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R E P O R T E R ' S R E C O R D

VOLUME 33 OF 53

Trial Court Cause No. 380-80047-01

THE STATE OF TEXAS * IN THE 380TH DISTRICT COURT

*

V. *

*

IVAN ABNER CANTU * OF COLLIN COUNTY, TEXAS

REPORTER'S RECORD

VOLUME 33 - GUILT/INNOCENCE

CAPITAL MURDER JURY TRIAL

COPY

On the 5th day of October, 2001, from 9:10 a.m. to 4:45 p.m. the Capital Murder - Trial on the Merits proceedings 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
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CLERK OF DISTRICT COURT
COLLIN COUNTY, TEXAS
BY *[Signature]*

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PROCEEDINGS

1
 2 THE BAILIFF: All rise.
 3 (Jury enters the courtroom at 9:10 a.m.)
 4 THE COURT: Please be seated. Good morning,
 5 Ladies and Gentlemen.
 6 Mr. High, go ahead.
 7 MR. HIGH: May it please the Court.
 8 May I approach the witness, Your Honor?
 9 THE COURT: All right.
 10 RE-CROSS-EXAMINATION CONTINUED
 11 BY MR. HIGH:
 12 Q. Good morning, Mr. Smith.
 13 A. Morning.
 14 Q. When we left off yesterday we were talking about
 15 Defendant's Exhibit Number 1, which is a green packet.
 16 Evidently it's used by the Dallas Police Department in
 17 collecting latent fingerprints, and you had identified it.
 18 And it also contained Defendant's Exhibits 1-A and 1-B, and I
 19 believe these are some prints that were lifted from the
 20 Corvette which was owned by James Mosqueda, a black Corvette,
 21 and these were introduced into evidence; is that correct?
 22 A. Yes.
 23 Q. You've had a chance to look at those this morning?
 24 A. Yes, I have.
 25 Q. And do you need any more time to look at it? Can I

1 look at it now and discuss it with you?
 2 A. No. You can have it.
 3 Q. Okay. Thank you.
 4 Defendant's Exhibit 1-A says that this print was
 5 lifted from the left side, rear deck trunk lid, and we're
 6 talking about a Corvette, 2000 Corvette; so that -- are you
 7 familiar with those kinds of vehicle?
 8 A. Yes, I am.
 9 Q. They have kind of a snubbed rear end, and they have
 10 a hatch. Do you know if it was a coupe, or if it was a --
 11 A. I never saw the car, so, no, I don't.
 12 Q. Have you seen any pictures of the car?
 13 A. No, I haven't.
 14 Q. In any event, it's a flat surface. It was
 15 sufficient to provide a fingerprint?
 16 A. Yes.
 17 Q. And there's a lifted print, and it was saved on this
 18 card?
 19 A. Yes.
 20 Q. And you've looked at State's Exhibit -- Defendant's
 21 Exhibit 1-A, which was this print that was lifted from the
 22 black Corvette, and you did a fingerprint comparison, and
 23 there was no match between whoever this individual was and
 24 Ivan Cantu?
 25 A. That was true yesterday, but this morning I did

1 another comparison with the deceased prints, and I have made a
 2 match with the deceased's prints with that print.
 3 Q. I see. And is it a fingerprint? Is that what it
 4 is, or is it a palm print? What kind of print?
 5 A. The one you're talking about there is a
 6 fingerprint. It's the right index finger of one of the
 7 deceased individuals.
 8 Q. Okay. And you had not done any kind of a comparison
 9 prior to this morning?
 10 A. No.
 11 Q. And do you know whether or not anyone else had done
 12 any comparison prior to this morning?
 13 A. I don't know. I do not know, except it was run
 14 through AFIS. That's all I know.
 15 Q. And AFIS is what?
 16 A. Automated Fingerprint Identification System. It's
 17 an automatic fingerprint identifier.
 18 Q. And those would be known fingerprints that are in a
 19 national database?
 20 A. Well, it's in the State database. It would be
 21 criminals and employees.
 22 Q. With respect to Defendant's Exhibit 1-B, we're
 23 talking about a fingerprint that was lifted from the lower,
 24 rear driver's door frame, black Corvette -- 2000 black
 25 Corvette, and you've had a chance to review this print.

1 Actually, it's a palm print; is that correct?
 2 A. Yes, it is.
 3 MS. LOWRY: Excuse me, Mr. High. I'm going to
 4 object just to him talking about the comparison. We don't
 5 have actually the known prints of the victims in evidence
 6 yet. I have them. If he wants to mark them and enter them
 7 just so that there's no testimony from documents that aren't
 8 in evidence, and these are just what he used to make his
 9 comparison, if he'd like to enter those, or the State can.
 10 THE COURT: You know, I haven't understood that
 11 he's testifying from a document not in evidence yet.
 12 MS. LOWRY: He's testifying as to his
 13 comparison -- from what he looked at on these documents with
 14 those prints that are in evidence.
 15 THE COURT: And tell me the last question.
 16 MR. HIGH: The last question was about what
 17 kind of print this was.
 18 THE COURT: And that's Number 1, right?
 19 MR. HIGH: 1-B, and this is in evidence.
 20 THE COURT: Overrule the objection.
 21 MS. LOWRY: May I clarify?
 22 THE COURT: Yes.
 23 MS. LOWRY: When he asked him what kind of
 24 print that was, and for him to testify what kind of print it
 25 was as far as what finger and who the finger came from, he's

