 2 for possible impeachment.

1 Doesn't matter whether it's her hand or not. Doesn't matter
 2 whether she's reviewed it prior to her testimony. That's a
 3 whole other area I haven't gotten to yet, but right now I'm
 4 entitled to the memorialization of her previous statements
 5 regarding this matter.
 6 THE COURT: I understand that Rule 6.15 (a)
 7 provides that we're talking about any statement that is in the
 8 State's possession that relates to the subject matter
 9 concerning which the witness is testifying. Do you-all agree
 10 with that? I know that there is -- certainly used to be a
 11 provision for the production of statements that the witness
 12 had used to refresh their recollection. But anyway, I need
 13 your take on 615 (a).
 14 MR. SCHULTZ: Well, our position -- may I
 15 speak, Judge?
 16 THE COURT: Yes.
 17 MR. SCHULTZ: Our position is that's not a
 18 statement of the witness if someone is writing down what she
 19 said. It's rather the statement of the author himself. We
 20 can easily cure the Brady complaint Mr. Goeller has by giving
 21 the statement to the Court in camera to see whether or not
 22 there's anything exculpatory contained within it, and that's
 23 not a blanket authorization to the Defense to scour our files
 24 to look for Brady material. The Court can do that, unless
 25 it's self-generating.

1 But our position is that someone writing down what
 2 someone else said is not a statement of the witness. It may
 3 be a statement of the author that makes it the statement of
 4 the witness, but, otherwise, it's like any other document
 5 contained within a report. It's just hearsay that's found its
 6 way into a report. It wouldn't be admissible if it's not
 7 authored by her.
 8 MR. GOELLER: Judge, let me point out 615 (f),
 9 statement. Recital of an oral statement made by the witness
 10 that is recorded contemporaneously with the making of the oral
 11 statement that is contained in a stenographic, mechanical,
 12 electrical or other recording, transcription thereof. She's
 13 testified the detective was taking notes, so that is a
 14 statement so I disagree with Mr. Schultz. I can't get around
 15 the rule by saying, well, she didn't write it; the detective
 16 wrote it. He's writing what she told him. Under that, it's a
 17 statement; I'm entitled to it.
 18 THE COURT: Yeah. Take a look at 615 (f),
 19 too, and tell me what you think.
 20 MR. SCHULTZ: Furthermore, our position is he
 21 hasn't established any necessary predicate to obtain this
 22 document because he hasn't proved it is contemporaneous in
 23 nature, or any type of substantial, verbatim recitation by the
 24 witness. He'd have to do that some other way before he gets
 25 to production.

1 THE COURT: I'll order the State to turn over
 2 any statement made by this witness. Before you turn that
 3 over, let me ask you, if there's any other reason that
 4 anything ought to be excluded just tell me now, and I'll take
 5 a look at it. Do you want me to look at it in camera for any
 6 other purpose?
 7 MS. FALCO: No, Your Honor.
 8 THE COURT: All right.
 9 MR. GOELLER: Judge, I've got four pages,
 10 single-space. May I have some time to review this?
 11 THE COURT: Yeah. I tell you what, Ladies and
 12 Gentlemen, it's a little bit early for lunch, but I think what
 13 we probably ought to do is take a lunch recess at this time.
 14 Let's take -- let's come back at 1:15.
 15 Before you leave, I want to instruct you that it is
 16 your duty not to converse among yourselves or with anyone else
 17 on any subject connected with the trial, or to form or express
 18 any opinion thereon until the cause is finally submitted to
 19 you. Let's come back at 1:15.
 20 THE BAILIFF: All rise.
 21 (Jury exits the courtroom at 11:45 a.m.)
 22 (Lunch recess taken.)
 23 THE BAILIFF: All rise.
 24 (Jury enters the courtroom at 1:27 p.m.)
 25 THE COURT: Please be seated.

1 Ladies and Gentlemen, to my right over here is Janie
2 Wilcox, and I introduce you to her because I think everybody
3 on the jury has spoke to her at least a couple of times, and
4 some have spoken to her -- I shouldn't say many, but several
5 times. And so I thought I'd put a face with a voice for you
6 because perhaps you'll need to call her again at some point.
7 But, anyway, this is Janie Wilcox.

8 Mr. Goeller, are you ready?

9 MR. GOELLER: Yes, Your Honor. Ms. Falco is
10 going to take her back for a few minutes.

11 THE COURT: All right. Please go ahead.

12 MS. FALCO: Just a few more questions.

13 MR. GOELLER: And in the meantime, I need to
14 talk to Gail for a few more seconds.

15 THE COURT: All right.

16 (Brief pause in proceedings.)

17 THE COURT: All right. Ms. Kitchen, I should
18 remind you, as I do every witness, that you're still under
19 oath. All right, Ms. Falco.

20 MS. FALCO: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. FALCO:

23 Q. Ms. Kitchen, are you a little nervous up there?

24 A. Yes.

25 Q. Back when I had you before the lunch break, I asked

1 THE COURT: Mr. Goeller.

2 MR. GOELLER: Thank you, Your Honor.

3 RE-CROSS-EXAMINATION

4 BY MR. GOELLER:

5 Q. Ma'am, when we last spoke we talked about some of
6 the statements that you had given that were being memorialized
7 by law enforcement officers. You said there was -- you spoke
8 to the officers at the Gibbons Drive address?

9 A. Yes.

10 Q. And did you go to the Dallas Police Department --

11 A. No.

12 Q. -- or anywhere else after that?

13 A. No.

14 Q. Did you talk on the phone with the detective?

15 A. Just spoke there at the front of the residence.

16 Q. Okay, all right. When you went to the District
17 Attorney's office, who did you speak with?

18 A. Well, I didn't really speak to any certain one. We
19 were all there.

20 Q. Okay. Were you given -- was your purpose to give a
21 statement?

22 A. No.

23 Q. Okay. Your name is not Bernadine with a "V," is it?

24 A. No, it isn't.

25 Q. Did you ever tell the Dallas detectives -- did they

1 you about items missing from James and Amy's house?

2 A. Yes.

3 Q. Specifically I asked you if you looked in Amy's
4 purse and looked through her house for her keys?

5 A. Yes.

6 Q. Do you remember me asking you that question?

7 A. Yes.

8 Q. Do you know what Amy's keys look like?

9 A. Yes.

10 MS. FALCO: Your Honor, may I approach the
11 witness?

12 THE COURT: Yes.

13 Q. BY MS. FALCO: Ms. Kitchen, I show you what has been
14 marked as State's Exhibit 8. Do you recognize that?

15 A. Yes.

16 Q. Are those Amy's keys?

17 A. Yes.

18 Q. Did you see them in her house that night, November
19 4th, when you were in her house?

20 A. No.

21 Q. And you looked for them?

22 A. Yes.

23 Q. Thank you.

24 MS. FALCO: That's all I have. I pass this
25 witness.

1 ever ask you how to spell your name?

2 A. If I remember correctly, I believe they did.

3 Q. Okay. I believe in your statement you talked about
4 your daughter had been dating this Mr. Mosqueda for about four
5 or five years?

6 A. Yes.

7 Q. Okay. Is that correct?

8 A. Yes.

9 Q. Okay. Did you tell the detectives that you had no
10 knowledge of any illegal activity either on the part of your
11 daughter or Mr. James Mosqueda?

12 A. That's correct.

13 Q. And would that be -- and that's apparently what you
14 said back in November of 2000. Would your answers to that
15 question still be the same today?

16 A. Yes.

17 Q. Okay. And you did have some concerns about their
18 lifestyle, didn't you?

19 A. Not really.

20 Q. Weren't you a little concerned that this man, who
21 was not married to your daughter, was pushing her to get
22 breast implants, an augmentation and was going to pay for it?
23 Didn't you have a discussion about that?

24 A. I don't recollect, don't remember that.

25 Q. Okay. Now, you told Ms. Falco that there was only

- 1 one time that you could recall where there was some type of
 2 incident of domestic violence between Mr. Mosqueda and your
 3 daughter, correct?
 4 **A. That's correct.**
 5 Q. And I think you testified that she called you
 6 immediately after, but she wasn't upset, correct?
 7 **A. Yes.**
 8 Q. Okay. Do you recall, ma'am, a time when your
 9 daughter and Mr. Mosqueda were living near Coit road in an
 10 apartment?
 11 **A. They lived in an apartment.**
 12 Q. Where was that apartment approximately; do you
 13 remember?
 14 **A. I don't remember that.**
 15 Q. Okay. It was actually -- it was near Coit and
 16 Frankford. You never recall going over there to help your
 17 daughter pack?
 18 **A. No, sir.**
 19 Q. And did you ever have any conversations with your
 20 son, Mark, about what was happening with your daughter,
 21 vis-a-vis James Mosqueda?
 22 **A. I don't remember.**
 23 Q. Okay, okay. But your testimony is you never, ever
 24 went to help your daughter pack to get out of there -- that
 25 apartment complex where the four of them lived?

- 1 **A. No, sir.**
 2 Q. Okay. Did you ever have to call the police?
 3 **A. No, sir.**
 4 Q. Okay. Ever know of an incident that got so bad
 5 where the police had to show up?
 6 **A. I don't remember any.**
 7 Q. Okay. And so again, your only knowledge is one
 8 phone call that was made, and she wasn't even upset?
 9 **A. As far as I remember, sir.**
 10 Q. Okay. You'd probably remember those things. I
 11 mean, if your daughter was being abused, you'd remember those
 12 things, wouldn't you?
 13 **A. Yes.**
 14 Q. Phone calls, dates, approximate -- okay.
 15 When I asked you if you had any concerns about their
 16 lifestyle, did you ever talk to your ex-husband about -- your
 17 ex-husband was Jerry Kitchen, right?
 18 **A. Yes, sir.**
 19 Q. Okay. Did you have protective orders out against
 20 him?
 21 **A. That was at the beginning of the divorce.**
 22 Q. Okay. You weren't the woman involved in the deadly
 23 conduct and violations --
 24 **A. No, sir.**
 25 Q. Okay. Did you ever talk to him about your daughter

- 1 and her situation with Mr. Mosqueda?
 2 **A. We had a good communication.**
 3 Q. Did you ever discuss that he had some concerns about
 4 their lifestyle?
 5 **A. Well, I don't remember.**
 6 Q. Okay. If you thought about it for a minute, do you
 7 think you might remember?
 8 **A. I don't remember.**
 9 Q. Okay. Did your daughter and yourself talk quite a
 10 bit about the relationship?
 11 **A. We had a good communication. We were the best of**
 12 **friends.**
 13 Q. Okay, okay. Were you personally very comfortable
 14 with that relationship?
 15 **A. Yes.**
 16 Q. Okay. And you were really looking forward to
 17 Mr. Mosqueda being your son-in-law, I suppose?
 18 **A. Yes.**
 19 Q. Okay. As a mother, I guess you weren't concerned --
 20 and it's true, he pushed her to have cosmetic surgery and all
 21 that kind of thing, right?
 22 **A. I don't know that.**
 23 Q. Okay. When that was going on, and she's driving
 24 this new Mercedes and all that, did you start to say to
 25 yourself, hum, I have some concerns as a mother, or no, you

- 1 had none of that, and you just couldn't wait for this guy to
 2 be your son-in-law?
 3 **A. Would you mind repeating that again, please?**
 4 Q. When she was -- decided to take up residence with
 5 this guy and have breast augmentation, and he's paying for it
 6 and putting her in a new Mercedes, did you have some concerns?
 7 **A. Well, he wasn't putting her in the Mercedes.**
 8 Q. She did that herself, I guess?
 9 **A. Her father helped her with that.**
 10 Q. Okay. And you talked to your daughter pretty
 11 in-depth about her affair, so you're pretty comfortable that
 12 her father put her in that car?
 13 **A. Yes.**
 14 Q. Okay. Now, you've had quite a falling out with
 15 James Mosqueda's family, correct?
 16 **A. No, sir.**
 17 Q. Are y'all on good terms?
 18 **A. Yes.**
 19 Q. Okay. Gladys Mosqueda, you're on good terms with
 20 her?
 21 **A. Yes.**
 22 Q. Okay. Okay. What action, if any, was taken by you
 23 or your ex-husband, to your knowledge, or your son, to your
 24 knowledge, when your daughter called you and said she was
 25 being -- she was physically abused?

1 **A. I don't remember.**
 2 Q. The morning of, I guess the 4th or the 5th, you
 3 testified that she told you that she would call you that
 4 morning to go shopping, or I believe you told the detective to
 5 finalize -- finalize the shopping arrangements?
 6 **A. No. I was supposed to call her that morning.**
 7 Q. Okay. You were supposed to call her to work out the
 8 details --
 9 **A. Make sure she was --**
 10 Q. -- of where you were going to go shopping?
 11 **A. Make sure she was up so she could study first.**
 12 Q. Okay. So there were no specific plans in place for
 13 a time and place to go shopping, or anything like that?
 14 **A. No, not relating to the shopping.**
 15 Q. Okay. And you weren't expected over there at a
 16 particular time?
 17 **A. Not really.**
 18 Q. Okay. What time did you -- I believe you said you
 19 went to the fire department?
 20 **A. I'm not -- it's approximate time because I'm not**
 21 **certain how long we had been there at the house after I**
 22 **checked the front door and the back door and went to the**
 23 **neighbor's house. I want to say we maybe were there**
 24 **approximately 15, 20 minutes before I went to the fire**
 25 **station.**

1 Q. Okay. Were you ever in the apartment, the Coit --
 2 I'll just call it the apartment at Coit and Frankford where
 3 your daughter and James and Ivan and Michelle all lived?
 4 **A. No.**
 5 Q. Okay. You never -- how long did they live there
 6 together?
 7 **A. I don't remember how long.**
 8 Q. Okay. But you never had the occasion to go visit or
 9 go inside that apartment?
 10 **A. Not at that apartment.**
 11 Q. Okay, okay. How about any other apartments?
 12 **A. The one that they moved into after that apartment,**
 13 **yes.**
 14 Q. Okay. Did you have occasion to be inside that
 15 apartment where you could see the doors of bedrooms and things
 16 like that in there? That was just a one-bedroom apartment,
 17 wasn't it, the next one -- the one they lived in after the
 18 four of them lived together?
 19 **A. No, not the one where they lived together. It's the**
 20 **one where James and Amy had moved to, the Moritz.**
 21 Q. You had been in that apartment, right?
 22 **A. The Moritz, yes.**
 23 Q. Did you notice anything about the doors?
 24 **A. No, sir.**
 25 Q. Okay. Do you know anything about a door being so

1 busted up it had to be replaced?
 2 **A. No, sir.**
 3 Q. Okay. What did Amy do for a living?
 4 **A. She went to school full time.**
 5 Q. Okay. And prior to that?
 6 **A. She had worked at Dillard's part-time. She worked**
 7 **at the Limited, Too part time, and she started to work at**
 8 **Pappadeaux for a short period.**
 9 Q. Okay. Would you say your family, that being
 10 yourself and your ex-husband and your son, were you-all
 11 equally supportive and pleased with this relationship your
 12 daughter was in?
 13 **A. Yes.**
 14 Q. Including your son, Mark?
 15 **A. Yes.**
 16 Q. Okay. Was there ever some heated discussions
 17 between you and the other families about how the contents of
 18 the home was going to get split up?
 19 **A. Well, I wouldn't say they were heated because we all**
 20 **had met there at one time to divide the contents.**
 21 Q. It was not a friendly little meeting, was it?
 22 **A. At that time, it was. Everyone was in agreement**
 23 **with what was given.**
 24 Q. When did it turn uglier?
 25 **A. Well, it didn't really turn ugly.**

1 Q. Less friendly?
 2 **A. Possibly less friendly.**
 3 Q. Yeah. I guess the legal ownership of that home
 4 was -- they weren't married, so I guess it's not community
 5 property. It was James' home, correct?
 6 **A. Yes, I believe it was. It was in his name.**
 7 Q. Okay. You told the detectives that they bought it
 8 together. Did your daughter -- did she have a financial
 9 interest in the home?
 10 **A. Well, that might have been said when this all began.**
 11 Q. Okay.
 12 **A. That Saturday when they were located.**
 13 Q. Okay. When things got a little less friendly
 14 between you and the Mosqueda family, were there -- did y'all
 15 kind of -- your side of the family kind of make it known
 16 Mr. Mosqueda and his lifestyle and his dealings was a large
 17 part (sic) responsible for why your daughter met her demise?
 18 **A. I don't remember that.**
 19 MR. GOELLER: Okay. That's all I have. Thank
 20 you.
 21 THE COURT: Ms. Falco.
 22 MS. FALCO: We have no further questions, Your
 23 Honor.
 24 THE COURT: All right. You may step down,
 25 ma'am.

1 THE WITNESS: Thank you.
 2 THE COURT: Let me ask the attorneys to come up
 3 here sidebar for a minute.
 4 (Sidebar discussion had outside the hearing of the
 5 jury and court reporter.)
 6 THE COURT: All right. Ms. Falco, would you
 7 call your next witness, please?
 8 MS. FALCO: Ms. Lowry will be calling the next
 9 witness, Your Honor.
 10 THE COURT: All right.
 11 MS. LOWRY: Your Honor, the State calls
 12 Lieutenant George Snowden.
 13 THE COURT: All right. Raise your right hand,
 14 please.
 15 (Witness sworn by the Court.)
 16 THE COURT: Ms. Lowry.
 17 Whereby,
 18 GEORGE SNOWDEN,
 19 a witness called by the State, sworn to testify to the truth,
 20 testified under oath as follows:
 21 DIRECT EXAMINATION
 22 BY MS. LOWRY:
 23 Q. Please introduce yourself to the jury, and spell
 24 your name for the record.
 25 A. **George Snowden, S-N-O-W-D-E-N.**

1 Q. How are you employed?
 2 A. **Dallas Fire Department, Lieutenant.**
 3 Q. And as a lieutenant for the Dallas Fire Department,
 4 what's your assignment, what are your duties?
 5 A. **Fire suppression and solve any problems that might**
 6 **come up during my watch.**
 7 Q. And describe that a little bit for us. What kind of
 8 things do you do as far as solving problems that might come
 9 up?
 10 A. **We do any type of call, whether it be automatic**
 11 **alarm, or whether it be EMS, emergency medical services,**
 12 **getting a cat out of a tree, from that to multiple-alarm**
 13 **fires.**
 14 Q. And as a lieutenant are you -- what does that
 15 involve as far as being a lieutenant?
 16 A. **I'm an officer at my particular station. I have six**
 17 **people that work under me, and we have rescue and an engine**
 18 **company that runs out of my station.**
 19 Q. I want to take you back to November 4th of 2000.
 20 Were you working --
 21 A. **Yes, ma'am.**
 22 Q. -- on that day?
 23 And do you recall what shift you were working?
 24 A. **A-shift. We work from 7 a.m. to 7 a.m. the**
 25 **following morning.**

1 Q. So you would come on at 7 a.m. on November 4th?
 2 A. **Yes, ma'am, and leave 7 a.m. November 5th.**
 3 Q. I want to direct your attention specifically to --
 4 well, let me ask you this. Was there a time that you were
 5 approached by a female who had concern about her daughter?
 6 A. **Yes. We -- yes.**
 7 Q. Can you describe that situation for me?
 8 A. **A lady came in the fire station and talked to one of**
 9 **the people there, one of the other firefighters and said that**
 10 **she was not able to contact her daughter, that they were**
 11 **supposed to have met for lunch, I believe it was, and they**
 12 **hadn't heard from her in a while and wanted to know if we**
 13 **could go up and check her house. And they brought the lady in**
 14 **to me, and I asked the woman -- I said, what makes you think**
 15 **that she's missing. And she said because mainly my daughter**
 16 **is very prompt, and we've tried calling her. If she wasn't**
 17 **going to be able to be with us, she would have called and told**
 18 **us, and she did not do so. And I explained to the lady that**
 19 **we can't just go up and break into a house. I said, so you're**
 20 **telling me that you think there might be an unconscious person**
 21 **in the house? And she said, yes. And I said, okay. So we --**
 22 **I turned around and on the radio contacted our dispatcher and**
 23 **told him that Engine 10/Rescue 10 were answering an**
 24 **unconscious person.**
 25 Q. And in asking her about whether or not there may be

1 an unconscious person in there, is that part of your procedure
 2 as far as when you can or cannot go into a home?
 3 A. **To me, it's obvious. It might not be obvious to**
 4 **everyone, but we can't just go around breaking into houses or**
 5 **apartments, or any other building unless there's a reason. I**
 6 **had to have a reason before I could break in.**
 7 Q. Right.
 8 A. **And we are allowed to go and make forcible entry any**
 9 **time we feel that there's an unconscious person, or for that**
 10 **matter for various other reasons. If there's a fire call**
 11 **there, we can effect forcible entry. If we feel that somebody**
 12 **is having a heart attack and unable to come to the door, we**
 13 **can effect forcible entry. Any unconscious person that -- we**
 14 **get a lot of third-party calls where somebody will say we**
 15 **can't reach so and so. We haven't talked to them in three**
 16 **days so we think there's an unconscious person inside. We'll**
 17 **answer those type of calls, also.**
 18 Q. So you told her, or you made the call to where you
 19 could have officers or firemen respond?
 20 A. **Yes. So we responded to the house. I got off the**
 21 **engine. I went up to the front door, knocked on the door,**
 22 **rang the doorbell, no response, went to the back door, went**
 23 **through a wooden fence. Went to the back door, knocked on the**
 24 **door, couldn't get a response, tried to peer in any windows**
 25 **and see if I could see anything. And at that point, I saw a**

1 foot on the bed, and so at that point since nobody responded,
2 I saw the foot laying there, I effected forcible entry.

3 Q. Let me back you up just a minute. Did you try the
4 doorknobs on the front door, the back door, check to see if
5 they were unlocked or anything like that?

6 A. Sure. They were locked.

7 Q. Did you look at all the windows to see if there was
8 a window broken out or maybe one was open?

9 A. No, I did not. Once we see an unconscious -- or in
10 this case, see an unconscious person, we don't fool around
11 with trying to find the easiest way in. At that point we
12 would just effect forcible entry.

13 Q. And at that point, as you said you had seen a person
14 in the bedroom?

15 A. Well, we saw a foot in the bedroom and put two and
16 two together and decided that was bound to be an unconscious
17 person that couldn't come to the door. And there was a window
18 just to the right of the patio door, so I broke that window,
19 reached around the corner and unlocked the door.

20 MS. LOWRY: May I approach the witness, Your
21 Honor?

22 THE COURT: Yes.

23 Q. BY MS. LOWRY: Lieutenant, I'm going to hand you
24 what has previously been marked as State's Exhibits 8, 9, 10
25 and 11, and ask you if you can identify those.

1 A. The large photo, Number 8, is the front door to the
2 residence of this house.

3 Q. That's 18663 Gibbons?

4 A. Yes, ma'am, 18663 Gibbons.

5 The Exhibit Number 9 is the back door that we --
6 well, the side window that I broke open and then reached
7 around and unlocked the door. And Number 10 is the entrance
8 to the bedroom from the patio door, and Exhibit Number 11 is
9 looking -- as you come in the patio door looking into the
10 bedroom, you see a deceased person -- the foot on top of the
11 bed.

12 Q. Do those photos accurately depict the home and what
13 you saw whenever you arrived at the scene on November 4th of
14 2000?

15 A. Yes.

16 Q. And --

17 A. Well, this is -- I say that. Before we made any
18 further entry, other than through the door, yes, it did.

19 Q. And in State's Exhibit 11, when you're talking about
20 the deceased person on the bed, is that what you saw when you
21 looked through the window?

22 A. Yes.

23 Q. Does it accurately depict the scene the way it was
24 whenever you saw it at that time when you first arrived at the
25 house?

1 A. Yes.

2 MS. LOWRY: Your Honor, at this time we would
3 offer State's Exhibits 8, 9, 10 and 11.

4 MR. GOELLER: Just a small record point. I
5 think there's already an 8 in evidence.

6 THE COURT: I think 7 was the diagram, right?

7 MS. LOWRY: Seven was the diagram. That was
8 the last -- oh, did you mark 8 as the keys?

9 THE COURT: I'm sorry, I didn't get that,
10 either. Was there something else marked 8?

11 MS. FALCO: I had marked, but not yet
12 introduced, State's Exhibit Number 8 as the keys.

13 THE COURT: And I didn't even put it down. Do
14 you want to just keep those 8 through 11, however y'all want
15 to do it.

16 MR. GOELLER: So she doesn't have to go remark
17 these, she can change that on the record. That's fine with
18 me.

19 THE COURT: All right. So 8 through 11, as it
20 stands right now, are the photos.

21 Sorry. I forgot about the keys.

22 MR. GOELLER: No objection.

23 THE COURT: State's Exhibits 8 through 11 are
24 admitted.

25 Q. BY MS. LOWRY: Can you describe the window that you

1 broke into, what the shades were like, were the shutters up,
2 down? What position were they in?

3 A. They weren't shutters. They were blinds. They were
4 down. In this picture, the window was up. It wasn't up at
5 that time. We actually broke a window and stuck my arm
6 through. That's in Exhibit Number 9.

7 Q. And in State's Exhibit Number 9, you could still see
8 the glass on the floor where the window was broken out?

9 A. Yes, ma'am.

10 Q. Let me show you also just for -- to help the jury
11 understand --

12 MS. LOWRY: Where would be the best place for
13 me to use this?

14 THE COURT: Wherever you'd like.

15 MR. GOELLER: I'll just walk around.

16 Q. MS. LOWRY: If you could kind of -- if you want to
17 use my pen -- show them where that window is and how you came
18 in?

19 A. First we came to the front door, couldn't gain
20 access through the front door; no one answered. So we
21 immediately went to the back door, which is pretty much
22 regular procedure for us. Somewhere along here there is a
23 wooden fence. Came along here. We looked through the --
24 tried the door; it was locked. The blinds were drawn;
25 however, between the blind and the door itself there is a

1 little area there that you can actually see through. And from
2 here -- we could see right through, see the person's bed set
3 this way with the head of the bed up here, and we could see
4 the person's foot off the -- on the bed. And broke this
5 window right here, reached in, unlocked the door, walked in
6 and went straight back here to where this person was.

7 Q. How many people were with you when you responded to
8 the scene?

9 A. There were six when we responded.

10 Q. And how many people -- how many people went into
11 the house once you got it unlocked?

12 A. When I first unlocked the door, I went in. I walked
13 in, I'd say probably two, maybe three, actually went in the
14 house. When I walked into the room, I told everybody, wait a
15 minute. It's a crime scene. Everybody back -- back out.
16 Then it dawned on me -- well, after I saw the body, this was a
17 male laying in the bed. And I thought, well, this woman was
18 concerned about her daughter. There may be a second person in
19 here. I told my people come back in. Be careful where you
20 step, don't touch anything, this could be a crime scene.
21 There's supposed to be another body in here.

22 At that point, another firefighter by the name of
23 David Ciszewski walked around to the other side of the bed and
24 said, hey, lieu, she's -- the other person is laying over here
25 on the side of the bed. At that point, I said don't touch

1 her. Can you tell without touching her if she's alive or
2 dead. And he said that she was dead. We made this
3 determination the same way we did the male person on the bed
4 because of dependent lividity, and then we turned around and
5 walked back out.

6 I sent another paramedic around front to be with the
7 mother, who'd originally come to the fire station and asked
8 for our help. And I think at that point -- somewhere at that
9 point another officer by the name of Van Buskirk, another
10 firefighter contacted the mother and told her that her
11 daughter was deceased.

12 Q. I guess in your training to become a fireman, as
13 far as things like being a paramedic, First-aid, things of
14 that nature, what kinds of things, like the lividity that you
15 were talking about. Can you explain that for the jury as far
16 as what that is; what you're looking for?

17 A. Well, dependent lividity -- now you have to
18 remember, we're not doctors, we're paramedics. We're trained
19 that at a certain point after a person has been dead long
20 enough, the blood starts to blood at the lower extremities of
21 their bodies, or if you're laying on your back, of course,
22 your back will start to turn purple. And then as the blood
23 goes down to the lower parts of your body, you'll see -- your
24 fingernails will become purple, if they're low. Now, if
25 they're up high, like this, they would just turn white, but if

1 they're down low or even at your side, your fingernail beds
2 will start to turn purple, your back will turn purple, and
3 that's what dependent lividity is.

4 We didn't check for rigor, which is when a person
5 gets real stiff after they've been dead a while. A lot of
6 things affect those; the temperature, that sort of thing. And
7 we're not medical examiners, so we don't know how long a
8 person has been like that. But we do know that once dependent
9 lividity, the pooling of the blood has set in, that person is
10 deceased.

11 Q. I'm also going to show you what's been marked as
12 State's Exhibits 12 and 13, and ask if you can identify those?

13 A. This is the male victim that was laying on the bed
14 whose foot we saw through the window as we came in. Number 12
15 pretty much shows a full -- except for where the blanket or
16 comfortor, pillow, whatever that was over him. I don't even
17 remember what it was. It was just part of it covering up part
18 of his body. That's pretty much a full picture of his torso.
19 You can see a little bit of the blood splattering on the wall
20 behind him.

21 And then the other one is -- well, you can actually
22 see the nail beds on this -- on State's Exhibit 13. You can
23 see where his nail beds are already purple because his hand
24 is -- his hand, if it's turned like this, all the blood from
25 here down is going to pool in his nail beds. All the rest of

1 it will pool in his elbow area, but from this picture alone
2 you can tell that the person is already deceased.

3 Q. And do those photos accurately reflect the scene as
4 it was when you first entered the home?

5 A. Yes, ma'am.

6 Q. And the lividity in State's Exhibit Number 13, is
7 that what you were describing for the jury as far as what you
8 were looking for trying to determine whether they were alive
9 or dead?

10 A. Yes, ma'am.

11 MS. LOWRY: Your Honor, the State would offer
12 State's Exhibits 12 and 13.

13 MR. GOELLER: May I address the Court?

14 THE COURT: Yes.

15 MR. GOELLER: Your Honor, we would object to 12
16 and 13 under the Rule of Evidence 403. Nobody is disputing
17 these people were dead. Nobody is disputing that the
18 lieutenant found two bodies in that house. Introduction of
19 these photographs -- any probative value is substantially
20 outweighed by the prejudicial effect when there's no dispute
21 before this court that these people are deceased.

22 THE COURT: Overruled. Exhibits 12 and 13 are
23 admitted.

24 Q. BY MS. LOWRY: Now, Lieutenant, you said that after
25 you found the male, and I guess I'll call him Fire Rescue

1 Officer Ciszewski; is that --

2 A. Yes, ma'am.

3 Q. He came in basically looking for the female's body?

4 A. Correct. I told the people we need to look through
5 the house to see if we saw another person. I walked straight
6 back. Just beyond the bed is a bathroom, and sometimes we
7 tend to find a lot of people in bathrooms, in bathtubs, and
8 that sort of thing. So, my first response was to walk towards
9 the bathroom.

10 David Ciszewski, Officer Ciszewski turned to the
11 left, went around to the side of bed, another firefighter --
12 and I don't know that firefighter's name. He is a firefighter
13 that came into our station because we were short of people
14 that day. I do not remember what his name was. He turned to
15 the right. David, who was right behind me, immediately saw
16 the girl on floor. So, I told everybody, everybody stop, back
17 out.

18 Q. In entering, even the bathroom being right there
19 attached to the master bedroom, was anything other than the
20 master bedroom, did anything else seem to be in disarray, or
21 that it seemed even could have touched?

22 A. We didn't see anything at all that looked like a
23 burglary as such, as far as anything being turned over or
24 broken or anything like that.

25 Q. And at that point, everybody begins to back out.

1 Did anyone ever go into the other areas of the house?

2 A. No.

3 Q. After you -- after everyone gets out of the house,
4 what do you do next?

5 A. I went back outside, and I left David and one of the
6 other paramedics -- one of the other firemen at the back door,
7 told them I didn't want anybody coming in the house at all
8 except the police. I went around to the front, got on the
9 radio and radioed in initially -- I believe I told the
10 dispatcher I had a "Signal 27," which is Dallas nomenclature
11 for a deceased person. Now, that can be anywhere from a
12 person that has had a heart attack or -- for any reason a
13 person that's deceased. Natural causes is also a Signal 27.

14 And because Dallas Police Department puts calls --
15 categorizes calls as far as importance goes sometimes it's a
16 long time before we get a responding police officer to our
17 location on a Signal 27 as such. It could be a natural cause
18 of death, and they have other priorities, other than answering
19 that.

20 So, instead I got on the radio and told our
21 dispatcher that it was a probable homicide, and we needed the
22 police and a PES unit.

23 Q. What is a PES unit?

24 A. Physical Evidence Section. PES, Physical Evidence
25 Section.

1 Q. Is that who you typically call to respond to crime

2 scenes, homicide scenes?

3 A. Those and CAPRS, Crimes Against Persons, yes, ma'am.

4 Q. After you called to get the homicide detectives out
5 there, what did you do next?

6 A. We waited for the first unit to arrive, which was a
7 patrol unit. When they got there, we took him back there,
8 showed him what we had. I think he entered the room to look
9 to see what we had. If I'm -- in fact, I remember him going
10 in. I think it was the first responding officer that went in.
11 I took somebody in the back -- a police officer in the back
12 room and showed him what we had, and we left and then he
13 got -- another patrol officer came -- his backup, per se, came
14 and after that we said -- I had officer Van Buskirk talking to
15 the mother trying to calm her down. She had called, I
16 believe, her son to come over. I believe it was her son, and
17 he was on his way. At some point in time I went up to the
18 police officer, and I said, do you need us anymore? And he
19 said, no, and we left.

20 Q. And where this residence is located at 18663 Gibbons
21 Drive is that in Collin County, Texas?

22 A. Yes, ma'am, it is. It's just north of Frankford and
23 south of Haverwood.

24 MS. LOWRY: Pass the witness, Your Honor.

25 THE COURT: All right, Mr. Goeller.

1 MR. GOELLER: Thank you.

2 CROSS-EXAMINATION

3 BY MR. GOELLER:

4 Q. Lieutenant, did the mother speak to you directly at
5 the fire station?

6 A. Yes, sir.

7 Q. What was her demeanor?

8 A. She was -- how do I say it? I'm not real good at
9 explaining how somebody looks or acts.

10 I have four children. She had the same demeanor
11 that I would have if my children were supposed to be somewhere
12 and I was looking for them and they weren't. I was afraid
13 something would have happened to them. Agitated is not the
14 right word, more of a worry-type thing.

15 Q. Really worried?

16 A. Really worried, yes. She was really worried about
17 her children -- or her child in this case.

18 Q. Did she explain to you how she came to live there?
19 I mean, how did you determine that she was legit (sic), and
20 her daughter lived there or stayed there, or whatever the case
21 may be?

22 A. I asked her her daughter's name. She gave me her
23 daughter's name. And I said, what's the address? She gave me
24 the address, and so I went on that. She didn't actually show
25 me that she lived there. If she lived there, I wasn't aware

1 of that.

2 Q. That who lived there?

3 A. The mother.

4 Q. No. I meant, I guess, the daughter.

5 A. Oh, okay.

6 Q. So she told you that she lived there?

7 A. She told me that her daughter lived there.

8 Q. Okay. She told you they were supposed to meet for
9 lunch?

10 A. I believe it was lunch, yes, sir, if I'm not
11 mistaken. This was probably four -- fourish in the afternoon,
12 5, somewhere around there. Before our dinner. We usual eat
13 dinner around 5 or 6. Somewhere prior to 6:00 that evening.
14 I'd guess about 4, maybe a little earlier, maybe a little
15 later.

16 Q. And did she tell you how long she had been at the
17 residence prior to going down to the fire station?

18 A. I don't know if she told me that or not. I do not
19 recall. She did say she had been down to the house -- at the
20 house banging on the door and couldn't get anybody.

21 Q. I took it as maybe a little bit tongue-in-check when
22 you kind of wink at somebody and say, you're telling me
23 there's an unconscious person -- a possibly unconscious
24 person? That will give us the go.

25 A. Well --

1 did she tell you the living arrangements in that home, about a
2 young man or somebody else that --

3 A. Well, I don't remember if she said -- I would just
4 be speculating exactly what she said. I don't recall.

5 Q. Well, they're going to object, and the judge is not
6 going to let me ask you a question if you know you'll be
7 speculating.

8 A. I'm sorry.

9 Q. That's okay, no, no. I understand. This isn't your
10 "gig," so to speak. You're a fireman. I know that.

11 Did she -- did she express concern about anyone
12 else, other than her daughter?

13 A. How did she put it? I don't remember if she said
14 there was a fiance. There was a man she lived with. There
15 was an expression of some other person, but I don't remember
16 how she put it.

17 Q. Okay. Did she ever express any concern about that
18 person -- not concern about their well-being, but concern
19 about their --

20 A. Not to me, she did not.

21 Q. Do you know if she spoke to any of the other
22 firefighting people about concerns she had about a male being
23 deceased?

24 A. Not to my knowledge, but I don't know.

25 Q. Okay.

1 Q. I mean, I'm not being critical, but that's how it
2 works, right?

3 A. I understand. In this case, yes, sir. I'm not
4 going to go in and break in somebody's door just because they
5 say, I want in this house.

6 Q. I understand.

7 A. They've got to have a reason for me to do that.

8 Q. Just out of curiosity, would you have broke in had
9 you not seen that foot on the bed?

10 A. Yes, sir.

11 Q. Okay, okay. Did she give you any other specifics,
12 other than they were supposed to meet for lunch? Did she say
13 what time they were supposed to meet for lunch, or where they
14 were supposed to meet?

15 A. She told me that they were -- they were supposed to
16 meet for -- if I'm not mistaken, it was lunch. I'm just -- I
17 might be mistaken there, but I'm sure she said it was lunch or
18 breakfast, or something they were supposed to meet for that
19 day. Where, she didn't say. If she did, I don't recall.

20 Q. Did you get the impression they were supposed to be
21 at somewhere else other than that house for lunch or
22 breakfast?