1 getting it from --
 2 THE COURT: I thought you were asking him about
 3 that document that was in evidence.
 4 MR. HIGH: I am.
 5 THE COURT: All right.
 6 Q. BY MR. HIGH: In case I wasn't, let me ask you about
 7 this document. Again, we're talking about Defendant's 1-B,
 8 which is a print of some kind. It's lifted from the lower,
 9 rear driver's door frame of a black Corvette, owned by James
 10 Mosqueda. And what kind of print is this?
 11 A. That's a latent palm print.
 12 Q. Okay. And with respect to the comparison to Ivan
 13 Cantu, did you do a comparison to Ivan Cantu?
 14 A. Yes, I did.
 15 Q. And did this print match up with one Ivan Abner
 16 Cantu?
 17 A. No, it did not.
 18 THE COURT: Just so it's clear, when you get
 19 the witness back you can offer anything you want, naturally.
 20 MS. LOWRY: Yes, Your Honor.
 21 Q. BY MR. HIGH: And again, this would be on the
 22 driver's door frame where one gets in the side of the
 23 Corvette, opens it up, puts their hand on it?
 24 A. All I can go by is what's written on the card. I
 25 don't know where he lifted it from. It says the driver's door

1 frame, but I don't know which area of the driver's door.

2 (Mr. Schultz enters the courtroom.)

3 Q. And do you know whether or not this particular print
4 was run through AFIS?

5 A. No. AFIS does not handle latent palm prints. It's
6 only fingerprints. Palm prints have too much of a surface
7 area. No one has come up with the technology to run a palm
8 print yet.

9 MR. HIGH: Your Honor, may I publish these to
10 the jury at this time?

11 THE COURT: Yes. Say, Mr. High, just so I'm
12 clear, is it 1, 1-A and 1-B that you're publishing to the
13 jury?

14 MR. HIGH: Also packet 1, which is the green
15 packet that contains 1-A and 1-B.

16 THE COURT: One is the envelope; 1-A is the
17 card; and 1-B is the card section, so that's what you've
18 tendered to them?

19 MR. HIGH: That's exactly right, Your Honor.

20 THE COURT: All right. Thank you.

21 MR. HIGH: Your Honor, I'll pass the witness.

22 THE COURT: All right.

23 FURTHER REDIRECT EXAMINATION

24 BY MS. LOWRY:

25 Q. Detective Smith, did you also have a chance to look

1 Q. And as with the prints that are being published to
2 the jury currently, the ones that were put into evidence
3 yesterday by the Defense, they're on the same kind of note
4 card?

5 A. Yes.

6 Q. And they have other people's writing on them, just
7 as Defense Exhibit 1, or packet 1 has?

8 A. Yes.

9 Q. Are those the prints that were taken from the
10 residence at 18663 Gibbons Drive?

11 A. Well, two were from a residence. One says "outside
12 hood of Mercedes emblem."

13 Q. And you had previously compared those prints to the
14 known prints of the Defendant; is that correct?

15 A. Yes.

16 Q. Had you had the opportunity to compare those to the
17 known prints of the victims?

18 A. Yes, I did.

19 Q. I'm also going to hand you State's Exhibits 90 and
20 91. Be careful of 91. The staple is coming out. Do you
21 recognize those?

22 A. Yes. These are the deceased's cards I received from
23 Dr. Rohr this morning.

24 Q. And this morning you met him in our office upstairs?

25 A. Downstairs, yes.

1 at the other prints that were taken from the residence that
2 were not identified?

3 A. Yes, I did.

4 Q. And did you have a chance to compare those to the
5 known prints of the victims in this case?

6 A. Yes, I did.

7 Q. The known prints of the victims in this case, where
8 did they come from?

9 A. From the ME's -- Collin County ME.

10 Q. And how did you get those into your possession?

11 A. Dr. Rohr handed them to me this morning before
12 court.

13 Q. Now, as far as those prints go, you didn't take
14 those prints obviously from the victims?

15 A. No, I did not.

16 Q. All of that was done prior -- I guess with him?

17 A. Yes.

18 Q. Detective Smith, I'm going to hand you another
19 green packet with fingerprints like we've been talking about.
20 It's marked State's Exhibit 93. It contains 93-A, 93-B, and
21 this one is going to be 93-C if you can show me the best place
22 on that card to put that sticker.

23 A. Put it right here.

24 Q. And that's 93-C. You've seen these prints before?

25 A. Yes, I have.

1 Q. Downstairs. I'm sorry.

2 And he brought those in and handed them to you?

3 A. Yes, he did.

4 Q. And those are the prints you used to compare to
5 State's Exhibits 93, A, B and C?

6 A. Yes, they are.

7 Q. Are those prints, State's Exhibits 90 and 91,
8 complete? Are they accurate as far as what he gave you this
9 morning as representation of the known prints in this case?

10 A. They seem to be. They have the rolled fingerprints
11 and they have the palm prints of both deceased victims.

12 MS. LOWRY: Your Honor, at this time the State
13 would offer State's Exhibits 93, 93-A, 93-B, 93-C, 90 and 91.

14 MR. HIGH: Your Honor, if we could just state
15 for the record, 90 and 91, the deceased's cards, who they
16 relate to.

17 MS. LOWRY: I'm sorry. State's Exhibit 90
18 is -- they are the prints of James Edwin Mosqueda; one of the
19 victims in this case. State's Exhibit 91, Amy Michelle
20 Kitchen, the other victim in this case.

21 THE COURT: All right.

22 MR. HIGH: Could I have just a moment, Your
23 Honor?

24 THE COURT: All right.

25 (Brief pause in proceedings.)

1 MR. HIGH: I just have a couple of questions on
2 voir dire.

3 VOIR DIRE EXAMINATION

4 BY MR. HIGH

5 Q. Is this your writing on the front here that's
6 written in pencil?

7 A. Yes, it is.

8 Q. Okay.

9 MR. HIGH: I have no objection, Your Honor.

10 THE COURT: Okay. Then State's Exhibits 93,
11 93-A, 93-B, 93-C, 90 and 91 are admitted. Could I see that?

12 Q. BY MS. LOWRY: Now, Detective, if you could go over
13 93-A, B and C, remind the jury where those prints were found
14 and what result you came up with this morning when you
15 identified them or compared them with the known prints of the
16 victims in this case?