23 A. Yes. They weren't supposed to be meeting there, I
24 don't think.

25 Q. Okay, okay. Did you mention anything about -- well,

1 A. To answer your question, no, I don't know.

2 Q. Okay. Did you ask her -- I mean, obviously, I
3 understand you just don't want to go breaking into somebody's
4 place. Did you get specific enough to satisfy yourself, okay,
5 you were supposed to have lunch here, and she never showed up,
6 and therefore you came back to the house and -- I mean, did
7 you do enough to satisfy yourself that this date -- date, for
8 lack of a better word, never came about? Do you know what I'm
9 trying to say?

10 A. I think so. Before I broke in the house? Yes, I
11 did. That's not unusual for us, actually, for that to
12 happen.

13 Q. Right.

14 A. That happens more than you would think.

15 Q. So you're kind of used to that. You say, well,
16 where were you supposed to meet them? Did you check in the
17 smoking section, the nonsmoking section, the lawn? You were
18 supposed to meet in the parking lot. Did you actually go in
19 the restaurant? I mean, you'd ask a lot of questions to
20 justify putting time into this unknown --

21 A. Not a whole lot.

22 Q. Okay, okay.

23 A. We -- in the operations end of it, we're not police
24 officers so we don't ask a lot of subjective questions like
25 that. Ours is strictly, do you really think that this person

1 is in the house? If the answer is, well, yes, I do, so we go
2 in.

3 MR. GOELLER: Okay, sir. Thank you,
4 Lieutenant. That's all I have.

5 THE COURT: Ms. Lowry.

6 MS. LOWRY: Nothing further of this witness.

7 THE COURT: All right, sir. You may step down.
8 Thank you.

9 Call your next witness.

10 MS. LOWRY: State would call fire rescue
11 officer David Ciszewski.

12 THE COURT: All right.

13 (Witness enters the courtroom.)

14 THE COURT: Could I ask the attorneys to step
15 up one more time?

16 (Sidebar discussion had outside the hearing of the
17 court reporter and jury.)

18 THE COURT: Raise your right hand, please.

19 (Witness sworn by the court.)

20 THE COURT: Put your hand down and have a seat
21 right here, please. Ms. Lowry.

22 Whereby,

23 DAVID CISZEWSKI,

24 a witness called by the State, sworn to testify to the truth,
25 testified under oath as follows:

1 DIRECT EXAMINATION

2 BY MS. LOWRY:

3 Q. Please introduce yourself to the jury, and spell
4 your name for the record.

5 A. My name is David Ciszewski. I'm a fire and rescue
6 officer and a paramedic with the Dallas Fire Department. Last
7 name is spelled C-I-S-Z-E-W-S-K-I, first name David.

8 Q. And obviously, you told me you're employed with the
9 Dallas Fire Department. How long have you been employed with
10 the Dallas Fire Department?

11 A. It's been over 12 years now.

12 Q. And as well as being a fire rescue officer, you're
13 also a paramedic?

14 A. Yes.

15 Q. And just for short, you go by FRO Ciszewski; is that
16 how I address you?

17 A. Yes, or David. That's fine.

18 Q. I want to take you back to November 4th of 2000.
19 Were you working for the Dallas Fire Department at that time?

20 A. Yes.

21 Q. What were your -- what was your assignment, what
22 were your duties at that time?

23 A. I was assigned to Rescue 10. That's the assignment
24 for the ambulance, or MICU.

25 Q. And under that assignment what kinds of things did

1 you do?

2 A. We make medical calls on the rescue unit;
3 unconscious people, heart attacks, major accidents. Anything
4 that people need us for, we basically go out on.

5 Q. So you're actually on, like, an ambulance-type deal?

6 A. Yes. It is an ambulance.

7 Q. And on November 4th, 2000, you were working in that
8 capacity?

9 A. Yes.

10 Q. What shift were you working?

11 A. That's the A-Shift.

12 Q. And that's, we learned, from 7 a.m. to 7 a.m. the
13 next morning?

14 A. Yes, 24 hours.

15 Q. So you would come to work that morning on November
16 4th, 2000 at 7 a.m.?

17 A. Yes.

18 Q. I want to direct your attention specifically to
19 around 4 p.m. that afternoon.

20 A. Okay.

21 Q. Do you recall being at the station about that time?

22 A. Yes.

23 Q. And what happened?

24 A. I recall two women coming into our -- into our fire
25 station talking about -- wanting to know if we could help them

1 out. Their daughter was supposed to meet them for something
2 early in the day. I can't remember if it was lunch or
3 breakfast, and she didn't show up. They had went by the house
4 that she was living in. There was no one home, or no one came
5 to the door and wanted to know if there was something we could
6 do to help them out. I believe our lieutenant called our
7 dispatch and told them to put us out on a possible unconscious
8 person, and so us and the crew on the fire engine, we were
9 dispatched to the house on a possible unconscious person.

10 Q. And when the lady approached, did she actually come
11 and talk to you first?

12 A. I don't recall if she actually talked to me, or -- I
13 do remember her being in our watch room area talking to us in
14 general, and then our lieutenant calling dispatch to put us
15 out on a run on a possible unconscious person.

16 Q. And where did she say the possible unconscious
17 person was?

18 A. At the -- I don't recall the actual address. It was
19 on Gibbons Street, just north of the station.

20 Q. I believe it's laying out in front of you, if I can
21 direct your attention to State's Exhibit Number 8.

22 A. Yes.

23 Q. Does that look familiar to you?

24 A. Yes, the front -- yes.

25 Q. Does that refresh your memory as to the address?

- 1 A. Yeah. 18663 Gibbons, yes.
 2 Q. Is that in Collin County, Texas?
 3 A. Yes.
 4 Q. When you get an unconscious person call, what are
 5 your procedures? What do you do?
 6 A. Well, when we show up, obviously we go to the front
 7 door, knock and ring the doorbell, and if no one comes to the
 8 door we're going to see if the door is unlocked. If the door
 9 is not unlocked, we're going to kind of spread out, kind of
 10 walk around the house, see if there are any other doors or
 11 windows that are unlocked. And if not, since it's a possible
 12 unconscious person, we're going to have to do some type of
 13 forcible entry because we cannot leave unless we know for sure
 14 there's no one in the house.
 15 Q. And you approached the front door, and obviously it
 16 was locked?
 17 A. Yeah, it was locked.
 18 Q. At this time, other than the fire department
 19 personnel that responded to the call and Ms. Kitchen, the
 20 mother of the unconscious person, was anyone else at the
 21 scene?
 22 A. No, not that I can remember.
 23 Q. After checking the front door and you went around
 24 back, what happened then?
 25 A. I remember going around the left side. I remember

- 1 it ended up -- we all ended up on back -- in the back trying
 2 to look through some windows. I remember being able to peek
 3 through the glass on the door, and you could see into the
 4 bedroom, and you could see the end of the bedroom, and you
 5 could see a foot at the end of the bed.
 6 Q. In front of you is State's Exhibit Number 11. Is
 7 that what you saw when you looked through the window?
 8 A. I'm trying to -- yes.
 9 Q. At that point, is that when Lieutenant Snowden
 10 breaks the window and unlocks the door after you see that?
 11 A. Yes. I believe we knocked really hard on the
 12 windows, you know, to make sure that the person wasn't
 13 sleeping, and there was nothing at that point, and there was a
 14 window that, I believe, the lieutenant broke out at that
 15 point.
 16 Q. And after he goes through the door, do you come in
 17 behind him next?
 18 A. Yes. The door's open, and then I remember us both
 19 going in -- right into the bedroom at that point.
 20 Q. At this point, the fire department personnel are the
 21 only people going into the house; is that right?
 22 A. That's correct.
 23 Q. And obviously, the mother is not back there with
 24 y'all --
 25 A. No.

- 1 Q. -- or no other -- just people standing around?
 2 A. No.
 3 Q. What precautions do you take to make sure, you know,
 4 just that if this is a crime scene, that nothing is damaged or
 5 tampered with?
 6 A. We make sure we don't touch anything unless --
 7 unless that there's something that we have to touch -- we have
 8 to touch a person or body or nothing, we're going to have
 9 gloves on. But, obviously, as soon as we walked into the
 10 room, we knew it was some type of a crime scene at that point.
 11 Q. Did you check to see if you could find the female in
 12 the room?
 13 A. You could not immediately see her. I remember the
 14 lieutenant heading towards the bathroom, and I walked --
 15 started walking to the other side of the bed, and that's when
 16 I saw the female laying face down on the floor.
 17 MS. LOWRY: May I approach, Your Honor?
 18 THE COURT: Yes.
 19 Q. BY MS. LOWRY: I'm going to hand you what's been
 20 marked as State's Exhibit 14. Can you identify that?
 21 A. Yes. That's the female that I saw on the floor.
 22 Q. And does that accurately depict what you saw
 23 whenever you walked around the edge of that house (sic) -- how
 24 she was laying when you barged into the house?
 25 A. Yes.

- 1 MS. LOWRY: Your Honor, State would offer
 2 State's Exhibit Number 14.
 3 MR. GOELLER: Objection -- Judge, we'd object
 4 under 402 and 403. It's just -- we believe any probative
 5 value is significantly outweighed by any prejudicial effect in
 6 that we are not contesting that these people are deceased.
 7 THE COURT: The objection is overruled, and
 8 State's Exhibit 14 is admitted.
 9 MR. GOELLER: Yes, Your Honor.
 10 Q. BY MS. LOWRY: Now, in State's Exhibit 14, you can
 11 see a towel that is laying across the female's back, as well
 12 as a pillow that's laying across the top part of her legs?
 13 A. Yes.
 14 Q. Is that exactly how you found her?
 15 A. That's exactly what I can remember, yes. I
 16 distinctly remember the pillow and that sheet or towel,
 17 whatever, laying on her back.
 18 Q. Did you, at any point, touch her, move her, anything
 19 like that?
 20 A. No.
 21 Q. Did anyone?
 22 A. Not while I was in there, no.
 23 Q. Were you the only one that approached that side of
 24 the bed to see?
 25 A. I believe so. I don't remember anyone else going

1 over on that side.

2 Q. At that point, once you find her, then is that when
3 everyone begins to back out?

4 A. Yeah. When I first saw her, I said, oh, we've got a
5 body over here on this side, and then that's when our
6 lieutenant stated that it's time for us to back out and don't
7 touch anything.

8 Q. Is that your standard procedure when you find a
9 scene like this is to back out, don't touch anything?

10 A. Yes. We don't want to disturb anything they might
11 be able to use for evidence or mess up a possible crime scene.

12 Q. At the point that everyone is out of the house, how
13 is it secured until the police get there?

14 A. We all went out the same door we came in, then went
15 back out through the gate, and we didn't -- we just
16 basically -- one or two of us basically stood at the gate and
17 didn't let anyone into the back yard.

18 Q. At this point, was it still just fire department
19 personnel --

20 A. Yes --

21 Q. -- and the mother?

22 A. -- and the mother. Yeah, they're out in the front
23 yard.

24 Q. At any point was anyone allowed to go in the house,
25 other than, obviously, the police department?

1 A. That's correct.

2 Q. So, no neighbors got to go in the back yard, the
3 mother, anything like that?

4 A. No.

5 MS. LOWRY: Pass the witness.

6 THE COURT: All right. Mr. Goeller?

7 MR. GOELLER: No questions. Thank you, Your
8 Honor.

9 THE COURT: All right. You may step down,
10 sir. Call your next witness, please.

11 MR. SCHULTZ: Judge, would you excuse him for a
12 three-hour call?

13 THE COURT: All right. Do you understand that
14 to be the case, sir? You're on call within a three-hour time
15 period; do you understand that?

16 THE WITNESS: Okay.

17 MR. SCHULTZ: But he can go back to Dallas.

18 THE COURT: But you can go back to Dallas, as
19 long as you're available.

20 THE WITNESS: Okay.

21 THE COURT: Thank you, sir. Ms. Lowry.

22 MS. LOWRY: State would call Officer Barry
23 Maxwell.

24 THE COURT: All right. Raise your right hand.

25 (Witness sworn by the court.)

1 THE COURT: Put your hand down and have a seat
2 right here. Ms. Lowry.

3 MS. LOWRY: Thank you.

4 Whereby,

5 BARRY MAXWELL,

6 a witness called by the State, sworn to testify to the truth,
7 testified under oath as follows:

8 DIRECT EXAMINATION

9 BY MS. LOWRY:

10 Q. Please introduce yourself to the jury and spell your
11 name for the record.

12 A. My name is Barry Maxwell, M-A-X-W-E-L-L. I'm a
13 Dallas Police Officer.

14 Q. How long have you been a Dallas Police Officer?

15 A. Approximately seven and a half years.

16 Q. Are you a certified peace officer?

17 A. Yes, ma'am.

18 Q. Can you describe for the jury, briefly, what kind of
19 training you go through to become a certified peace officer?

20 A. My training consists of about nine months in an
21 academy class, trainings from the Texas Penal Code, Traffic
22 Code, basic rules of the City of Dallas. That also includes
23 arrests, search and seizure laws, a variety of other basic
24 policies and procedures in the City of Dallas.

25 Q. Where are you assigned specifically right now?

1 A. Right now I'm assigned to the North Central
2 Operations Divisions.

3 Q. And what are your duties there?

4 A. My primary duty is to answer 911 calls that come in.

5 Q. And in doing that, do you respond to the 911 calls?

6 A. Yes, ma'am.

7 Q. I want to take you back to November 4th of 2000.

8 You were employed with the Dallas Police Department at that
9 time?

10 A. Yes, I was.

11 Q. And what was your assignments at that time?

12 A. My assignment was a patrol officer, which is
13 answering 911 calls.

14 Q. Do you recall what shift you were working that day?

15 A. Yes. I was working 4 p.m. to midnight.

16 Q. During that shift, did you get a call to respond to
17 an address on Gibbons Drive?

18 A. Yes, I did.

19 Q. And what was the nature of that call?

20 A. It came in as a possible dead person at that
21 residence.

22 Q. And were you -- at that time, were you alone, or was
23 somebody else with you in your patrol car?

24 A. That particular night I was working one man, so I
25 was by myself in the patrol car.

1 Q. Is that your normal area that you patrol, in that
2 area around Gibbons Drive?

3 A. Yes, ma'am, at that time it was.

4 Q. Upon responding to the Gibbons Drive location --
5 when you're responding to a call like that, what are your
6 procedures? What do you do?

7 A. Well, depending on what call -- what the nature of
8 the call is, depending on how we proceed in the squad car,
9 either lights and sirens or just the normal speed limit. That
10 particular call came in, and it was just a normal "proceed to
11 the location within the speed limit as soon as you can."

12 Q. And about how far away were you?

13 A. I was, I would say, about two and a miles, three
14 miles when I initially received the call.

15 Q. Do you recall approximately what time you arrived at
16 that location?

17 A. I would say it was about 5:45, maybe. I really
18 don't know, to be honest with you.

19 Q. When you arrived at that location, what's the first
20 thing that you do?

21 A. On a particular call like that, the first thing we
22 do -- usually the fire department is at the scene. They have
23 to wait on the police department to arrive. Then we get a
24 briefing from the fire department as to what they saw and what
25 the situation is.

1 Q. And when you got there, there was already another
2 officer there?

3 A. Yes, ma'am, there was, already inside the residence.

4 Q. Is that Officer Frank Della?

5 A. Yes, ma'am.

6 Q. When you arrived, did you go and contact Officer
7 Della?

8 A. Yes. That was the first thing I did. I went
9 around the back of the residence where the fire department
10 made entry, and then searched and found Officer Della.

11 Q. When you arrived at the scene, other than fire
12 department personnel and the mother of the female victim and I
13 believe a friend of hers and her granddaughter were with her,
14 was there anyone else at the scene other than those people?

15 A. No, other than the -- Officer Della and the
16 relatives you mentioned and the fire department. There was no
17 one else there upon my arrival.

18 Q. When you got in the house, was it just Officer Della
19 and the fire department personnel?

20 A. Yes. I believe when I was -- when I was going in
21 the back door, actually the fire department personnel were
22 actually exiting the residence, and Officer Della was in the
23 back bedroom. And he, I believe, was the only one that was in
24 the house at the time.

25 Q. Did you go in to assist him?

1 A. Yes. I went in to make sure he was okay and if he
2 needed anything, and basically to find out what we had.

3 Q. When you got into the back bedroom, what did you
4 discover?

5 A. Well, upon entering the bedroom where Officer Della
6 was, I discovered that there was -- there was two bodies.
7 There was a male laying on the bed face up, and then a female
8 laying beside him -- excuse me -- beside the bed face down.
9 The -- basically the bedroom conditions that I observed, I
10 immediately called for a supervisor and detectives to
11 investigate the scene.

12 Q. Why do you call for -- what about the scene made it
13 something that you would call for a detective?

14 A. Just the appearance. It looked like something
15 violent had occurred there. A lot of times when I get these
16 sort of calls, unfortunately it's a murder/suicide where
17 someone has killed someone, then killed themselves. And I --
18 when I walked in the room, I could just tell -- or I believed
19 that wasn't an occurrence; that someone had come and murdered
20 these two individuals.

21 I looked for a weapon briefly without moving any of
22 the bodies or any of the evidence in the bedroom, and I could
23 not find one. So, I just felt like we had something that was
24 a little bit unusual; therefore, I notified a supervisor.

25 Q. If I can direct your attention to State's Exhibits 8

1 through 14, which are laying there in front of you, the
2 photographs. If you could just take a moment and briefly look
3 at those.

4 A. Okay.

5 Q. Do those all accurately depict the scene as it
6 appeared whenever you got to the bedroom?

7 A. Yes, ma'am.

8 Q. As far as entering the house, were there any lights
9 on?

10 A. The -- I don't really specifically recall the
11 bedroom. I mean, there were lights on in the bedroom, but
12 when I entered through the back door, all the lights were off
13 except there was a light above the island of the kitchen.
14 There was an island in the kitchen, and that was the only one
15 that was on. And I noticed that because there was some
16 clothes sitting on a chair, and for some reason that just
17 caught my attention.

18 Q. Did you see the dog that was in the house?

19 A. Yes. It was in a -- a kennel box, I guess, in the
20 kitchen.

21 Q. After you spoke with Officer Della back in the back
22 bedroom, called for your supervisor, then you start looking
23 through the house?

24 A. Yes. Basically once I told him that we need to get
25 a supervisor there, then we just -- together we went through

1 the house just to make sure there wasn't anyone else in there,
2 either dead or alive, and basically just for security -- to
3 secure the residence.

4 Q. And you didn't find anybody else in the house, did
5 you?

6 A. No, ma'am.

7 Q. Did you see any sign of anyone having been anywhere
8 else in the house?

9 A. The -- there was two spots in the house. One was a
10 guest bedroom. The bed itself, it looked like it had been --
11 like someone might have slept in it or had messed it up a
12 little bit. Some of the pillows were missing. The
13 comforter or -- the comforter of the bed was gone. The -- as
14 we made it through the house, we made it to the garage. There
15 was a black Mercedes in the garage with it's parking lights
16 left on, which I thought was kind of unusual, but that was the
17 only two things that we found. The rest of the house was very
18 nice and neat.

19 Q. In a situation like this where you're the responding
20 officer, you're waiting for the detective, what is your next
21 procedure? Do you just wait for them to get there?

22 A. Yes. One we get the house secured and make sure
23 there's no other dangers for anyone, we just secure the crime
24 scene, basically where no one else can come in and disturb
25 what we found. And that's what we did. We backed off, we

1 tried to keep the family out, and just basically secured it
2 until the detectives arrived.

3 Q. About how long did it take before the detectives
4 arrived?

5 A. Maybe an hour. Lots of times when we -- we'll get
6 on the radio and ask for CAPRS, which is our Crimes Against
7 Persons detectives to handle these. They'll want us to call
8 them at the scene just to kind of let us know what we have,
9 and then they make a judgment whether they want to come out or
10 not, and by the time they called and we told them what was
11 going on, I want to say it was about an hour. I couldn't tell
12 you for sure. More people started arriving to the scene,
13 relatives and stuff. In fact, it kind of got to the point I
14 had to call other officers there to help me control the crowd,
15 so I kind of lost track of time. Since Officer Della was
16 inside, he remained inside with the scene, and I kind of went
17 outside to make the appropriate phone calls.

18 Q. And at this time you're also waiting for the PES, or
19 the Physical --

20 A. Yes. I had ordered -- my supervisor -- or a
21 supervisor took over the scene, so I ordered a Crimes Against
22 Persons detective. Our physical evidence section, I contacted
23 them, and I contacted the Collin County ME, so...

24 MS. LOWRY: Pass the witness.

25 THE COURT: All right. Mr. Goeller.

CROSS-EXAMINATION

1 BY MR. GOELLER:

2 Q. Officer, is it appropriate to call you officer,
3 detective?

4 A. Officer Maxwell is fine.

5 Q. Do you carry any rank?

6 A. Senior corporal.

7 Q. Do you prefer senior corporal?

8 A. It doesn't matter.

9 Q. I don't know.

10 A. Officer Maxwell is fine.

11 Q. Some guys are touchy about that rank stuff, you
12 know?

13 A. Officer is fine.

14 Q. Officer Maxwell, did you make any reports?

15 A. No, sir. Once the CAPRS detectives arrived, they
16 took control of the scenes, and they did all the reports. I
17 was mainly there just to control the crowds and secure the
18 scene.

19 Q. Were you -- you and officer -- what was his name
20 again, the first one on the scene?

21 A. Della, Frank Della.

22 Q. Was he there before you were?

23 A. Yes, sir.

24 Q. Was he in the house before you were?

1 A. Yes, sir.

2 Q. Okay, all right. But you were, obviously, there
3 before any detectives arrived; is that right?

4 A. That is correct.

5 Q. And before any physical evidence folks arrived?

6 A. Yes, sir.

7 Q. Before the ME's office arrived?

8 A. Yes, sir.

9 Q. Did any detectives anywhere, any time, ask you to
10 make a report?

11 A. No, sir.

12 Q. Okay. Do you know the highway patrolman on the
13 Tollway?

14 A. Do I know them?

15 Q. Yeah.

16 A. I know they work the Tollway, yes, sir.

17 Q. Do you ever break with them or --

18 A. No, sir.

19 Q. -- coffee or just chew the fat?

20 A. Occasionally, I have court with them at Lew
21 Sterret, but it's very rare.

22 Q. Okay. What detective came out to the crime scene?

23 A. To be honest with you, sir, I couldn't tell you
24 their names. I don't -- I don't know. I think one of them,
25 his name was Carillo or Carillo. I don't really know.

- 1 Q. Did they talk to you?
- 2 A. Briefly. When they arrived, we just briefed them of
3 what we found and, you know, what -- the events that led up as
4 far as us arriving and the fire department, how they were
5 involved, and then I removed myself from the house, and they
6 took over.
- 7 Q. How long were you actually on the scene?
- 8 A. Total, or before they arrived?
- 9 Q. Total.
- 10 A. Three and a half, four hours, maybe.
- 11 Q. Okay.
- 12 A. I mean, it was light when we arrived, and then it
13 was well into the dark when we left.
- 14 Q. Yeah.
- 15 A. I think it was about three, four hours; I couldn't
16 tell you.
- 17 Q. Was it -- was word kind of spreading amongst the law
18 enforcement-types that this was a dope deal gone down bad, or
19 something like that?
- 20 A. To be honest with you, I don't know what the words
21 were. I had found some paraphernalia in the house, but other
22 than that it was --
- 23 Q. Tell me about that.
- 24 A. We were -- when we were walking around searching the
25 house waiting for detectives to arrive, after we cleared the

- 1 house to make sure there was no other dangers, we were trying
2 to find some ID on the two individuals where we could relay
3 that to the detectives. And in one of the drawers of the
4 kitchen on the island, I found small scales and a little bit
5 of marijuana.
- 6 Q. In the kitchen?
- 7 A. Yeah. In the kitchen drawer, like where you keep
8 notepads and stuff for --
- 9 Q. Like at my house, we have a junk drawer?
- 10 A. Yes, sir.
- 11 Q. I think every house has got them.
- 12 That's kind of odd that it would be in the kitchen,
13 that kind of stuff, isn't it, in your line of work?
- 14 A. To be honest with you, it could be anywhere.
- 15 Q. You just never know, right?
- 16 A. True.
- 17 Q. Scales. When you say scales, tell the jury what
18 scales are, besides the obvious. Hopefully you're not talking
19 about the thing I stand on in the morning to see how fat I am.
- 20 A. These particular scales were chrome in color, very
21 small, usually to weigh small amounts of drugs, either cocaine
22 or marijuana. They weren't electrical or digital. They
23 looked like just miniature scales.
- 24 Q. Balance scales?
- 25 A. Sure.

- 1 Q. Like, there's usually a little set of weights?
- 2 A. Yes. Yes, sir.
- 3 Q. You put the known weight; gram, two grams, ounce on
4 one side, and you put your dope on the other side --
- 5 A. Basically.
- 6 Q. -- and figure out how much to sell it for, right?
- 7 A. Basically.
- 8 Q. Now, you and I both know that when somebody has
9 scales they are more than just a user, aren't they?
- 10 A. It could be.
- 11 Q. Okay. Well, come on. Come on, Officer, could be?
- 12 A. It could be.
- 13 Q. Okay. If somebody were purely just a user, why
14 would they need scales?
- 15 MS. LOWRY: Your Honor, I'm going to object,
16 calling for speculation.
- 17 THE COURT: Overruled.
- 18 Q. BY MR. GOELLER: Do you know what I'm saying?
- 19 A. They may weigh the drugs for their own personal use
20 to get a certain amount that they're going to use, inject,
21 smoke, eat. I mean --
- 22 Q. Never thought of that.
- 23 A. -- there could be a variety of reasons. Just
24 because they have scales don't mean they're --
- 25 Q. Yeah. So then we'd be talking about stuff other

- 1 than marijuana, though?
- 2 A. Could. I mean --
- 3 Q. If you want to make sure you're not going to shoot
4 up too much to whack yourself you may want to weigh that
5 stuff?
- 6 A. Or when you're mixing marijuana and drugs. I mean,
7 there's a plethora.
- 8 Q. You're right. I'm sorry. I stand corrected.
9 Have you ever worked narcotics?
- 10 A. No.
- 11 Q. Okay. Have you ever worked homicide?
- 12 A. No, sir.
- 13 Q. Okay. But I'll bet as a patrol officer you've made
14 more pot arrests than you care to -- if you had ten bucks for
15 every one -- every car you pulled over that had pot in it, you
16 could probably retire?
- 17 A. I've made my fair share.
- 18 Q. Okay. Outside of the scales -- the balance scales
19 and the pot, did you find any other contraband?
- 20 A. No, sir. That was it.
- 21 Q. Okay. You didn't happen to -- did you look in any,
22 oh -- did you look any containers or boxes or luggage that was
23 in the house, or anything like that?
- 24 A. No, sir.
- 25 Q. Was your search more confined to just trying to find

1 ID?

2 A. That was mainly it. We didn't search a lot where
3 the bodies were found just because I didn't want to get in
4 there and disturb anything, but while we were waiting on them,
5 we thought we might try to find a purse or a wallet or
6 something.

7 Q. Okay. Did you find any large sums of money in the
8 house?

9 A. I did not, no.

10 Q. Okay. Did you look in any other rooms, other than
11 the kitchen?

12 A. Yes, sir. I went basically through every room.
13 Their -- the master bathroom, closets, the guest bedroom, the
14 closets. There was an office that we went through and that
15 closet, as well as the garage.

16 Q. Okay.

17 A. So I mean, we covered basically every room that was
18 there.

19 Q. I guess what I'm asking is, let's say you're in a
20 closet in the bedroom or in a home office?

21 A. Uh-huh.

22 Q. When you say you're looking, what are you doing?
23 Are you looking through, like, I don't know, if this was my
24 home office, are you looking for files? Are you opening up
25 shoeboxes? Are you going through the pockets of the clothes

1 hanging in the closet? Tell me what you're doing.

2 A. Well, excuse me. At first when I arrived on the
3 scene and we were going to clear the house and make sure there
4 was no other bodies or anyone else hiding, we did a brief
5 search of the rooms and the closets. That did not consist of
6 going in any drawers or containers or briefcases.

7 Then when we decided to look for the ID, basically
8 my search consisted of just the kitchen. I didn't go into --

9 Q. Okay.

10 A. -- anything else and open any drawers. It was just
11 the kitchen. I thought that was my best chance of finding --

12 Q. Maybe like mail?

13 A. -- mail, contact number, maybe driver's license,
14 something like that.

15 Q. Okay.

16 A. None of the other rooms did I go through a desk or
17 any containers or anything like that.

18 Q. Okay. Did you speak with any of the folks that were
19 gathered outside, the non-law enforcement, non-firemen
20 paramedic/type people?

21 A. No, not that I recall. At one point in time I was
22 going to go door to door to neighbors to see if they might
23 have seen anything throughout the night or throughout the day,
24 but I ended up there was so many individuals arriving at the
25 scene I just stayed at the front door and secured it. I

1 didn't --

2 Q. Okay.

3 A. I mean, relatives kept wanting to come up a little
4 closer, and I would tell them to step back. But other than
5 that, that was it.

6 Q. Okay. Were the -- had the deceased been removed?

7 A. When I was sitting out front, or what --

8 Q. What point in time? About what time? You got
9 there, I think you said about 5:45, somewhere around there?

10 A. Basically. As soon as -- excuse me. As soon as the
11 detectives arrived, which I would assume it was about an hour,
12 give or take.

13 Q. Maybe 6:45?

14 A. I let them know what was going on, or what I seen,
15 and I removed myself basically to get out of their way and to
16 go help if any other officer needed any help outside, because
17 I had called for additional cover to help with crowd control.

18 Q. Okay.

19 A. And I think the media was starting to arrive and
20 stuff like that, so I needed a little bit more help.

21 Q. Did you discuss -- I think you had mentioned the
22 parking lights were on in the Mercedes?

23 A. Yes, sir.

24 Q. Did you discuss that with any of the firemen?

25 A. To be honest with you, I don't remember. I mean,

1 they may have been standing around when we were talking about
2 it. I don't know.

3 Q. Okay.

4 A. I just mainly when -- the firemen were removed from
5 the residence when our detectives got there, and that's
6 inside -- or maybe right outside on the back patio is where I
7 told them what we had discovered.

8 Q. Okay. Once you had removed yourself, I guess, from
9 the interior and kind of got out of the detectives' way, and
10 you were out front more to control the crowd, assist, whatever
11 you could do out front, did you engage yourself in questioning
12 people? I don't mean interrogating, but just who are you, do
13 you know much about these people, do you know why they're dead
14 and --

15 A. No, not really. I mean, there was -- obviously,
16 neighbors saw there was something going on, and they would
17 come over and ask and, you know, I would tell them, you know,
18 I can't tell you anything right now. You need to go back to
19 your residence. And I never -- other than that, I didn't have
20 much conversation -- conversation with them.

21 Q. Okay. Did you have conversation with any of the
22 family members of anybody, either the deceased in the home or
23 anybody else?

24 A. No.

25 Q. Regarding specifics about these people, any theories

1 of what happened, what's going on here?
 2 A. No, I didn't -- I mean, I didn't talk to, really,
 3 anybody.
 4 Q. But you were -- well, if the detectives get there
 5 for -- about an hour later, let's call it. I'm not pinning
 6 you down to an exact time. I know that. Say 6:45, and you're
 7 there for probably another two hours --
 8 A. Uh-huh.
 9 Q. -- and there's all these people, relatives are
 10 showing up out front --
 11 A. Uh-huh.
 12 Q. -- I'm just surprised the detectives never came back
 13 to you and asked you about -- while they're inside doing that
 14 and all the relatives are out front, I'm surprised they didn't
 15 ask you what do you know, or what these people say, or to talk
 16 to anybody.
 17 A. Well, all that, that you're asking me, was gone
 18 over with them when they first arrived. Usually our producers
 19 are when our detectives arrive, the first officer on the
 20 scene, or the officer with seniority will go to them and tell
 21 them exactly what we know and what we've done.
 22 Q. I understand all that.
 23 A. So all that was already gone over with.
 24 Q. But you're out front for another two hours?
 25 A. Right.

1 Q. I'm surprised they couldn't come say, by the way,
 2 any of these relatives say anything?
 3 A. They did remove themselves later from the house, and
 4 the detectives went and talked to relatives.
 5 Q. Okay.
 6 A. But I didn't talk to any relatives and --
 7 Q. Okay. I got you.
 8 One thing you said just -- I don't know, it just
 9 stuck in my head. You said a comforter in a spare bedroom, or
 10 guest bedroom was gone?
 11 A. Well, there was not one on the bed where, normally,
 12 to me there should be some sort of comforter on a bed, or a
 13 top cover to a mattress, and it was not there.
 14 Q. Okay.
 15 A. The sheets were there. There was just no -- I call
 16 it a comforter. It wasn't on the bed.
 17 Q. I was trying to figure out if something was gone if
 18 you had never been there before. I got you, all right.
 19 You said when you first entered the bedroom, you
 20 knew this was, quote, something different?
 21 A. It just -- it was just a feeling I had. The way the
 22 whole --
 23 Q. This was a strange deal?
 24 A. The patterns of the way the blood was on the walls,
 25 I don't know, it just didn't seem right, and we didn't find a

1 weapon. That kind of concerned me. Now, sometimes weapons
 2 are underneath bodies that we find. But it just didn't appear
 3 it when I first took a look at what had happened here.
 4 Q. Okay. Since -- have you had any contact with either
 5 the DA's office or anybody in law enforcement since you
 6 cleared the scene that day regarding this case?
 7 A. Yes. We had a, I guess, a pretrial meeting with the
 8 prosecutors.
 9 Q. When was that?
 10 A. Two or three weeks ago.
 11 Q. Okay. Were you --
 12 A. Or longer. I don't really know, probably about a
 13 month.
 14 Q. Did you give any statements at that time, write any
 15 statements?
 16 A. Basically just told them what I saw and what I
 17 had -- my involvement with this case.
 18 Q. Okay.
 19 A. As being the first office on the scene and securing
 20 the scene.
 21 Q. Okay. Was that done in a group setting, what you
 22 call the pretrial with the prosecutor?
 23 A. Yes.
 24 Q. Who's all present with that?
 25 A. Who all was there? I could not begin to tell you

1 all their names. As far as the officers that were there and
 2 detectives, I don't know.
 3 Q. Were y'all talked to at the same time?
 4 A. No, individually, but we were all in the room.
 5 Q. Oh, okay. Wait, what?
 6 A. We were all in a room.
 7 Q. Same room?
 8 A. Yes, sir.
 9 Q. How big a room?
 10 A. Conference-room size.
 11 Q. Okay.
 12 A. So --
 13 Q. Size of the jury room, one of these jury
 14 deliberation rooms back here?
 15 A. Yes, sir.
 16 Q. Okay.
 17 A. But we individually went and spoke with the
 18 prosecution.
 19 Q. Got you.
 20 MR. GOELLER: May I have just a second, Judge?
 21 THE COURT: All right.
 22 (Brief pause in proceedings.)
 23 Q. BY MR. GOELLER: How long had you worked, what do
 24 you call those sectors or divisions or areas of assignment?
 25 A. That particular area, we -- I probably worked there

1 about four months.

2 Q. Okay.

3 A. Somewhere around there.

4 Q. Did you come to know, sooner or later, of who the
5 owner of that residence was, the deceased male?

6 A. No, sir.

7 Q. All right.

8 A. That particular evening, I didn't know who he was.

9 Q. Okay.

10 A. If that's what you're asking me.

11 Q. Or at any time later?

12 A. The only -- no. Actually, the only time I knew who
13 the owner of that residence was, was in a pretrial meeting
14 with the prosecutor.

15 Q. Okay. Do you participate in any intelligence
16 briefing in your duties? You know, like once a week or once a
17 month you sit down with sergeants, lieutenants and all the
18 brass, and say, here's what we've got going on in our little
19 hunk in the city here. Pay close attention to this, or we
20 think there's being dope dealt out of this house, or this guy
21 is doing this?

22 A. Well, each day before I start my tour of duty, we
23 have what we call a "detail" to make sure that the officers
24 that are supposed to be working that evening are there. And
25 if there's anything; you know, specific, like officer safety

1 issues or something like that that needs to be addressed,
2 they'll usually go over it there. But as far as having a
3 meeting with the top brass at my station, I don't have any
4 sort of intelligence meeting with them. It's usually gone
5 over by our supervisor before -- in the detail meeting.

6 Q. Okay. Did -- was there ever any mention amongst
7 law enforcement or anybody else that night as to whether or
8 not they had a suspect in mind or a suspect being developed at
9 the crime scene?

10 A. No, sir, not that I know of.

11 Q. Okay. Okay. Were you shown any reports or given
12 anything to review prior to testifying today?

13 A. Other than these pictures in front of me?

14 Q. Okay.

15 A. That's it.

16 Q. Okay.

17 MR. GOELLER: Thank you, Officer.

18 REDIRECT EXAMINATION

19 BY MS. LOWRY:

20 Q. Officer, I'm also going to show you State's Exhibit
21 Number 15. Do you recognize that?

22 A. Yes.

23 Q. And what is that?

24 A. That is the back bedroom where the -- I thought was
25 messed up.

1 Q. Is that the one you were talking about earlier?

2 A. Yes, ma'am. Yeah, that was the second bedroom that
3 we had searched.

4 Q. And does that accurately depict what that bedroom
5 looked like whenever y'all first entered the house?

6 A. Yes.

7 MS. LOWRY: State would offer State's Exhibit
8 Number 15.

9 MR. GOELLER: I have no objection.

10 THE COURT: State's Exhibit 15 is admitted.

11 Q. BY MS. LOWRY: I'm also going to direct your
12 attention back to State's Exhibit Number 11. In State's
13 Exhibit Number 11, you can see that the comforter from that
14 bedroom is on the floor. In State's Exhibit Number 15, the bed
15 is just all kind of messed up. Is that how you found it? Is
16 that what you were trying to describe earlier?

17 A. Yes, ma'am.

18 Q. Now, as far as the scene goes, wherever you first
19 got there and you go back to the back bedroom, was the scene
20 such that it looked like it was some kind of drug deal, or
21 some kind of scuffle or anything of that nature?

22 A. I mean, obviously, there had been violence there. I
23 mean, that's -- that would go without saying. As far as a
24 drug deal, I mean, there was no evidence in that bedroom that
25 would lead me to believe there was any sort of narcotics or

1 anything like that that was involved with this, no.

2 Q. And other than, like you said the obvious signs of
3 blood, the things of that nature, was there any signs of
4 struggle, like on the part of the victims? Was there any
5 sign that the victims had struggled?

6 A. Not that I could tell. You know, once we got in
7 there, I started looking for a weapon. I got close enough to
8 see if I could see a weapon on the bed or anywhere around the
9 female victim on the ground without moving her to see if it
10 was under her. We couldn't find anything. I did find a shell
11 casing over by the bathroom entrance doorway. Other than
12 that, we just backed out and just kept it like it was until,
13 like I said, the detectives got there.

14 Q. And everything was pretty contained as far as the
15 crime scene in that bedroom?

16 A. Yeah, that was it. We -- that was it.

17 Q. And, in fact, the male body, did he appear to be
18 ready for bed?

19 A. Yes. He was wearing boxers and T-shirt. The female
20 victim, I believe, was in, like, wind shorts or running
21 shorts, maybe like she was preparing for bed as well.

22 Q. Now, as far as the conference that we came down and
23 had with y'all at Dallas Police Department, basically we were
24 in one big room with a bunch of chairs behind us, and we were
25 sitting at a table calling y'all up one by one talking to you?

1 A. Yes, ma'am, that's correct.

2 Q. We certainly didn't have y'all in a group talking
3 to you, all -- you know, here's what happened in this case,
4 here's what's going on?

5 A. No. We met as a whole, but individually we spoke to
6 y'all.

7 MS. LOWRY: Pass the witness.

8 THE COURT: Ms. Goeller.

9 RE-CROSS-EXAMINATION

10 BY MR. GOELLER:

11 Q. You mentioned something that just kind of got my
12 curiosity.

13 You didn't see any sign of narcotics in the
14 bedroom, but on how many occasions have you had to be inside a
15 habitation that ends up being a crime scene?

16 A. I'm sorry, say that one more time.

17 Q. On how many occasions have you had to be in a
18 habitation that ends up being a crime scene?

19 A. Several. I mean happens all the time.

20 Q. I mean, some people have contraband in their home,
21 right?

22 A. Sure.

23 Q. What's typical contraband besides dope?

24 A. Well, that's usually what we find. I mean, a used
25 joint, a little bit of marijuana or crack, or something laying

1 front door. It can be a variety of places. I mean, it can be
2 on the nightstand table, and they were doing dope and OD'd. I
3 mean, it can be a number of things.

4 Q. Okay. Did you go through the nightstand drawers in
5 the bedroom?

6 A. No, sir.

7 Q. Okay.

8 A. Once I did not find a weapon and searched their
9 bathroom and closets, I withdrew from their bedroom.

10 Q. Have you ever, in your career, dealt with dopers
11 who weren't really dopers? They were smart enough not to use
12 the poison themselves, they just deal it and turn a coin?

13 A. Yes, sir, I have.

14 Q. Okay. Smell any dope in this house?

15 A. Not at all.

16 Q. All right.

17 MR. GOELLER: That's all I have. Thank you.

18 MS. LOWRY: Nothing further from this witness.

19 THE COURT: All right. You may step down, sir.

20 MR. GOELLER: Same reserve status?

21 THE COURT: All right. Sir, I understand that

22 you're in a position to where you could come back up here if
23 you're needed; is that correct?

24 THE WITNESS: Sure, yes, sir.

25 THE COURT: You can be on call?

1 around like that. I mean --

2 Q. The other common types of contraband are dope, kiddy
3 porn, maybe some kind of illegal weapon, right?

4 A. Yeah, sure.

5 Q. Now, most people don't keep that kind of stuff in
6 the junk drawer in their kitchen. Usually that's a little bit
7 more secretive. That's kind of -- if I have a neighbor over,
8 and she goes to -- or he goes to get a spoon because we made
9 coffee and wants some sugar, I'm not going to keep kiddy porn
10 or dope in my kitchen drawers; would you agree?

11 A. I would agree if you were expecting someone to come
12 over. Maybe if you're not, then you might have it laying
13 out. I don't know.

14 Q. But I wouldn't want to take the chance and leave it
15 in the kitchen drawer, would I?

16 A. I --

17 Q. You have to admit, that's pretty darn weird, Officer
18 Maxwell; scales in a kitchen drawer.

19 A. I don't say it's weird. I mean, why -- we find
20 stuff like that all over the house sometimes in different
21 situations.

22 Q. Usually in closets, though, right?

23 A. Oh --

24 Q. Usually buried in a master bedroom closet?

25 A. It can be on the coffee table when we walk in the

1 THE WITNESS: Yes, sir.

2 THE COURT: All right. That's good.

3 All right. It's about a quarter after and probably
4 a good time to take an afternoon break. So, let's take a
5 15-minute recess and come back at 3:30.

6 THE BAILIFF: All rise.

7 (Jury exits the courtroom.)

8 MR. SCHULTZ: I just want to remind the Court
9 about swearing the witnesses and invoking the rule that we
10 talked about at the bench.

11 THE COURT: I suppose it's better, to me, to do
12 it in front of the jury. We can call them in mass and swear
13 them in. I think it's a good thing for the jury to see.

14 MR. SCHULTZ: It just occurred to me we still
15 hadn't done that.

16 THE COURT: Do you want to gather them up, and
17 we'll do that at 3:30 after the jury is seated?

18 MR. SCHULTZ: Sure. Thank you.

19 THE COURT: All right. Thank you.

20 (Recess taken.)

21 THE BAILIFF: All rise.

22 (Jury enters the courtroom at 3:45 p.m.)

23 THE COURT: Please be seated. I'm going to ask
24 those who are present in the courtroom and who may be a
25 witness in this case, if you would please come forward and

1 I'll swear you in as a group.
 2 (Prospective witnesses approach the bench.)
 3 THE COURT: Ma'am, you're to going to act as an
 4 interpreter for this lady?
 5 INTERPRETER: Yes.
 6 THE COURT: What is her name?
 7 INTERPRETER: Gladys Mosqueda.
 8 THE COURT: Gladys Mosqueda. All right. Let
 9 me make sure everybody is here first. All right. Raise your
 10 right hands, please.
 11 (Witnesses sworn by the court.)
 12 THE COURT: All right. Put your hands down,
 13 please. The Rule has been invoked and that means that you
 14 must remain outside the courtroom during the testimony. You
 15 cannot discuss your testimony among yourselves or with anybody
 16 else, but you can discuss your testimony with the attorneys on
 17 either side. Would you please translate that into Spanish?
 18 You understand everything you'll be saying --
 19 INTERPRETER: Yes.
 20 THE COURT: -- or do you want me to say it a
 21 sentence at a time?
 22 Do you understand that?
 23 THE WITNESS: (Nods head.)
 24 THE COURT: You must answer in words.
 25 THE WITNESS: I do.

1 THE COURT: All right. Then let me ask you
 2 to -- yes, sir.
 3 MR. GOELLER: I was wondering if the Court
 4 could just have the folks that are present just state their
 5 name.
 6 THE COURT: Yeah, that's a good idea. Let's
 7 start on this side over here. What is your name, sir?
 8 PROSPECTIVE WITNESS: Detective William J.
 9 Carillo.
 10 PROSPECTIVE WITNESS: Senior Corporal Steve
 11 Junger.
 12 PROSPECTIVE WITNESS: Officer Edwards.
 13 THE COURT: Ma'am, you've testified. Tell me
 14 your name again. Ma'am, you've testified. Tell me your name.
 15 MS. KITCHEN: Yes, Bernadine Kitchen.
 16 PROSPECTIVE WITNESS: Gladys Mosqueda.
 17 PROSPECTIVE WITNESS: Mark Kitchen.
 18 PROSPECTIVE WITNESS: Detective Anthony Winn.
 19 PROSPECTIVE WITNESS: Sergeant Mike Nomenaker.
 20 PROSPECTIVE WITNESS: Detective Don Whitsitt.
 21 PROSPECTIVE WITNESS: Jerry Kitchen.
 22 THE COURT: All right. Then, who's going to
 23 be the next witness for the State.
 24 MS. LOWRY: Detective Whitsitt, Your Honor.
 25 THE COURT: All right. Let me ask Detective

1 Whitsitt to come on up and be seated, and I'll ask everybody
 2 else to remain outside.
 3 Whereby,
 4 DONALD A. WHITSITT,
 5 a witness called by the State, sworn to testify to the truth,
 6 testified under oath as follows:
 7 DIRECT EXAMINATION
 8 BY MS. LOWRY:
 9 Q. Please introduce yourself to the jury.
 10 A. I'm Detective Donald A. Whitsitt, Dallas Police
 11 Department.
 12 Q. And Detective Whitsitt, what's your current
 13 assignment?
 14 A. My current assignment is with the Physical Evidence
 15 Section of the Dallas Police Department.
 16 Q. Are you a certified peace officer?
 17 A. Yes, ma'am, I am.
 18 Q. How long have you been employed by the Dallas Police
 19 Department?
 20 A. 24 years.
 21 Q. How long have you been assigned to the Physical
 22 Evidence Section?
 23 A. Four years.
 24 Q. Describe for the jury what you do as far as what
 25 your duties are working in the Physical Evidence Section?

1 A. Our basic job assignment is to preserve and collect
 2 evidence at a crime scene. We preserve it by collecting
 3 physical evidence and also by taking photographs of the crime
 4 scene.
 5 Q. And did you undergo any special training to do that,
 6 any extra classes, things like that?
 7 A. Yes, ma'am, we do.
 8 Q. Can you describe those for the jury?
 9 A. Initially take basic crime scene search school,
 10 which my first one was in-service school that lasted
 11 approximately two weeks during which you take basic
 12 photography, basic fingerprinting, hands-on experience using
 13 both fingerprinting techniques and photography methods. And
 14 later on it's supplemented by in-service and state schools.
 15 I've been to Austin several times.
 16 Q. And plus the four years that you've been working in
 17 that section?
 18 A. Yes, ma'am.
 19 Q. I want to take you to November 4th of 2000. Were
 20 you working at that time?
 21 A. Yes, ma'am, I was.
 22 Q. And you were employed, of course, with the Dallas
 23 Police Department in the Physical Evidence Section?
 24 A. Yes, ma'am, I was.
 25 Q. And y'all abbreviate that PES?

- 1 A. Yes, ma'am.
- 2 Q. When you're working, or I guess when you're on
3 duty, are you actually at the police department or are you on
4 call? How does that work?
- 5 A. We have -- our physical facility is at 718 Cantregal
6 Street. It's in Dallas. It's off of Live Oak and 75, if
7 you're familiar with that area, near downtown Dallas.
- 8 Q. And that -- I guess my question is, when you're on
9 duty, do you go there waiting for a call to come in and then
10 go out to a crime scene?
- 11 A. Yes, ma'am. Every day we hold detail. I'm
12 currently employed on the third watch, which is 2:30 to 10:30
13 p.m., and so we'll make detail and then we'll frequently catch
14 up on previous nights or past crime scenes processing them.
15 We'll do fingerprint identification for various units, such as
16 robbery and homicide. So, we usually stay busy at the office
17 until we have call rotation, and then when a PES call comes in
18 for a detective, we follow that rotation. And in this case,
19 on November 4th, I was the individual assigned in the rotation
20 for this call.
- 21 Q. So, back in November of 2000, they get the call in
22 that they need the PES. They make contact with you, and say
23 this is the location; go to it. Is that kind of how it works?
- 24 A. Yes, ma'am.
- 25 Q. What do you do -- do you just go out there? Is

- 1 there anything that you do before you go out there?
- 2 A. We have a van assigned to each team. It has a lot
3 of basic crime scene tools and equipment in it, plus each of
4 us has an individual PES kit, which is mostly for the
5 fingerprinting portion of our duties, and then our own
6 personal camera kit so that's all loaded into the vans.
- 7 Q. When you responded to the location on November 4th,
8 were you alone or was someone with you?
- 9 A. No, ma'am. I had a rookie police officer from
10 Southeast Substation, I believe, that was there to observe.
- 11 Q. And is that kind of customary, do they come in and
12 ride with y'all periodically to different locations?
- 13 A. Yes, ma'am.
- 14 Q. When you arrived, or I guess the call that you got
15 was to respond to 18663 Gibbons Drive; is that right?
- 16 A. Yes, ma'am.
- 17 Q. When you get to that location, who all is there at
18 that point?
- 19 A. There was approximately three, I believe, officers.
20 I think the supervisor and two police officers that I recall.
21 I made contact with the police officers at the location.
- 22 Q. And do you recall about what time it was that you
23 arrived?
- 24 A. 6:45 approximately.
- 25 Q. When you first arrive on a crime scene like that,

- 1 what are your -- what do you do first?
- 2 A. Normally we contact the initial officers at the
3 scene, exchange information. We need each other's badge
4 numbers and element numbers, and then we conduct what's known
5 as a walk-through. They tell us what -- what has occurred at
6 the scene and walk us through the evidence that they have
7 observed, and so on.
- 8 Q. And when you arrived at the scene, was there anyone
9 inside the house at that point?
- 10 A. There may have been one officer standing at the door
11 to guard it, but I don't think anybody was inside at the time.
- 12 Q. Was the crime scene secure?
- 13 A. Yes, ma'am.
- 14 Q. And by that, I mean people weren't able to go
15 inside; people weren't just walking through the house. They
16 were kind of just waiting on y'all to get there?
- 17 A. Correct.
- 18 Q. What is the first thing when you go into the house
19 that you do?
- 20 A. I walked in to do a walk-through with the officer
21 and observe the crime scene as he described it, and as I saw
22 it. And once that I saw, in this case what we had, I was
23 accompanied by another PES detective. In Dallas, basic
24 operation procedure is that we send two detectives on any
25 homicide. So, Detective Forest Smith arrived shortly after I

- 1 did, and as I had started loading my camera up and was going
2 to take the photographs, I detailed Detective Smith to do the
3 fingerprinting.
- 4 Q. Now, at the time that you're taking photographs, or
5 preparing to take photographs, is everyone away from the crime
6 scene, and it's just you in there with the crime scene?
- 7 A. Yes, ma'am.
- 8 Q. What is the purpose of doing it like that?
- 9 A. That's so the crime scene isn't contaminated.
- 10 Q. When you take photographs, what all are you taking
11 photographs of?
- 12 A. Took a general overall photograph of the front of
13 the house, which illuminated the house numbers. The fact that
14 the door was not kicked in; everything appeared normal at the
15 residence, and then pretty much localized my photograph-taking
16 to the rear, master bedroom of the house. The house was in
17 pretty immaculate shape, except for a disheveled bed in one
18 bedroom -- side bedroom, and the scene in the master bedroom.
- 19 MS. LOWRY: May I approach, Your Honor?
- 20 THE COURT: Yes.
- 21 Q. BY MS. LOWRY: I'm going to show you State's Exhibit
22 Number 8, and is that one of the photographs that you took of
23 the front of the house?
- 24 A. Yes, ma'am, it is.
- 25 Q. Okay. Now, as you're going through taking photos,

1 how do you -- do you work, like, around the room, or kind of
2 orient us as to how you're doing this as you go through this
3 process.

4 A. Normally I try to work in a 180 or 360-degree
5 pattern, depending on the type of situation I had. In this
6 instance, the master bedroom was, more or less, in a straight
7 line from the living room. I could take a photograph of the
8 patio window, which the -- I guess the patio/living room
9 window, which the firemen broke out to gain access to the
10 house, and then from there you just had to pan in a few
11 degrees to the right into the master bedroom. And you could
12 glimpse some of the crime scene from there. And then I could
13 advance several feet into the bedroom and continue panning, in
14 more or less, a 180-degree sweep.

15 Q. And the photographs that I've laid in front of you
16 have already been admitted into evidence, but if you'll
17 look -- as we talked about -- we talked about State's Exhibit
18 Number 8, which is the front of the house. State's Exhibit
19 Numbers 9 and 10 are -- if you can find those. Should be the
20 entrance that the fireman made and the back doorway.

21 A. Yes, ma'am.

22 Q. And are those photographs that you took that you
23 were just describing to the jurors?

24 A. Yes, ma'am, it is.

25 Q. Now, State's Exhibit Number 11, which is going into

1 the bedroom that you were describing?

2 A. Correct.

3 Q. Now, if I could show you State's Exhibits 16, 17 and
4 18, if you can identify those for me.

5 A. Sixteen -- State's Exhibits 16, 17 and 18 are
6 photographs that I took of one corner of the bedroom.

7 Q. Okay. And are they all of the same thing
8 basically? Can you describe, I guess, how they're different,
9 for the record?

10 A. In our photography, ideally you want to get three
11 shots; a distance shot, an intermediate shot and a close-up
12 shot. And this is pretty much what I did on these State's
13 exhibits. The first one starts with a distance shot of a pot
14 and the edge of a dresser, and you can see a small object near
15 the pot. And, of course, as I did in the intermediate photo,
16 it gets closer to the small object and pans out most of the
17 other objects. And the last photo, State's Exhibit 18, was
18 the close-up, and it was a projectile that we discovered
19 behind a pot in one corner.

20 MR. GOELLER: Judge, I'm sorry. If you could
21 ask the detective not to start displaying to the jury and
22 going through his spiel until it's admitted and she request
23 permission to publish to the jury. He ought to know better
24 than that.

25 THE COURT: All right. Are you offering 16

1 through 18?

2 MS. LOWRY: May I ask one more question?

3 THE COURT: All right.

4 Q. BY MS. LOWRY: Do those accurately depict the scene
5 as it was whenever you arrived on November 4th, 2000?

6 A. Yes, ma'am.

7 MS. LOWRY: At this time, the State would offer
8 State's Exhibits 16, 17 and 18.

9 THE COURT: All right.

10 MR. GOELLER: No objection.

11 THE COURT: Sixteen through 18 for the State
12 are admitted.

13 Q. BY MS. LOWRY: And the purpose in taking these is
14 to show the projectile, the bullet --

15 A. Correct.

16 Q. -- that you found there on the floor?

17 A. Yes, ma'am.

18 Q. And then as you come in the room, you begin taking
19 pictures going more around -- coming around the room; is
20 that --

21 A. Correct.

22 Q. -- correct?

23 Now, Detective, I'm going to show you, and it's
24 going to be kind of lengthy, State's Exhibits 19 through 56.
25 If you could just kind of look at them to yourself, identify

1 them if they're the photos that you took or not.

2 (Pause in proceedings.)

3 A. They're all my photographs.

4 Q. And are all of those photographs, State's Exhibits
5 19 through 56, do they all accurately depict the scene as it
6 was on November 4th of 2000 when you arrived at the crime
7 scene?

8 A. Yes, ma'am.

9 MS. LOWRY: Your Honor, at this time the State
10 would offer State's Exhibits 19 through 56.

11 THE COURT: Okay.

12 (Pause in proceedings.)

13 MR. GOELLER: Your Honor, I need a sub rosa
14 hearing.

15 THE COURT: Ladies and Gentlemen, I'm going to
16 ask you to step down for about five minutes.

17 THE BAILIFF: All rise.

18 (Jury exits the courtroom at 4:06 p.m.)

19 THE COURT: Please be seated.

20 MR. GOELLER: Yes, Your Honor. May it please
21 the Court?

22 THE COURT: Sure.

23 MR. GOELLER: Your Honor, State's 19 through
24 50 -- what was it, Jami?

25 MS. LOWRY: Six.

1 MR. GOELLER: -- through 56 are a series of
2 photographs, all of them, with the exception of maybe one or
3 two, taken of the master bedroom where the testimony has been
4 that these two bodies were discovered. I specifically object
5 to Exhibit 20, Number 23, 24, 25, 26, 28, 29, 30, 31, 32, 33,
6 34, 35, 41, 42, 43, 46, 48, 49, 52, 55 and 56. I specifically
7 object to the introduction of these photographs, Your Honor.
8 Most of these photographs are duplicates, or just slightly
9 different angles or more of a close-up shot of the photographs
10 that I did not just specifically name in my objection.

11 Again, Your Honor, I'd ask the court -- again,
12 they're duplicitous, they're cumulative. They're not
13 probative of any fact at issue in this case. Again, it is no
14 one's contention that these people are not deceased. We have
15 in no way, through our cross-examination of these witnesses,
16 through any questioning, directly or indirectly, have we even
17 led anybody to think these people were not deceased.

18 These pictures show a great amount of blood. These
19 pictures show these people being manipulated by either
20 detectives or law enforcement to expose wounds. There are --
21 these pictures would show that once the bodies have been
22 removed, blood -- red blood on white sheets, and there's no --
23 such a photograph -- for example, Your Honor. Let me be
24 specific. Such a photograph, as State's Exhibit Number 29,
25 and that would be a photograph showing a white bed sheet with

1 in controversy regarding the deceased and most likely there's
2 going to be no issue -- I mean, Dr. Rohr could sit up here and
3 say I found bullets in these people; these people were shot.
4 It's not an issue. So these photographs here can be offered
5 for -- certainly not to show cause of death. It's quite
6 obvious, they've already got before the jury, the first
7 fireman in -- you don't have to touch them. They're dead due
8 to the lividity. So for that reason, under 402, relevance and
9 that being these photographs are cumulative and offered for
10 prejudicial purposes only, my belief. I object to this series
11 of photographs.

12 THE COURT: I tell you what, I assume there's
13 no objection to 19, 21, 22, 27, 36, 37, 38, 39, 40, 44, 45,
14 47, 50, 51, 53 and 54. Those are ones that you didn't
15 mention; is that correct?

16 MR. GOELLER: Yes, Your Honor, and I actually
17 got a few out. I need to put in the group that I specifically
18 object to.

19 THE COURT: With regard to those that are
20 duplicative and cumulative, if they are absolutely
21 duplicative, we won't put in two pictures that are completely
22 identical.

23 MR. GOELLER: I don't want to misspeak to the
24 Court. When I say -- none of these pictures were exactly the
25 same shot, just offered twice. That's not what I mean, but

1 at least half of it covered in blood. This photograph can be
2 offered for no reason other than to inflame the jury. This
3 photograph does not show injuries. It shows a great deal of
4 blood on a bed. For what reason, I don't know. Again, I
5 think it's been established, or they will establish that these
6 people were shot with a firearm, but that -- a photograph such
7 as that is highly prejudicial.

8 There's another photograph I want to specifically
9 object to and that would be Photograph Number 52 that would
10 show the face of the female. The testimony is this female was
11 shot in the top of the head and other places in the body.
12 Apparently, because of the way the body lay, the blood ran
13 down. This photograph is not specific as to entry wound or
14 exit wound. The purpose of this photograph is purely to
15 inflame the jury.

16 Again, Your Honor, we are not contesting that these
17 people are dead, and they were shot with a firearm. The State
18 has noticed us that they will call Richard -- what's his
19 name? Dr. Rohr -- I can't remember his first name.

20 THE COURT: William, I think.

21 MR. GOELLER: William. Yes, William E. Rohr,
22 the Medical Examiner of Collin County. I guarantee the State
23 will call him, and he will go into the cause of death, areas
24 of, you know -- and we'll probably end up stipulating, if they
25 want us to, to those autopsy reports. Again, there's no issue

1 maybe from a slightly different angle.

2 THE COURT: But I tell you what, then there's
3 nothing wrong with that, if it's different perspectives. The
4 best thing for me to do is take a look at them.

5 MR. GOELLER: Let me give the court this stack
6 here, which I don't have an objection to those.

7 THE COURT: Okay. This is -- then I'll refer
8 to my list then; 19, 21, 22, 27, 36, 37, 38, 39, 40, 44, 45,
9 47, 50, 53 and 54 are admitted. In this stack you gave me,
10 there is 54, but you didn't object to it?

11 MR. GOELLER: I'm sorry. No. 54 is my -- I
12 want to put that one in my strike --

13 THE COURT: So 54 is objected to. Everything I
14 said, except for 54 is admitted.

15 MR. GOELLER: Yes, sir.

16 MS. LOWRY: And may I ask to see the stack that
17 you have admitted so that I can mark that on my list?

18 THE COURT: Let me make sure I've got them in
19 order here. And I need to see Numbers 50 and 51 because you
20 didn't object to those.

21 MR. GOELLER: 50 and 51 I need to put in the
22 objection stack.

23 THE COURT: Objection pile?

24 MR. GOELLER: Yes, sir.

25 THE COURT: Okay. Then we've got -- let me

1 give the numbers over again, and I'll hand them to you; 19,
2 21, 22, 27, 36, 37, 38, 39, 40, 44, 45, 47 and 53 are
3 admitted.

4 All right. And the ones that you don't
5 like?

6 MR. GOELLER: Yes, sir.

7 And, Judge, again, the record should reflect that
8 State's Exhibit 14, that's already before this jury and been
9 published, is a picture of a female deceased on the floor.
10 State's Exhibit 12 is a picture of a male deceased on the bed.
11 These are (sic) already been published to the jury, as well as
12 State's Exhibit 31 showing another picture of the deceased.
13 State's Exhibit Number 11 has already been admitted before the
14 jury showing at least part of a body, which there's no doubt
15 that the jury believes is the male --

16 THE COURT: Let's me take a look.

17 MS. LOWRY: Judge, if I might just so that I
18 can get this right. Can we go -- the ones that he's objecting
19 to, go through them one at a time.

20 THE COURT: Let me tell you, and I can do them
21 in numerical order. I understand there's an objection to 20.
22 Do you want to write this down?

23 MS. LOWRY: May I actually look at the photo?

24 THE COURT: Do you want me to give you the list
25 or not?

1 as the probative value, it's all probative in order to
2 actually show that the murder occurred. Whether or not
3 they're contesting it or not, we still have to prove that it
4 actually occurred. We have to prove it caused the death. We
5 have to prove the identification of the victims. The picture
6 of the female's face is the only picture that we have of her
7 face from the scene. As far as proving that that was her,
8 that she was killed, and it was at her house, that's the one
9 picture that we have that shows her face, that shows it was
10 her.

11 The pictures are also more probative because we have
12 to prove intentionally, so where the shot goes -- and where
13 the shots are goes towards the person's state of mind when
14 they're shooting, when they're committing this crime, the
15 actual shot to the top of the head goes directly to
16 intentional, just the way it was done and the way it all
17 resulted.

18 The pictures, as far as positioning and the pictures
19 from all different views of the scene, show that they were
20 moved. Also goes -- that's probative value towards robbery
21 showing they were moved, possibly looking for jewelry. We
22 know the ring was gone, things of that nature.

23 Also, the positioning of them and the way that they
24 are in the pictures showing the different views of the body
25 shows there was no struggle, and that goes towards the fact

1 MS. LOWRY: Yes.

2 (Pause in proceedings.)

3 THE COURT: All right. I've reviewed all the
4 ones that are objected to. Is there anything else to be said
5 from the Defense?

6 MR. GOELLER: Probably, depending on how you
7 rule so far.

8 THE COURT: Well, my inclination is to let them
9 in, so if you've got some other objection now is the time to
10 make it.

11 MR. GOELLER: Yes, Your Honor. At this time
12 then I would object under Rule 403. Although perhaps
13 relevant, it's our position that any probative value is
14 substantially outweighed by the danger of unfair prejudice,
15 especially of the picture of a facial shot of the female
16 deceased. And at this time I'd ask the Court to conduct a 403
17 balancing test --

18 THE COURT: All right.

19 MR. GOELLER: -- under Fuller versus State.

20 THE COURT: All right. Is there anything from
21 the State?

22 MS. LOWRY: May I have just a moment, Your
23 Honor?

24 THE COURT: All right.

25 MS. LOWRY: Your Honor, just basically as far

1 that it couldn't have been self-defense on the shooter's part
2 because there is no sign of struggle.

3 As far as the blood on the bed, the amount of blood
4 goes towards helping to establish a time frame. It will also
5 corroborate testimony. It will also corroborate testimony
6 that it didn't just happen at the time the fire department got
7 there; that being 4:30 p.m. The amount of blood that is on
8 the bed, the amount of bleeding is going to go to corroborate
9 that in a way that it will establish that they've been there
10 for a while, that it did occur -- quite a while earlier, and
11 that's going to corroborate testimony later on down the line.

12 And also in the center of the mass on the bed where
13 it has just the picture of the blood on the bed, is where a
14 cartridge case was found, a bullet hole that goes all the way
15 through the mattress and box springs, and that's the only
16 picture we have of the mattress, and that's how they
17 ascertained it, because all the blood was on there, and they
18 had to show where the bullet went through and how they found
19 that cartridge casing.

20 As far as the blood splatter -- all the blood
21 splatter on the walls, up to the ceiling, different blood
22 splatter on the bed, just have to prove that it was actually a
23 shooting. That's all probative. Just -- it's indicative of
24 what happens when someone is shot, and it also goes towards
25 looking at what the officers would have been looking for as

1 far as trying to find blood on a defendant's clothes. The
2 blood splatter is going to be indicative of -- you know, it's
3 going to splatter on the walls, it's certainly going to
4 splatter on the defendant, and those are things that they use
5 to determine what kind of evidence they were going to be
6 looking for.

7 THE COURT: Something else?

8 MR. GOELLER: Yes, Your Honor. I disagree with
9 the State. They don't need that facial shot of that female to
10 prove up that she is one and the same. I guarantee it, when
11 the medical examiner works, they don't show -- they show
12 people, or if they're going to ask next-of-kin to identify,
13 they clean that face up. They don't allow people to go in
14 there and look at that. We'll stipulate that that female
15 deceased in that bedroom is one and the same Amy Kitchen.
16 They don't need that photograph. That photograph is so
17 harmful, Your Honor.

18 What probative value do they have? They have other
19 ways of proving up identity, and we're offering -- as an
20 officer of this court, I'll stipulate to it, that that's Amy
21 Kitchen. So, what probative value does it have to show the
22 face like that? Nothing but prejudice.

23 Now, that huge shot of the mattress that's totally
24 blood-soaked, Ms. Lowry says she wants to show the bullet hole
25 went through that? I'd like to know where the bullet hole is

1 wall. Here we go again, State's Exhibit Number 23, just a
2 different angle. Why? Why do they need two of them on this
3 particular angle of that body? 29, somebody tell me where the
4 bullet hole is in that picture?

5 THE COURT: Let me see.

6 MR. GOELLER: Geez, Judge, don't point that
7 out.

8 THE COURT: All right. I do remember the
9 different perspective of the little hole there in another
10 picture. All right. Go ahead.

11 MR. GOELLER: Lost my train of thought.

12 Anyhow, Exhibit 29, Ms. Lowry said, well, we need
13 this one to show the bullet went through the mattress. No.
14 No, she doesn't. She's got, for example, this one, State's
15 Number 30, well, that shows a mattress. I don't know how many
16 of these photographs show a mattress. I'll bet a dozen of
17 them. So, why? What is State's Exhibit Number 29 probative
18 of? What fact in this indictment is that probative of? Not a
19 thing, I would submit to the Court. So, therefore, it's being
20 offered, obviously in my opinion, to prejudice this jury. The
21 harm we have here is the thoughts of punishment garnering in
22 the first phase of the trial due to bloody, grotesque
23 photographs, and that's not what the guilt-innocence phase is.

24 They've already got bodies before this court, and I
25 think it ought to be on a case by case -- I don't know if this

1 in that shot. Absolutely not. We know this detective right
2 here, through some of his other photographs, can get right
3 down to inches, so I don't think that -- I think that argument
4 is somewhat disingenuous. They want to get that huge,
5 blood-stained mattress before this jury. What is that
6 probative of, Your Honor, that they got shot? No. It's only
7 to inflame this jury.

8 Judge, you already have before this jury the
9 bodies. You've already got blood on the wall. These
10 detectives can talk about that. Why are we putting in 40
11 some-odd or 30 some-odd more photographs of the same thing?
12 Only to inflame. These detectives can talk about their
13 theories. They can talk about, we believe it was moved, or
14 the body was moved or whatever, but you don't need 40
15 something photographs to prove that. There's just too much
16 harm, Judge, in these personal shots. Again, the record and
17 the Court knows there's already photos before this jury of
18 these bodies in that bedroom. Why do we need more photographs
19 of the bodies to prove they're dead, 40 something more-odd
20 times? No.

21 They have a photograph of blood stains on the wall.
22 All right. Maybe the Court wants to let that one in. In
23 fact, that may be one of the ones I didn't object to. I
24 understand that. But it's just -- just, for example, here's
25 State's Exhibit 20, shows again the body, blood stains on the

1 particular detective is going to talk about -- I'm not sure
2 what he's going to talk about because he's (sic) just offering
3 these photographs. But I would at least ask the Court to --
4 after it conducts my 403 balancing test, I would ask the Court
5 to not allow these mass introduction of photographs because it
6 denies me, really, my right to cross-examine the witness on
7 photograph-by-photograph basis. I may have other objections I
8 may want to lodge.

9 This officer may not be here -- I'm not sure if he's
10 here as the photographer, or is he going to offer more
11 opinions based on these photographs? And, therefore, I'd like
12 to do it one by one if my 403 balancing test is overruled.

13 THE COURT: All right. Hey, let me have the
14 photographs that you specifically say are duplicative because
15 I remember you talking about it, too. You were talking about
16 a photograph that shows a very bloody bed and another
17 photograph that shows a bloody bed. But, anyway I want to see
18 the very photographs that you say are duplicative, and I want
19 to look at them and make a decision.

20 MR. GOELLER: Yes, sir.

21 THE COURT: You're questioning this, the way it
22 really looked?

23 MR. GOELLER: No, sir. Absolutely not.

24 THE COURT: All right, sir.

25 MR. GOELLER: Yes, sir. Let me start off by

1 saying that State's Exhibit Number 14, which is already in
 2 evidence, I would argue to the court that State's Exhibit 42
 3 is just another worse, not as well-lit photograph of one
 4 that's already in evidence. For example, I would submit to
 5 the Court that 24, 25 and 26 are essentially the same thing,
 6 the same general theme. Why do we need three of them?

7 THE COURT: Thank you. You need to see these?

8 MS. LOWRY: Yes, Your Honor.

9 MR. GOELLER: 23 and 20, same thing. It may be
 10 a different angle, but I don't think probative value hinges
 11 on, well, the detective walked a few feet and snapped another
 12 photo. And in that same series, 56, Your Honor.

13 THE COURT: 23 and 56?

14 MR. GOELLER: Yeah, 23 and 56. Obviously,
 15 these photographs are the master bed, blood splatter on the
 16 wall, male deceased in the bed.

17 THE COURT: Okay.

18 MR. GOELLER: I think I mentioned 42 already.

19 THE COURT: Well, what I'm asking you now is if
 20 you want to say -- well, yeah, you're saying that is like
 21 Number 8, I think?

22 MR. GOELLER: 14, I think. Yeah, State's
 23 Exhibit 14. I'm saying Exhibit 42 is, essentially, the same
 24 thing.

25 THE COURT: All right.

1 MR. GOELLER: 55, I would say, again, is
 2 cumulative, Judge. It's just another --

3 THE COURT: If you're saying cumulative, show
 4 me which one is just like it.

5 MR. GOELLER: The last series of four
 6 photographs I talked about, the male deceased on the bed.

7 Now, 52 and 54, obviously they're not --

8 THE COURT: 52 and 54.

9 MR. GOELLER: Those are the two, Your Honor,
 10 that are probative of, I would say, of no issue contested in
 11 this case. They are so inflammable, so prejudicial. The
 12 harm? What benefit, what probative value of the body turned
 13 over and to show the female's face where blood has apparently
 14 collected or -- how would that -- what probative value does
 15 that have, and what is the chance that the prejudicial value
 16 substantially outweighs the probative value? Well, I would
 17 say greatly. This photograph would do nothing (sic) to
 18 inflame this jury, and 54 -- everything to inflame the jury,
 19 as Mr. High is telling me.

20 I'll put that in with 29. Those I object to, Judge,
 21 on purely a 403 test.

22 Now, here's State's Exhibit 41. This shows,
 23 apparently, blood splatter on the wall.

24 THE COURT: This is the wall above the bed?

25 MS. LOWRY: That's the ceiling.

1 THE COURT: Oh, it's the ceiling. All right.

2 MR. GOELLER: Here's two photographs, State's
 3 Exhibits 32 and 30. They're obviously of a mattress. Now,
 4 that global question to this detective, well, they fairly
 5 represent what? Well, how can I make an objection? How do I
 6 know if they're not one and the same thing? That's why I'm
 7 also asking we need to go through these one by one so I can
 8 find out.

9 Here's another one, Judge. 43 and 47, are they not
 10 cumulative of 42? Aren't they really the same thing? Again,
 11 I don't think probative value hinges on, well, we'll move in a
 12 little closer and pull the -- click the shutter a few more
 13 times on a slightly different angle.

14 THE COURT: All right. Anything else?

15 MR. GOELLER: Fifty and 51, I would object on
 16 just purely 403 grounds. Those are pictures of the bodies
 17 being manipulated -- and being manipulated so a photograph can
 18 take place. These are not medical examiner photographs.

19 So, those are my reasons, Your Honor. Again, I'd
 20 ask the Court to conduct that balancing test, keeping in mind
 21 that the fact that these folks are deceased is not an issue,
 22 and it's not in controversy in this case.

23 THE COURT: All right. Anything else from the
 24 State?

25 MS. LOWRY: No.

1 THE COURT: All right. If not, I'm going to
 2 exclude 25, 26 and 56 as cumulative of other photographs that
 3 are being admitted, and I've considered all -- how many are
 4 there -- 37 of these photographs, and in light of
 5 consideration of Rule 403 and find that the probative value
 6 outweighs the prejudicial effect. And so with regard to 19
 7 through 56, 25, 26 and 56 are not admitted, and all of the
 8 rest are.