17 A. 93-A is the outside hood of the Mercedes by the
18 emblem. This print was not identified to either of the two
19 deceased people. 93-B is the outside, front door just above
20 the dead bolt. This is the right palm print of Amy Kitchen,
21 and 93-C from the metal trash can lid is the right index
22 finger of Amy Kitchen.

23 Q. When you're talking about the Mercedes print, that
24 card is identified as being on the outside hood, which is
25 where -- I mean what we all know is when you walk by a car,

1 it's the hood; is that your understanding?

2 A. Yes.

3 Q. Does it say on that card where it was found?

4 A. It just says outside hood by emblem, so it's the
5 front of the hood.

6 MS. LOWRY: Pass the witness.

7 THE COURT: Anything else?

8 MR. HIGH: Yes.

9 FURTHER RE-CROSS-EXAMINATION

10 BY MR. HIGH:

11 Q. Detective Smith, any idea why a year later you guys
12 are finally taking a look at these prints and comparing them
13 to the known prints of the deceased?

14 A. I was never asked to compare the deceased prints to
15 them. That's all I can tell you.

16 Q. So this is the first time you've done this?

17 A. Yes.

18 MR. HIGH: Pass the witness.

19 THE COURT: Anything else?

20 MS. LOWRY: No further questions.

21 THE COURT: All right. You may step down, and
22 I guess you're subject to recall, also.

23 (Witness exits the courtroom.)

24 THE COURT: All right. Call your next witness,
25 please?

1 MS. LOWRY: May we have just a moment, Your
2 Honor?

3 THE COURT: Yes.

4 MR. SCHULTZ: The State would call Mark
5 Neinast, Your Honor, and he's not been sworn.

6 THE COURT: Raise your right hand.
7 (Witness sworn by the Court.)

8 THE COURT: Put your hand down and have a seat
9 right here, please.

10 THE COURT: Mr. Schultz.

11 MR. SCHULTZ: Thank you, Judge.

12 Whereby,

13 MARK NEINAST,

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

16 DIRECT EXAMINATION

17 BY MR. SCHULTZ:

18 Q. Sir, state your name.

19 A. It's Mark Neinast.

20 Q. Would you spell your last name for the record?

21 A. N-E-I-N-A-S-T.

22 Q. And I'll ask you, if you would speak loud enough so
23 we can all hear. This room has a tendency to swallow sounds
24 sometimes.

25 A. Okay.

1 Q. How are you employed?

2 A. I work for Southwestern Bell Telephone. I manage
3 the Network Software Center.

4 Q. How long have you been so employed?

5 A. For a little over 26 years.

6 Q. By the way, have you ever had occasion in your whole
7 26 years to ever have to testify as a witness concerning
8 telephone company operations?

9 A. No, I have not.

10 Q. Are you excited about this opportunity?

11 A. Not particularly.

12 Q. But you're here with a subpoena; is that right?

13 A. That's correct.

14 Q. Okay. Let me ask you, do you have any familiarity
15 with the general technology of what we now call Caller ID, or
16 Caller Identification, and in particular the type of system
17 Southwestern Bell uses?

18 A. Yes, very much.

19 Q. Tell us, in an overview, how does that work?

20 A. Well, basically it -- the switching systems are set
21 up such that they are enabled to have that feature working.
22 And that's a lot of work to do ahead of time before you can
23 even offer the service. And then once the service is out
24 there, it's a mechanical operation, if you will, that, when a
25 call is made to another party, then the number is

1 automatically registered, and it's -- and then if that calling
2 party, the person you're trying to call, if they have that
3 feature then that number is delivered to them automatically.

4 Q. All right. Do you know anything about the type of
5 system that Southwestern Bell chose and who went about
6 choosing it, and who was in charge of that project?

7 A. Well, I was the person that did the project
8 management for the Dallas/Fort Worth area. So, yeah, we
9 basically use the Nortel and Lucent switching systems, and
10 that's the mainstay of our network.

11 Q. Now, does the calling party, whether it's from a pay
12 phone or from a resident or a cell phone, does the calling
13 party have to do anything in order for Caller ID to be
14 available to a receiving party?

15 A. No.

16 Q. Why is that?

17 A. All numbers are registered and they're available.
18 Now, because -- that's just the way the system is set up to
19 do.

20 Q. When a call is made, you've made reference to the
21 switching system. What does that mean?

22 A. Well, all calls are switched through a network from
23 one point to another, and therefore that's -- that would --
24 that's what enables you to call from any point across the
25 country.

1 Q. Then does the call -- are you saying the Caller ID
2 reads the switching signal?

3 A. Yes. That's exactly right. Basically between when
4 the customer -- when you ring the customer, it's set up so
5 that the calling -- Caller ID information is sent between the
6 first and second ring of a call, so it's a little burst of
7 data that is just sent out, and it's -- that Caller ID device
8 reads that data and then puts it into a number.

9 Q. So if you want to harass somebody, you can call them
10 and hang up quick and there won't be a record of it?

11 A. If you hung up before the second -- actually, right
12 around the first ring, but that can be tricky because what you
13 hear on your ringing (sic) is audible ringing. It's a
14 different circuit than what they're ringing and not
15 necessarily coincidental.

16 Q. Okay. Was the switching signal -- is the switching
17 signal that's read by Caller ID always present whenever you
18 make a telephone call?

19 A. Yes.

20 Q. So then the Caller ID box is -- is that something
21 that's designed to read that signal and you pay for it? How
22 does that work?