9 All right. And I tell you what, if you would -- I
 10 think it would be a good idea to --

11 MS. LOWRY: We're not going to publish right
 12 now, if that's what you were going to --

13 THE COURT: No. The only thing I was going to
 14 say, with regard to those three I excluded, if you would keep
 15 those available so that perhaps a court can look at those some
 16 time in the future.

17 MS. FALCO: Your Honor, just for
 18 clarification, with regard to State's Exhibit Number 56, if
 19 you'd let us know which one that's duplicative of --

20 THE COURT: I can.

21 MS. FALCO: -- we might swap out, because we
 22 have a blood splatter expert coming.

23 THE COURT: Let me see all the other ones, and
 24 I think 25 and 26 were kind of duplicative of each other and
 25 another photograph.

1 MS. FALCO: This is 25 and --
 2 THE COURT: And those -- there's one that shows
 3 exactly what those show.
 4 MS. LOWRY: And 25 and 26, what they're
 5 duplicative of is the smear (inaudible).
 6 THE COURT: I believe Number 56 to be
 7 duplicative of 23. At least I can't see anything that's not
 8 reflected in 23 or 56 that does not appear in 23.
 9 MS. FALCO: And, Your Honor, I guess if we're
 10 on the record, our argument to that would be just based on
 11 speaking with my blood splatter expert, State's Exhibit
 12 Number 56 goes above and beyond the bedpost, and it shows --
 13 there's a space in the center, kind of circle of blood, and it
 14 specifically talks about that, and that is -- that area is not
 15 shown in State's Exhibit Number 23.
 16 THE COURT: I agree. And so I will let in 56.
 17 There's a -- they're similar, but not -- but there is a
 18 pattern reflective in 56 that's not reflected in 23. So I
 19 will let in 56. So, 25 and 26 are excluded, and 56 is
 20 admitted, as well as the other ones, 19 through 56, but not 25
 21 and 26, okay.
 22 MR. GOELLER: Just for the record, I'd ask the
 23 Court to reconsider it's balancing test on State's Exhibit 52
 24 and State's Exhibit 54, the facial shots of the victims.
 25 THE COURT: Oh, yeah. Those are facial shots.

1 I tell you what, I do find them to be extremely probative and
 2 important. I believe the probative value outweighs the
 3 prejudicial value.
 4 MS. LOWRY: Your Honor, then we would offer 25
 5 and 26 for record purposes, I guess at this point, so that we
 6 can keep them available.
 7 THE COURT: Right. I appreciate that. If
 8 you'll make sure that those don't get mixed up with anything.
 9 We'll segregate those.
 10 MR. GOELLER: May I make a request? I would
 11 ask that these photographs not be displayed for the jury at
 12 all times. For example, right now just sitting within -- you
 13 know, is that facial shot of that female victim. I would like
 14 these -- I don't know if this officer is going to testify
 15 right now, or they're going to publish it, but I don't want
 16 these displayed in such a manner the jury is always going to
 17 be looking at them, because a shot like this, Your Honor -- a
 18 photograph like this is horrific. Those jurors are going to
 19 be tuned into that thing and not be listening to the detective
 20 or the evidence or anything else.
 21 So, I'd ask that, certainly for pictures that show
 22 faces and bodies and blood, that unless they're being in the
 23 process of being published to the jury or they're specifically
 24 being talked about with a witness, that they either be turned
 25 down or not displayed for the jury at all times.

1 THE COURT: But sometimes?
 2 MR. GOELLER: Well, yeah, sometimes I suppose,
 3 over my objection.
 4 THE COURT: Well, I tell you what, if -- I
 5 don't expect the State to be waving them around.
 6 MR. GOELLER: Okay.
 7 THE COURT: But they have been admitted into
 8 evidence for all purposes, and the jury does have the right to
 9 see them.
 10 MR. GOELLER: Yes, sir.
 11 THE COURT: And so I'll just ask the State to
 12 be discrete with regard to what they do, and if there's
 13 something that's objectionable at the time, make an objection,
 14 and I'll rule on it.
 15 MR. GOELLER: Yes, sir. Thank you, Your Honor.
 16 THE COURT: All right. Let's bring the jury
 17 in.
 18 THE BAILIFF: All rise.
 19 (Jury enters the courtroom at 5:05 p.m.)
 20 THE COURT: Please be seated.
 21 All right. The Court will admit State's Exhibits
 22 Number 19 through 24 and 27 through 56. Go ahead.
 23 MS. LOWRY: Thank you, Your Honor.
 24 Q. BY MS. LOWRY: Okay. Detective Whitsitt, after
 25 photographing the crime scene, what is the next step in the

1 procedure?
 2 A. Next step is the recovering of evidence.
 3 Q. And at this time -- you mentioned earlier, Forest
 4 Smith, who is also a detective, who was doing -- is kind of
 5 your backup. What is he doing at the time you're
 6 photographing the main crime scene?
 7 A. He is in the garage fingerprinting the female
 8 complainant's Mercedes.
 9 Q. Now, in collecting evidence, how is that typically
 10 done? Do you collect everything in the room as far as the
 11 crime scene evidence, or how does that work?
 12 A. Normally anything of a probative value, of course.
 13 In this case it would be firearms evidence, some blood trace
 14 evidence, hairs and fibers.
 15 Q. And at this particular crime scene, what is the
 16 first thing that you collected? Do you recall?
 17 A. Yes, ma'am. Since the first items that I saw were
 18 firearms evidence, I began with -- by picking up shell casings
 19 and then projectiles. And then, of course, after the bodies
 20 were removed, recovery of items from the bed.
 21 Q. When you collect, like you're talking about casings
 22 or something like that, from the crime scene what do you
 23 typically do with them? How do you mark them; how do you
 24 remember where they were?
 25 A. Each casing and each projectile is put in a small

1 2-by-2 glycine bag. It has an opaque on one side that you can
2 write on so you can put notes, and you describe, typically, on
3 that bag where you recovered the item. Later, I like to redo
4 that, and include my initials, my badge number, the case
5 number, and then a better description. But you can write a
6 very quick, brief description on the initial bag for the
7 firearm evidence.

8 Anything that has blood stains, or what is suspected
9 blood trace evidence on it, must go in a paper bag, so we have
10 varying sizes of grocery bags, and we place all blood-stained
11 items in those. And that's due to the fact that plastic
12 denigrates blood.

13 Q. I'm going to hand you what's been marked as State's
14 Exhibit 57, and ask if you recognize that package?

15 A. Yes, ma'am, I do.

16 Q. And how do you recognize that package?

17 A. This is in my handwriting. It's one of our property
18 tags from Dallas Police Department. It has a number. It has
19 the date marked on it, in this case 11-4 of 2000. It has a
20 service number, which is the service number for this murder
21 case; my name and initials as the person seizing and
22 delivering, and the items described, which in this case are
23 three cartridge cases, has the article name, brand is FC,
24 which means Federal Cartridge Company, and additional
25 description, caliber .38 auto.

1 It also contains one projectile. Brand, of course,
2 was unknown. I put in the comments, copper and lead
3 composition.

4 Q. And is that the package that you put the casings
5 that you found from the crime scene in when you packaged them
6 originally?

7 A. Yes, ma'am, it is.

8 Q. And can you tell that, like you said, by your
9 markings on the package itself?

10 A. This package doesn't contain any of my markings, and
11 it's been resealed, and it's possible that the underlying
12 package inside may be my package.

13 Q. Okay. Once you, like, get evidence from a crime
14 scene, take it back and package it in envelopes, what do you
15 generally -- do you then send it off for testing, usually?
16 How does that work?

17 A. Yes, ma'am, after we put the items in, we have
18 tape -- evidence tape. This is a piece of -- similar to what
19 we use. You put your initials, badge number and date on it.
20 This one doesn't have that. It's put on upside down. I
21 didn't seal this envelope, but all of them are sealed.
22 They're sent with our items additionally sealed inside and
23 itemized; one bag per item normally. And they are then
24 transported to SWIFS. There's a chain of custody form so that
25 only I handle it on our end and a SWIFS technician on theirs.

1 It's all itemized on the chain-of-custody form. Instead of
2 ripping our seal, normally they cut the bottom of the bag, and
3 then they'll put a red seal around that and do the same thing
4 we do; initial, date and time it.

5 Q. Detective Whitsitt, when you open -- well, let me
6 ask you about the evidence tag on the front. Is that the
7 evidence tag that you fill out so that you know what you
8 recover? You give it a number as far as when you recovered
9 it. What does that tell you?

10 A. Yes, ma'am. This is in my handwriting. It tells me
11 this is the firearms evidence that I recovered on the 4th of
12 November, 2000, from this crime scene location at 18663
13 Gibbons, and it's all in my handwriting.

14 Q. Can you open that package, and take out the
15 contents? Do you need scissors?

16 A. The inner envelope is the one that -- is the way
17 that I processed --

18 Q. Detective, let me interrupt for just a second. Let
19 me mark these as you're going through so that the record is
20 clear as to what you're talking about.

21 Okay. The first one that you have in your hand --

22 A. It came out of this one. This is going to be SWIFS.

23 Q. This is the one that you pulled out of State's
24 Exhibit 57, and I'm marking it State's Exhibit 57-A. And can
25 you identify that for us?

1 A. Yes, ma'am. This is the way I packaged this item to
2 be sent with SWIFS. It would have had this form on it, the
3 chain of custody, and this was the way that I sent it. That's
4 sealed, my initials, badge number, and the date that it was
5 sent or sealed, which was 11-5-2000, the evening -- or the day
6 after; SWIFS firearm section, and I put the service number on
7 the front.

8 Q. Is there anything that is different about that
9 package than from the time that you put the casings that you
10 found at the crime scene in that package?

11 A. Yes, ma'am. There's other writing reported on it,
12 and the red tape is not mine.

13 Q. Did you know where the red tape came from?

14 A. Yes, ma'am, I do.

15 Q. And where did it come from?

16 A. That's the way that SWIFS reseals the envelopes when
17 they cut them.

18 Q. Can you also open that package and take the contents
19 out? Do you need scissors?

20 A. Maybe.

21 Q. I have some scissors if you need them.

22 And inside are two smaller envelopes?

23 A. Yes, ma'am.

24 Q. And I'll mark them as 57-B --

25 MR. SCHULTZ: Excuse me, Jami. Would that help

1 you?

2 THE WITNESS: All right.

3 MR. SCHULTZ: Thanks, Judge.

4 THE COURT: Yes, sir.

5 Q. BY MS. LOWRY: -- and one 57-C. If you will, by
6 their exhibit numbers, identify those for me.

7 A. 157-B (sic) --

8 THE COURT: Say, are we talking about 57 or
9 157?

10 MS. LOWRY: 57.

11 A. 57 --

12 THE COURT: All right. Good.

13 A. -- B is marked in my handwriting evidence; one
14 projectile, Item 4 -- that's to coincide with my report, and
15 then on the other side my -- our tape, which is blue in color
16 with my initials. Again, the date, 11-5-2000, the date it was
17 sealed. And as I said, SWIFS traditionally cuts it open on
18 the opposite end, or somewhere away from ours, so it don't
19 blow -- break our seal, and then they've resealed it.

20 Q. And now 57-C?

21 A. 57-C is Evidence 3, FC. FC stands for Federal
22 Cartridge Company, .38 automatic cartridge cases; items 1, 2
23 and 3. That's in my writing and also sealed by me.

24 Q. If you could open both of those packages and
25 identify the contents of both of those.

1 right of the bed headboard near bathroom entry.

2 Q. And item number two?

3 A. Item number two is FC .38 auto cartridge case
4 recovered from between the middle, upper mattress and
5 headboard.

6 Q. And item number three?

7 A. Item number three is an FC .38 auto cartridge case
8 recovered from under the head of the deceased male in the bed
9 of the master bedroom.

10 Q. And if you would just put that one back in the
11 bigger envelope that it came in.

12 Now, all of these items, items one through four, are
13 they the -- the casings and the bullets that you picked up
14 from the crime scene on November 4th, 2000?

15 A. Yes, ma'am.

16 Q. And are they in same or similar form that they were
17 when you picked them up, other than -- aside from the testing
18 that's been done on them?

19 A. Yes, ma'am.

20 MS. LOWRY: Your Honor, at this time we would
21 offer State's Exhibits 57, 57-A, 57-B and 57-C.

22 THE COURT: All right.

23 (Brief pause in proceedings.)

24 MR. GOELLER: Briefly take the detective on
25 voir dire?

1 A. I've opened 57-B, which indicates that it contains
2 one projectile listed as Item 4 on my initial report, contains
3 the glycine bag that I described to you earlier with my
4 initials, badge number, the service number on this call, and a
5 description of where I recovered the item from.

6 Q. And where did you find that item?

7 A. Four. Projectile recovered on the floor/carpet in a
8 corner of the room by a potted plant.

9 Q. And that's also one that you took a picture of; is
10 that correct?

11 A. Yes, ma'am.

12 Q. Okay. And that is what is reflected in State's
13 Exhibit Number 18?

14 A. Yes, ma'am.

15 Q. Okay. If you would, just put that back in the
16 envelope, and open the next one.

17 A. The next item is State's Exhibit 57-C, which was the
18 three cartridge cases .38, and these two are in each --
19 packaged individually in glycine bag, my initials and badge
20 number, the case and items numbers 1, 2, and 3 indicated on
21 the item, and a description of where they were recovered from.

22 Q. Okay. Can you tell us where item number one was
23 recovered from?

24 A. Yes, ma'am. Number one, FC .38 auto cartridge case
25 recovered from the floor/carpet in the master bedroom to the

1 THE COURT: All right.

2 (No omissions.)

3 VOIR DIRE EXAMINATION

4 BY MR. GOELLER:

5 Q. Detective Whitsitt, am I pronouncing that correctly?

6 A. Yes, sir.

7 Q. Detective Whitsitt, do you have any idea who -- how
8 these got there, who fired the weapon, if a weapon was fired,
9 whether or not they were placed there, whether they ended up
10 there as a natural result of ejection from -- do you know any
11 of those things?

12 A. No, sir.

13 MR. GOELLER: Okay, thank you, sir. Well, then
14 I'd object on relevance, Your Honor.

15 THE COURT: Objection is overruled.

16 MR. GOELLER: Yes, sir.

17 THE COURT: And 57, 57-A, 57-B and 57-C are
18 admitted.

19 (Brief discussion off the record.)

20 THE COURT: I tell you what, Ladies and
21 Gentlemen, this is probably a good time to recess for the
22 day. It's a little bit after 5. I want to instruct you that
23 it is your duty not to converse among yourselves or with
24 anyone else on any subject connected with the trial or to form
25 or express any opinion thereon until the cause is finally

1 submitted to you. And let's get started at 9:00 tomorrow
2 morning.

3 THE BAILIFF: All rise.

4 (Jury exits the courtroom at 5:07 p.m.)

5 (End of Volume 31.)

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1 REPORTER'S CERTIFICATE
2 THE STATE OF TEXAS *

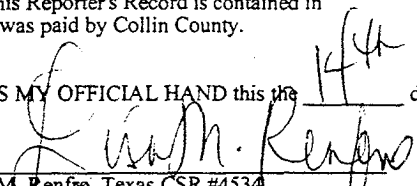
3 COUNTY OF COLLIN *

4
5 I, Lisa M. Renfro, Official Court Reporter in and
6 for the 380th District Court of Collin County, State of Texas,
7 do hereby certify that the above and foregoing contains a true
8 and correct transcription of all portions of evidence and
9 other proceedings requested in writing by counsel for the
10 parties to be included in this volume of the Reporter's
11 Record, in the above-styled and -numbered cause, all of which
12 occurred in open court or in chambers and were reported by me.

13
14 I further certify that this Reporter's Record of the
15 proceedings truly and correctly reflects the exhibits, if any,
16 offered by the respective parties.

17
18 I further certify that the total cost for the
19 preparation of this Reporter's Record is contained in
20 Volume 53 and was paid by Collin County.

21
22 WITNESS MY OFFICIAL HAND this the 14th day of
23 January, 2003.

24
25

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0	162 3:16	194:1,4,19,20	403 117:16 133:4	57-A 200:24	972/424-1460
00787450 2:4	166 3:18	195:4	183:12,16 189:4	204:21 205:17	207:21
08059260 2:12	168 3:19	26 178:5 190:5	189:12 191:21	57-B 201:24	98 61:8 66:5
09605050 2:13	17 175:3,5 176:8	193:2,7,24	192:16 193:5	203:1 204:21	99 37:8 48:11
	176/176 4:14	194:4,19,21	41 178:6 191:22	205:17	
	177 3:21	195:5	42 178:6 190:2,18	57-C 202:5,20,21	A
1	177/196 4:15,16	27 119:10,13,17	190:23 192:10	203:17 204:21	a-shift 107:24
1 28:23 30:21	17841800 2:3	180:13 181:8	423-4518 2:16	205:17	128:11
32:5.8 202:22	18 175:4,5,17	182:2 196:22	43 178:6 192:9	5th 67:4 102:2	A.D 9:23
203:20	176:1,8,11	28 178:5	44 180:13 181:8	108:2	a.m 1:10 6:8
1,500 37:23	203:13	29 3:25 17:15	182:2		59:14,17 93:21
1,600 21:9 37:23	180 174:4	60:24 178:5,24	45 180:13 181:8		107:24,24 108:1
1:15 93:14,19	180-degree	188:3,12,17	182:2		108:2 128:12,12
1:27 93:24	174:14	191:20	4534 1:16 207:18		128:16
10 3:9 108:23	18663 73:20 87:1	29/32 4:4,5,6,7,8	207:23	6	abandoned 35:22
110:24 111:7	111:3,4 120:20		46 178:6	6 3:6,7 82:10 83:7	abbreviate
112:3 127:23	130:1 171:15		4661 207:21	85:12 122:13	169:25
174:19	200:12	3	47 180:14 181:9	6.15 91:6	able 12:15 70:11
10/Rescue 108:23	19 176:24 177:5	3 3:2 29:23	182:2 192:9	6:00 122:13	108:10,17 131:2
10:00 69:19	177:10,23	202:21,23	48 178:6	6:45 152:13 154:6	134:11 172:14
10:15 23:24	180:13 181:8	203:20	49 178:6	171:24	abner 1:5 5:3
10:30 11:17 24:23	182:1 193:6	3:00 12:6	4th 9:25 12:7	60 3:13 83:4	9:24 10:23
170:12	194:20 196:22	3:30 165:5,17	15:25 28:3	615 91:13 92:8,18	about 7:6,16 9:25
10:45 59:14	196 3:19,22	3:45 165:22	29:18 30:5 67:4	62 3:13	12:6 13:2 14:3,6
100 53:8 55:3	1997 35:8	30 71:1 178:5	67:11,19 76:19	63 3:13	19:11 22:7
106 3:14		187:11 188:15	89:7 95:19		24:12 26:16
11 3:10 110:25	2	192:3	102:2 107:19	7	27:3 31:16 44:3
111:8,19 112:3	2 29:9 90:25	30's 41:23,24	108:1 111:13	7 18:10 86:11,21	44:12 45:3,16
112:14,19,23	202:22 203:20	31 1:1 3:3,12	127:18 128:7,16	86:23 107:24,24	48:9 49:15,18
131:6 160:12,13	2-by-2 198:1	178:5 182:12	137:7 169:19	108:1,2 112:6	50:3,5 51:13,19
174:25 182:13	2:30 170:12	207:23	170:19 171:7	128:12,12,16	53:20 54:9,21
11-4 198:19	20 102:24 178:5	32 3:12 178:5	176:5 177:6	7:00 24:11	55:1 56:11,19
11-5-2000 201:5	182:21 187:25	192:3	200:11 204:14	7:30 38:17	57:16,17,17
202:16	190:9	324 2:8		718 170:5	58:3,4,25,25
11:00 59:17	2000 10:1 11:15	33 3:12 178:5		75 40:14 170:6	59:2 61:18
11:15 12:24	14:25 16:1	34 178:6	5	75069 1:17 2:8	62:20 67:18
11:20 11:23	17:16,18 18:4	35 178:6	5 3:4 30:11,21	207:21	68:8 69:3 71:6
11:25 68:8	29:6 38:18	36 180:13 181:8	32:5 122:12,13	75075 2:16	73:6,10 76:16
11:30 27:25 76:16	60:25 61:2,12	182:2	205:22	7th 14:22 33:13	81:1 91:7 95:1
11:45 93:21	61:17 62:1	360-degree 174:4	5'7 41:19		96:5 97:3,4,17
112/112 4:10	65:11 66:20	366th 9:23	5:05 196:19	8	97:23 98:20
117/117 4:11	84:9 97:14	37 180:13 181:8	5:07 1:10 206:4	8 95:14 110:24	99:15,16,25
12 54:11 116:12	107:19 111:14	182:2 193:4	5:30 26:17	111:1 112:3,5,8	100:3,6,10
116:14 117:12	127:18 128:7,16	38 180:13 181:8	5:45 138:17 152:9	112:10,12,14,19	101:11 103:11
117:15,22	137:7 169:19	182:2 198:25	50 1:1 177:24	112:23 129:21	103:23,25
127:11 182:10	170:21 176:5	202:22 203:18	180:14 181:9,19	140:25 173:22	104:17 108:5,25
121 3:14	177:6 198:19	203:24 204:3,7	181:21 207:12	174:18 190:21	111:19 112:21
127 3:15	200:12 204:14	380-80047 5:2	500 22:19 23:18	8:00 37:1 40:14	114:18 115:15
13 51:10 116:12	2001 1:10 3:2	380-80047-00 1:2	23:20	800 20:5,6 21:2	121:16 122:14
116:22 117:6,12	9:23 84:7	380th 1:3,16	51 180:14 181:19	37:18,23 40:14	123:25 124:1,11
117:16,22	2002 207:16,23	207:5,19	181:21 192:15	83 3:13	124:17,18,19,22
133/133 4:12	204 3:22	39 180:13 181:8	52 178:6 179:9	850 21:3	124:22 125:8
136 3:16	205 3:19	182:2	191:7,8 194:23	86 3:14	128:21,25
14 51:10 132:20	207 3:24	3rd 1:10 11:14	53 180:14 181:9	86/86 4:9	136:20 138:12
133:2,8,10	21 180:13 181:8	12:25 15:25	182:2	875 21:2,3 43:20	138:13,17
141:1 182:8	182:2	17:16 18:4	54 180:14 181:9	46:2	140:12 143:3,11
190:1,22,23	210 1:17 2:8	38:17 67:21	181:10,11,13,14	88 3:13	144:12 146:15
144 3:16	207:20	68:11 84:7	191:7,8,18	8th 14:25 33:13	146:23 147:19
15 19:15 102:24	22 17:17 61:1		194:24		148:25 152:8,9
159:21 160:8,10	180:13 181:8	4	548-4323 2:9	9	152:11 153:1,13
160:14	182:2	4 30:10 122:14	548-4661 1:17	9 3:8 69:18	153:25 154:5,13
15,000 53:19	23 17:1 178:5	128:19 137:15	55 178:6 191:1	110:24 111:5	156:12 158:1
15-minute 165:5	188:1 190:9,13	202:14 203:2	56 176:24 177:5	112:3 113:6,7	160:1 165:3,9
157 202:9	190:14 194:7,8	4:00 71:8	177:10 178:1,6	174:19	165:10 171:22
157-B 202:7	194:8,15,18	4:06 177:18	190:12,13,14	9:00 12:2,4 206:1	174:17,17
159 3:16	24 128:14 168:20	4:30 185:7	193:2,7,7,18	9:22 1:10 6:8	177:16 187:10
15K 58:5	178:5 190:5	40 180:13 181:8	194:6,8,12,16	9:30 12:4 69:3,18	187:12,13 189:1
16 3:11,12 175:3	196:22	182:2 187:10,14	194:18,19,19,20	69:19	189:2,15,15
175:5,25 176:8	24012724 2:5	187:19	196:22	911 137:4,5,13	191:6 194:14
16,000 49:6	25 178:5 190:5	400 2:15,15	57 198:14 200:24	94 3:13	195:24 197:21
160/160 4:13	193:2,7,24	402 133:4 180:8	202:8,10,11	96 3:13 50:15	200:6,20 201:8
			204:21 205:17	97 35:7	
				972 1:17 2:9,16	

202:8	196:21	Alice 47:6,8	39:20 66:7 71:7	103:23,25	87:7,16,25 91:3
above 7:14	admitted 32:6	alive 11:21 25:5	71:11 77:18,22	109:25 110:5	114:1 117:1
141:13 191:24	86:24 112:24	115:1 117:8	78:19 80:8 82:2	114:20 118:19	129:13 138:1,2
194:12 207:6	117:23 133:8	142:2	83:1 84:8 86:7	118:20,22,23,24	157:25 170:7
above-entitled	160:10 174:16	alleged 47:3,5	88:15 95:1,3,8	123:25 128:3	194:14
1:11	175:22 176:12	allow 8:6 186:13	95:16	132:6 133:18	areas 119:1
above-styled	181:9,14,17	189:5	analysis 14:16,16	134:7,9,10	157:24 179:23
207:8	182:3,13 193:3	allowed 109:8	15:15	135:3 140:2	aren't 148:9
absolute 49:13	193:7 194:20	134:24	angle 181:1 188:2	149:23 150:4	192:10
absolutely 11:10	196:7 205:18	almost 79:2 85:16	188:3 190:10	151:10,17,23	argue 8:7 190:2
57:20,24 80:22	admonish 59:2	alone 117:1	192:13	153:18 155:2	argument 187:3
180:20 187:1	advance 174:13	137:22 171:8	angles 178:9	158:25 159:12	194:10
189:23	advise 56:5 57:12	along 113:22,23	Ann 47:6,8	160:21 161:1,10	arguments 9:15
abuse 58:16	affair 101:11	already 14:4	another 14:20	171:1 183:4,20	Arkansas 14:4,5
abused 99:11	affect 53:13 116:6	76:22 112:5	20:10 21:4	192:14,23 194:7	14:8,10
101:25	afraid 121:12	116:23 117:2	37:15,16 50:13	195:8,20 197:12	Arlington 17:3
academy 136:21	after 27:4 31:10	139:1,3 154:23	50:19 69:11,11	198:8 201:8	18:17 24:15,16
access 113:20	31:11,17 34:10	174:16 180:6	114:21,22 115:6	94:7 189:17	46:17 58:15
174:9	37:12 39:21	182:8,11,13	115:9,9 118:5	anyway 91:12	arm 15:20,21
accident 11:9	43:5 53:15	187:8,9,17	118:11 120:13	anywhere 96:12	65:1 113:5
accidents 128:3	63:20 64:1 68:3	188:24 190:1,4	139:1 154:7,24	119:11 142:7	around 28:8 44:9
accompanied	69:13,15,22,23	190:18	172:23 179:8	145:9 147:14	65:1 69:18
172:23	70:20,21 72:12	alterations 84:21	182:12 188:9	161:8	72:14,25 74:5,6
accurate 29:5,20	78:8 84:22	alternative 62:15	189:16 190:3,11	apartment 12:23	87:22 92:14
30:7,15,17	85:17 96:12	Although 183:12	191:2 192:9	13:20,21 14:12	108:22 109:4
86:17	98:6 102:21	always 65:1	193:25	14:12 15:5	110:10,19 111:7
accurately	103:12,17	195:16	answer 12:10	51:25 66:1,2	113:15 114:23
111:12,23 117:3	114:16 115:19	ambulance	25:21 53:17	98:10,11,12,25	115:4,6 118:11
132:22 141:5	116:5 117:24	127:24 128:6	56:15,24 57:13	103:1,2,9,10,12	119:8 122:12,13
160:4 176:4	119:3,3 120:4	ambulance-type	63:24 69:20,24	103:15,16,21	128:19 130:10
177:5	120:14 130:23	128:5	69:25 70:11,12	apartments	130:23,25 132:1
across 12:22	131:10,16	among 59:9 93:16	70:19 72:10,11	103:11 109:5	132:23 138:2
133:11,12	141:21 146:25	166:15 205:23	109:17 125:1	apparently 32:20	139:9 146:24
act 85:6 166:3	165:3,17 172:25	amongst 146:17	126:1 137:4	53:19 62:21	152:9 153:1
action 101:22	189:4 196:24	159:6	166:24	97:13 179:12	158:3 161:8
active 6:17	197:19 199:17	amount 148:20	answered 26:5	191:13,23	163:1 174:1
activity 97:10	201:6 205:22	178:18 185:3,7	113:20	appear 156:2	176:19,19 196:5
acts 121:9	afternoon 12:5,6	185:8	answering 108:23	161:17 194:8	200:3
actual 21:5	26:12 69:5,14	amounts 147:21	119:18 137:13	appearance 8:20	arranged 14:4,7
129:18 184:15	70:14 71:9	Amy 10:15,15	answers 97:14	140:14	arrangements
actually 18:18	122:11 128:19	11:5,13,15,23	Anthony 167:18	appeared 141:6	32:24 33:2 49:2
19:1 48:14	165:4	11:25 12:2,19	anybody 34:1,5,9	173:14	67:10 80:11,23
58:10 86:14	again 26:11 37:18	12:23 13:3,12	42:10 47:11	appreciate 54:24	81:10 102:5
88:6 98:15	39:17 43:13	13:18,22,24	89:18,20 119:7	195:7	124:1
113:5 114:1,13	54:15,19 83:13	14:5,7,18,18,25	122:20 142:4	approach 28:19	arrest 50:11 73:2
116:21 121:24	85:18,21 94:6	15:3,5,20 16:2	153:22,23 154:3	32:12 82:7 86:3	arrested 14:24
125:11,18 128:5	99:7 101:3	17:4,16,18	154:16 156:5	95:10 110:20	15:1 46:21
129:10,12	144:21 167:14	18:20 21:19	159:7 166:15	132:17 166:2	72:24
139:21,22 146:7	178:11,11,13	22:3,23 23:11	172:11 178:17	173:19	arrests 136:23
158:12 170:3	179:4,16,25	23:18 24:16	Anyhow 188:12	approached	149:14
180:16 182:23	182:1,7 187:16	26:8 27:3 28:5	anymore 120:18	108:5 129:10	arrival 139:17
184:2,4 185:22	187:25 188:1	29:2,3 32:24	anyone 7:4 19:19	130:15 133:23	arrive 120:6
additional 152:17	191:1 192:10,19	33:3 37:3 38:11	25:21 42:1 59:9	appropriate	138:23 146:25
198:24	202:16	41:7 48:15	68:23 71:22	143:17 144:3	152:19 154:19
additionally 85:7	against 10:18	57:18 60:22,25	81:2 93:16	approve 53:5	171:25
199:22	49:7 99:19	61:2,11,20 63:4	119:1 124:11	approximate	arrived 34:10
additions 84:21	120:3 143:6,21	63:11,14 64:4,6	130:20 133:21	99:14 102:20	39:21 111:13,24
address 38:22	Agitated 121:13	64:14,25 65:2,6	133:25 134:17	approximately	138:15,19 139:6
73:18,19 87:1	ago 37:22 49:19	65:20 66:15	134:24 139:14	11:17,23 12:24	139:11 143:2,4
96:8 117:13	55:9 58:3	67:10,17,22	142:1,7,23	14:9,21 18:10	144:16 145:3,5
121:23,24	156:10	68:13 69:1,13	151:4 172:8	19:15 20:4 21:2	145:7 146:2,8
127:16 129:18	agree 91:9 163:10	69:15,16 70:6	205:24	21:9 23:22	146:12 151:2
129:25 137:17	163:11 194:16	76:8,21 77:11	anyone's 73:14	24:21 26:1	152:11 154:18
addressed 5:13	agreement	79:10,18 80:11	anything 5:7 15:5	27:25 37:1	171:14,23 172:8
159:1	104:22	81:8,11 82:22	20:12 28:9,16	51:10 68:6,8,14	172:25 176:5
administer 6:11	ahead 27:8 32:21	83:14 103:20	31:16 42:9	71:8 76:16	177:6
administration	57:13 59:2	104:3 186:15,20	49:15 50:3,5,9	98:12 102:24	arriving 143:12
6:17	94:11 188:10	Amy's 11:15,22	50:20 63:16	136:15 138:15	146:4 151:24
admissible 92:6	196:22	12:11 22:8,10	77:15 78:8 85:4	169:11 171:19	article 198:23
admission 3:21	airport 15:2,3	25:8 26:20	90:10 91:22	171:24	articles 7:6
admit 163:17	alarm 107:11	28:17 29:12	93:4 102:13	area 12:12 79:17	ascertained

185:17 aside 204:17 asked 24:8 42:10 55:7 56:25 58:10 62:20 70:23 72:14 73:5,17 74:2,24 75:2 76:7 94:25 95:3 99:15 108:14 115:7 121:22 154:13 asking 27:5 33:11 34:6 48:23 76:7 95:6 108:25 150:19 154:17 158:10 190:19 192:7 asleep 73:24 76:5 assault 63:17 assigned 127:23 136:25 137:1 168:21 170:19 171:2 assignment 107:4 127:21,23,25 137:12 157:24 168:13,14 169:1 assignments 137:11 assist 139:25 153:10 assistance 90:3 Assistant 2:7 ASSOCIATES 2:15 assume 44:1 152:11 180:12 assumed 83:24 attached 118:19 attack 109:12 119:12 attacks 128:3 attempting 10:5 10:10 attention 73:9,14 108:3 128:18 129:21 140:25 141:17 158:19 160:12 attitude 8:20 attorney 51:5 Attorney's 96:17 attorneys 2:2,7 2:11 8:3 34:9 106:2 126:14 166:16 augmentation 97:22 101:5 Austin 169:15 authenticity 85:18,20 author 91:19 92:3 authored 92:7 authority 9:21 authorization 91:23 auto 198:25 203:24 204:3,7 automatic 107:10 202:22 Automotive	16:24 autopsy 15:17 179:25 available 135:19 193:15 195:6 Avenue 18:12 awake 12:2 aware 62:7 64:14 68:23 121:25 away 12:22 138:12 173:5 202:18 B B 202:13 baby 74:22 back 7:16 13:20 14:21 15:2,22 17:18 24:15 26:8 28:24 29:3 29:6 31:9 43:19 46:1 47:13 50:6 55:4 59:1 68:1 71:25 72:1,2,6,8 72:19,22,22 73:1,12,25 74:5 74:6 76:5 88:14 88:17 93:14,19 94:10,25 97:14 102:22 107:19 109:22,23 110:3 110:4 111:5 113:21 114:6,15 114:15,19 115:5 115:21,22 116:2 118:6,16,25 119:5,6 120:7 120:11,11 125:6 127:18 130:24 131:1,1,23 133:11,17 134:3 134:6,9,15,17 135:2,17,18 137:7 139:9,21 139:23 140:3 141:12,21,21 152:4 153:6,18 154:12 157:14 159:24 160:12 160:19,19 164:22 165:5 170:21 174:20 199:14 203:15 204:10 backed 142:25 161:12 background 68:16 backup 120:13 197:5 bad 58:11 99:4 146:18 badge 172:3 198:4 199:19 201:4 203:4,19 bag 13:15 198:1,3 198:6,9 199:23 200:2 203:3,19 bags 198:10 Bahamas 61:21 bailiff 6:7 7:1	59:13,16 93:20 93:23 165:6,21 177:17 196:18 206:3 balance 147:24 149:18 balancing 183:17 189:4,12 192:20 194:23 banging 122:20 bar 38:1 44:13 87:16,18 barged 132:24 barking 71:15 79:8 barrel 15:16 barry 3:17 135:22 136:5,12 barstools 87:18 based 189:11 194:10 basic 136:22,23 169:1,9,11,12 171:3 172:23 basically 118:3 128:4 134:16,16 140:2,9 141:24 142:2,24 143:1 148:5,7 150:12 150:17 151:7 152:10,15 156:16 161:23 175:8 183:25 basis 77:25 189:7 bathroom 118:6 118:9,18 132:14 150:13 161:11 164:9 204:1 bathrooms 118:7 bathtubs 118:7 beat 54:7 58:11 64:11 beating 56:8 became 6:16 become 115:12 115:24 136:19 bed 12:17 80:4 88:6,9 110:1 111:11,20 114:2 114:3,4,17,23 114:25 115:3 116:13 118:6,11 123:9 131:5 132:15 133:24 140:7,8 142:10 142:13 155:11 155:12,16 160:14 161:8,18 161:21 173:17 178:25 179:4 182:10 185:3,8 185:12,13,22 189:16,17 190:15,16 191:6 191:24 197:20 204:1,8 Bedford 60:12 bedpost 194:12 bedroom 12:16 12:17 88:4,5,8 88:10,11,14,15	110:14,15 111:8 111:10 118:19 118:20 131:4,4 131:19 139:23 140:3,5,9,22 141:6,11,11,22 142:10 150:13 150:20 155:9,10 155:19 159:24 160:2,4,14,19 160:24 161:15 162:14 163:24 164:5,9 173:16 173:18,18,18 174:6,11,13 175:1,6 178:3 186:15 187:18 203:25 204:9 bedrooms 88:3 103:15 beds 116:1,22,23 116:25 before 1:11 5:8 8:7 13:9 27:6 28:12 37:13 40:17 55:15 69:4 75:8 76:14 82:13 84:21 85:17 92:24 93:2,15 94:25 102:24 109:6 111:17 117:21 119:16 122:12 125:10 143:3 144:23,25 145:3 145:5,7 146:8 155:18 158:22 159:5 171:1 180:6 182:8,13 187:5,8,17 188:24 began 105:10 197:18 begin 12:3 156:25 176:18 beginning 62:5 72:17,20 99:21 begins 118:25 134:3 behalf 5:11 behavior 8:20 behind 45:1 116:20 118:15 131:17 161:24 175:19 being 19:4 36:7 41:4 43:1,20 46:4 57:15 65:2 96:6 99:11 100:17 101:25 103:25 104:9 107:15 115:13 118:18,23 123:1 124:22 127:12 128:21 129:13 131:2 156:19 158:20 159:8 162:15,18 178:19 180:9 185:7 188:19 192:17,17 193:3	195:22,23,24 belief 180:10 believe 5:22 71:24 73:11 74:7 76:16 97:2 97:3 102:4,18 105:6 108:11 119:9 120:16,16 122:10 129:6,20 131:11,14 133:4 133:25 139:13 139:20,23 160:25 161:20 171:10,19 187:13 194:6 195:2 believed 140:18 believes 182:15 bench 165:10 166:2 benefit 191:12 bernadine 3:14 11:22 59:20 60:3,9 96:23 167:15 beside 140:8,8 besides 147:18 162:23 best 24:14 100:11 113:12 151:11 181:4 bet 149:13 188:16 better 53:11 125:8 165:11 175:23 198:5 between 15:25 45:7 62:21 64:2 69:19 98:2 104:17 105:14 113:25 204:4 beyond 15:24 118:6 194:12 big 44:12 157:9 161:24 bigger 204:11 bill 2:3 9:20 bit 37:13 38:3 41:5 52:6 53:3 54:9 58:4 70:24 93:12 100:10 107:7 116:19 122:21 140:24 142:12 147:4 152:20 162:25 163:6 205:22 black 21:20 30:19 30:19 31:22 39:11,17 89:10 142:15 blanket 91:23 116:15 bleeding 185:8 blind 113:25 blinds 72:1 113:3 113:24 blood 13:2,2,3 14:16,17,18 15:15 115:20,20 115:22 116:9,19 116:24 155:24 161:3 178:18,22	178:22 179:1,4 179:12 185:3,3 185:7,13,17,20 185:20,21 186:1 186:2 187:9,21 187:25 190:15 191:13,23 193:22 194:11 194:13 195:22 197:13 198:8,9 198:12 blood-soaked 186:24 blood-stained 187:5 198:10 bloody 14:13,13 14:14,15 188:22 189:16,17 blow 202:19 blue 202:15 bodies 12:19 13:11,13 115:21 117:18 140:6,22 150:3 151:4 156:2 178:4,21 187:9,18,19 188:24 192:16 195:22 197:19 body 114:16,21 115:23 116:18 118:3 132:8 134:5 161:17 179:11,12 182:14 184:24 187:14,25 188:3 191:12 Boettcher 12:23 13:12,18,23 14:25 Boettcher's 14:5 14:7 book 20:14 37:14 books 7:11 both 10:16 15:19 25:14 72:12 81:8 82:18 131:18 148:8 169:13 202:24 202:25 bottom 200:2 bought 105:7 bound 110:16 box 14:19 141:19 185:15 boxers 161:19 boxes 149:22 bracelet 13:21 Brady 90:25 91:20,24 brand 48:22 198:23 199:1 159:3 break 71:20 74:2 94:25 108:19 109:6 123:4 145:17 165:4 202:19 breakage 74:13 breakfast 123:18 123:22 129:3
--	--	--	--	--	--

breaking 109:4 125:3	103:2 106:7 107:10 109:10 109:18 117:25 120:1 126:9,10 130:4,19 135:10 135:12,14,22 137:16,19 138:5 138:7,8,10,14 138:21 140:12 140:13 143:7,14 144:3 154:5 155:15 156:22 157:24 158:23 164:25 165:12 170:4,9,17,17 170:20,21 171:14 179:18 179:23 203:4	173:1 Cantregal 170:5 cantu 1:5 5:3 9:24 10:23 11:11 16:1 33:17 65:18 66:4 79:3 81:24 capacity 128:8 CAPRS 120:3 143:6 144:16 car 14:18 21:19 21:21 23:11 29:12 31:14 42:11 46:15 48:10,23 72:19 72:22 73:24 74:1,10 78:14 78:16 101:12 137:23,25 138:8 149:15 care 149:14 career 164:10 careful 44:9 114:19 carefully 7:15 Carillo 145:25,25 167:9 carried 78:2,4 carry 144:6 carrying 44:9 cars 31:9 75:21 cartridge 185:14 185:19 198:23 198:24 202:22 202:22 203:18 203:24 204:3,7 case 6:20,22,25 7:2,9,10,20 8:21 9:8 32:18 34:2 46:24 47:1,4,11 50:6 51:5 89:3 110:10 121:17 121:20 123:3 135:14 156:6,17 162:3 165:25 170:18 172:22 178:13 185:14 188:25,25 191:11 192:22 197:13 198:4,19 198:21,22 203:20,24 204:3 204:7 cases 198:23 202:22 203:18 cash 20:1,3,4,20 21:10 23:16 36:25 37:18,20 37:22,24 38:6 40:14 41:13 42:16 43:12,15 43:20 44:9,12 45:3 46:2 47:14 47:23 48:16,21 49:6,9 53:19 54:10 78:10,21 cash-wise 53:22 casing 161:11 185:19 197:25 casings 197:18,21 199:4 201:9	204:13 cat 107:12 catch 170:13 categorizes 119:15 caught 141:17 cause 1:2,11 5:2 10:2,7,12,14 59:11 93:18 119:17 179:23 180:5 205:25 207:8 caused 62:4 184:4 causes 11:9 119:13 ceiling 185:21 191:25 192:1 celebrate 66:16 cell 13:15 70:3,5 70:6 73:7 82:19 82:25 center 185:12 194:13 Central 74:25 137:1 Cert 207:23 certain 81:1,17 96:18 102:21 115:19 148:20 certainly 57:12 80:22 91:10 162:2 180:5 186:3 195:21 certificate 3:24 207:1 certified 136:16 136:19 168:16 certify 207:6,9,11 chain 199:24 201:3 chain-of-custody 200:1 chair 141:16 chairs 161:24 chambers 207:8 chance 151:11 163:14 191:15 change 50:3,5,9 112:17 changed 25:17 charge 9:15 50:16 50:21 charged 50:20,23 charges 51:12 Charles 1:12 check 15:3 20:2 52:7 71:25 108:13 110:4 116:4 125:16 132:11 checked 102:22 checking 130:23 chew 145:19 child 121:17 children 17:6 41:25 60:19,21 121:10,11,17 Chisholm 2:15 choose 7:18 Christmas 66:8 66:11,16	Christmastime 66:5 chrome 147:20 CHRONOLOGI... 3:1 Chrysler 49:5 church 66:10 circle 194:13 ciszewski 3:15 114:23 118:1,10 118:10 126:11 126:23 127:5,15 city 17:2 18:13 60:15 62:24 136:22,24 158:19 clarification 193:18 class 136:21 classes 169:6 clean 186:13 cleaning 73:4 clear 151:3 200:20 cleared 146:25 156:6 clearly 6:18 click 192:12 client 5:11 10:21 Cliff 22:1 35:21 37:16 38:21 close 15:19 21:7 61:5 158:19 161:7 close-up 175:11 175:18 178:9 closed 71:25 72:2 closer 152:4 175:16 192:12 closest 12:10 closet 150:15,20 151:1 163:24 closets 150:13,14 151:5 163:22 164:9 closing 9:15 clothes 141:16 150:25 186:1 club 13:9 clubs 13:6,25 cocaine 147:21 Cocker 79:13 Code 136:21,22 coffee 145:19 163:9,25 coin 164:12 coincide 202:14 Coit 98:9,15 103:1,2 cold 24:13,14 collar 46:12 collect 20:9 169:1 197:10,21 collected 191:14 197:16 collecting 36:21 40:18 169:2 197:9 collin 1:5,12 2:7 9:21 120:21 130:2 143:23	179:22 207:3,5 207:12,19,20 color 147:20 202:15 come 12:13 13:1 24:12 26:23,24 36:20 55:8 59:1 75:6 93:14,19 106:2 107:6,8 108:1 109:12 110:17 111:9 114:19 115:7 120:16 128:15 129:10 131:16 137:4 140:19 142:24 143:9 148:11,11 152:3 153:17 155:1 158:4 163:11 164:22 165:5,25 168:1 170:9 171:11 176:18 201:15 comes 41:3,11 45:6 53:19 74:16 130:7 170:17 comfortable 100:13 101:11 comforter 142:13 142:13 155:9,12 155:16 160:13 comfortor 116:16 coming 18:16 54:10 71:18 119:7 128:24 176:19 193:22 comment 43:6 comments 199:2 commit 10:5,10 committed 10:16 committing 10:5 10:10 184:14 common 67:7 85:8 163:2 communicate 6:22 communication 100:2,11 community 105:4 company 65:14 107:18 198:24 202:22 complainant 44:23 45:25 complainant's 197:8 complaint 91:20 completely 180:21 complex 98:25 composition 199:3 computer 88:12 Computer-Assisted 1:14 Computerized 1:13 concern 8:8 62:4 108:5 124:11,17 124:18,18
C					
C 1:1 2:1 5:1 C-I-S-Z-E-W-S-... 127:7 cage 79:23 cage-like 79:16 Cain 47:6,8 caliber 198:25 call 12:1,5 16:7 25:11,24 50:17 52:8,10,11,19 54:5 55:4,12,15 55:17 59:18 68:1 69:3,18 70:13,18 72:15 73:23 75:11,13 75:14 85:8 94:6 99:2,8 102:3,6,7	53:23 58:5 72:2 72:14,21,22 74:1,19,20 75:19 82:13 84:22 87:14 108:8 113:17,19 113:23 116:14 118:3,13 120:13 120:13 121:18 125:6,8 129:4 134:14 137:20 138:10 145:22 154:12 161:22 200:22 201:13 204:11 camera 91:21 93:5 171:6	cases 198:23 202:22 203:18 cash 20:1,3,4,20 21:10 23:16 36:25 37:18,20 37:22,24 38:6 40:14 41:13 42:16 43:12,15 43:20 44:9,12 45:3 46:2 47:14 47:23 48:16,21 49:6,9 53:19 54:10 78:10,21 cash-wise 53:22 casing 161:11 185:19 197:25 casings 197:18,21 199:4 201:9	changed 25:17 charge 9:15 50:16 50:21 charged 50:20,23 charges 51:12 Charles 1:12 check 15:3 20:2 52:7 71:25 108:13 110:4 116:4 125:16 132:11 checked 102:22 checking 130:23 chew 145:19 child 121:17 children 17:6 41:25 60:19,21 121:10,11,17 Chisholm 2:15 choose 7:18 Christmas 66:8 66:11,16	179:22 207:3,5 207:12,19,20 color 147:20 202:15 come 12:13 13:1 24:12 26:23,24 36:20 55:8 59:1 75:6 93:14,19 106:2 107:6,8 108:1 109:12 110:17 111:9 114:19 115:7 120:16 128:15 129:10 131:16 137:4 140:19 142:24 143:9 148:11,11 152:3 153:17 155:1 158:4 163:11 164:22 165:5,25 168:1 170:9 171:11 176:18 201:15 comes 41:3,11 45:6 53:19 74:16 130:7 170:17 comfortable 100:13 101:11 comforter 142:13 142:13 155:9,12 155:16 160:13 comfortor 116:16 coming 18:16 54:10 71:18 119:7 128:24 176:19 193:22 comment 43:6 comments 199:2 commit 10:5,10 committed 10:16 committing 10:5 10:10 184:14 common 67:7 85:8 163:2 communicate 6:22 communication 100:2,11 community 105:4 company 65:14 107:18 198:24 202:22 complainant 44:23 45:25 complainant's 197:8 complaint 91:20 completely 180:21 complex 98:25 composition 199:3 computer 88:12 Computer-Assisted 1:14 Computerized 1:13 concern 8:8 62:4 108:5 124:11,17 124:18,18	

concerned 44:11 70:16 97:20 100:19 114:18 156:1 concerning 91:9 concerns 97:17 99:15 100:3,25 101:6 124:22 conclusion 9:13 conditions 140:9 condolence 54:18 54:20 conduct 34:25 35:6 46:9 47:1,4 50:11 51:2 99:23 172:4 183:16 192:20 conducts 189:4 conference 161:22 Conference-room 157:10 confined 149:25 connected 59:10 93:17 205:24 connection 34:1 50:6 89:18 consider 7:23 8:9 8:12,19 consideration 193:5 considered 193:3 considering 8:18 consist 7:23 151:5 consisted 151:8 consists 136:20 construction 41:7 contact 6:25 7:1 62:13 108:10 139:6 151:13 156:4 170:22 171:21 172:2 contacted 108:22 115:10 143:22 143:23 contain 199:10 contained 14:20 30:13 85:18 91:22 92:5,11 161:14 207:12 containers 149:22 151:6,17 contains 199:1 203:1,2 207:6 contaminated 173:9 contemporaneous 92:22 contemporaneou... 92:10 contention 178:14 contents 104:17 104:20 200:15 201:18 202:25 contested 191:10 contesting 133:6 179:16 184:3 continue 70:13 174:13 continued 12:4	contraband 149:19 162:20 162:23 163:2 control 143:14 144:17,18 152:17 153:10 controversy 180:1 192:22 conversation 45:7 56:18 153:20,20 153:21 conversations 56:10 98:19 converse 59:9 93:16 205:23 convertible 21:20 30:19 copper 199:2 corner 110:19 175:6,19 203:8 corporal 144:7,8 167:10 correct 22:10 27:22 28:7 31:4 31:17 35:18,23 36:2,4 53:7 54:3 58:2 64:7 80:17 80:20 82:14 83:4 87:2,3 97:7 97:12 98:3,4,6 101:15 105:5 118:4 131:22 135:1 145:4 162:1 164:23 172:17 175:2 176:15,21,22 180:15 203:10 207:6 corrected 149:8 correctly 54:2 89:9,23 97:2 205:5 207:10 correspond 82:21 correspondent 60:11 corroborate 185:5,5,8,11 corvette 11:19 13:19 14:1,11 21:20 24:19 28:10,11,16 30:14,18 31:23 31:25 77:20 78:23 cosmetic 100:20 cost 48:22 207:11 couch 15:9 counsel 11:2 207:7 country 57:7 county 1:5,12 2:7 9:22,23 10:1 35:4,5 46:11,13 120:21 130:2 143:23 179:22 207:3,5,12,19 207:20 couple 27:5 34:16 41:7 87:20 90:15 94:3 course 10:4,9	28:15 73:24 115:21 169:22 175:15 197:12 197:19 199:1 court 1:2,3,16,16 3:6,8 5:2,5,7,13 5:14,15,17,21 5:24 6:1,3,5,9 6:13,14,16 9:23 9:24 10:20,24 11:2 16:3,6,9,11 16:12 28:21 30:24 32:5,9,11 32:14,16,17,20 33:22 34:15,18 35:13 40:21 56:3,5,14,17,22 56:24 57:2,6,12 58:20,23 59:18 59:21,23,24 62:17 63:2,24 81:3 82:8 83:10 85:7,14,24 86:5 86:23 87:21 88:21 91:6,16 91:21,24 92:18 93:1,8,11,25 94:11,15,17 95:12 96:1 105:21,24 106:2 106:5,6,10,13 106:15,16 110:22 112:6,9 112:13,19,23 113:14 117:13 117:14,21,22 120:25 126:5,7 126:12,14,17,18 126:19,20 132:18 133:7 135:6,9,13,18 135:21,24,25 136:1 143:25 145:20 148:17 157:21 160:10 162:8 164:19,21 164:25 165:2,8 165:11,16,19,23 166:3,6,8,11,12 166:20,24 167:1 167:3,6,13,22 167:25 173:20 175:25 176:3,9 176:11 177:11 177:15,19,21,22 178:11 179:20 180:12,19,24 181:2,5,7,13,18 181:23,25 182:16,20,24 183:3,8,16,18 183:20,24 186:7 186:20 187:17 187:22 188:5,8 188:19,24 189:3 189:4,13,21,24 190:2,5,7,13,17 190:19,25 191:3 191:8,24 192:1 192:14,20,23 193:1,13,15,20	193:23 194:2,6 194:16,23,25 195:7 196:1,4,7 196:11,16,20,21 202:4,8,12 204:22 205:1,15 205:17,20 207:5 207:5,8,19,19 Court's 3:7 6:20 9:14 courthouse 2:7 7:13 207:20 courtroom 6:8 7:11 8:7 32:18 59:3,14,17 93:21,24 126:13 165:7,22,24 166:14 177:18 196:19 206:4 cousin 11:12 16:1 cover 152:17 155:13 covered 150:17 179:1 covering 116:17 crack 12:16 162:25 credibility 8:16 9:2 crew 129:8 crime 114:15,20 120:1 132:4,10 134:11 142:23 145:22 159:9 161:15 162:15 162:18 169:2,3 169:9 170:10,14 171:3,25 172:12 172:21 173:5,6 173:9 174:12 177:6 184:14 196:25 197:6,11 197:15,22 199:5 199:13 200:12 201:10 204:14 Crimes 120:3 143:6,21 criminal 2:7 10:17 critical 123:1 crooked 13:8 Cross 3:12,19,22 cross-examination 33:23 88:23 121:2 144:1 178:15 cross-examine 9:6,10 189:6 crowd 143:14 152:17 153:10 crowds 144:18 crying 55:13 74:19 CSR 1:16 207:18 207:23 cumulative 178:12 180:9,20 191:2,3 192:10 193:2 cure 91:20 curiosity 123:8	162:12 current 168:12 168:14 currently 170:12 cushion 15:10 custody 46:17 199:24 201:3 customary 171:11 customer 73:6 cut 200:2 201:17 cuts 202:17 D D 1:1 5:1 DA's 89:21,25 156:5 dad 11:16 76:6 77:2 Dallas 11:16 12:12 15:7 17:20 18:14 34:13 35:5 36:18 46:13,13 46:14,14,16,21 52:24 61:3,6 70:24,25 96:10 96:25 107:2,3 119:10,14 127:6 127:9,10,19 135:17,18 136:13,14,22,24 137:8 161:23 168:10,15,18 169:22 170:6,7 172:23 198:18 damaged 132:4 danger 183:14 dangers 142:23 147:1 dark 146:13 darn 163:17 data 84:13,20,20 85:2,2,18,21,22 date 33:11,12 125:7,7 198:19 199:19 200:4 201:4 202:16,16 dates 90:13,14 99:14 dating 64:7 97:4 daughter 11:21 11:25 18:6 19:17 25:4 49:6 51:17 52:16 53:6 54:7 55:2,5 56:8 58:9 62:22 65:4 67:2 74:22 77:24 83:17 97:4,11,21 98:3 98:9,17,20,24 99:11,25 100:9 101:10,24 103:3 104:12 105:8,17 108:5,10,15 114:18 115:11 121:20 122:4,7 124:12 129:1 daughter's 73:14 121:22,23 david 3:16 114:23	118:10,15 119:5 126:11,23 127:5 127:7,17 dawned 114:16 day 1:10 9:25 11:5,24 12:3 14:3,24 22:8 25:7 26:3,6,7,9 33:11,12,15 63:4 71:23 81:6 81:17 107:22 118:14 123:19 129:2 137:14 151:23 156:6 158:22 170:11 201:5 205:22 207:15 days 33:9 80:7,15 81:1 109:16 dead 12:19 13:10 115:2,2,19 116:5 117:9,17 137:20 142:2 153:13 179:17 180:7 187:19 deadly 34:25 35:6 46:9 47:1,4 50:11 51:1 99:22 deal 128:5 146:18 155:23 160:20 160:24 164:12 179:3 dealer 40:23 58:1 dealings 105:16 dealt 158:20 164:10 death 3:5 5:12 10:2,7,12,14 119:18 179:23 180:5 184:4 deceased 74:18 111:10,20 115:11 116:10 117:2,21 119:11 119:13 124:23 133:6 152:6 153:22 158:5 178:14,17 180:1 182:9,10,12 183:16 186:15 190:16 191:6 192:21 204:8 December 207:23 decide 8:17 decided 18:16 70:21 101:4 110:16 151:7 decision 189:19 declare 3:5 5:12 defendant 2:11 3:9,11 8:22 9:9 9:25 10:4,9 12:21 13:21 14:7,21,24 15:5 15:10 16:1 33:17 65:18,20 66:3,13,15,18 81:24 186:4 defendant's 3:4 5:11 14:11,23
--	---	---	--	---	--

15:13 65:21 186:1 defense 5:5 9:4,6 9:8,10,11,13 11:2 91:23 183:5 degree 9:1 degrees 174:11 deletions 84:21 deliberate 7:3 9:16 deliberation 157:14 delivering 198:22 Della 139:4,7,10 139:15,18,22 140:5 141:21 143:15 144:22 144:22 demeanor 121:7 121:10 demise 105:17 denied 5:15 denies 189:6 denigrates 198:12 department 12:10,11,13,14 15:7 27:15 46:14 96:10 102:19 107:2,3 119:14 127:6,9 127:10,19 130:18 131:20 134:18,25 137:8 138:22,23,24 139:9,12,16,19 139:21 146:4 161:23 168:11 168:15,19 169:23 170:3 185:6 198:18 dependent 115:4 115:17 116:3,8 depending 138:7 138:8 174:5 183:6 depict 111:12,23 132:22 141:5 160:4 176:4 177:5 depiction 29:5,20 30:7,17 86:17 deposit 37:12 40:9 depositions 7:25 describe 64:14,18 107:7 108:7 112:25 136:18 160:16 168:24 169:8 175:8 198:2 described 48:2 172:21 198:22 203:3 describing 117:7 174:23 175:1 description 4:3 198:5,6,25 203:5,21 deserves 9:2 desk 88:13	151:16 detail 37:22 158:23 159:5 170:11,13 detailed 173:2 details 102:8 detective 34:13 36:18 38:9,13 38:16 39:6,9,10 39:13,18,22 40:1 43:1,18 44:3,5,12 46:4,8 46:11 49:13,16 89:9 90:24 92:13,15 96:14 102:4 140:13 142:20 143:22 144:4 145:22 167:8,18,20,24 167:25 168:10 168:12 170:18 172:23,25 173:2 175:21 176:23 187:1 189:1 190:11 192:4 195:19 196:24 197:4 200:5,18 204:24 205:5,7 detective's 43:24 detectives 34:5 46:23 96:25 97:9 105:7 120:4 140:10 143:2,3,7 144:16 145:3,9 146:25 147:3 152:11 153:5,9 154:4,12,19 155:4 157:2 161:13 172:24 178:20 187:10 187:12 determination 115:3 determine 8:15 117:8 121:19 186:5 developed 159:8 diagram 86:11,11 86:25 112:6,7 dictionaries 7:12 die 11:8,9 died 11:9 different 48:2 62:10 155:20 163:20 171:12 175:8 178:9 181:1,3 184:19 184:24 185:21 188:2,9 190:10 192:13 201:8 digital 147:22 dignity 10:18 dilapidated 36:9 Dillard's 104:6 dining 87:6 dinner 11:15,16 11:17 18:6 21:18 23:23 25:2,14 31:10 31:11,17 38:14	67:14 68:3 122:12,13 dire 3:12,19,22 30:23 31:1 62:16,17,18 83:9,11 204:25 205:3 direct 3:12,19,22 16:19 60:6 106:21 108:3 127:1 128:18 129:21 136:8 140:25 160:11 168:7 directly 121:4 178:16 184:15 disagree 7:16 92:14 186:8 disarray 77:19 118:20 discharged 7:4 discover 140:4 discovered 140:6 153:7 175:18 178:4 discrete 196:12 discuss 6:20 7:2,7 100:3 152:21,24 166:15,16 discussed 84:3 discussion 22:7 23:25 32:15 97:23 106:4 126:16 205:19 discussions 104:16 disheveled 173:17 disingenuous 187:4 dismissed 50:20 dispatch 129:7,14 dispatched 129:9 dispatcher 108:22 119:10 119:21 displayed 195:11 195:16,25 displaying 175:21 dispute 55:9 117:20 disputing 117:16 117:17 disregard 8:10 56:4,5 distance 175:11 175:13 distinctly 133:16 distraught 77:9 district 1:3,16 2:7 9:23 34:9 96:16 207:5,19 disturb 134:10 142:24 150:4 divide 104:20 divisions 137:2 157:24 divorce 99:21 divorced 22:10 60:17 DNA 14:15,16 15:14	doctors 115:18 document 92:4 92:22 documentation 90:8 documents 8:1 dog 71:15 79:8,10 79:12,14,19,21 79:25 87:14 141:18 doing 16:25 26:24 26:24 41:8 60:13 73:2 75:21 137:5 150:22 151:1 154:13 158:21 164:2 173:8 174:2 197:4,5 dollars 20:5,7 21:2,3,10 22:19 23:18,20 40:14 43:20 46:2 domestic 98:2 don 2:13 89:1 167:20 donald 3:20,23 168:4,10 done 23:22 24:3 41:5 154:21 156:21 165:15 184:16 197:10 204:18 door 12:8 21:8 37:11,14 40:6 43:3,7,9 45:8,25 47:15,20,21 71:13,18,22,25 72:6,6,8,21 79:7 87:4,6,11 88:17 102:22,22 103:25 109:12 109:21,21,22,23 109:24 110:4,4 110:17,18,19 111:1,5,7,8,9,18 113:19,20,21,24 113:25 114:5,12 119:6 122:20 123:4 129:5 130:7,8,8,8,15 130:23 131:3,10 131:16 134:14 139:21 141:12 151:22,22,25 164:1 172:10 173:14 door's 131:18 doorbell 71:14 109:22 130:7 doorknobs 110:4 doors 12:9,9,15 71:19 72:12,12 103:15,23 130:10 doorway 161:11 174:20 dope 36:21 40:18 40:22 58:1 146:18 148:4 158:20 162:23 163:2,10 164:2	164:14 dopers 164:10,11 double 33:4 80:13 doubt 15:24 182:14 down 11:16 16:12 36:20 37:2 41:9 43:15 44:6 45:1 46:4 49:6 58:23 59:24 72:22,22 90:24 91:18 92:1 105:24 112:13 113:2,4 115:23 116:1,25 120:15 122:17 122:19 126:7,20 132:16 135:9 136:1 140:8 146:18 154:6 158:17 161:22 164:19 166:12 177:16 179:13 182:22 185:11 187:3 195:25 199:20 downtown 170:7 dozen 188:16 DPD 46:15,15 Dr 15:17 179:19 180:2 drawer 147:7,9 163:6,15,18 drawers 147:3 151:6,10 163:10 164:4 Drawing 4:9 drawn 12:9 86:16 113:24 dressed 55:10 dresser 77:19 175:14 drew 86:14 drinks 38:7,8 44:20,21,24 drive 13:19 23:11 24:12 70:25 75:5 96:8 120:21 137:17 138:2,4 171:15 driver's 78:10 151:13 driving 13:3 37:7 42:2 100:23 dropped 50:20,21 drug 160:20,24 drugs 35:8,14 147:21 148:19 149:6 dry 73:4 due 64:9 180:7 188:22 198:11 duly 9:22 duplicates 178:8 duplicative 180:20,21 189:14,18 193:19,24 194:5 194:7 duplicitous 178:12 during 6:21 7:14	7:17 8:3,4 10:16 41:9 62:22 76:3 76:5 81:17,19 107:6 137:16 166:14 169:11 duties 107:4 127:22 137:3 158:16 168:25 171:5 duty 6:25 59:8 93:16 137:4 158:22 170:3,9 205:23 E E 1:1,1,1 2:1,1 5:1,1 179:21 each 8:15,16 9:6 9:10,15 21:3 72:21 86:18 158:22 171:2,3 172:3 193:24 197:25,25 203:18 earlier 55:3 70:18 84:11 122:14 160:1,16 185:10 197:3 203:3 early 41:23,24 70:14 93:12 129:2 easiest 110:11 easily 91:20 easy 54:22 eat 18:6,18 21:23 122:12 148:21 eating 23:22 25:2 edge 132:23 175:14 Edwards 167:12 effect 109:11,13 110:12 117:20 133:5 193:6 effected 110:2 eight 67:1 either 7:24 31:25 33:12,12,18 44:2 46:3 51:17 62:15 82:25 84:21 89:2 97:10 112:10 138:9 142:2 147:21 153:22 156:4 166:17 178:19 195:24 ejection 205:10 El 21:24 elbow 117:1 election 5:21 electric 39:2 electrical 92:12 147:22 electronic 84:20 electronically 85:2 element 172:4 elements 80:24 eligible 5:18 emergency 107:11 employed 107:1
--	---	--	---	---	--

127:8,9 137:8 168:18 169:22 170:12 empty 38:25 EMS 107:11 encyclopedias 7:12 end 3:25 125:23 131:4,5 179:24 199:25 202:18 ended 55:20 131:1,1 151:24 205:9 ends 162:15,18 enforcement 45:23 89:18 96:7 151:19 156:5 159:7 178:20 enforcement-types 146:18 engage 153:11 engaged 11:7 61:14,15,16,19 61:24 64:17 77:11 engagement 13:23 61:18 77:12 engine 107:17 108:23 109:21 129:8 enjoyed 25:14 enough 52:7,19 79:18 115:20 125:4,7 161:7 164:11 enter 72:18 entered 117:4 120:8 141:12 155:19 160:5 entering 118:18 140:5 141:8 enters 6:8 59:17 93:24 126:13 165:22 196:19 entire 51:23 entitled 90:24 91:4 92:17 entrance 111:7 161:11 174:20 entry 12:18 30:2 109:8,11,13 110:2,12 111:18 130:13 139:10 179:13 204:1 envelope 199:21 200:16 203:16 204:11 envelopes 199:14 201:16,22 equally 104:11 equipment 171:3 especially 183:15 essentially 190:5 190:23 establish 179:5 185:4,9 established 92:21 179:5 evaluate 8:16	even 40:25 57:25 71:20 74:14 76:24 89:11 99:8 112:13 116:1,16 118:18 118:21 178:16 evening 18:3,4 26:14,14 31:9 31:17 38:14 39:20 61:21 81:13 122:13 158:8,24 201:5 event 63:5 events 146:3 eventually 13:17 77:3 ever 25:4 26:5,9 26:12 33:17 36:13 40:17 43:18 44:8 50:12 53:20 56:17 58:10 62:4,7 63:11,13 63:17,17 65:17 70:11 78:14 81:24 96:25 97:1 98:19,23 99:2,4,16,25 100:3 103:1 104:16 119:1 124:17 145:17 149:9,11 159:6 164:10 every 11:5,5 64:25 94:18 147:11 149:15 149:15 150:12 150:17 170:11 everybody 76:12 94:2 114:14,15 118:16,16,25 166:9 168:1 everyone 61:20 66:8,10 104:22 109:4 119:3 134:3,12 173:5 everything 49:12 75:21 161:14 166:18 173:14 181:13 191:18 197:10 evidence 7:2,11 7:19,20,21,22 7:25 8:13 9:5,9 9:14 11:14,22 12:21,24 15:24 112:5 117:16 119:24,24 134:11 140:22 143:22 145:5 160:24 168:14 168:22,25 169:2 169:3,23 172:6 174:16 186:5 190:2,4 195:20 196:8 197:2,9 197:11,13,14,18 198:7,9 199:13 199:18 200:6,7 200:11 202:13 202:21 207:6	evidently 46:6 ex-husband 99:16 99:17 101:23 104:10 ex-wife 26:10,12 27:10 33:1 exact 90:13,14 154:6 exactly 43:12 46:7 55:10 86:16 124:4 133:14,15 154:21 180:24 194:3 EXAMINATION 16:19 31:1 60:6 62:18 83:11 94:21 106:21 127:1 136:8 159:18 168:7 205:3 examiner 15:17 179:22 186:11 192:18 examiners 116:7 example 178:23 187:24 188:14 190:4 195:12 except 61:20 116:15 119:8 141:13 173:17 181:14 exception 178:2 exchange 172:3 exchanged 66:18 excited 61:23,24 exclude 193:2 excluded 93:4 193:14 194:19 exculpatory 91:22 excuse 57:6 135:11 140:8 151:2 152:10 201:25 excused 59:3 executed 14:12 exhibit 28:23 29:9,23 32:8 82:10 83:7 85:12 86:10,20 86:23 95:14 111:5,8,19 112:12 113:6,7 116:22 117:6 129:21 131:6 132:20 133:2,8 133:10 159:20 160:7,10,12,13 160:14 173:21 174:17,18,25 175:17 178:5,24 182:8,10,12,13 187:25 188:1,12 188:17 190:1,2 190:23,23 191:22 193:18 194:11,15,23,24 198:14 200:24 200:24 202:6 203:13,17	exhibits 3:21 4:1 4:3 8:2,9,11 30:10,21 110:24 112:3,23 116:12 117:12,22 140:25 175:3,5 175:13 176:8,24 177:4,10 192:3 196:21 204:21 207:10 exit 179:14 exited 15:21 exiting 139:22 exits 59:14 93:21 165:7 177:18 206:4 expect 196:5 expected 102:15 expecting 163:11 expenses 22:22 experience 169:12 expert 193:22 194:11 Expires 207:23 explain 80:15 115:15 121:18 explained 87:1 108:18 explaining 121:9 expose 178:20 express 8:13 59:10 93:17 124:11,17 205:25 expression 124:15 ext 207:21 extra 169:6 extremely 195:1 extremities 115:20	16:3,6,8,13,14 16:20 28:19,22 30:20 32:7,21 32:22,23 33:20 34:22 35:10,12 40:19 43:11,14 56:1,4,12 58:19 58:21 59:18,20 59:25 60:1,7 62:20 63:4 64:1 80:25 81:5 82:7 82:9 83:6 84:2 85:5 86:3,6,20 86:25 87:25 88:19 90:18 93:7 94:9,12,19 94:20,22 95:10 95:13,24 97:25 105:21,22 106:6 106:8 112:11 193:17,21 194:1 194:9 falling 101:14 familiar 49:1,3 79:18 86:7 129:23 170:7 families 104:17 family 32:23,25 76:9,10 79:5 80:10,10 81:12 81:14,15,15,20 81:22 101:15 104:9 105:14,15 143:1 153:22 far 12:11 17:20 28:16 79:19 80:15 99:9 107:8,15 109:2 115:13,15 117:7 118:23 119:15 138:12 141:8 146:4 157:1 159:2 160:18,23 161:14,22 168:24 183:7,25 184:7,18 185:3 185:20 186:1 197:10 200:8 fat 145:19 147:19 father 17:5 38:11 68:4 101:9,12 fault 57:11,14 FC 198:23 202:21 202:21 203:24 204:3,7 Federal 198:24 202:21 feel 6:21 8:25 9:2 109:9,11 feeling 155:21 feet 11:8 12:17 174:13 190:11 fellow 7:3 felony 47:1 50:11 51:1 felt 73:16 140:23 female 47:9 108:5 132:11,16,21 139:12 140:7 161:9,19 179:10 179:10 182:9	183:15 186:9,14 195:13 197:7 female's 118:3 133:11 184:6 191:13 fence 109:23 113:23 few 24:4 33:25 37:11,21 43:19 46:1 53:22 55:9 94:10,12,14 174:10 180:17 190:11 192:12 fiance 11:12 16:2 17:23 18:7 51:18 55:5 124:14 fibers 197:14 Fifteen 49:8,9 Fifty 192:15 fight 62:12 figure 53:18 148:6 155:17 figured 49:17 file 5:18,21 files 91:23 150:24 fill 90:5,6,7 200:7 final 15:23 finalize 102:5,5 finally 7:5 12:6 27:24 59:11 93:18 205:25 financed 48:16,17 finances 23:5 financial 49:2 105:8 find 40:13 72:23 110:11 118:7 132:11 134:2,8 140:2,23 142:4 147:2 149:19,25 150:5,7 155:25 156:2 161:10,10 162:24 163:19 164:8 174:19 186:1 192:8 193:5 195:1 203:6 finding 151:11 fine 6:3,4 112:17 127:17 144:5,11 144:14 finger 13:24 fingernail 116:1 fingernails 115:24 fingerprint 15:13 170:15 fingerprinted 13:17 fingerprinting 169:12,13 171:5 173:3 197:7 fingerprints 13:18 finished 9:7,11 73:1 fire 12:10,11,13 12:14 72:17,20 73:9,12 102:19 102:24 107:2,3
---	--	---	---	---	---