23 A. The customer -- if a customer wants to buy that
24 Caller ID feature so they can see who's calling them, then
25 they would go ahead and subscribe to that feature and pay a

1 monthly fee. And then they would have to have a Caller ID box
2 at their home, and then that would allow them to receive those
3 signals.

4 Q. But you still have to have the phone company with an
5 interface system to connect the Caller ID box to the
6 switching signals; is that right?

7 A. That's correct.

8 Q. Otherwise, everybody would just go buy a box of
9 Caller ID --

10 A. That's exactly right.

11 Q. -- and never pay y'all?

12 A. That's exactly right.

13 Q. Now, on -- are there times indicated on Caller ID
14 messages?

15 A. Yes. It has a date and time stamp.

16 Q. How does that work? Where does that come from?

17 A. It comes from the switching system itself.

18 Q. Is that all part of that signal that's -- that
19 information that's always created at a switch?

20 A. Yes. It's always there, and that -- the Caller ID
21 device is actually kind of like a modem, if you will, from off
22 the computer. It sends it in a data stream, and the date and
23 time and the number and the name, if they subscribe to that
24 information, will be sent at that point.

25 Q. Okay. And tell us about the accuracy of the

1 switching signal clock. How does that --

2 A. There's a clock, and it's -- I believe it's run off
3 of the atomic clock center because all systems are
4 synchronized, one with the other, and there's a separate clock
5 within each central office switching system, that they all
6 have to be timed exactly in sync with each other.

7 Q. So if the -- the time on a Caller ID message is
8 actually mechanical? It's a form of reading a clock; is that
9 what you're saying?

10 A. Exactly.

11 Q. Okay. What about the date? Where does that come
12 from?

13 A. In the same -- same manner.

14 Q. So then the switching system changes dates at
15 midnight then?

16 A. Yes.

17 Q. Now, the Caller ID can't tell who's making the call;
18 is that correct? It can just tell what number it's coming
19 from?

20 A. What number it's coming from. Anyone within that
21 number calling would be registered, is how it works.

22 MR. SCHULTZ: Approach the witness, please,
23 Judge?

24 THE COURT: Yes.

25 Q. BY MR. SCHULTZ: If I might show you an exhibit

1 previously marked and identified as State's Exhibit Number 6.
 2 I guess that would be enough to say that appears to be a
 3 telephone; is that right?
 4 A. Oh, yes.
 5 Q. Now, if you would go ahead and examine that phone
 6 for me, and tell me if there's any part of that phone that
 7 appears to be designed for receiving Caller ID messages?
 8 A. It's got a Caller ID unit in it. It's got --
 9 Q. And without telling us what those particular
 10 messages are, do those appear to be memoranda of switching
 11 information that's common?
 12 A. Yeah, absolutely. There's a record of 60 calls in
 13 here.
 14 MR. SCHULTZ: One moment, please, Judge.
 15 THE COURT: Yes.
 16 MR. SCHULTZ: We would reoffer State's Exhibit
 17 6, Judge.
 18 MR. GOELLER: No objection, Your Honor.
 19 THE COURT: All right. Number 6 for the State
 20 is admitted, the telephone.
 21 MR. SCHULTZ: And I'm trying to recall, I
 22 believe there was internal objection to that offer relating to
 23 the Caller ID information, so I don't want to miss that one.
 24 I'm offering also the memoranda that's contained on Caller ID.
 25 THE COURT: Let me see it.

1 MR. SCHULTZ: If it's part of the phone --
 2 THE COURT: Oh, I see.
 3 MR. SCHULTZ: And it's there, but as I recall
 4 there was an objection to that previously lodged yesterday,
 5 which I believe was sustained. So I just want to be clear for
 6 the record that we're offering actually the ID memoranda
 7 itself.
 8 THE COURT: All right. It's admitted for all
 9 purposes.
 10 MR. SCHULTZ: Pass the witness.
 11 MR. GOELLER: No questions, Your Honor.
 12 THE COURT: All right. You may step down.
 13 (Witness exits the courtroom.)
 14 THE COURT: Call your next witness, please.
 15 MS. FALCO: Armando Hernandez.
 16 THE COURT: This is the gentleman that was
 17 sworn yesterday, right?
 18 MS. FALCO: Yes.
 19 (Witness enters the courtroom.)
 20 THE COURT: Have a seat right over here,
 21 please.
 22 THE COURT: Mr. Hernandez, you recall you were
 23 sworn in yesterday; is that correct, sir?
 24 THE WITNESS: Yes.
 25 THE COURT: Please be seated.

1 All right. Ms. Falco.
 2 (Mr. Schultz exits the courtroom.)
 3 Whereby,
 4 ARMANDO HERNANDEZ,
 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. FALCO:
 9 Q. Mr. Hernandez, would you state your name for the
 10 jury?
 11 A. Armando Hernandez.
 12 Q. Could you spell your first name, please?
 13 A. A-R-M-A-N-D-O.
 14 Q. Mr. Hernandez, where do you live?
 15 A. Dallas.
 16 Q. What do you do for a living?
 17 A. Drive a truck.
 18 Q. I want to take your attention back to September,
 19 October and November of last year, 2000. Where were you
 20 living then?
 21 A. 2829 Westwood.
 22 Q. And what city is that?
 23 A. Dallas.
 24 Q. What part of Dallas is that located?
 25 A. Oak Cliff.

1 Q. And were you living in an apartment or a house?
 2 A. House.
 3 Q. And were you renting or did you own it?
 4 A. Rent.
 5 Q. Who did you rent that house from?
 6 A. James Mosqueda.
 7 Q. When did you move into that house?
 8 A. Oh, I don't remember that.
 9 (Mr. Schultz enters the courtroom.)
 10 Q. Were you living there in November of 2000?
 11 A. Yes.
 12 Q. How big was the house?
 13 A. It was two bedrooms.
 14 Q. And who lived in the house?
 15 A. My wife and one of my daughters.
 16 Q. Did Mr. Mosqueda also own the house next door to
 17 you?
 18 A. I think so, yes.
 19 Q. How much did you pay in rent each month?
 20 A. 850.
 21 Q. 8 hundred and 50 dollars?
 22 A. Yes.
 23 Q. And who did you pay the 850 dollars to?
 24 A. James --
 25 Q. Mosqueda?

- 1 A. — Mosqueda, uh-huh.
 2 Q. And did you typically pay in cash, or did you give
 3 him a check? How did you pay?
 4 A. Cash.
 5 Q. And when you paid for your rent in cash, did
 6 Mr. Mosqueda write you a receipt?
 7 A. Yes.
 8 MS. FALCO: Your Honor, may I approach the
 9 witness?
 10 THE COURT: Yes.
 11 Q. BY MS. FALCO: Mr. Hernandez, specifically on
 12 November 3rd, 2000, do you remember seeing Mr. James Mosqueda?
 13 A. Yes.
 14 Q. And for what purpose did you see Mr. Mosqueda?
 15 A. He went to collect rent.
 16 Q. Is that when your rent was due, at the beginning of
 17 every month?
 18 A. Yes.
 19 Q. Did he come to your house?
 20 A. Yes.
 21 Q. Do you remember if it was during the day or in the
 22 evening?
 23 A. It was late in the evening.
 24 Q. And did he come to collect rent from you?
 25 A. Yes.

- 1 Q. And did you pay him?
 2 A. Yes.
 3 Q. How much did you pay him?
 4 A. 850.
 5 Q. Did he give you a receipt?
 6 A. Yes.
 7 Q. I show you what's been marked as State's Exhibit
 8 Number 102. Do you recognize that?
 9 A. Yes.
 10 Q. What is that?
 11 A. A receipt, rent receipt.
 12 Q. Is that the rent receipt that Mr. Mosqueda gave you
 13 on November 3rd, 2000?
 14 A. Yes.
 15 Q. For 850 dollars?
 16 A. Yes.
 17 Q. It has the name "Eric Hernandez" on the receipt; is
 18 that correct?
 19 A. Yes.
 20 Q. Who is Eric?
 21 A. That's my son.
 22 Q. And why is Eric's name on the receipt?
 23 A. He's the one that — what do you call it — the
 24 lease.
 25 Q. His name is on the lease?

- 1 A. Yes, uh-huh.
 2 Q. But you're actually the one that paid the money to
 3 James?
 4 A. Yes.
 5 Q. But he made the receipt out in Eric's name since
 6 Eric's name is on the lease?
 7 A. Yes.
 8 MS. FALCO: We'd offer State's Exhibit 102.
 9 MR. GOELLER: May I ask him one question on
 10 voir dire?
 11 THE COURT: Sure.
 12 VOIR DIRE EXAMINATION
 13 BY MR. GOELLER:
 14 Q. Sir, what did you say your address was?
 15 A. 2829.
 16 Q. Okay. And the street number?
 17 THE COURT: Is it 12th?
 18 A. West 12th.
 19 Q. BY MR. GOELLER: West 12th, okay.
 20 Is this your copy?
 21 A. Yes.
 22 Q. Okay.
 23 MR. GOELLER: That's all I have, Judge.
 24 THE COURT: State's Exhibit 102 is admitted.
 25 Q. BY MS. FALCO: Mr. Hernandez, in order to move into

- 1 that house on West 12th Street, was there a lease permitting
 2 you to move into that house?
 3 A. Yes.
 4 Q. I show you what's been marked as State's Exhibit
 5 Number 103. Do you recognize that?
 6 A. Yes.
 7 Q. What is that?
 8 A. That's the rent lease.
 9 Q. The rent lease allowing you to move into that house
 10 you previously described on West 12th Street?
 11 A. Yes.
 12 Q. And that lease, is that between your son and
 13 Mr. James Mosqueda?
 14 A. Yes.
 15 Q. And do you recognize your son's handwriting?
 16 A. Yes.
 17 Q. Is that your son's signature at the bottom?
 18 A. Yes.
 19 Q. Do you also recognize Mr. James Mosqueda's
 20 handwriting?
 21 A. Uh-huh, yes.
 22 Q. Is that his signature on the bottom of the lease?
 23 A. Yes.
 24 Q. Does this lease have you moving into that house in
 25 September of 2000?

1 A. Yes.
 2 Q. And you were -- the lease was for one year?
 3 A. Yes.
 4 MS. FALCO: We offer State's Exhibit 103.
 5 MR. GOELLER: May I take the witness on voir
 6 dire, Your Honor?
 7 THE COURT: All right.
 8 (No omissions.)
 9 VOIR DIRE EXAMINATION
 10 BY MR. GOELLER:
 11 Q. Mr. -- is it Hernandez?
 12 A. Yes.
 13 Q. Would you say that James Mosqueda and Gladys
 14 Mosqueda have the exact same handwriting?
 15 A. I really don't know. I just know that they signed
 16 it.
 17 Q. Oh, you saw them sign that?
 18 A. No. It was -- I think my son is the one that --
 19 Q. You think your son signed this?
 20 A. Yes.
 21 Q. So you don't know who signed this?
 22 A. No.
 23 MR. GOELLER: Okay. Objection; hearsay, Your
 24 Honor. It's not properly authenticated.
 25 MS. FALCO: Your Honor, with regard to the