107:5 108:8	following 1:11	72:14 73:23	193:16	11:25 13:5,5,6,7	164:20 167:3
109:10 115:7	25:15,18,18	74:9 139:13		15:1,1 18:20	175:20 176:10
117:25 121:5	33:14 107:25	friendly 104:21	<hr/> G <hr/>	19:5 20:9 21:17	177:13,20,23
122:17 126:10	follows 9:3 16:18	105:1,2,13	G 5:1	21:23 22:12,15	178:1 179:21
127:5,6,9,10,12	60:5 106:20	friends 100:12	gail 2:4 94:14	24:15 27:1,17	180:16,23 181:5
127:19 128:24	126:25 136:7	FRO 127:15	gain 113:19 174:9	27:24 28:14	181:11,15,21,24
129:8 130:18	168:6	from 1:10 6:24,25	garage 13:16	31:9 32:21 35:6	182:6 183:6,11
131:20 134:18	fool 110:10	7:5 8:24 12:22	28:15,17 29:17	37:2,11 43:3,6,9	183:19 186:8
138:22,24 139:9	foot 110:1,2,15	18:17 20:10,25	30:2,5,6,8 31:4	43:15 45:8,25	188:6,11 189:20
139:11,16,19,21	111:10 114:4	21:4 25:2 26:9	31:19 87:12	52:7 55:4 57:13	189:23,25 190:9
146:4 185:6	116:14 123:9	26:10,12,14,18	142:14,15	59:2 63:16	190:14,18,22
firearm 10:4,8,13	131:5	30:2 35:14	150:15 197:7	66:10 67:14	191:1,5,9 192:2
10:16 179:6,17	forcible 109:8,11	53:23 54:10	garnering 188:21	69:9 70:21,22	192:15 194:22
198:7 201:6	109:13 110:2,12	57:22 60:17	gate 134:15,16	70:23 71:2,24	195:10 196:2,6
firearms 197:13	130:13	70:25 71:21	gather 165:16	72:18 75:23	196:10,15
197:18 200:11	Ford 37:8 75:1	76:24 77:15	gathered 151:19	76:15,21,23	204:24 205:4,13
fired 205:8,8	foregoing 207:6	78:12,18 82:25	gave 20:20 23:18	77:3,4 78:6	205:16
firefighter 114:22	Foreman 10:19	85:10 90:3 95:1	39:19 121:22,23	82:16 87:6	goes 47:19,19
115:10 118:11	forensics 14:15	107:12,24	181:9	94:11 96:10	115:23 119:15
118:12	15:14	108:12 111:8	Geez 188:6	102:4,10,13	131:16 160:18
firefighter's	Forest 172:25	114:1 116:24	general 129:14	103:8,9 108:13	163:8,8 184:12
118:12	197:3	117:1 119:11	173:12 190:6	108:19 109:2,4	184:13,15,20,25
firefighters 108:9	forgot 112:21	128:12 136:21	generally 199:15	109:8 112:16	185:4,14,24
firefighting	form 8:1 59:10	138:24 146:5	Gentlemen 6:10	119:1 122:24	194:12
124:22	93:17 199:24	153:4,8 155:3	6:15 10:22 11:4	123:4 125:3,18	going 11:19,25
fireman 74:1,15	200:1 201:2	160:13 164:9,18	58:24 93:12	126:1 127:15	12:8 19:8 22:8
74:20 115:12	204:16 205:24	171:9 173:5	94:1 177:15	128:4 130:6	22:12,15,25
124:10 174:20	formal 87:6	174:7,10,12	205:21	134:24 135:2,17	24:5 25:19
180:7	Fort 18:12	181:1 183:5,20	george 3:15	135:18 136:19	26:24 39:1
firemen 73:13	forward 25:15	184:7,19 192:23	106:12,18,25	139:6,25 151:8	40:19 43:6
109:19 119:6	100:16 165:25	197:20,22	gets 92:24 116:5	151:16,22	49:16 50:6
152:24 153:4	found 12:19	198:18 199:5,13	119:3 175:16	152:16 153:18	51:18 53:22
174:9	14:13,18,19,19	200:12 201:9,13	getting 14:6	154:20 159:2	62:14 67:5,13
fires 107:13	14:25 15:10	201:15 202:18	56:11 69:12	160:19,23 164:4	67:15,16 71:8
first 16:7 20:20	27:3,6,6 39:17	203:5,21,23,25	70:15 74:1	170:9,10,23,25	74:4,20,22,22
21:23 38:16	52:5 74:17 92:5	204:4,8,14,17	107:12	171:1 172:14,18	75:2 80:4,7,21
39:18 45:4	117:18,25	205:10	Gibbons 72:20,20	174:2 179:23	80:23,25 86:10
47:16 48:8 53:8	133:14 139:10	front 42:11 47:17	73:20 87:2 96:8	182:18,19 185:8	94:10 97:22
65:6 69:10	142:17,25 146:3	71:13 72:1,6,14	111:3,4 120:20	186:13 188:1,10	98:16 100:23
75:17 81:6 85:5	146:21 147:4	73:13,21,25	129:19 130:1	192:7 196:22	102:10 104:18
87:1 88:4	150:3 160:15	74:4,7,8,16 87:4	137:17 138:2,4	198:9	108:17 110:23
102:11 111:24	176:16 180:3	87:6 96:15	171:15 200:13	goeller 2:12,15	116:11,25 120:9
113:19 114:12	185:14,18 199:5	102:22 109:21	gifts 66:18	5:6,10,16,20,22	122:17 123:4
117:4 118:8	201:10	110:4 111:1	gig 54:10 124:10	5:25 6:2,4 10:20	124:5,6 130:8,9
120:6,10 127:7	four 15:20 22:2	113:19,20 115:6	girl 118:16	10:22 11:3 16:4	130:12,25
129:11 134:4	26:3 51:20,20	119:8 129:20,24	girlfriend 12:23	16:5 30:22 31:2	131:19,21 132:8
138:19,21 139:8	51:22,23 93:9	130:6,15,23	13:7,19,22	32:4,10,12	132:19 133:25
144:21 151:2	97:4 98:25	131:6 134:22	14:23,25	33:22,24 34:14	139:20 143:11
154:18,19	103:18 121:10	141:1 151:25	give 7:18 20:18	34:16,20,24	148:15,20 149:3
155:19 156:3,19	122:11 146:10	152:7 153:10,11	20:23 22:16,18	35:14 40:22	150:25 151:3,6
160:5,18 166:9	146:15 158:1	154:10,14,24	22:19 34:4	56:7,15,20 57:3	151:22 152:14
169:10 171:25	168:23 169:16	159:13 164:1	41:12 96:20	57:8,11,14	153:16 154:1
172:1,18 175:13	191:5 203:7	165:12 173:12	122:24 123:11	58:17 62:14,19	158:18 159:20
179:19 180:6	204:12	173:23 174:15	152:12 156:14	63:1,21 80:19	160:11 162:4
188:22 197:16	fourish 122:11	174:18 200:6	181:5 182:1,24	80:21 83:8,12	163:9 165:23
197:17 200:21	frame 185:4	201:7	200:8	84:25 85:13	166:3 167:22
First-aid 115:13	Frank 139:4	full 104:4 116:15	given 8:17 50:6	86:22 87:21,23	173:1,21,25
five 35:3 51:10	144:22	116:18	96:6,20 104:23	88:21,22,24,25	174:25 175:22
97:5 177:16	Frankford 12:12	Fuller 183:19	159:11	90:16,23 91:20	176:19,23,24
flat 73:8,8	61:6 65:17	fully 15:12 24:12	giving 9:1 13:23	92:8 93:9 94:8,9	177:15 180:2
floor 113:8	72:21,23 98:16	funeral 33:4,7,15	39:6 91:20	94:13 96:1,2,4	185:8,11 186:2
118:16 132:16	103:2 120:22	33:18 80:11,13	Gladys 101:19	105:19 112:4,16	186:3,3,5,12
132:21 160:14	frequently 82:3	80:16,23 81:6,6	166:7,8 167:16	112:22 113:15	189:1,2,10
176:16 182:9	170:13	funerals 32:24	glass 74:13 113:8	117:13,15	193:1,11,12,13
floor/carpet	Friday 11:14,24	further 58:21	131:3	120:25 121:1,3	195:14,15,16,18
203:7,25	12:24 31:11	105:22 111:18	glimpse 174:12	126:3 133:3,9	198:13 200:19
folks 54:10 145:5	38:17 61:21,22	126:6 164:18	global 192:4	135:6,7 143:25	200:22
151:18 167:4	67:21 68:11	207:9,11	gloves 132:9	144:2 148:18	gone 25:1 68:3
192:21	69:15	Furthermore	glycine 198:1	157:20,23	71:22 74:14
follow 37:5	friend 19:18 22:2	92:20	203:3,19	159:17 160:9	76:22 142:13
170:18	70:21 71:2,24	future 54:6,6	go 7:8,12 11:20	162:8,10 164:17	146:18 154:17

154:23 155:10 155:17 159:4 184:22 good 6:10 25:11 46:4,6 52:16,19 53:9 54:3,10 62:2 64:16,19 100:2,11 101:17 101:19 121:8 165:2,4,13 167:6 193:10 202:12 205:21 gotten 85:15 91:3 gram 148:3 grams 148:3 Grand 9:21 10:19 46:18 60:16 grandchildren 66:21 granddaughter 11:25 73:24 76:3 139:13 great 37:22 53:25 61:13 65:1 178:18 179:3 greatly 191:17 grocery 198:10 grotesque 188:22 ground 11:8 161:9 grounds 192:16 group 156:21 162:2 166:1 180:17 GRUBBS 2:15 guarantee 179:22 186:10 guard 172:11 guess 36:17 41:12 43:19 47:4 49:18 71:21 83:24 89:20 100:19 101:8 102:2 105:3,4 115:12 117:25 122:4,14 141:19 150:19 153:8 156:7 170:2,8 171:14 174:8 175:8 194:9 195:5 guest 88:6 142:10 150:13 155:10 guilt-innocence 188:23 Guilt/Innocence 3:2 guilty 3:9 10:23 gun 11:11 13:12 15:10,11,12,13 15:14,14,16 guy 48:5 101:1,5 158:20 guys 46:15 144:12 gynecological 64:9	162:18 hair 13:2 41:21 hairs 197:14 half 22:6 51:22 58:25 136:15 146:10 179:1 hall 30:2 hand 16:9,12 43:11 59:21,24 91:1 106:13 110:23 116:23 116:24 126:18 126:20 132:19 135:24 136:1 182:1 198:13 200:21 207:15 handle 143:7 199:25 hands 6:12 36:25 40:14 166:10,12 hands-on 169:12 handwriting 198:17 200:10 200:13 202:13 hanging 151:1 happen 125:12 149:21 185:6 happened 34:7 44:25 46:3,7 49:20 63:20 75:9 121:13 128:23 130:24 154:1 156:3 162:3 happening 73:13 98:20 happens 13:11 125:14 162:19 185:24 happy 61:22 65:2 65:4 hard 17:25 131:11 harm 187:16 188:21 191:12 harmful 186:17 Hayerwood 120:23 having 86:6 109:12 142:7 159:2 head 6:2 15:23 36:1 52:14 114:3 155:9 166:23 179:11 184:15 204:8 headboard 204:1 204:5 headed 11:18,18 13:8 24:17,21 heading 132:14 heads 45:15 hear 6:18 26:9,12 49:20 54:2 68:15 71:15 heard 1:10 26:14 74:13 79:8 108:12 hearing 3:21 32:15 106:4 126:16 177:14	hearsay 56:2,13 62:15 63:23 85:4,6,20 92:5 heart 109:12 119:12 128:3 heated 104:16,19 heavy 42:8 held 1:12 hell 55:6 56:8 help 7:19 9:1 12:13 23:4,9,13 72:19 73:17 98:16,24 113:10 115:8 128:25 129:6 143:14 152:16,16,17,20 201:25 helped 29:15 48:23 101:9 helping 185:4 her 8:21 11:25,25 12:13 13:9,10 13:11,13,23 15:2,2,6,20,21 15:21,22,22,23 17:23 18:7 22:13,16,18,19 23:4,5,9,13,21 29:17 30:2 31:14 37:21 48:23 51:25 52:3,6 53:2 58:10,11 62:8 62:15,17 63:7,9 63:17,19 64:2 64:11,11 65:1 65:22 66:23 67:7,24 68:3,6 68:15 69:3,4,7 69:10,18,22 70:6,15,23 74:25 76:6,8 77:2,18 78:6,8 78:10,12,14,16 78:20 81:1 83:22 84:3 90:20 91:1,2,4 92:7 94:2,3,4,6 94:10 95:4,4,18 95:19 97:21 100:1,20 101:6 101:7,9,9,11,12 101:12,20 102:6 102:7 105:17 108:5,10,12,13 108:16,25 109:18 114:18 115:1,1,10,10 120:15,16,16 121:7,17,17,20 121:22,22,22 122:7 124:12 125:2 129:13 132:13 133:12 133:14,17,18,18 134:2,4 139:13 139:13 161:9,10 166:6 184:6,7,8 184:9,10 hereinafter 9:25 herself 90:20	101:8 hesitate 6:19 hey 54:10 114:24 189:13 hiding 151:4 high 2:13,15 89:1 115:25 191:19 highly 179:7 highway 145:12 him 11:16 13:11 19:7,11 20:13 20:17,20,23 21:10 36:25 37:12 38:20 40:17 41:25 42:25,25 43:11 45:1,7,17,18 47:22 55:24 57:12 73:16,21 75:1,4,20,22 79:23 80:4 92:16 99:20,25 108:23 116:16 116:20 117:25 120:7,8,9,12 131:17 135:11 139:25 140:8 141:24 179:23 himself 70:15 91:19 hinges 190:10 192:11 Hispanic 39:11 89:10 hit 62:8 64:11 hitting 52:17 58:14 hold 170:11 holding 43:24 hole 185:14 186:24,25 188:4 188:9 home 4:9 11:18 11:18,20 13:2 15:1,8,9 24:17 24:22 25:2 52:3 66:16 68:18,21 70:3 79:25 82:18,22,25 83:15,17 86:7,8 86:12 88:12 104:18 105:3,5 105:9 109:2 111:12 117:4 124:1 129:4 150:20,24 153:22 162:20 homicide 119:21 120:2,4 149:11 170:16 172:25 Honda 13:19 honest 55:16 138:18 145:23 146:20 147:14 152:25 Honor 5:6,16,20 5:22 6:7 9:19 10:22 11:1 16:5 28:19 30:20 32:4,7,22 34:22 35:10 40:19	56:1,12 58:22 60:1 63:1,21 80:25 82:7 83:6 84:25 85:5 86:3 88:22 90:18 93:7 94:9,20 95:10 96:2 105:23 106:9,11 110:21 112:2 117:11,15 120:24 132:17 133:1,9 135:8 148:15 167:24 173:19 177:9,13 177:20,23 178:7 178:11,23 179:16 180:16 183:11,23,25 186:8,17 187:6 190:8,12 191:9 192:19 193:17 194:9 195:4,17 196:15,23 204:20 205:14 Honorable 1:11 Hopefully 147:18 hoping 72:23,25 horrific 195:18 hospital 52:24 58:9,11 63:16 64:7 hour 13:2 19:15 19:15 22:6 58:25 143:5,11 152:11 154:5 hour's 24:12 hours 74:18 128:14 146:10 146:15 154:7,24 house 12:7,11,13 12:14,18,19 13:10,13 14:20 18:21,22,24 19:1,3,5,14 21:5 21:7,15 24:1 25:8 26:19,20 27:8,10,17,24 28:5,6 31:10,10 35:18,20,22,25 36:5,23 38:24 38:25 39:20,20 39:23 40:5,12 41:3 42:17 45:4 45:5 47:16 65:16 66:1,7 70:25 71:7,12 71:16 73:14,17 73:22,25 74:3,7 74:8,16,21,22 74:23 75:8,24 76:15,21,23,25 77:3,14,16 78:18,25 79:5 79:15 82:2 84:8 84:15,16 85:25 87:4 88:15 95:1 95:4,18,19 102:21,23 108:13,19,21 109:20 111:2,25 114:11,14	117:18 118:5 119:1,3,7 122:19,20 123:5 123:21 125:6,10 126:1 129:3,9 130:10,14 131:21 132:23 132:24 134:12 134:24 139:18 139:24 141:8,18 141:23 142:1,4 142:8,9,14,17 142:22 144:25 146:5,21,25 147:1,9,11 149:23 150:8 151:3 155:3 158:20 160:5 163:20 164:14 172:9,15,18 173:13,13,16,16 173:23 174:10 174:18 184:8 houses 109:4 huge 186:23 187:4 huh 53:3 hum 33:13 40:7 40:13 100:25 human 11:10 hundred 37:23 hung 69:1 hunk 158:19
H habit 79:19 80:4 habitation 162:15				I ID 78:20 82:14,16 82:24 83:3 85:6 85:8,12 147:2 150:1 151:7 idea 71:21 167:6 193:10 205:7 ideally 175:10 identical 30:16 180:22 identification 170:15 184:5 identified 31:3 identify 110:25 116:12 132:20 175:4 176:25 186:12 200:25 202:6,25 identity 186:19 illegal 35:8 57:21 97:10 163:3 illuminated 173:13 immaculate 173:17 immediately 64:1 98:6 113:21 118:15 132:13 140:10 impeachment 35:12 90:25 implants 97:22 importance 119:15 important 195:2 impression 37:20 39:8 123:20	

improbability 8:23	199:22 201:22	197:17,20	Judge 1:12 5:10	113:15 115:25	143:8,13,15,16
improper 35:12	instance 64:6	198:11,22	32:10 34:14,16	116:17 118:6	146:17 147:12
40:20 56:2	174:6	199:17,22	57:15 62:14	120:22 123:4,8	147:13 153:9
in-depth 101:11	instead 119:20	202:22 203:20	80:19 83:9	123:16 124:3	156:1 160:15,20
in-service 169:10	200:1	204:12,12	87:23 90:16	125:3 127:15	160:21 162:11
169:14	instruct 8:10,12	ivan 1:5 5:3 9:24	91:15 92:8 93:9	129:19 132:1,4	163:3,5,7
inaudible 194:5	93:15 205:22	10:23 11:11	124:5 133:3	133:4 134:15,18	170:23 171:11
inches 187:3	instructed 7:3	16:1 33:17	135:11 157:20	138:9,10 139:18	172:16 174:1
incident 63:20	59:8	65:18 66:3	175:20 182:7,17	140:14,18,23	176:24,25 186:5
64:1,13 98:2	instructions 3:7	81:24 89:1	187:8,16 188:6	141:2,16,25	193:24 194:13
99:4	Insurance 60:12	103:3	191:2,20 192:9	142:1,2,21,23	197:4
inclination 8:22	integrity 6:23		202:3	143:1,8 144:18	kinds 54:23
183:8	intelligence		judgment 143:9	145:19 146:2	115:14 127:25
include 198:4	158:15 159:4		judicial 1:16 85:7	147:15,23 148:9	kit 171:4,6
included 207:7	intentional		85:14	148:13,23	kitchen 3:12,13
includes 136:22	184:16		July 61:17	149:25 150:3	10:15,15 11:5
including 50:8	intentionally 10:2		Junger 167:11	151:8,10,25	11:13,15,16,20
66:13 104:14	10:7,12,14		junk 147:9 163:6	153:4,12 154:12	11:23 12:1,3,19
INDEX 3:1 4:1	184:12		juror 6:21	155:8,8,15,21	14:14 15:20
indicated 203:20	interest 8:20		juror's 6:11	155:21,25 156:2	16:2,8,16,21,22
indicates 52:16	105:9		jurors 6:16 7:3	156:16 157:20	16:23 17:2,4
58:13 203:1	interior 153:9		174:23 195:18	160:15 161:12	18:3 19:7 28:15
indicating 87:15	intermediate		jury 1:11 3:6,7	161:12 162:11	28:22 30:2,8
indicative 185:23	175:11,15		5:8,25 6:5,8,13	164:12 165:8,14	31:3 32:23
186:2	interpreter 166:4		6:15,23 7:5 8:6	167:4,4 170:25	33:20,25 36:20
indictment 3:4,8	166:5,7,19		9:18,21 10:19	172:15,16 173:6	41:22 43:12,19
5:12 9:17,20	interrogating		10:23 11:4	174:10,23	44:18 46:2 53:7
10:21 50:23,24	153:12		16:21 31:8 32:8	176:25 178:8,10	53:24 57:14
80:24 188:18	interrupt 200:18		32:15 35:17	180:25 182:17	58:17 59:20
indirectly 178:16	intersection 61:4		43:14 46:3 54:5	183:22,25	60:3,8,9,17,22
individual 7:9	72:25		55:1,18 56:4,5	184:16 185:6,13	60:22 66:24
10:3,7,12,15	interviews 90:17		59:14,17 60:8	185:22,23	79:17,24 82:2,9
170:19 171:4	intimately 49:1		80:15,24 87:1	187:15,24,24	83:14 85:9 86:6
individually	introduce 94:2		93:21,24 94:3	188:1 189:2	86:25 87:9,16
157:4,17 162:5	106:23 127:3		106:5,23 113:10	190:3 191:2,4	88:19 94:17,23
203:19	136:10 168:9		115:15 117:7	192:16 193:17	95:13 99:17
individuals	introduced 8:11		126:17 127:3	194:10,22	130:19 141:13
140:20 147:2	112:12		136:10,18	195:12 196:11	141:14,20 147:4
151:24	introduction		147:17 157:13	200:18 203:15	147:6,7,12
inferences 8:24	117:18 178:7		157:13 165:7,12	204:10	150:11 151:8,11
inflamm 80:23	189:5		165:13,17,22	justice 6:17	163:6,10,15,18
179:2,15 187:7	investigate		168:9,24 169:8	justify 125:20	167:15,15,17,21
187:12 191:18	140:11		175:21,23		186:15,21
191:18	investigation 7:10		177:18 179:2,15		Kitchen's 13:3,24
inflammable	investigators 34:5		180:6 182:8,11		14:18,18
191:11	34:8		182:14,15 187:5	keeping 192:20	knew 28:10 40:22
information 7:13	invoked 3:18		187:7,8,17	keep 87:18	61:20 70:8 75:4
39:7,19 50:24	166:13		188:20 191:18	112:14 143:1	78:2 132:10
86:2 172:3	invoking 165:9		191:18 195:11	147:7 163:5,9	155:20 158:12
initial 172:2	involve 107:15		195:16,23,25	193:14 195:6	knock 130:7
198:6 200:4	involved 46:23,24		196:8,16,19	kennel 79:16,16	knocked 12:8
203:2	47:11 67:15		206:4	79:23 80:5	71:13 109:21,23
initially 77:14	99:22 146:5		just 5:18 6:1,16	87:14 141:19	131:11
119:9 138:14	161:1		12:16 22:2	kept 152:3 161:12	knocking 55:5
169:9	involvement		24:14,24 31:14	key 14:19,20	72:8 79:7
initials 198:4,21	156:17		31:25 32:1,13	keys 14:19,20	know 5:17,24 6:1
199:19 201:4	island 141:13,14		34:14,16 37:21	78:14,16 95:4,8	15:7 19:22
202:16 203:4,19	147:4		38:3,4 39:16	95:16 112:8,12	20:25 24:14,14
inject 148:20	issue 53:16		40:13 41:12,19	112:21	26:23 27:6,23
injuries 179:3	178:13 179:25		55:7 57:20	kicked 173:14	28:14 30:14
inner 200:16	180:2,4 191:10		64:22,25 71:4	kiddy 163:2,9	31:6,16,23
innocence 9:10	192:21		71:21 73:22	kill 34:21 55:24	34:10 36:17,20
inside 13:12	issues 159:1		74:11,18,21	56:8	38:4 40:9,10,11
27:18,24 71:16	item 198:3 199:23		75:3,3 80:16	killed 11:12 16:1	41:14,15 43:5,6
77:3,14 79:5,14	201:1 202:14		84:15 85:22	140:17,17 184:8	43:24,25 45:6
103:9,14 109:16	203:2,5,6,17,21		89:16 92:5 93:4	kind 54:24 57:15	46:20 47:21
139:3 143:16,16	203:22 204:2,3		94:12 96:15	77:17 78:2	48:8 49:16,19
153:6 154:13	204:6,7		101:1 103:2,16	79:12 100:21	49:19 50:1,1,24
162:14 172:9,11	itemized 199:23		108:19 109:4	105:15,15 107:7	51:13 53:15,22
172:15 199:12	200:1		110:3,12,18	113:16 122:22	53:22,24 54:2,9
	items 77:17 95:1		112:4,14 113:10	125:15 130:9,9	54:22,23 55:3,8
				136:18 142:16	

55:9,19,20 58:6 58:15,16 63:22 63:23 68:18 71:6 72:16 73:16 75:8,12 78:20,20 79:3 82:5 83:23,24 84:1,23 85:16 91:10 95:8 99:4 100:22 103:25 108:12 116:7,8 118:12 122:18 124:6,10,21,24 125:1,8 128:25 129:5 130:13 131:12 132:3 138:18 143:8 144:10,13 145:12,14,16,24 145:25 146:3,20 147:15 148:8,18 150:23 152:14 153:2,13,13,17 153:17 154:6,15 154:21 155:8,25 156:12 157:2 158:4,8,16,25 159:10 161:6 162:3 163:13 175:23 179:4,24 184:22 186:2,25 187:1 188:15,25 192:6 193:19 195:13,14 200:7 201:13 205:10 knowing 22:15 knowledge 47:15 56:9 57:25 84:13,19 85:3 97:10 99:7 101:23,24 124:24 known 6:19 58:4 105:15 148:3 172:4 knows 85:10,10 187:17	191:5 lasted 169:10 later 9:5 13:2 26:6,7 37:13,25 39:17 43:19 46:1,20 86:2 122:15 154:5 155:3 158:4,11 169:14 185:11 198:3 Latin 36:14,24 37:10 39:23 41:3,11,17 43:2 43:9 45:6,9,12 48:3 law 6:23 45:23 89:18 96:7 146:17 156:5 159:7 178:20 lawn 125:17 laws 5:13 136:23 lawyers 6:22 7:18 57:7 lay 179:12 laying 110:2 114:17,24 115:21 116:13 129:20 132:16 132:24 133:11 133:12,17 140:7 140:8 141:1 162:25 163:12 layout 4:9 86:8 lead 160:25 199:2 leading 30:8 33:6 64:17 67:19 leads 87:11 learned 128:12 least 71:1 94:3 179:1 182:14 189:3 194:7 leave 21:15 45:4 45:11,22 47:19 59:2,3 67:24 93:15 108:2 130:13 163:14 leaving 43:6 45:17,20 led 146:3 178:17 left 13:1,14,14,16 14:3 15:5,18 24:16 31:18 37:13 43:5 48:8 69:9 72:24 87:9 118:11 119:5 120:12,19 130:25 142:16 146:13 legal 105:3 legit 121:19 legs 133:12 lengthy 176:24 less 12:21 52:21 105:1,2,13 174:6,14 let 6:19 15:7 26:23 27:17,23 32:17 41:2 59:5 76:15,21 92:8 93:3 106:2 108:4 110:3	113:10 124:6 134:17 143:8 152:14 166:8 167:1,25 178:23 181:5,18,25 182:20 183:8 187:22 188:5 189:13,25 193:19,23 194:16,19 200:5 200:18,18 let's 6:5 45:3 55:4 58:25 59:12 93:14,14,19 150:19 154:5 165:4 167:6 182:16 196:16 206:1 letting 75:23 Lew 145:20 liar 46:4 49:25 library 7:12 license 78:10 151:13 lie 44:2 lieu 114:24 lieutenant 73:16 106:12 107:2,3 107:14,15 110:23 117:18 117:24 121:4 126:4 129:6,14 131:9,14 132:14 134:6 lieutenants 158:17 life 11:7,10 lifestyle 97:18 99:16 100:4 105:16 light 42:8 141:13 146:12 193:4 lights 71:25 138:9 141:8,11,12 142:15 152:22 like 9:17 10:24 16:4,7 29:6,21 30:18 31:15 32:1 34:5,9 39:10 40:2 41:17,18 44:14 45:1 48:22 49:19,21 50:9 54:9 55:3,23 57:3,8 58:4,6,6 70:23 71:16 82:5 88:12 92:4 95:8 102:13 103:16 110:5 113:1,14 115:13 115:14,25 116:8 116:24 118:22 118:24 125:24 128:5 133:19 134:9 135:3 138:5,21 140:14 140:23 142:10 142:11,19 146:19 147:7,9 147:23 148:1 149:23 150:23	151:12,14,17 152:20 158:16 158:25 159:1 160:5,20 161:1 161:2,4,12,13 161:20,21 163:1 163:20 169:6 171:25 173:8 174:1 182:5 186:22,25 189:11 190:20 191:4 195:13,17 195:18 197:21 197:22 198:3 199:8,13 likely 180:1 likes 53:6 Likewise 6:21 limit 138:9,11 limited 8:11,13 104:7 line 147:13 174:7 185:11 lisa 1:16 207:5,18 list 181:8,17 182:24 listed 203:2 listen 7:7,15 listening 195:19 little 24:13,14 37:13 38:3 42:7 50:4 52:6,21 53:2,11,21 54:9 58:3,4 70:24 93:12 94:23 97:20 104:21 105:13 107:7 114:1 116:19 122:14,14,21 140:24 142:12 147:4 148:1 152:3,20 158:18 162:25 163:6 188:9 192:12 205:22 live 11:7 17:2 24:24 51:23 60:15 61:4,9 65:24 103:5 121:18 170:6 lived 12:21,22 14:5 65:17,20 98:11,25 103:3 103:17,18,19 121:20,25,25 122:2,6,7 124:14 lividity 115:4,14 115:17 116:3,9 117:6 180:8 living 16:23 17:18 17:22 35:23 45:6 51:18 60:10 61:2,7 83:20,21 87:7 87:19 88:1 98:9 104:3 124:1 129:4 174:7 loaded 15:12,12 171:6 loading 173:1	localized 173:15 located 14:10 21:25 105:12 120:20 location 21:4 37:16 119:17 138:4,11,16,19 170:23 171:7,17 171:21 200:12 locations 7:8 86:18 171:12 locked 12:9 72:6 72:21 110:6 113:24 130:16 130:17 lodge 189:8 lodged 15:21 long 16:25 19:14 22:5 51:16,17 51:19 60:13 61:7 65:24 68:13 70:13,25 74:15 76:14 78:25 102:21 103:5,7 115:19 116:7 119:16 122:16 127:9 135:19 136:14 143:3 146:7 157:23 168:18 168:21 longer 28:6 156:12 look 7:11 12:16 28:8 39:10 41:17,18 54:5 78:6 90:24 91:24 92:18 93:5,5 95:8 110:7 118:4 120:8 129:23 131:2 141:2 149:21,22 150:10 151:7 156:3 174:17 176:25 181:4 182:16,23 186:14 189:19 193:15 looked 15:9 29:6 29:21 30:18 31:15 73:10 74:17 82:5 84:3 95:3,4,21 111:21 113:23 118:22 131:7 140:14,21 142:10 147:23 160:5,20 189:22 looking 25:14 64:22 78:8 100:16 111:9,9 115:16 117:8 118:3 121:12 141:22 150:22 150:23,24 161:7 184:21 185:25 185:25 186:6 195:17 looks 32:1 121:9 Lord 10:1	loss 53:25 lost 74:18 143:15 188:11 lot 38:17 109:14 116:5 118:7 125:18,19,21,24 140:15 150:2 171:2 Lots 143:5 love 25:14,14 64:20 low 115:24 116:1 lower 115:20,23 lowry 2:5 106:8 106:11,16,22 110:20,23 112:2 112:7,25 113:12 113:16 117:11 117:24 120:24 126:5,6,10,21 127:2 132:17,19 133:1,10 135:5 135:21,22 136:2 136:3,9 143:24 148:15 159:19 160:7,11 162:7 164:18 167:24 168:8 173:19,21 176:2,4,7,13 177:9,25 181:16 182:17,23 183:1 183:22,25 186:24 188:12 190:8 191:25 192:25 193:11 194:4 195:4 196:23,24 202:5 202:10 204:20 Luby's 18:12,15 18:18 38:17 luggage 149:22 lunch 93:12,13,22 94:25 108:11 122:9,10 123:12 123:13,16,17,21 125:5 129:2 LXI 49:5 lying 44:3,3,5 Lynn 66:24
L					M
lab 14:15 15:14 lack 51:10 125:8 Ladies 6:10,15 10:22 11:4 58:24 93:11 94:1 177:15 205:20 lady 19:18 73:5 73:23 74:15 90:3 108:8,13 108:18 129:10 166:4 laid 85:19 174:15 large 105:16 111:1 150:7 last 11:20 17:24 25:4 45:24 50:7 52:1 56:6 66:3 69:16 83:4,4 84:2,6 88:14 96:5 112:8 127:6 175:17					M M 1:16 207:5,18 M-A-X-W-E-L-L 136:12 ma'am 11:3 62:20 83:13 88:25 89:8 96:5 98:8 105:25 107:21 108:2 111:4 113:9 117:5,10 118:2 120:3,22 136:17 137:6 138:3 139:3,5 141:7 142:6 160:2,17 162:1 166:3 167:13,14 168:17 169:7,18 169:21,24 170:1 170:11,24 171:9 171:13,16

172:13 173:7,24 174:21,24 176:6 176:17 177:8 197:17 198:15 199:7,17 200:10 201:1,11,14,23 203:11,14,24 204:15,19 Machine 1:14 made 7:17,19 8:5 12:18 27:20 40:18 43:6 76:1 76:23 84:14,14 89:2 90:23 92:9 93:2 99:8 109:18 111:17 115:2 139:10 140:12 142:14 142:14 149:13 149:17 163:8 171:21 174:20 magazine 15:13 mail 151:12,13 main 197:6 mainly 108:15 144:18 150:2 153:4 maintain 6:23 51:25 major 61:4 128:3 make 8:3 9:4 10:24 11:24 12:2 18:6 32:24 33:1 34:1 36:13 37:9 38:5 54:25 67:10 76:12,14 80:10 90:19 102:9,11 105:15 109:8 128:2 131:12 132:3,6 140:1 142:1,22 143:9,17 144:15 145:10 147:1 149:3 151:3 158:23 166:9 170:13,22 181:18 183:10 189:19 192:5 195:8,10 196:13 makes 92:3 108:14 making 92:10 male 36:14,24 37:10 38:6 39:24 40:4,4 41:3,11,18 43:2 43:9 44:22 45:1 45:6,9,12 48:3 114:17 115:3 116:13 117:25 124:22 140:7 158:5 161:17 182:10,15 190:16 191:6 204:8 man 11:10,11,11 39:12,17 41:22 43:5 45:20 48:8 54:24 89:10 97:20 124:2,14 137:24	manipulated 178:19 192:17 192:17 manner 195:16 many 26:1 35:2 62:10,10 66:21 94:4 114:7,10 114:10 151:24 162:14,17 188:15 193:3 Marie 60:9 66:24 marijuana 147:5 147:22 149:1,6 162:25 mark 17:9,13,14 55:21,23,23 56:7,11 60:22 60:23 70:15,20 76:7 98:20 104:14 112:8 167:17 181:17 197:23 200:19 201:24 marked 28:23 29:8 30:10 82:10 86:10 95:14 110:24 112:10,11 116:11 132:20 198:13,19 202:13 marking 200:24 markings 199:9 199:10 marks 52:20 married 11:7 14:6 97:21 105:4 Masquele 17:25 mass 165:12 185:12 189:5 master 3:1 12:16 12:17 118:19,20 150:13 163:24 173:16,18 174:6 174:11 178:3 190:15 203:25 204:9 material 91:24 matter 40:10 46:22 52:7,15 53:5 89:19 91:1 91:1,5,8 109:10 144:9 matthew 2:12 88:25 mattress 155:13 185:15,16 186:23 187:5 188:13,15,16 192:3 204:4 maxwell 3:16 135:23 136:5,12 144:5,11,15 163:18 may 6:20 7:18,22 8:3,5,11,19 9:4 9:4,6,8,10,12 9:13 11:2 28:19 30:22 32:12 34:14 58:23	59:2,3 63:24 82:7 83:8 86:3 87:22 91:14 92:2 93:10 95:10 105:24 108:25 110:20 114:18 117:13 121:21 126:7 132:17 135:9 148:19 149:4 153:1 157:20 164:19 165:24 172:10 173:19 176:2 177:20 181:16 182:23 183:22 187:23 189:7,8,9 190:9 195:10 199:12 maybe 26:3 48:24 71:20 72:18 73:1 74:14 86:16 102:23 110:8 114:13 122:14,14,21 138:17 143:5 146:10 151:12 151:13 152:13 153:6 161:21 163:3,12 178:2 181:1 187:22 201:20 McDonald 1:17 2:8 207:20 McKinney 1:12 1:17 2:8 207:21 ME's 145:7 mean 27:6 36:4 38:5 42:20 52:23 53:15 54:21 83:22 99:11 121:19 123:1 125:2,6 125:19 141:11 146:12 148:21 148:24 149:2,6 150:17 152:3,25 153:12,15 154:2 160:22,23,24 162:19,20,24 163:1,19 164:1 164:3 172:14 180:2,25 means 166:13 198:24 meant 122:4 mechanical 92:11 media 152:19 medical 15:17 107:11 116:7 128:2 179:22 186:11 192:18 meet 14:7 18:9,11 18:15,16 39:18 90:2 122:8 123:12,13,14,16 123:18 125:16 125:18 129:1 meeting 104:21 123:23 156:7 158:13 159:3,4 159:5	member 6:19 members 76:9 153:22 memorialization 90:17 91:4 memorialized 96:6 memory 129:25 mention 123:25 159:6 180:15 mentioned 139:16 152:21 162:11 190:18 197:3 Mercedes 13:3,7 13:16,17,18 14:19 23:12,13 28:17 29:13,21 30:3,8 31:4 48:9 48:22 49:4 53:19 58:5 77:22 100:24 101:6,7 142:15 152:22 197:8 Merits 1:10 mess 134:11 message 67:24 messed 142:11 159:25 160:15 messes 13:11 met 11:16 18:20 38:13,16 65:6 75:20 90:11 104:20 105:17 108:11 162:5 methods 169:13 Mexican 21:24 41:19 Michelle 65:22 103:3 MICU 127:24 Mid 41:23,24 mid-morning 79:2 middle 204:4 midnight 137:15 might 15:3 18:19 42:14 44:25 62:7 75:12 100:7 105:10 107:5,8 108:20 109:3 123:17 134:10 142:11 150:5 151:22 163:12 182:17 193:21 Mike 167:19 mile 12:22 miles 138:13,14 Mill 58:15 mind 54:14 71:21 74:2 77:15 101:3 159:8 184:13 192:20 mine 19:18 70:22 71:24 201:12 miniature 147:23 minute 37:21 49:19 100:6 106:3 110:3 114:15	minutes 19:15 34:17 37:11,21 43:19 46:1 68:14 71:1 74:14 94:10 102:24 177:16 misheard 48:24 misleading 50:4 missing 28:8,9,10 28:16 77:15,20 78:9,10,11,18 78:20,21,23 95:1 108:15 142:12 misspeak 180:23 misstatement 34:23 mistaken 122:11 123:16,17 mixed 39:16 195:8 mixing 149:6 mom 11:22 22:10 22:13 75:2,20 moment 32:13 34:14 58:19 73:22 141:2 183:22 money 22:16,18 36:21 37:13,22 38:8 40:9,18 44:21,23 53:9 53:13,16 58:7 78:11 150:7 month 156:13 158:17 months 51:10 136:20 158:1 more 25:24 44:9 47:4 52:20 53:21 54:9 58:4 80:16 94:12,14 121:14 125:14 126:15 143:12 148:9 149:14,25 152:20 153:10 162:16 163:7 174:6,14 176:2 176:19 178:9 184:11 187:11 187:18 189:10 192:12 more-odd 187:19 Moritz 103:20,22 morning 6:10 12:2,5 24:11 25:11 69:3,18 82:13 102:2,4,6 107:25 128:13 128:15 147:19 206:2 mortgage 65:13 Mosqueda 10:3,3 10:6,8,8,11,13 10:13 11:5,12 11:15 12:20 15:18 16:2 18:1 33:4 35:15,18 36:14,20 37:3,9 37:10 38:6 39:24 40:14,22	43:2,3,9,18 45:7 45:8,11,25 47:19 51:16 52:13 53:6 54:3 55:23 56:8 57:22,25 61:10 62:21 70:2 83:14 97:4,11 98:2,9,21 100:1 100:17 101:19 105:14,16 166:7 166:8 167:16 Mosqueda's 11:19 13:4 14:17 15:15 31:4,10 52:3 101:15 most 76:5 163:5 175:16 178:8 180:1 mostly 171:4 mother 100:19,25 115:7,10 120:15 121:4 122:3 130:20 131:23 134:21,22 135:3 139:12 motion 3:4 5:11 5:14 51:2 move 87:21 133:18 192:11 moved 51:18 103:12,20 184:20,21 187:13,14 moving 65:16 140:21 161:9 much 20:4,25 22:18 44:9 57:5 69:9 113:21 116:15,18 148:6 149:4 153:13,20 173:15 175:12 187:15 multiple-alarm 107:12 murder 184:2 198:20 murder/suicide 140:16 murdered 140:19 murders 10:16 must 8:5,6,7,9,13 8:15,16 166:14 166:24 198:9 myself 70:22 137:25 146:5 152:15
				N	
				N 2:1,13 5:1 nail 116:22,23,25 name 9:20 16:21 17:24 41:15 60:8 65:22 66:23 88:25 96:23 97:1 105:6 106:24 114:22 115:9 118:12,14 121:22,23 127:4	