1 hearsay exception we offer it under 803, subsection 15,
 2 statements and documents affecting an interest in property.
 3 MR. GOELLER: Judge, that's clearly
 4 untrustworthy. The document shows either a forgery, or I
 5 guess we can get Detective Smith back in here and maybe he
 6 knows something about handwriting and how two people can have
 7 the exact same handwriting.
 8 THE COURT: I tell you what, let's do this. If
 9 you've got an objection, let's make an objection and let me
 10 rule on it. Let's not have an argument.
 11 MR. GOELLER: Yes, sir.
 12 THE COURT: And let me see if I understand.
 13 Mr. Hernandez, do you know your son's signature?
 14 THE WITNESS: Yes.
 15 THE COURT: Is that his signature?
 16 THE WITNESS: Yes.
 17 THE COURT: That is your testimony, just so I
 18 understand it?
 19 THE WITNESS: Yes.
 20 THE COURT: It's the other signatures you don't
 21 recognize?
 22 THE WITNESS: Well, I didn't see him write his
 23 name or anything. I just -- just the paper there.
 24 THE COURT: Sure, all right.
 25 THE WITNESS: I didn't see him write his name

1 or anything.
 2 THE COURT: All right. The objection is
 3 overruled, and Number 103 is admitted.
 4 Q. BY MS. FALCO: Mr. Hernandez, after you paid rent
 5 to Mr. Mosqueda on November 3rd and he wrote you that receipt,
 6 was that the last time you ever saw Mr. Mosqueda?
 7 A. Yes.
 8 MS. FALCO: I pass the witness.
 9 THE COURT: All right, sir. Mr. Goeller.
 10 CROSS-EXAMINATION
 11 BY MR. GOELLER:
 12 Q. Mr. Hernandez, who actually leased this home?
 13 A. My son.
 14 Q. Your son did?
 15 A. Yeah.
 16 Q. How old is your son?
 17 A. He's about 27.
 18 Q. He's about 27?
 19 A. Something like that.
 20 Q. Something like that?
 21 A. I can't keep up with the birthday.
 22 Q. Okay. State's Exhibit, what is this thing, 103,
 23 look down here at those signatures. Do you find that odd?
 24 A. I don't know. I mean, I don't see nothing different
 25 on the -- it's just his handwriting, I guess.

1 Q. Exact same handwriting, huh?
 2 A. Well, you mean those two names?
 3 Q. Yeah.
 4 A. Yes.
 5 Q. That's odd, isn't it? Huh?
 6 A. Yes.
 7 Q. Very odd. Okay.
 8 Now -- so you never actually leased this home, did
 9 you?
 10 A. Not in my name, no.
 11 Q. Not under your name?
 12 A. No, only my son.
 13 Q. So your son, you say, leased the home?
 14 A. Yes.
 15 Q. And what is his name?
 16 A. Eric.
 17 Q. Eric Hernandez?
 18 A. Yes, uh-huh.
 19 Q. And where does he live now?
 20 A. Somewhere in East Dallas, apartment house. I don't
 21 know.
 22 Q. Somewhere in East Dallas?
 23 A. Yes.
 24 Q. Okay. There's no entry on State's Exhibit 102
 25 about any other 600 (sic) dollar payment, is there?

1 A. No.
 2 Q. Okay. Have you ever seen -- let me ask you to
 3 direct your attention to that receipt. Have you ever seen
 4 that receipt?
 5 A. What do you mean, if I have seen that receipt?
 6 Q. Yeah.
 7 A. I don't know. My wife, she's the one that takes
 8 care of all of the receipts.
 9 Q. Okay.
 10 A. That was the last receipt we got from him that
 11 night.
 12 Q. Okay. You said you think he owned the house next
 13 door, too, right?
 14 A. Yes.
 15 Q. Okay.
 16 MR. GOELLER: Approach the court reporter,
 17 Judge?
 18 THE COURT: Yes.
 19 MR. GOELLER: Judge, we'd offer Defense
 20 Exhibit 2.
 21 MS. FALCO: And just for record purposes,
 22 there's yellow sheets that are not attached. I don't know if
 23 he wants to make that 2-A just in case they come away from the
 24 book, and if he does that we have no objection.
 25 THE COURT: All right. This is a receipt book?

1 MR. GOELLER: Yes, sir.
 2 THE COURT: Defense Exhibit 2 is admitted.
 3 Q. BY MR. GOELLER: Mr. Hernandez, the receipt that you
 4 testified you have is numbered 589207, correct?
 5 A. Yes.
 6 Q. Let me direct your attention to this receipt in here
 7 dated March 4th of 2001, 589212. Do you still all live in
 8 that house?
 9 A. No.
 10 Q. When did you move out?
 11 A. It's been about two months.
 12 Q. Two months?
 13 A. About two or three months ago.
 14 Q. So August -- did you move out in August of this
 15 year?
 16 A. I think, yes.
 17 Q. Hum. Do you know a Joe Dominguez?
 18 A. No.
 19 Q. Never heard of him?
 20 A. No. I don't know if he was going to move next door
 21 or not. I'm not sure.
 22 Q. When do you think he was going to move next door, if
 23 you think that?
 24 A. Before, when I pay him, I think he wanted to rent
 25 the house next door. I think that's him. I don't know if

1 that's him or not.
 2 Q. Okay. So he wasn't living there when you moved in
 3 the house next door?
 4 A. No.
 5 Q. Okay. What month did you move in? You moved in
 6 September?
 7 A. Yes.
 8 Q. Well, guess what? He was already living there; did
 9 you know that?
 10 A. Who?
 11 Q. Joe Dominguez.
 12 MS. FALCO: Your Honor, I'm going to object.
 13 That's a misstatement of facts. Those are for deposit, not
 14 for rent. He's misstating the evidence.
 15 THE COURT: And I don't know.
 16 MS. FALCO: So our objection is assuming facts
 17 not in evidence, misstating the evidence.
 18 THE COURT: Do you have any response,
 19 Mr. Goeller? The objection is sustained.
 20 MR. GOELLER: Yes, sit.
 21 Q. BY MR. GOELLER: Would you always get receipts, you
 22 or your wife?
 23 A. I think we did.
 24 Q. Think so? You don't have any others, do you, on
 25 you?

1 A. No. They told us to bring this one.
 2 Q. Just that one?
 3 A. Bring the last receipt, yeah. I don't know if my
 4 wife got the other ones at the house.
 5 Q. Okay. Did you know Mr. Mosqueda to lease from him?
 6 A. I only knew him about six weeks.
 7 Q. How did you get to know him?
 8 A. Well, he was the landlord. We went up there and --
 9 to see if his workers were finished -- you know, what they
 10 were doing there at the house.
 11 Q. Okay. When you moved in, in that house in
 12 September, and that's -- what was that, 2912?
 13 A. 2829, I think.
 14 Q. I'm sorry?
 15 A. 2829.
 16 Q. 2829?
 17 A. West 12th, yes.
 18 Q. Okay. And the number of the house next door is
 19 what?
 20 A. I don't know.
 21 Q. Okay. Did -- was there anybody in the house next
 22 door when you moved in?
 23 A. No.
 24 Q. It was empty?
 25 A. Yes.

- 1 Q. Okay. And that was in September?
 2 A. Yes.
 3 Q. Okay. And did anybody move in the house next door
 4 in October?
 5 A. No.
 6 Q. Anybody move in the house next door in November?
 7 A. No.
 8 Q. Anybody move in the house next door in December?
 9 A. No.
 10 Q. Anybody move in the house next door in January of
 11 2001?
 12 A. No.
 13 Q. January 2002?
 14 A. No.
 15 MS. FALCO: Objection, Your Honor. That hasn't
 16 happened. He can't foresee the future.
 17 Q. BY MR. GOELLER: I'm sorry, February of 2001, this
 18 year.
 19 THE COURT: The objection is sustained.
 20 Q. BY MR. GOELLER: Can't read the future.
 21 Has anybody ever moved in the house next door?
 22 A. No. We never saw nobody move there.
 23 Q. Okay. What do you know about narcotics trafficking
 24 in that house next door?
 25 A. What house?

- 1 Q. Next door.
 2 A. It was empty.
 3 Q. We've established that.
 4 A. Yeah. I don't know, was there --
 5 Q. I'm sorry?
 6 A. I don't know nothing about nothing.
 7 Q. You don't know nothing about nothing?
 8 A. No, not around there.
 9 Q. Okay. Well, around where?
 10 A. Where I used to live.
 11 Q. Where is that?
 12 A. 2829 West 12th.
 13 Q. Are you saying you do know something about
 14 narcotics trafficking there?
 15 A. No.
 16 Q. Okay. Who do you work for?
 17 A. Robertson Fleet Service.
 18 Q. Okay. And how long have you worked for them?
 19 A. About two years.
 20 Q. Okay. And what kind of money do you make down
 21 there?
 22 A. Pretty good, average.
 23 Q. Do you know a guy named Carlos?
 24 A. No.
 25 Q. Carlos Gonzalez?

- 1 A. No.
 2 Q. Do you ever see him down there at one of those
 3 houses?
 4 A. No.
 5 Q. Okay. Who would -- who would sometimes collect the
 6 rent?
 7 A. James --
 8 Q. And only --
 9 A. -- Mr. Mosqueda.
 10 Q. -- James?
 11 A. Yeah.
 12 Q. Okay. You moved out when, did you say?
 13 A. I don't remember, about two months ago.
 14 Q. Just -- this is October, August?
 15 A. Okay. We moved somewhere else, and then we came
 16 back to the same house, but we moved. We been there about two
 17 months already at this place. I don't know the address, on
 18 Windamere. That's all I know. I don't keep up with all of
 19 that stuff.
 20 Q. Okay.
 21 A. Addresses and everything.
 22 Q. Yeah. What was going on in that house next door?
 23 A. I don't know. They were working on it, painting or
 24 whatever.
 25 Q. For how long?

- 1 A. At the time he got killed or whatever.
 2 Q. Okay.
 3 A. After that nobody showed up there, no workers, no
 4 nothing. It was empty.
 5 Q. And it was empty when you moved in, too, right?
 6 A. Yes.
 7 Q. Okay. You're saying that nobody actually lived in
 8 that house next door?
 9 A. No.
 10 Q. Okay. But people would go down there to have
 11 parties and stuff, right? You'd hear music and parties going
 12 on in there?
 13 A. No.
 14 Q. Never?
 15 A. No.
 16 Q. Okay. You sure about that?
 17 A. Yes. I live right next door.
 18 Q. All right.
 19 A. I don't like noises, call the cops.
 20 Q. You what?
 21 A. I will call the cops if they were partying around
 22 there.
 23 Q. What's your address now?
 24 MS. FALCO: Your Honor, I'd object to the
 25 relevance what his address is now.

1 THE COURT: I'll overrule the objection. I
 2 believe he testified.
 3 Q. BY MR. GOELLER: Having thought about it, do you
 4 know where you live now?
 5 A. I don't know the address, except the address, I know
 6 it's on Windamere.
 7 MR. GOELLER: Okay. That's all I have, Judge.
 8 THE COURT: Anything else?
 9 MS. FALCO: Just briefly.
 10 REDIRECT EXAMINATION
 11 BY MS. FALCO:
 12 Q. Mr. Hernandez, after November -- after James
 13 Mosqueda was murdered, did you continue to pay rent?
 14 A. Yes.
 15 Q. And who did you pay the rent to?
 16 A. His mother.
 17 Q. Gladys Mosqueda?
 18 A. Yes.
 19 Q. And that's the other signature that's on that lease?
 20 A. Yes.
 21 Q. But she's the one that continued to collect rent
 22 from you?
 23 A. Yes.
 24 Q. That 850 dollars a month?
 25 A. Yes.