127:5,7,7 136:11,12 144:20 145:25 166:6 167:5,7 167:14,14 178:10 179:19 179:19 198:21 198:23 named 14:23 55:21 names 145:24 157:1 narcotics 57:21 149:9 160:25 162:13 natural 11:9 119:13,17 205:10 nature 7:20 92:23 115:14 137:19 138:7 160:21 161:3 184:22 near 65:16 98:9 98:15 170:7 175:14 204:1 nearby 72:23 73:4 nearest 73:5 neat 142:18 necessary 8:4 92:21 neck 15:18 necklace 13:21 need 73:15 74:3 76:8 87:21 90:14 91:12 94:6,13 118:4 120:18 128:4 141:24 148:14 153:18 170:22 172:3 177:13 180:17 181:19 181:21 186:9,16 187:14,18 188:2 188:12 190:6,7 192:7 200:15 201:19,21 needed 13:1 26:23 73:17 119:21 140:2 152:16,20 164:23 needs 159:1 neighbor 163:7 neighbor's 76:23 102:23 neighbors 74:19 76:9 135:2 151:22 153:16 nervous 94:23 never 9:9 36:17 36:18 39:3,16 40:1,5,25 42:24 43:1,4,22 44:16 45:14,23 46:3,3 56:10 57:21 98:16,23 103:5 103:8 125:5,8 147:15 148:22 153:19 154:12 155:18	new 48:12,22 53:19 58:5 100:24 101:6 newspaper 7:6 next 11:24 14:3 14:24 21:8 22:8 25:7,15,18 33:15 37:11,14 40:5 43:3,7,9 45:8,25 47:15 47:20,21 57:2 59:19 63:9 69:18 71:22 72:25 80:7 89:17,20 103:17 106:7,8 119:4 120:5 126:9 128:13 131:17 135:10 142:20 167:23 196:25 197:2 203:16,17 next-door 36:15 39:24 next-of-kin 186:12 nice 77:12 142:18 night 11:5,17,24 12:25 14:1,2,8 14:22,22 23:25 24:5,6,10,10,13 28:1,12 29:17 31:11 36:25 40:15 61:22 67:21 69:15 76:17,18 79:1 95:18 137:24 151:23 159:7 nights 170:14 nightstand 164:2 164:4 nine 136:20 Nineteen 65:7 nobody 26:5 35:22 42:12 45:6 49:23,25 110:1 117:16,17 Nods 6:2 52:14 166:23 Nomenaker 167:19 nomenclature 119:10 non-firemen 151:19 non-law 151:19 none 101:1 151:16 180:24 nonsmoking 125:17 noon 14:3 normal 138:1,9 138:10 173:14 normally 31:18 155:11 172:2 174:4 197:12 199:23 200:2 north 11:19 12:12 17:20 52:24 74:25 120:22 129:19 137:1 notepads 147:8	notes 89:13,16 92:13 198:2 nothing 41:15 45:5 80:24 90:10 126:6 131:13 132:4,8 164:18 181:3 186:22 191:17 notice 28:9 72:3 77:20 78:8,18 85:7,14 103:23 noticed 44:22 141:15 179:18 notified 140:24 November 10:1 11:14 12:7,25 14:22,24 15:25 15:25,25 17:16 17:18 18:4 28:3 29:6,18 30:5 38:17 50:7 51:25 60:25 61:2,11 62:1 65:11 66:20 67:4,11,19,21 68:11 76:19 84:9 89:7 95:18 97:14 107:19 108:1,2 111:13 127:18 128:7,15 137:7 169:19 170:19,21 171:7 176:5 177:6 200:12 204:14 207:16 number 5:2 28:23 29:9,23 32:8 82:10,18,19 83:7 85:12 86:11,21,23 90:25,25 111:1 111:5,7,8 112:12 113:6,7 116:14 117:6 129:21 131:6 133:2 151:13 159:21 160:8,12 160:13,14 164:3 173:22 174:18 174:25 178:5,24 179:9 182:13 188:1,15,17 190:1,21 193:18 194:6,12,15 196:22 198:4,5 198:18,20,20 199:19 200:8 201:4,6 203:4,4 203:13,20,22,24 204:2,3,6,7 207:21 numbered 1:11 207:8 numbers 70:8 172:4,4 173:13 174:19 181:19 182:1 202:6 203:20 numerical 182:21 numerous 82:19 86:7	nurse 23:3 69:8 nursing 53:18 69:7 <hr/> O O 1:1,1 5:1 Oak 22:1 35:21 37:16 38:21 170:6 oath 6:11,15 7:20 8:14 16:18 60:5 94:19 106:20 126:25 136:7 168:6 object 40:19 56:1 62:14 80:21 85:13 117:15 124:5 133:3 148:15 175:14 175:16 178:4,7 179:9 180:10,18 181:10,20 183:12 187:23 191:20 192:15 205:14 objected 181:13 183:4 objecting 182:18 objection 8:5,9 34:22 35:10 56:12 63:1,2,21 81:4 84:25 85:2 85:19,22,23 86:1,1,22 112:22 133:3,7 160:9 176:10 178:10 180:13 181:6,22,23 182:21 183:9 192:5 196:3,13 205:15 objectionable 196:13 objections 8:4,8 32:4 189:7 objects 8:1 175:17 observe 171:10 172:21 observed 140:9 172:7 obtain 7:13 92:21 obvious 109:3,3 147:18 161:2 180:6 obviously 28:5 44:11 49:1 77:8 77:24 85:1,13 125:2 127:8 130:6,15 131:23 132:9 134:25 145:2 153:15 160:22 188:20 190:14 191:7 192:3 occasion 25:24 103:8,14 Occasionally 145:20 occasions 24:3 55:25 62:10	82:19 86:7 162:14,17 occur 185:10 occurred 5:18 33:9 63:5 64:2 140:15 165:14 172:5 184:2,4 207:8 occurrence 140:19 occurs 8:12 October 1:10 3:2 84:7 OD'd 164:2 odd 40:13 147:12 off 24:24 42:7 45:2 109:20 114:4 141:12 142:25 170:6 189:25 199:15 205:19 offended 6:22 offense 10:5,10 34:23 offer 9:5 30:21 83:6 85:1 86:20 112:3 117:11 133:1 160:7 176:7 177:10 189:10 195:4 204:21 offered 179:2 180:4,9,25 188:20 207:10 Offered/Admitted 4:3 offering 85:22 175:25 186:19 189:2 office 46:15 88:12 89:21,25 90:3 96:17 145:7 150:14,20,24 156:5,19 170:16 officer 45:24 89:4 89:8 107:16 115:9 118:1,10 119:16 120:10 120:11,13,14,18 126:11 127:6,12 135:22 136:13 136:14,16,19 137:12 139:2,4 139:6,10,15,18 139:22 140:5 141:21 142:20 143:15 144:3,3 144:5,11,14,15 144:20 148:11 149:13 152:16 154:19,20 158:25 159:17 159:20 163:17 167:12 168:16 171:9 172:10,20 186:20 189:9 195:14 officers 34:8 96:7 96:8 109:19 125:24 143:14 157:1 158:23	171:19,20,21 172:2 185:25 official 1:16 207:5,15,19 officials 6:16 oh 26:17 42:13 48:20 50:21 64:23 71:1 74:21 112:8 122:5 134:4 149:22 157:5 163:23 192:1 194:25 okay 31:8,14,20 31:22 32:3,3 34:12 35:8,17 35:20,22 36:13 37:2,9,18 38:16 39:3,6,10,10,18 39:22 40:17 41:2,24 42:13 42:16,19 44:2,8 44:11 45:19 46:8,11,19,22 47:3,13,17,23 48:1,7,12 49:6 49:12,15 51:1,7 51:15,21 54:13 56:10,16 57:1 57:20,20 58:3 70:3 83:15,24 84:2,13,17,24 87:23 88:10 89:8,12,17,24 90:5,10,14 96:16,20,23 97:3,7,9,17,25 98:8,15,23,23 99:2,4,7,10,14 99:19,22,25 100:6,9,13,13 100:16,19,23 101:10,14,19,22 101:22 102:7,12 102:15,18 103:1 103:5,8,11,11 103:14,25 104:3 104:5,9,16 105:7,11,13,19 108:21 122:5,8 123:11,11,25,25 124:9,17,25 125:2,4,22,22 126:3 128:20 135:16,20 140:1 141:4 145:2,12 145:22 146:11 148:11,13 149:11,13,18,21 150:7,10,16 151:9,15,18 152:2,6,18 153:3,8,21 155:5,7,14 156:4,11,18,21 157:5,11,16 158:2,9,15 159:6,11,11,14 159:16 164:4,7 164:14 173:25 175:7 177:11
--	---	---	--	---	--

181:7,25 190:17 194:21 196:6,24 199:13 200:21 203:12,15,22 205:13 old 14:23 17:14 17:16 19:6,8 41:20,22 60:23 60:25 65:6 66:25 omissions 30:25 205:2 once 7:1 15:18,19 18:20 21:14 62:11 110:9 114:11 116:8 134:2 141:24 144:16 153:8 158:16,16 161:6 164:8 172:22 178:21 199:13 one 6:20 15:20,21 15:22 19:6 25:24 29:15,17 30:16 32:1 33:12 42:18 43:17,17 49:17 50:13,18,19 52:24 58:19 64:6,13 66:22 71:18 73:13 86:14 88:14 90:25 96:18 98:1 99:7 103:12,17,17,19 103:20 104:20 108:8,9 110:8 113:20 116:21 119:5,6 126:15 129:4,4 130:7 130:14 133:23 134:16 137:24 139:17,23 140:23 141:14 142:9,22,24 144:21 145:24 147:3 148:4 149:15 151:21 155:8,11 157:13 160:1 161:24,25 161:25 162:16 169:10 172:10 173:17,22 175:6 175:13,19 176:2 178:2 181:12 182:19 184:8 186:10,15 187:22,23 188:13,14 189:12,12 190:3 191:4 192:6,7,7 192:9 193:19 194:2 198:1,17 199:1,20,23 200:16,21,22,23 202:5,13 203:2 203:9,16,22,24 204:10,12 one's 178:14 one-bedroom 12:23 103:16	ones 180:14 182:4 182:18 183:4 187:23 193:23 194:20 only 7:21 8:13 48:23 50:11,18 56:17,24 58:12 80:23 97:25 99:7 131:21 133:23 139:23 141:14 142:17 158:12,12 180:10 184:6 185:15 187:6,12 193:13 199:25 opaque 198:1 open 3:8,10,11 16:4 71:19 72:3 72:5 110:8 111:6 131:18 151:10 200:5,14 201:18 202:17 202:24 203:16 207:8 opened 203:1 opening 7:18 9:4 10:25 12:8 24:11 150:24 operation 172:24 operations 125:23 137:2 opinion 59:11 93:18 188:20 205:25 opinions 189:11 opposite 202:18 oral 34:4 89:2 92:9,10 order 7:13 93:1 181:19 182:21 184:1 ordered 143:20 143:21 orders 99:19 organized 9:22 orient 174:2 originally 115:7 199:6 other 8:25 17:6 21:4,7 27:13 48:2,5 58:12,12 58:16 64:13 68:24 76:9,9 81:5 86:2,18 89:18 90:10 91:3 92:4,12,24 93:3,6 103:11 104:17 108:9 109:5,10 111:18 114:23,24 116:21 118:19 119:1,6,6,18,18 123:11,12,21 124:12,15,21 130:10,18 132:1 132:15 134:25 136:23 139:11 139:14,15 142:23 143:14 146:21 147:1 148:4,25 149:19	150:10,10 151:4 151:16 152:4,16 153:19 159:13 161:2,11 163:2 175:17 179:2,11 183:9 186:18 187:2 189:7 193:2,23,24 194:20 201:11 202:15 204:17 207:7 otherwise 172:3 otherwise 92:4 ought 44:8 93:4 93:13 175:23 188:25 ounce 148:3 out 13:5,7,9,24 14:1,1,25 19:7 23:5 27:3,6,6 36:11 38:1,4,6,8 39:17 42:6,11 42:25 44:12,19 44:21,23 49:17 51:10,18 52:5 53:18 55:6 56:8 73:13 74:1 75:19 77:15 89:15 90:5,6,7 92:8 98:24 99:19 101:14 102:7 107:12,18 110:8 113:8 114:15 115:5 118:17,25 119:3 120:4 123:8 128:4 129:1,6,7 129:15,20 130:9 131:14 134:3,6 134:9,12,14,15 134:22 140:2 143:1,9 145:22 148:6 152:7,15 153:9,10,11 154:10,14,24 155:17 158:20 161:12 163:13 170:10,25 171:1 174:9 175:16 180:17 188:7 192:8 193:21 200:7,14,22,23 201:19 outcome 8:21 outdoors 71:23 outside 14:11 27:20 32:15 72:1 74:11 76:1 76:12,14 106:4 119:5 126:16 143:17 149:18 151:19 152:16 153:6 166:14 168:2 outweighed 117:20 133:5 183:14 outweighs 191:16 193:6 195:2 over 7:13 12:7 13:1,14,15 25:7	25:10,21 26:23 26:24 36:25 43:11 47:22 55:8,11,14,15 66:8 68:24 73:10 74:16,20 80:7 88:3 90:21 93:1,3 94:1 98:16 102:15 114:24 116:16 118:23 120:16 127:11 134:1,5 143:21 146:6 149:15 153:17 154:18,23 159:2 159:5 161:11 163:7,12,20 167:7 182:1 191:13 196:3 overall 173:12 overrule 81:4 overruled 56:14 63:24 117:22 133:7 148:17 189:12 205:15 own 11:12 13:22 51:25 65:14,14 83:17 148:19 171:5 owned 35:18 owner 158:5,13 ownership 105:3 <hr/> P P 1:1 2:1,1 5:1 p.m 1:10 18:10 38:17 68:9 93:24 128:19 137:15 165:22 170:13 177:18 185:7 196:19 206:4 pack 98:17,24 package 198:14 198:16 199:4,9 199:10,12,12,14 200:14 201:9,10 201:18 packaged 199:5 201:1 203:19 packages 202:24 PAGE 3:4,17,20 3:23 pages 93:9 paid 38:7,8 42:25 44:20,21 48:16 207:12 pair 12:17 pan 174:10 panning 174:13 pans 175:16 paper 198:9 Pappadeaux 104:8 paramedic 115:6 115:13 127:6,13 paramedic/type 151:20 paramedics 115:18 119:6 paraphernalia	146:21 parents 14:5,7 15:2,6 parked 13:8 14:11 30:4,8 31:9,16,18 73:25 parking 38:17 125:18 142:15 152:22 part 47:23 70:14 80:3 97:10 104:7 105:17 109:1 116:17,17 133:12 161:4 182:14 185:1 part-time 104:6 participants 6:17 participate 158:15 particular 102:16 107:16 137:24 138:10,21 147:20 157:25 158:8 188:3 189:1 197:15 parties 8:7 13:25 207:7,10 parts 115:23 party 13:6 pass 33:20 58:18 88:19 95:24 120:24 135:5 143:24 162:7 past 85:15 170:14 patio 110:18 111:8,9 153:6 174:8 patio/living 174:8 patrol 46:15 120:7,13 137:12 137:23,25 138:1 149:13 patrolman 145:12 pattern 174:5 194:18 patterns 155:24 pause 34:19 94:16 157:22 177:2,12 183:2 204:23 pay 19:20,24 20:1 20:17 29:15 44:23 81:10 97:22 158:19 paying 101:5 peace 10:18 136:16,19 168:16 peek 131:2 peer 109:24 pen 113:17 Penal 136:21 penalty 3:5 5:12 pending 51:12 people 13:25 27:13 40:5 107:17 108:9 114:7,10,10,19 117:17,21 118:4	118:7,13 124:22 128:3,4 131:21 132:1 133:6 139:14 143:12 151:20 153:12 153:13,25 154:9 154:15 162:20 163:5 172:14,15 178:14,17,19 179:6,17 180:3 180:3 186:12,13 people's 81:1 per 120:13 199:23 percent 53:8 55:3 perform 7:9 14:15 performed 15:15 perfume 77:18 perhaps 86:1 94:6 183:12 193:15 period 51:17,19 81:18 104:8 135:15 periodically 171:12 permanently 59:3 permission 175:23 permitted 7:5 9:16 person 7:24 19:24 20:17,18,20 48:2 71:23 89:3 89:18,24 90:1 108:20,24 109:1 109:9,13,16 110:10,13,17 111:10,20 114:6 114:18,24 115:3 115:19 116:4,8 116:9 117:2 118:5 119:11,12 119:13 122:23 122:24 124:15 124:18 125:25 129:8,9,15,17 130:4,12,20 131:12 132:8 137:20 198:21 person's 8:19,20 114:2,4 184:13 personal 84:13,19 85:3 148:19 171:6 187:16 personally 100:13 personnel 130:19 131:20 134:19 139:12,19,21 Persons 120:3 143:7,22 perspective 188:9 perspectives 181:3 PES 119:22,23,24 143:18 169:25 170:17,22 171:4 172:23 phase 188:22,23 phone 11:23
---	--	--	---	--	---

13:15 25:22 26:5 63:19 69:1 70:5,6 73:7 75:2 82:11,14,18,19 82:25 83:1,13 83:22,22,25 84:4,15,20,22 85:9,10,16,22 85:23,25 96:14 99:8,14 143:17 photo 111:1 175:15,17 182:23 190:12 photograph 4:4,5 4:6,7,8,12,13 29:9,11,24 173:12 174:7 178:23,24,25 179:1,3,6,8,9,13 179:14 186:16 186:16 187:21 189:16,17 190:3 191:17 192:17 193:25 195:18 photograph-by-p... 189:7 photograph-taking 173:15 photographer 189:10 photographing 196:25 197:6 photographs 4:10 4:11,14,15,16 31:3,6 117:19 141:2 169:3 173:2,4,5,10,11 173:22 174:15 174:22 175:6 177:3,4 178:2,7 178:8,9 180:4,9 180:11 187:2,11 187:15,18 188:16,23 189:3 189:5,11,14,18 190:15 191:6 192:2,18 193:2 193:4 195:11 photography 169:12,13 175:10 photos 111:12 112:20 117:3 173:25 177:1 187:17 physical 8:1 58:16 62:13,21 63:13 119:24,24 143:19,22 145:5 168:14,21,25 169:3,23 170:5 physically 85:1 101:25 PI 50:17 pick 43:3 46:1 picked 13:13 46:17 204:13,17 picking 197:18 picture 28:23 29:1 30:1 113:4 116:18 117:1	182:9,10,12 183:15 184:5,6 184:9 185:13,16 188:4,10 203:9 pictures 28:24 30:11,13 31:22 31:23 159:13 176:19 178:18 178:19,21 180:21,24 184:11,18,18,24 192:16 195:21 piece 199:18 pile 181:23 pillow 116:16 133:12,16 pillows 142:12 pinning 154:5 place 2:15 45:4 47:14,15,17 49:20 85:17 102:12,13 113:12 125:4 192:18 198:10 placed 205:9 places 164:1 179:11 plan 12:1 69:2 plane 15:6 planned 11:6 69:12 planning 11:7 Plano 2:16 17:19 23:1 plans 11:24 18:6 22:8 25:16,17 102:12 plant 203:8 plastic 198:11 pled 10:21,23 pleads 3:9 please 6:9,12,14 6:18 7:15 11:2 16:10,13 54:15 58:19 59:6,18 59:19,22,24 93:25 94:11 101:3 106:7,14 106:23 126:18 126:21 127:3 135:10 136:10 165:23,25 166:10,13,17 168:9 177:19,20 196:20 pleased 104:11 plethora 149:7 plus 169:16 171:3 pocket 38:7 44:21 44:23 pockets 150:25 point 21:9 26:9 54:25 57:21 62:1 75:23 89:11 92:8 94:6 109:25 110:1,11 110:13 112:4 114:22,25 115:8 115:9,19 118:25 120:17 131:9,13 131:15,19,20	132:10 133:18 134:2,12,18,24 143:13 151:21 152:8 171:18 172:9 188:6 195:5 Pointing 87:5 poison 164:12 police 13:17 14:10 15:7,11 15:11 27:15,21 34:8 46:14,16 52:10,11,19 54:6 55:4,12,15 55:20 72:15,23 73:6 75:11,13 75:14,15,17,21 76:12 96:10 99:2,5 119:8,14 119:16,22 120:11,18 125:23 134:13 134:25 136:13 136:14 137:8 138:23 161:23 168:10,15,18 169:23 170:3 171:9,20,21 198:18 policeman 72:24 policemen 77:5 policies 136:24 pool 116:25 117:1 pooling 116:9 porn 163:3,9 portion 171:5 portions 207:6 position 91:14,17 92:1,20 113:2 164:22 183:13 positioned 31:17 positioning 184:18,23 positive 21:3 possession 19:8 20:6 21:12,14 84:22 91:8 possible 90:25 129:7,9,15,16 130:11 134:11 137:20 199:11 possibly 105:2 122:23 184:21 pot 149:14,15,19 175:13,15,19 potted 203:8 Prairie 46:18 60:16 precautions 132:3 predicate 85:19 92:21 prefer 144:8 prejudice 183:14 186:22 188:20 prejudicial 117:20 133:5 179:7 180:10 191:11,15 193:6 195:3 preparation	207:12 prepared 24:13 preparing 161:21 173:5 presence 1:11 81:2 present 9:8,15,24 32:18 62:22 156:24 165:24 167:4 presentation 9:14 presented 7:14 8:1 presenting 9:7,11 preserve 169:1,2 Presiding 1:12 pretrial 156:7,22 158:13 pretty 36:11 52:5 52:16 53:9 101:10,11 113:21 116:15 116:18 161:14 163:17 173:15 173:17 175:12 previous 24:3 91:4 170:14 previously 5:13 19:12 110:24 primary 137:4 printed 15:12 prior 43:5 65:16 66:4 81:10 84:7 91:2 104:5 122:13,17 159:12 priorities 119:18 probability 8:23 probable 119:21 probably 5:24 49:17 50:15 52:20 70:14 74:14 90:15 93:13 99:10 114:13 122:11 149:16 154:7 156:12 157:25 165:3 179:24 183:6 205:21 probation 5:19 34:20,24 35:2,6 51:2,3 probative 117:19 133:4 178:13 183:13 184:1,1 184:11,20 185:23 186:18 186:21 187:6 188:17,18 190:10 191:10 191:12,14,16 192:11 193:5 195:1,2 197:12 problems 107:5,8 procedure 8:4 109:1 113:22 134:8 142:21 172:24 197:1 procedures 130:5 136:24 138:6 proceed 9:3 138:8	138:10 proceeded 73:12 proceedings 1:11 1:13 6:18 34:19 94:16 157:22 177:2,12 183:2 204:23 207:7,10 process 174:3 195:23 processed 200:17 processing 170:14 produced 1:14 producers 154:18 production 90:17 91:11 92:25 prohibits 6:24 projectile 175:18 176:14 197:25 199:1 202:14 203:2,7 projectiles 197:19 prompt 108:16 pronouncing 17:25 205:5 proper 57:9,13 85:19 property 28:8 105:5 198:17 proposed 13:22 prosecution 9:10 157:18 prosecutor 9:3,5 9:7,12 156:22 158:14 prosecutors 156:8 prospective 166:2 167:8,10,12,16 167:17,18,19,20 167:21 protectives 99:19 prove 9:9 184:3,4 184:5,12 185:22 186:10 187:15 187:19 proved 92:22 provides 91:7 proving 184:7 186:19 provision 91:11 proximities 86:18 public 6:17 50:17 50:17 publish 32:8 175:23 193:11 195:15 published 182:9 182:11 195:23 pull 38:4 192:12 pulled 38:1,3 149:15 200:23 pulling 38:6 44:23 punishment 188:21 purchase 23:13 purchased 35:8 35:14 48:12,14 57:21 pure 63:22	purely 148:13 179:14 191:21 192:16 purple 115:22,24 116:2,2,23 purpose 8:12,13 81:3 93:6 96:20 173:8 176:13 179:14 purposes 180:10 195:5 196:8 purse 23:21 78:2 78:6,8 95:4 150:5 purses 78:4 pushed 100:20 pushing 97:21 put 9:12 13:15,16 13:21 16:12 23:21 27:5 46:11 49:6 58:10 59:24 79:23 80:4 86:2 94:5 101:12 110:15 112:13 124:13,16 126:20 129:7,14 136:1 148:3,4 166:12 180:17 180:21 181:12 181:21 191:20 197:25 198:2 199:2,4,17,19 199:20 200:3 201:6,9 203:15 204:10 puts 119:14 putting 101:6,7 125:20 187:10
Q					
quarter 165:3 Quash 3:4 5:11 question 53:17 56:6,18 57:2,9 57:10,10,13 62:20 63:3,25 95:6 97:15 124:6 125:1 170:8 176:2 192:4 questioned 34:10 questioning 40:20 153:11 178:16 189:21 questions 27:5 33:25 54:23 56:2,25 57:8 58:21 94:12 105:22 125:19 125:24 135:7 quick 193:6 quite 41:5 82:3 100:9 101:14 180:5 185:10 quote 155:20					
R					
R 1:1,1,1,1,1 2:1 5:1					

radio 7:7 108:22 119:9,20 143:6	165:20 205:21 Recital 92:9	relating 102:14	renting 40:5	review 7:13 34:17	rise 6:7,11 59:13
radioed 119:9	recitation 92:23	relations 51:16	repair 16:24	93:10 159:12	59:16 93:20,23
rain 42:7	recognize 28:24	relationship 8:21	repeat 20:19	reviewed 90:20	165:6,21 177:17
raining 42:3,5,6	29:9,24 30:11	54:2,3 55:1	43:13	91:2 183:3	196:18 206:3
raise 6:12 16:9	82:10 86:11	57:17 61:11	repeating 101:3	revoke 51:3	road 98:9
59:21 106:13	95:14 159:21	62:2,5 64:15,16	replaced 104:1	Richard 179:18	robbery 10:5
126:18 135:24	198:14,16	64:18,19 100:10	report 7:1 15:17	ride 171:12	170:16 184:20
166:9	recollect 97:24	100:14 104:11	43:24 92:5,6	right 3:11 5:15	Rohr 15:17
ran 179:12	recollection 91:12	relatives 139:16	145:10 202:14	6:5,12,14 10:20	179:19,21 180:2
Rancho 21:24	recommended	143:13 152:3	203:2	12:22 15:19	rookie 171:9
Randol 58:15	59:7	154:9,14 155:2	reported 1:13	16:6,9,13 32:9	room 8:6 87:19
rang 71:14	reconsider 5:14	155:4,6	201:11 207:8	32:20,21 34:15	88:1 114:14
109:22	194:23	relay 147:2	reporter 1:16	36:6,21 38:1,2	120:8,12 129:13
range 15:19	record 1:7,14	released 6:24	32:16 106:5	38:11,20,21,23	132:10,12
rank 144:6,12	106:24 112:4,17	relevance 80:22	126:17 207:5,19	39:1 41:13	140:18 150:12
rare 145:21	127:4 136:11	180:8 205:14	reporter's 1:7,14	43:25 45:2,19	150:17 157:4,6
rather 71:16	175:9 182:7	relevant 183:13	3:24 207:1,7,9	46:5 47:3,13	157:7,9,13
91:19	187:16 194:10	remain 166:14	207:12	49:17 51:2,12	161:24 174:1,7
reach 109:15	194:22 195:5	168:2	reports 7:7	52:19 55:6,21	174:8 176:18,19
reached 110:19	200:19 205:19	remained 143:16	144:15,17	56:22 57:2,13	197:10 203:8
111:6 114:5	207:8,9,12	remark 112:16	159:11 179:25	58:20,23 59:12	rooms 86:17
read 3:8 7:5,16	recorded 85:9	remember 26:1	represent 89:1	59:21,21 61:25	150:10 151:5,16
9:14,17	89:3 92:10	33:9 38:22	192:5	62:17 63:19	157:14
ready 5:3,4,5	recording 92:12	41:15 44:4,7,14	request 5:15	68:12 72:17	rosa 3:21 177:13
13:5 40:11 94:8	records 7:13 83:4	45:17,20 55:10	175:22 195:10	75:25 81:3	rosaries 33:6
161:18	recover 200:8	58:9 63:10 64:3	requested 207:7	83:18 87:7,11	rosary 80:16
real 61:23 116:5	recovered 198:3	65:25 75:18	required 9:9	87:15,20 88:18	81:13
121:8	200:8,11 203:5	77:11 78:19	rescue 107:17	89:13 91:3 93:8	rotation 170:17
really 5:17 24:12	203:7,21,23,25	81:19 89:5,9,11	117:25 126:10	94:1,11,15,17	170:18,19
38:4 49:18 53:5	204:4,8	89:23 90:13	127:5,12,23	94:19 96:16	rounds 40:18
55:23 96:18	recovering 197:2	95:6 97:2,24	128:2	99:17 100:21	route 25:1
97:19 100:16	recovery 197:20	98:13,14,22	resealed 199:11	103:21 105:24	routine 80:3
102:17 104:25	Recross 3:12,19	99:6,9,10,11	202:19	106:6,10,13,13	rule 3:18 8:5
121:15,16,16	3:22	100:5,7,8 102:1	reseals 201:16	109:7 110:18	90:19 91:6
125:25 131:11	RECROSS-EXA...	103:7 105:18	reserve 16:5	112:6,19,20	92:15 117:16
138:17 141:10	96:3 162:9	115:18 116:17	164:20	114:2,5 118:15	165:9 166:13
145:25 153:15	red 178:22 200:3	118:14 120:9	reserves 3:11	118:15,18	183:7,12 193:5
154:2 156:12	201:12,13	124:3,13,15	residence 45:11	120:25 121:14	196:14
164:11 189:6,22	red 178:22 200:3	129:2,13 130:22	52:3 96:15	123:2 125:13	rules 136:22
192:10	201:12,13	130:25,25 131:2	101:4 111:2	126:7,12,18,21	rulings 7:22 8:8
rear 173:16	redirect 3:12,19	131:18 132:13	120:20 122:17	131:19,21 135:6	run 129:15
reason 48:23 93:3	3:22 94:21	133:15,16,25	137:21 139:3,9	135:9,13,24,24	running 53:6
109:5,6 119:12	159:18	152:25 179:19	139:22 142:3	136:2,25 137:1	54:14 74:19
123:7 141:16	redo 198:3	188:8 189:15	153:5,19 158:5	143:25 145:2,3	161:20
179:2,4 180:8	refer 181:7	197:24	158:13 173:15	147:15 148:6	runs 107:18
reasonable 8:24	reference 85:2	remind 94:18	respect 81:11	149:8 153:6,18	
15:24	referred 7:8	165:8	respect 81:11	154:25 155:18	S
reasons 58:12,12	reflect 50:8 117:3	remove 155:3	respective 207:10	155:25 157:21	S 1:1,17 2:1,8 5:1
58:12 64:9	182:7	removed 76:24	respond 109:19	158:7 162:21	207:20
109:10 148:23	reflected 85:11	146:5 152:6,15	120:1 137:5,16	163:3,22 164:16	S-N-O-W-D-E-N
192:19	194:8,18 203:12	153:4,8 178:22	171:15	164:19,21 165:2	106:25
rebuttal 9:12	reflective 82:24	197:20	responded 109:20	165:3,19 166:8	safety 158:25
recall 18:4 77:17	194:18	render 7:21	110:1 114:7,9	166:9,10,12	salon 65:10
98:1,8,16	reflects 85:6	renew 63:1 85:19	130:19 171:7	167:1,22,25	same 9:13 10:16
107:23 122:19	207:10	renfro 1:16 207:5	responding	171:15 174:11	28:11 31:22
123:19 124:4	refresh 91:12	207:18	119:16 120:10	175:25 176:3,9	37:3 62:24
128:21,24	129:25	rent 18:21,22,24	138:4,5 142:19	182:4,18 183:3	97:15 115:3
129:12,18	refurbish 45:5	19:1,3,5,14,20	response 12:5	183:18,20,24	121:10 134:14
137:14 138:15	refurbished 19:4	19:24 20:1,9,15	32:19 71:14,15	187:1,2,22	157:3,7 164:20
141:10 151:21	36:7 41:4	20:17,21,25	85:13 109:22,24	188:8,10 189:6	175:7 180:25
171:20,22	regard 11:10	21:5,7,14,15	118:8	189:13,24	186:10,15
197:16	64:13 83:3	35:18,20 37:12	responsible	190:25 192:1,14	187:11 190:5,6
recalls 83:3	85:25 88:3	37:16 38:24	105:17	192:23 193:1,9	190:9,12,23
receipt 20:14,15	180:19 193:6,14	42:17 43:4,7,8	rest 116:25	193:11 195:7,12	192:6,10 200:3
20:18,23 37:12	193:18 196:12	43:15 46:1	142:17 193:8	195:15 196:8,16	204:16
37:14 42:25	regarding 89:3	47:16	restaurant 21:24	196:21 202:2,12	Sandoval 1:12
receive 7:10	91:5 153:25	rental 45:4	38:6 44:22	204:1,22 205:1	satisfy 125:4,7
received 138:14	156:6 180:1	rented 40:9,11,11	125:19	rigor 116:4	Saturday 12:7
recess 59:1,12,15	regular 46:15	renter 20:10 21:1	result 205:10	ring 13:23 77:12	14:3,8 24:11
93:13,22 165:5	77:25 113:22	36:15,23 39:24	resulted 184:17	130:7 184:22	28:3 67:11,19
	related 17:4	renters 19:1	retire 149:16	ripping 200:2	69:2 76:19 89:4
	relates 91:8		retrieving 80:8		

89:5 105:12 saw 11:20 12:17 13:25 14:1 20:17 25:4 30:4 37:22 43:11,15 63:9 66:3 81:2 82:24 84:2,6 109:25 110:2,15 111:13,20,24 114:16 116:14 118:5,15 131:7 132:16,21,22 134:4 138:24 153:16 156:16 172:21,22 197:17 saying 31:14,15 31:25 44:7,14 46:5 92:15 148:18 160:23 166:18 190:1,20 190:23 191:3 says 38:4 55:5 186:24 SBOT 2:3,4,5,12 2:13 scale 86:17 scales 147:4,17 147:17,18,20,23 147:24 148:9,14 148:24 149:18 149:18 163:18 scare 52:21 scene 34:6,7 77:6 111:13,23 114:8 114:15,20 117:3 130:21 132:4,10 134:9,11 138:22 139:11,14 140:11,12 141:5 142:24 143:8,12 143:16,21 144:19,21 145:22 146:7 151:3,25 154:20 156:6,19,20 159:9 160:18,19 161:15 162:15 162:18 169:2,4 169:9 170:10 171:3,25 172:3 172:6,8,12,21 173:6,6,9,18 174:12 176:4 177:5,7 184:7 184:19 196:25 197:6,11,15,22 199:5,14 200:12 201:10 204:14 scenes 120:2,2 144:17 170:14 school 22:23,25 23:4 53:20 69:9 104:4 169:9,10 schools 169:14 schultz 2:3 91:14 91:17 92:14,20 135:11,17 165:8 165:14,18 201:25 202:3 scissors 200:15	201:19,21 scour 91:23 screaming 74:19 scuffle 160:21 se 120:13 seal 199:21 200:2 200:3 202:19 sealed 199:21,22 201:4,5 202:17 202:23 search 14:12 136:23 149:25 150:2 151:5,8 169:9 searched 139:10 160:3 164:8 searching 146:24 seat 16:12 76:6 126:20 136:1 seated 6:9,14 59:6,18,25 93:25 165:17,23 168:1 177:19 196:20 second 20:25 38:24 40:5 43:17 45:3 47:13 71:20 72:16 88:10 114:18 157:20 160:2 200:18 Secondly 85:15 seconds 94:14 secret 61:20 secretive 163:7 section 119:24,25 125:17,17 143:22 168:15 168:22,25 169:17,23 201:6 sectors 157:24 secure 142:3,23 144:18 172:12 secured 134:13 142:22 143:1 151:25 securing 156:19 security 85:21 142:2 see 8:15 12:7 15:5 19:6,24 20:6,21 20:23 23:15,20 33:17 37:19,23 39:16 40:5 42:1 42:2,12,15,16 43:17 47:23 63:7,11,13 71:22 72:18 74:4 76:24 77:24 78:14,16 81:24 82:18 91:21 95:18 103:15 109:25 109:25 110:4,7 110:9,10 111:10 113:7 114:1,2,2 114:3 115:23 116:19,22,23 118:5,22 120:9 130:8,10 131:3 131:4,5,10	132:11,13 133:11,24 141:18 142:7 147:19 151:22 160:13 161:8,8 161:9 162:13 165:13 175:14 181:16,19 188:5 189:17 190:7 193:23 194:7 196:9 seem 71:17 118:20 155:25 seemed 53:9 71:16 118:21 seen 28:11 42:10 42:18,23 43:17 47:22 64:25 71:22 85:15 110:13 123:9 151:23 152:14 162:13 segregate 195:9 seized 15:11 seizing 198:21 seizure 136:23 self-defense 185:1 self-generating 91:25 sell 148:6 semester 69:10 69:11 send 8:6 172:24 199:15 senior 144:7,8 167:10 seniority 154:20 sent 14:14 15:14 115:6 199:22 201:2,3,5 sentence 166:21 Sequestration 3:18 Sergeant 167:19 sergeants 158:17 series 178:1 180:10 190:12 191:5 serious 54:21 service 6:21 7:5 198:20,20 201:6 203:4 services 107:11 set 14:20 114:2 116:9 148:1 setting 156:21 seven 18:10 112:7 136:15 several 55:25 69:23 74:18 80:7 94:4 162:19 169:15 174:13 shades 12:9 113:1 Shakes 36:1 45:15 shape 173:17 share 149:17 sheet 133:16 178:25 sheets 155:15	178:22 shell 161:10 197:18 Sheriff's 46:14 shift 107:23 128:10 137:14 137:16 shirt 13:4,13 shoeboxes 150:25 shoes 13:4,14 shoot 149:3 shooter's 185:1 shooting 10:3,8 10:13,15 184:14 185:23 shop 24:11 shopping 12:1 22:13,15,20,22 67:14 73:3 102:4,5,10,13 102:14 short 41:21 104:8 118:13 127:15 shortly 70:21 74:13 172:25 shorts 161:20,21 shot 11:11 15:18 15:20,22,22,23 16:1 175:11,11 175:12,13 178:9 179:6,11,17 180:3,25 183:15 184:12,15 185:24 186:9,23 187:1,6 195:13 195:17 shots 15:19 175:11 184:13 187:16 194:24 194:25 shoulder 15:22 show 11:14,22 12:21,24 13:10 13:11 14:16 15:24 19:19 28:22 29:8,23 30:10 92:9 86:10 95:13 99:5 113:10,17 116:11 121:24 129:3 130:6 159:20 173:21 175:3 176:14,23 178:18,19,21 179:3,10 180:5 184:2,19 185:18 186:11,11,21,24 188:13,16 191:3 191:13 194:3 195:21 showed 13:13 36:14 39:24 40:4 41:12 43:19 46:2 75:15,17 120:8 120:12 125:5 shower 13:6,8 showing 48:3 76:10 154:10 178:25 182:12 182:14 184:21	184:24 shown 159:11 194:15 shows 36:24 40:13 116:15 179:3 184:9,9 184:25 187:25 188:15 189:16 189:17 191:22 194:2,12 shutter 192:12 shutters 113:1,3 sic 17:25 27:21 54:11 69:14 105:17 121:19 132:23 182:11 189:2 191:17 202:7 side 9:15 11:6,6 28:24 29:3 31:18 87:19 105:15 111:6 114:23,25 116:1 118:11 130:25 132:15 133:23 134:1,5 148:4,4 166:17 167:7 173:18 198:1 202:15 sidebar 32:12 106:3,4 126:16 sign 142:7 161:5 162:13 185:2 Signal 119:10,13 119:17 Signed 10:18 significantly 133:5 signs 63:13 161:2 161:3 similar 194:17 199:18 204:16 simply 84:15 since 18:16 35:8 61:8 90:12 110:1 130:11 143:15 156:4,5 197:17 single-space 93:10 sir 5:9 16:10,13 31:7,13,21 32:2 35:16,24 36:10 36:12,16,22 38:12 40:16,24 41:1 44:4,15 45:10,13,18 46:10 47:2,25 50:25 53:8,13 53:16 54:4,4 55:7 56:15,24 57:6,11 58:17 58:23 59:2 62:23,25 98:18 99:1,3,9,18,24 101:16 103:24 104:2 121:6 122:10 123:3,10 126:3,7 135:10 135:14,21 144:16,24 145:1	145:6,8,11,16 145:18,23 147:10 148:2 149:12,20,24 150:12 152:23 157:8,15 158:6 159:10 164:6,13 164:19,21,24 165:1 167:2,7 181:15,24 182:6 189:20,23,24,25 196:10,15 202:4 205:6,12,13,16 sirens 138:9 sister 55:24 56:11 sisters 74:25 sit 158:17 180:2 sitting 30:3 42:11 141:16 152:7 161:25 195:12 situation 62:4 100:1 108:7 138:25 142:19 174:5 situations 163:21 six 11:8 107:16 114:9 177:25 Sixteen 175:5 176:11 size 157:10,13 sizes 198:10 slap 52:21 sleep 79:19,22 sleeping 131:13 slept 142:11 slightly 178:8 181:1 192:13 small 112:4 147:4 147:21,21 175:14,16 197:25 smaller 201:22 smart 164:11 smear 194:5 Smell 164:14 smile 65:1 Smith 172:25 173:2 197:4 smoke 148:21 smoking 125:17 snapped 190:11 snowden 3:14 106:12,18,25 131:9 socks 13:3 14:13 14:15,17 solve 107:5 solving 107:8 some 8:10 22:16 22:22 26:9 44:13 48:5,21 62:20 65:16 69:4 72:19 77:5 77:17 79:5 81:22 85:14 90:12 92:24 93:10 94:4,6 96:5 97:17 98:1 100:3,25 101:6 104:16 120:17 124:15 130:12
---	---	---	---	--	--

131:2 132:10 141:15,16 142:12 144:12 146:21 147:2 155:12 160:20 160:21 162:20 163:3,9 174:12 183:9 187:2 193:15 197:13 201:21 some-odd 187:11 187:11 somebody 13:11 34:21 40:13 42:14 72:24 73:17 109:11,14 120:11 121:9 122:22 124:2 137:23 148:8,13 188:3 somebody's 123:4 125:3 somehow 71:21 someone 6:25 20:17 73:11 75:11 91:18 92:1,2 140:17 140:17,19 142:11 163:11 171:8 185:24 someone's 73:9 something 19:11 56:23 57:16 58:13 59:1,5 112:10 121:13 123:18 129:1,5 132:7 140:13,14 140:23 146:19 150:6 151:14 153:16 155:17 155:20 159:1 162:11,25 186:7 187:15,19 196:13 197:22 sometime 15:25 sometimes 67:8 69:14 118:6 119:15 156:1 163:20 196:1,2 somewhat 187:4 somewhere 47:19 113:22 115:8 121:11 122:12 122:13 123:21 152:9 158:3 202:18 son 17:11 26:10 26:13,15,18 27:4,11 33:1 55:21 56:7,10 56:18 57:17 67:16 70:20 75:3,17,19 86:14 98:20 101:23 104:10 104:14 120:16 120:16 son's 67:2 son-in-law 54:6,6 100:17 101:2 soon 132:9	138:11 152:10 152:10 sooner 158:4 sorry 17:12 20:19 26:11 34:24 47:7 51:6 53:25 54:14 81:5 112:9,21 124:8 149:8 162:16 175:20 181:11 sort 77:19 116:6 118:8 140:16 155:12 159:4 160:25 soul 35:25 36:4 source 58:7 south 120:23 Southeast 171:10 space 194:13 Spahovick 14:23 Spaniel 79:13 Spanish 166:17 spare 88:5,8 155:9 speak 73:15 91:15 96:17,18 121:4 124:10 151:18 speaking 6:24 194:11 special 169:5 specific 7:17 102:12 125:4 158:25 178:24 179:13 specifically 45:23 81:1 95:3 108:3 128:18 136:25 141:10 178:4,6 178:10 179:8 180:17 189:14 194:14 195:23 specifics 123:11 153:25 speculating 124:4 124:7 speculation 40:20 56:2 62:15 63:22 148:16 speed 138:9,11 spell 97:1 106:23 127:3 136:10 spelled 127:7 spend 24:5,10,13 67:10 80:7 spending 23:25 spent 11:5 14:22 spiel 175:22 splatter 185:20 185:21,22 186:2 186:3,4 190:15 191:23 193:22 194:11 splattering 116:19 split 104:18 spoke 37:10 45:24 69:15 89:17,20 94:3 96:5,7,15 124:21 141:21	157:17 162:5 spoken 48:9 89:4 94:4 spoon 163:8 spots 142:9 spouse 7:4 spread 130:9 spreading 146:17 springs 185:15 squad 138:8 stack 181:5,9,16 181:22 staff 6:20 stage 80:22 stains 187:21,25 198:8 stand 42:20 147:19 149:8 standard 67:7 134:8 standing 74:11,16 132:1 153:1 172:10 stands 112:20 202:21 staring 42:20 start 76:10 100:24 115:22 116:2 141:22 158:22 167:7 175:21 189:25 started 51:18 72:22 74:18 104:7 132:15 143:12 161:7 173:1 206:1 starting 152:19 starts 115:20 175:13 state 1:3 2:2 3:10 5:3,3 8:22 9:21 9:22 10:2,18 16:17,21 32:5 59:8 60:4,8 84:22 93:1 106:11,19 117:11 126:10 126:24 133:1 135:22 136:6 160:7 167:4,23 168:5 169:14 176:7,11 177:9 179:17,22 183:19,21 184:13 186:9 192:24 196:5,11 207:2,5 state's 3:11,18,21 4:2 5:4 9:8 28:23 29:8,23 30:10,21 32:8 82:10 83:7 85:12 86:20,23 91:8 95:14 110:24 111:19 112:3,12,23 113:7 116:12,22 117:6,12 129:21 131:6 132:20 133:2,8,10 140:25 159:20	160:7,10,12,12 160:14 173:21 174:17,18,25 175:3,5,12,17 176:8,24 177:4 177:10,23 178:24 182:8,10 182:12,13 187:25 188:1,14 188:17 190:1,2 190:22 191:22 192:2 193:18 194:11,15,23,24 196:21 198:13 200:23,24 202:12,17 204:21 stated 134:6 statement 3:10 7:17 9:4 10:25 36:13 37:9 38:5 50:5 85:6 89:15 90:5,6 91:7,18 91:19,21 92:2,3 92:3,9,9,11,14 92:17 93:2 96:21 97:3 statements 7:18 7:19 8:24,25 34:1,3,4 89:2 90:19,20,21,23 91:4,11 96:6 156:14,15 states 7:21 station 72:17,20 72:23 73:6,9,12 102:25 107:16 107:18 108:8 115:7 118:13 121:5 122:17 128:21,25 129:19 159:3 status 19:3 51:1 164:20 statutes 5:12 stay 25:16,19 27:17,20 74:8 76:12,14 78:25 170:16 stayed 14:1,8 39:22 121:20 151:25 stenographic 92:11 Stenotype 1:13 step 58:23 105:24 114:20 126:7,14 135:9 152:4 164:19 177:16 196:25 197:2 Sterret 145:21 Steve 167:10 stiff 116:5 still 14:11 22:23 23:4 71:15 72:10 82:14 85:15 94:18 97:15 113:7 134:18 165:14 184:3 stipulate 186:14	186:20 stipulating 179:24 stocky 41:19 stood 134:16 stop 26:23 118:16 stored 84:20 85:3 stove 19:7,9 21:12,15 38:25 39:2,3,23 45:5 straight 41:2 57:20 114:6 118:5 174:6 straighten 13:7 strange 71:16,17 155:23 street 1:17 38:21 72:17,22 129:19 170:6 207:20 strictly 125:25 strike 181:12 strip 73:3 struggle 161:4 184:25 185:2 struggled 161:5 stuck 77:15 113:5 155:9 student 53:18 studied 69:13 study 102:11 studying 23:2 69:4,6,7 stuff 80:8 143:13 144:12 147:8,13 148:25 149:5 152:20 163:5,20 sub 3:21 177:13 subject 51:2 59:10 91:8 93:17 205:24 subjective 125:24 submit 188:19 190:4 submitted 7:22 59:11 93:18 206:1 substantial 92:23 substantially 117:19 183:14 191:16 Substation 171:10 sugar 163:9 Suite 2:8,15 sums 150:7 supervisor 140:10,24 141:22,25 143:20,21 159:5 171:20 supplemented 169:14 supportive 104:11 suppose 100:17 165:11 196:2 supposed 102:6,7 108:11 114:21 121:11 122:8 123:12,13,14,15 123:18,20,23	125:5,16,18 129:1 158:24 supposedly 40:8 47:6 suppression 107:5 sure 12:2 32:14 34:18 45:16 54:16 81:19 102:9,11 110:6 123:17 130:13 131:12 132:3,6 140:1 142:1,22 143:12 147:1,25 149:3 151:3 158:23 162:22 163:4 164:24 165:18 166:9 177:22 181:18 189:1,9 195:8 surgery 100:20 surprised 49:20 154:12,14 155:1 suspect 159:8,8 suspected 40:25 198:8 Sustain 63:2 sustained 8:10 35:13 40:21 56:3 86:1 swap 193:21 swear 165:12 166:1 swearing 165:9 sweep 174:14 SWIFS 199:24,25 200:22 201:2,6 201:16 202:17 sworn 3:6 6:13 16:11,17 59:23 60:4 106:15,19 126:19,24 135:25 136:6 166:11 168:5 SX-1 4:4 SX-14 4:12 SX-15 4:13 SX-2 4:5 SX-3 4:6 SX-4 4:7 SX-5 4:8 SX-7 4:9 SX12-13 4:11 SX16-18 4:14 SX19-24 4:15 SX27-56 4:16 SX8-11 4:10 Sylvia 79:3 system 6:23 57:7 <hr/> T T 1:1 2:4 T-shirt 161:19 Tabatha 66:24,25 67:5,17 Tabitha 69:4 70:23 73:24 74:10 76:7 77:1 table 23:15,17 161:25 163:25 164:2
---	--	--	--	--	--

tag 200:6,7	Tawny 14:23	49:15 50:8	190:5,9,24	throttling 52:16	145:9 151:21
tags 198:18	15:2,8,9	84:14 85:24	192:6,10 193:13	through 7:24 9:6	152:8,8 154:6
take 5:7 13:9 18:3	team 171:2	90:21 91:2	195:19 197:16	28:15 30:21	156:14 157:3
19:8 20:6,12	tears 61:23	98:23 166:14,15	200:3	32:5 50:7 82:16	158:11,12
21:12 30:22	technician 199:25	166:16 178:3	things 99:10,12	95:4 109:23	162:16,19 165:4
47:14,17 58:25	techniques	179:10 185:5,5	103:15 105:13	111:18,21	166:21 169:20
59:12 62:15,17	169:13	185:11	107:8 115:13,13	112:14,19,23	171:22 172:11
66:20 77:1 83:8	technology 85:14	testing 199:15	115:14 116:6	113:6,20,23	173:4 176:7
85:7 91:13	Tel 207:21	204:17	127:25 142:17	114:1,2 116:14	177:9 182:19
92:18 93:4,13	telephone 2:9,16	texas 1:3,5,12,16	161:3 164:3	118:4 131:2,3,7	183:9,11,16
93:14 94:10	82:5 84:7 85:1	1:17 2:2,8,16	169:6 184:22	131:16 134:15	185:4,6 193:16
101:4 107:19	89:24	5:3,12 8:22 9:21	186:4 205:11	136:19 141:1,12	196:13 197:3,5
127:18 132:3	television 7:6	9:22 23:1 59:8	think 21:2,3 26:4	141:23,25	200:4 201:9
137:7 141:2	tell 8:23 38:8,13	60:12,16 61:3	36:11 37:18	142:14 150:12	204:20 205:21
143:3 152:12	38:16 39:22	120:21 130:2	41:22 42:11	150:14,23,25	times 8:6 15:20
163:14 165:4,4	43:18 59:5,5,7	136:21 207:2,5	54:13 55:16	151:16 164:4	24:4 26:1 42:8
169:9,11,19	61:18 64:22,24	207:18,19,21	72:15 73:15	172:6,15 173:25	51:15 69:23
173:2,5,10	73:5 75:3,4 76:7	thank 16:3,14	76:6 85:4 92:19	174:2 175:22	82:21 85:11
174:7 181:4	76:8 92:19 93:4	32:22 33:20	93:12 94:2 98:5	176:1,11,24	90:10,12,15
182:16 192:18	93:11 96:25	54:17,18,20	100:7 108:14,20	177:5,10,23	94:3,5 140:15
199:14 200:14	97:9 115:1	57:4 58:17 60:1	109:16 112:5,6	178:1,15,16	143:5 169:15
201:18 204:24	117:2 122:16	87:23 88:19,22	115:8 120:8,10	182:19 185:15	187:20 192:13
taken 6:16 31:6	124:1 140:18	94:20 95:23	123:24 125:10	185:18 186:25	195:12,25
31:23 59:15	143:11 145:23	96:2 105:19	125:14,25	187:2 188:13	tire 73:8,8
85:16 93:22	146:16,23	106:1 121:1	145:24 146:15	192:7 193:7	today 49:16 50:8
101:22 165:20	147:17 151:1	126:3,8 135:7	147:11 152:9,19	194:20 196:22	66:4 84:5,6
178:3	152:4 153:17,18	135:21 136:3	152:21 158:20	196:22 200:19	97:15 159:12
takes 71:1	154:20 156:25	159:17 164:17	165:13 171:20	204:12	together 11:7
taking 85:14	161:6 167:13,14	165:18,19 190:7	172:11 178:17	throughout 51:15	12:1,3 27:5
89:13,16 92:13	172:5 180:12	196:15,23	179:5,20 187:3	59:6 151:23,23	51:19,23 60:19
169:3 173:4,10	181:2 182:20	205:13	187:3 188:25	thumping 52:6	64:25 65:24
173:25 176:13	188:3 193:9	Thanks 202:3	190:10,18,21,22	55:23	66:10 67:11,14
176:18	195:1 196:4	their 7:24 11:7	192:11 193:10	thumping	69:12 103:6,18
talk 13:1 45:3	199:8 200:9	12:3 13:20 24:1	193:24	53:2	103:19 105:8
63:4 68:13 77:5	203:22 205:20	26:19 27:8,10	thinking 55:19	Thursday 81:7,10	110:16 141:25
94:14 96:14	telling 31:8 46:2	30:7 62:2,5	58:5	time 5:10,14 6:10	told 12:25 13:6
99:16,25 100:9	54:11,12 55:1	64:18 66:15	thinks 57:17	6:13,18 9:5	35:17 37:21
129:11 146:1	77:11 108:20	71:15 72:17	third 170:12	11:20 15:20,21	38:20 41:14
154:2,15 155:6	122:22 191:19	79:19,19,21	third-party	15:22 16:4	42:24 43:1,8,11
187:10,12,13	tells 45:8 200:10	80:3 82:5 83:15	109:14	17:25 18:9	43:14,14 44:12
189:1,2	temperature	86:8,11,18	though 52:19	23:22 24:21	45:23 49:12
talked 11:23	116:6	87:25 91:12	83:18 86:16	25:4 26:4,16	55:18 71:24
19:11 43:2 58:3	temple 15:19	97:17 99:15	87:24 149:1	27:23 30:20	73:13,16 74:7
63:19 68:6,15	ten 68:14 74:14	100:4 115:21	163:22	32:7,18 34:8	75:21 77:4
69:16 70:20	149:14	124:18,19 129:1	thought 18:19	36:25 45:24	92:16 97:25
75:1 84:3 96:5	ten-minute 58:25	145:24 148:19	24:14 39:12	49:11 51:17,19	102:3,4 105:7
97:3 101:10	59:12	150:13 152:15	44:8 48:24	52:24 59:4 62:7	108:17,23
108:8 109:15	tend 118:7	157:1 162:20	49:18 53:20,21	63:9 64:17,25	109:18 114:14
129:12 155:4	term 9:22,24	163:6 164:8,9	55:18 57:25	65:8,11,16 66:3	114:19 115:10
157:3 165:10	terms 101:17,19	167:4 187:12	71:20 72:16	66:21 68:6,19	118:4,16 119:7
174:17,17 191:6	test 69:7 183:17	202:6	94:5 100:6	69:12,16 71:6	119:9,20 122:6
195:24	189:4,12 191:21	theirs 199:25	114:17 142:16	73:1,6,10 74:1	122:7,8,18
talking 14:6 27:4	192:20 194:23	theme 190:6	148:22 150:5	76:4,5 77:2	123:15 127:8
51:19 64:4	testified 16:18	themselves	151:11 159:24	81:18 83:6 84:2	129:7 141:24
67:18 91:7	35:17 37:15	140:17 155:3	188:11	84:6 85:10	143:10 153:7
111:19 115:15	60:5 85:9 92:13	164:12	thoughts 58:6	89:17,20 90:16	156:16
120:14 128:25	98:5 102:3	theories 153:25	188:21	90:22 93:10,13	Tollway 11:19
129:13 147:18	106:20 126:25	187:13	thousand 53:23	98:1,8 102:13	12:12,22 24:24
148:25 153:1	136:7 167:13,14	thereof 92:12	threaten 56:7	102:16,18,20	61:6 65:17
160:1 161:25	168:6	thereon 59:11	threatened 55:24	104:4,7,20,22	145:13,16
162:2 189:15,15	testify 15:18	93:18 205:25	three 26:3 71:4	108:4 109:9	tomorrow 206:1
197:21 200:20	16:17 60:4	they'd 12:3 41:5	109:15 114:13	111:24 112:2	tongue-in-check
202:8	82:13 85:17,20	thing 31:22 46:20	138:13 146:10	113:5 119:16	122:21
talks 194:14	85:21 106:19	57:7 77:17	146:15 156:10	120:17 123:13	tools 171:3
tampered 132:5	126:24 136:6	100:21 116:6	171:19 175:10	125:20 126:15	top 15:23 111:10
tanning 65:10	168:5 195:14	118:8 121:14	190:6 193:14	127:19,22	133:12 155:13
88:9	testifying 91:9	138:20,21 139:8	198:23 203:18	128:21 130:18	159:3 179:11
tape 199:18,18	159:12	147:19 155:8	204:6,7	134:6 135:14	184:15
201:12,13	testimony 7:15,16	165:13 172:18	three-hour	137:9,11,22	torso 116:18
202:15	7:23,25 8:9,11	175:7 181:4	135:12,14	138:3,15 139:24	total 146:8,9
Tarrant 46:11	8:18,19 9:1	187:11 188:19	thrilled 55:1	143:10,15,18	207:11

totally 186:23	49:13 52:15	129:7,9,15,16	113:17 134:11	voir 3:12,19,22	wants 163:9
touch 114:20,25	53:5 54:1 60:4	130:4,12,20	148:19,20	30:23 31:1	186:24 187:22
132:6,7,8	106:19 126:24	unconstitutional	164:11 186:4	62:16,17,18	warrant 14:12
133:18 134:7,9	136:6 168:5	3:5 5:13	199:19	83:8,11 204:25	wasn't 22:19 36:4
180:7	try 25:7,10 67:21	under 7:22 8:14	used 52:5 54:6	205:3	36:9 43:12,16
touched 118:21	70:4,6,8,13	11:8 15:9 16:18	88:11 91:10,12	volume 1:1 3:3,25	46:8 49:3,10
touching 115:1	71:19 72:8	37:20 39:8 41:3	125:15 162:24	207:7,12	50:20 52:16,20
touchy 144:12	110:3 150:5	45:5 60:5 92:16	user 148:9,13		53:14,14,16
tour 158:22	174:4	94:18 106:20	using 86:25		54:8 69:21 73:3
towards 118:8	trying 34:20	107:17 117:16	169:12		98:6 99:8 101:7
132:14 184:13	53:18,24 54:1,1	126:25 127:25	usual 122:12	W	103:17 108:16
184:20,25 185:4	54:25 73:9	133:4 136:7	usually 79:23	wad 38:1,7 44:12	113:4 121:25
185:24	110:11 117:8	161:10 168:6	87:18 138:22	44:21	131:12 140:19
towel 133:11,16	120:15 125:9	180:8 183:12,19	147:21 148:1	wait 37:21 73:21	142:1 155:16
town 14:21	131:1,8 147:1	204:8	154:18 159:2,4	76:1 101:1	watch 7:6 13:22
trace 197:13	149:25 155:17	undergo 169:5	162:24 163:6,22	114:14 138:23	74:21 107:6
198:9	160:16 186:1	underlying	163:24 170:16	142:21 157:5	129:13 170:12
track 143:15	Tuesday 14:9,22	199:11	199:15	waited 120:6	watched 38:6
trade-in 48:17,19	33:10,10 81:12	underneath 156:2		waiting 142:20	44:22
48:20	81:14,25	understand 7:20	V	143:18 146:25	waving 196:5
traded 49:4	tuned 195:19	85:24 91:6	V 1:4 96:23	150:4 170:9	wake-up 25:11
traditionally	turn 90:21 93:1,2	113:11 123:3,6	value 8:17,18	172:16	walk 47:22
202:17	104:24,25	124:9 125:3	117:19 133:5	wake-up 25:11	walk 47:22
Traffic 136:21	115:22,25 116:2	135:13,15	183:13 184:1,20	113:15 118:8	113:15 118:8
train 188:11	116:2 164:12	154:22 164:21	186:18,21	130:10 163:25	172:6
trained 115:18	turned 72:25	166:18,22	190:10 191:12	172:6	walk-through
training 115:12	108:22 115:4	182:21 187:24	191:14,15,16	172:5,20	walked 28:15
136:19,20 169:5	116:24 118:10	understanding	192:11 193:5	172:5,20	73:6 114:5,12
trainings 136:21	118:14,23	22:12 48:1 69:2	195:2,3 197:12	walked 28:15	114:14,23 115:5
transaction 10:17	191:12 195:24	90:18	van 115:9 120:14	118:5 132:9,14	179:12 184:16
37:19 42:16	twice 15:18	underwriting	171:2	132:23 140:18	184:16,23 185:9
43:15 45:3	180:25	60:11	vanished 71:21	172:20 190:11	185:14 189:21
47:14,24	two 19:6 27:5,5	unfair 183:14	vans 171:6	172:20 190:11	200:16 201:1,3
TransAmerica	30:11,13 70:9	unfortunately	variety 136:23	walking 132:15	201:16
60:11	110:15,16	140:16	148:23 164:1	146:24 172:15	ways 75:5 186:19
transcription	114:13 117:18	unit 119:22,23	various 109:10	wall 116:19 187:9	we'll 16:5 59:1
1:14 92:12	128:24 134:16	120:6,7 128:2	170:15	187:21 188:1	109:16 143:5
207:6	138:13 140:6,20	units 170:15	varying 198:10	190:16 191:23	165:17 170:13
transcripts 7:24	142:9,17 147:2	University 23:1	vehicle 37:3 49:4	191:24	170:13,15
translate 166:17	148:3 154:7,24	unknown 36:14	verbatim 92:23	wallet 78:12	179:24 186:14
transported	156:10 169:11	36:24,24 37:10	verdict 7:21	150:5	192:11 195:9
199:24	171:20 172:24	38:5,20 39:23	versus 5:3 183:19	walls 155:24	we're 6:3,4 91:7
trash 13:15 14:14	178:3,4 180:21	41:2,11,17 43:2	very 8:11 46:4,6	185:21 186:3	115:18,18
trashed 36:11	188:2 191:9	43:9 44:22 45:6	57:15 61:24	want 15:3 18:3	116:7 125:23
tray 77:18	192:2 201:22	45:8,12 48:3	62:2 77:8,8,12	47:13 50:3,5	130:8,9,12
treated 56:11	203:18 204:2,3	125:20 199:2	77:24 100:13	57:16 59:1,6	132:8 186:19
treating 57:18	TWU 69:10	unless 7:16 91:24	108:16 142:17	65:4 66:20	193:11 194:9
tree 107:12	type 7:9 23:11	109:5 130:13	145:21 147:20	70:22 75:4 93:5	we've 57:7 58:24
Treva 71:24	62:12 65:8,11	132:6,7 195:22	189:16,18 198:6	93:15 102:23	108:16 134:4
73:23	92:23 98:1	unlocked 110:5	victim 47:4,5	107:19 108:3	154:21 158:18
trial 1:2,10 7:6,7	107:10 109:17	110:19 111:7	116:13 139:12	112:14,14	181:25
7:14,17 8:3,4	130:12 132:10	114:5,11,12	161:9,20 195:13	113:16 119:7	weapon 140:21
9:3 46:21 59:6	174:5	130:8,9,11	victim's 90:3	123:5 125:3	156:1 161:7,8
59:10 80:23	types 163:2	unlocks 131:10	victims 12:25	127:18 128:18	163:3 164:8
93:17 188:22	typical 162:23	until 6:24 7:3,4	13:10 14:20	134:10 137:7	205:8,8
205:24	typically 25:12	14:8 27:17	161:4,5 184:5	143:7,9,11	weapons 156:1
tried 12:8,15,15	120:1 197:9,23	59:11 70:14	194:24	149:3,4 150:3	wearing 13:4
69:22,23 70:18	198:2	76:16 93:18	viewing 33:14,18	163:14 165:8,16	161:19
72:12 74:4		134:13 143:2	81:5,12,13,14	166:20 169:19	Wednesday 14:24
88:17 108:16		161:12 170:17	viewings 33:6	175:10 179:8,25	33:10 81:13
109:24 113:24		175:22 205:25	views 184:19,24	180:23 181:12	week 40:10 66:20
143:1	U	unusual 26:4	violations 99:23	182:22,24 187:4	67:18 158:16
tries 6:25	uglier 104:24	125:11 140:24	violence 62:21,22	189:8,17,18	weekend 25:15
trip 14:4,6	ugly 104:25	142:16	63:13 98:2	190:20 195:15	25:15,16,17,18
truck 37:8 75:20	Uh-huh 47:10	upper 204:4	160:22	205:22	67:4,5
true 9:20 43:12	78:24 150:21	upset 52:5 55:13	viewing 33:14,18	wanted 13:5,6,9	weekends 67:8
43:16 100:20	154:8,11	64:4 77:8 98:6	81:5,12,13,14	13:10 15:1,1	weeks 156:10
147:16 207:6	unable 109:12	99:8	viewings 33:6	24:8 53:14	169:11
truly 207:10	unconscious	upside 199:20	views 184:19,24	108:12 129:5	weigh 147:21
trust 53:24	108:20,24 109:1	urge 5:10	violations 99:23	wanting 128:25	148:19 149:4
truth 8:23 16:17	109:9,13,16	use 59:7 113:13	violence 62:21,22	152:3	weight 8:17,18
	110:9,10,16		63:13 98:2		148:3
	122:23,23 128:3		160:22		
			violent 140:15		
			vis-a-vis 98:21		
			visit 103:8		
			visitation 80:16		
			voice 94:5		
			voices 68:15		

weights 148:1	121:24 129:3	179:6,17 180:3	33:21 56:23	worse 190:3
weird 163:17,19	130:23 134:14	180:24 184:19	57:1 58:18	worshipped 76:8
welcomed 66:15	134:14 139:8	184:21 186:5	59:19,23 60:4	Worth 18:12
well 9:4 20:18	140:1 141:25	189:15 193:12	83:8 85:3 86:4	wouldn't 42:20
26:8 27:4,13	143:16 150:12	193:24 197:17	88:20 90:19	54:4 76:24 92:6
28:10 31:18	150:14 155:4	197:20,24	91:9,11,18 92:2	99:12 104:19
37:19,25 39:8	157:17 185:18	203:21 204:16	92:4,9,24 93:2	163:14
39:12,16 40:11	186:25 188:13	205:9 207:8	94:18 95:11,25	wound 179:13,14
40:22 41:7 42:9	were 1:11 10:16	weren't 46:24	106:1,7,9,15,19	wounds 178:20
42:10 43:5	11:6,18,18,19	52:23,23 75:23	110:20 120:24	write 20:15 89:15
44:25 45:11	11:25 12:9,9,15	97:20 99:22	126:6,9,13,19	90:7 92:15
46:6 47:4,22	13:8 14:10 15:3	100:19 102:15	126:24 135:5,10	156:14 182:22
51:6,15 52:7,20	15:19 19:1,8,14	105:4 113:3	135:16,20,25	198:2,5
53:11,21 54:14	19:16,19 20:9	121:12 123:23	136:6 143:24	writing 46:4
55:16,19 61:20	21:5,19 22:5,7,8	147:22 164:11	162:7 164:18,24	90:24 91:18
69:23 70:6	23:15 24:5,16	172:14,15	165:1,25 166:23	92:1,16 201:11
71:13 72:16	24:19,21 25:2	whack 149:4	166:25 167:8,10	202:23 207:7
73:7,15,22	25:19 27:13	whatsoever 57:25	167:12,16,17,18	written 7:24 89:2
75:19 77:17	28:6 31:6,9,23	while 14:10 19:16	167:19,20,21,23	90:19
78:19 79:5	37:7 39:1,6 41:9	19:19 20:9 22:7	168:5 189:6	wrong 181:3
80:25 81:15	44:11 47:1	23:4,15 27:20	195:24 202:2	wrote 37:12
83:19 85:24	50:23 51:15	27:20 37:10	207:15	42:25 44:5 45:1
89:4 90:12	54:13 55:1 58:5	39:23 43:2	witnesses 3:12,19	92:16
91:14 92:15	58:6,12 61:14	45:24 58:3 64:7	3:22 7:9,23 8:24	
96:18 100:5	61:15 62:7,22	77:5 108:12	9:6,12,12 32:17	Y
101:7 104:19,25	62:24 64:17,20	116:5 133:22	165:9 166:2,11	y'all 19:16,19
105:10 108:4	64:25 67:4,13	150:4 154:13	178:15	21:23 23:15,22
110:15 111:6,17	68:23 70:11	185:10,10	woke 76:6	37:2 38:20
114:16,17	72:1,1,3,6 74:6	white 38:5 39:11	woman 41:25	60:19 67:13,18
115:17 116:21	74:11 76:22	39:12 42:11	99:22 108:14	76:14 101:17
122:25 123:25	77:4,5,8 79:7,18	44:22 45:1	114:17	105:14 112:14
124:3,5 125:15	80:4 89:3 95:19	46:15 89:10	women 128:24	131:24 157:3
126:1 127:12	96:6,19,20 98:9	115:25 178:22	Women's 23:1	160:5 161:23,25
130:6 133:11	100:11,13,16	178:25	wondering 167:3	162:2,6 169:25
138:7 140:5	102:7,10,12,23	whitsitt 3:19,22	wood-burning	171:12 172:16
146:13 148:11	103:1 104:10,19	167:20,24 168:1	38:25 39:3	yard 134:17,23
150:15 151:2	105:12,14	168:4,10,12	wooden 109:23	135:2
154:4,17 155:11	107:20,23 108:4	196:24 200:5	113:23	yeah 26:6 31:12
158:22 161:21	108:10,23 110:5	205:5,7	word 121:14	38:3 39:14 41:5
162:24 182:11	110:6 113:1,1,2	Who-all 65:20	125:8 146:17	42:22,23 45:17
183:8 188:12,15	113:3,3,24	67:15	worded 49:21,21	49:22,25 50:22
190:11,19,20	114:7,9 115:15	whole 38:1,7	54:15	51:6 52:23
191:16 192:4,5	117:7,8,8,17	44:20 91:3	words 36:24	53:12 70:24
192:11 194:20	118:13 121:11	125:21 155:22	41:12 55:10	76:23 78:7
196:2,4 200:5	122:8 123:12,13	162:5	59:7 146:20	87:20 92:18
205:13	123:14,15,15,18	wife 65:21 67:16	166:24	93:11 105:3
well-being 124:18	123:20 125:5,16	Wilcox 94:2,7	work 16:24 70:3	130:1,17 134:4
well-lit 190:3	125:17 127:19	William 167:8	102:7 104:7	134:22 145:15
went 11:15 12:7	127:21,22 128:7	179:20,21,21	107:17,24	146:14 147:7
12:10,14 13:9	128:10 129:8	wind 161:20	128:15 145:16	148:25 160:2
13:20,24,25,25	133:23 137:8,14	window 12:16,17	147:13 170:4	161:16 163:4
15:6,8,20 20:12	137:22,22	12:18 74:2	174:1,4 197:11	167:6 190:14,20
21:18,24 27:8,8	138:12 139:13	110:8,17,18	199:16	190:22 194:25
28:5,14 35:18	139:21 141:8,11	111:6,21 112:25	worked 74:25	196:2
37:14,16,22	141:12 142:12	113:4,5,8,17	104:6,6 149:9	year 10:1 45:24
38:20 46:20	144:20,23,25	114:5 116:14	149:11 157:23	48:9 50:7 52:1
47:21 52:24	145:2 146:4,7	131:7,10,14	157:25	60:14 69:11
55:11,14,15	146:21,24,24	174:8,9	workers 41:7	85:16
61:21 64:6	147:1,20 148:13	windows 12:15	working 49:10	years 17:1 35:2
71:13 72:19,25	150:3,4 151:3	72:3,5 74:4	107:20,23	51:11,20,23
73:3,4,12,25	151:18 152:6,22	109:24 110:7	127:19 128:7,10	55:9 97:5
74:5,6 77:14	153:1,4,10	130:11 131:2,12	137:14,15,24	127:11 136:15
79:14 19,21,25	154:4 155:15	wink 122:22	158:24 168:25	168:20,23
96:16 98:24	156:11 157:1,3	Winn 39:9,13	169:16,20 170:2	169:16
102:19,22,24	157:4,6 159:11	46:3,23 89:9	works 82:14 85:8	you-all 91:9
104:4 109:21,22	160:1,16 161:23	167:18	123:2 170:23	104:10
109:22,23	161:24 163:11	withdrew 164:9	186:11	young 124:2
113:21 114:6,10	164:2,11 169:19	witness 7:17 8:17	worried 121:15	
114:12,13	169:22 171:8	8:19,23 9:1,7,11	121:16,16	
118:11 119:5,8	172:16 174:23	16:7,11,17	worry-type	
120:10,17	175:1 178:4,17	28:20 30:22	121:14	