1 Q. From September to November, with regard to that
 2 house next door, did you see workers show up working on the
 3 house?
 4 A. No.
 5 Q. When you're talking about painting and stuff, when
 6 was that?
 7 A. Well, after Mr. James Mosqueda was killed, they
 8 stopped working.
 9 Q. What about before he was killed?
 10 A. Yes. There was people painting, or whatever they
 11 were doing.
 12 Q. So you saw them painting and working on the house
 13 until he was killed?
 14 A. Yes, uh-huh.
 15 Q. And then after that, no one showed up anymore?
 16 A. Right.
 17 MS. FALCO: That's all I have. Thank you,
 18 Mr. Hernandez.
 19 THE COURT: Anything else, Mr. Goeller?
 20 MR. GOELLER: No, Your Honor.
 21 THE COURT: All right. You may step down, sir.
 22 Is he finally excused by both sides?
 23 MR. GOELLER: Reserve, Judge, with maybe a
 24 few -- let the DA know where he would be.
 25 THE COURT: Mr. Hernandez, they know how to get

1 ahold of you, right, if they need you to come back to court,
 2 right?
 3 THE WITNESS: Yes.
 4 THE COURT: Thank you, sir. Call your next
 5 witness, please.
 6 MS. FALCO: Detective Winn.
 7 (Witness enters the courtroom.)
 8 THE COURT: Detective, you were sworn in
 9 yesterday, or the day before?
 10 THE WITNESS: Yes.
 11 THE COURT: Please be seated. Ms. Falco.
 12 Whereby,
 13 ANTHONY WINN,
 14 a witness called by the State, sworn to testify to the truth,
 15 testified under oath as follows:
 16 DIRECT EXAMINATION
 17 BY MS. FALCO:
 18 Q. Detective, could you state your name for the jury?
 19 A. Anthony Winn.
 20 Q. What is your occupation?
 21 A. I'm employed with the Dallas Police Department.
 22 Q. What is your position with the Dallas Police
 23 Department?
 24 A. I'm a detective assigned to the homicide section.
 25 Q. How long have you been a police officer?

1 A. Thirteen years.
 2 Q. What type of training and education have you had to
 3 become a police officer?
 4 A. There, when I went through, we had to attend an
 5 18-week academy. From that point you're then assigned field
 6 duty where it lasts about 18 weeks. Then you have to do your
 7 time in patrol, is what it's called. From there you take a
 8 senior corporal test, and then you apply to become a
 9 detective.
 10 Q. And when did you become a detective?
 11 A. I became a detective in 1993, I believe.
 12 Q. Was there any additional training or specialization
 13 you have to go through to become a detective?
 14 A. Yes. They sent us to several schools that usually
 15 are put on by the Dallas Police Department or by different
 16 agencies for training, such as interviewing, interrogations,
 17 courtroom testimony and so forth.
 18 Q. And being a detective, are you assigned to a
 19 particular division?
 20 A. I'm assigned to the Crimes Against Persons Division.
 21 Q. What does that mean, or what does that include?
 22 A. The Crimes Against Persons Bureau consists of
 23 homicides, felony assaults, robberies and all sexual assault
 24 crimes.
 25 Q. And how long have you been assigned to that

1 division?

2 A. Seven years.

3 Q. What are your duties being a homicide -- or
4 detective assigned to the CAPRS unit?

5 A. Being a homicide detective, we respond or are
6 summoned on all deaths in the City of Dallas. Any suicides,
7 of course, homicides, and any unexplained deaths, we usually
8 respond to them.

9 Q. I want to direct your attention to November 4th,
10 2000. Were you working in that same capacity as a homicide
11 detective?

12 A. Yes, I was.

13 Q. Were you called out to a crime scene at 18663
14 Gibbons Road?

15 A. Yes, I was.

16 Q. How does that work with regard to which detective
17 goes out to which crime scene?

18 A. We have what we call a straight-day shift, but two
19 detectives are required to work one week of the evenings.
20 That was the week that myself and Detective Carillo was
21 working evenings.

22 Q. Approximately what time did you get called to come
23 out to that crime scene?

24 A. It was after -- I don't remember exactly what time,
25 but I think we arrived there, like, 6:15, 6:30.

1 Q. P.m.?

2 A. Yes, ma'am.

3 Q. And who would have called the homicide detectives to
4 come out to the scene?

5 A. The standard procedure is that when the responding
6 officers, who are the uniformed patrol officers, get to the
7 scene, and once they determine what they have, they request it
8 through our dispatcher, and then the police dispatcher will
9 call our office.

10 Q. How does it work as far as patrol officers and
11 detectives, whose job is it to do what?

12 A. The initial officers at the scene are responsible
13 for the crime scene, and usually those are the responding
14 patrol officers. Not until the detectives get there do we
15 take over that crime scene.

16 Q. Do you also have a section with the Dallas Police
17 Department known as the Physical Evidence Section?

18 A. Yes, we do.

19 Q. And what is the nature of their position in regard
20 to responding to a crime scene?

21 A. We all work in conjunction, hand in hand. The
22 Physical Evidence Section is responsible for obtaining, as
23 well as submitting all physical evidence; the sheets, bullets,
24 guns, fingerprints, et cetera.

25 Q. When you arrived at 18663 Gibbons, you said it was

1 approximately 6:15 p.m., 6:30?

2 A. Yes, ma'am.

3 Q. Who was at the scene when you arrived?

4 A. There was several uniform patrol officers at the
5 scene. Of course, one of the deceased's mother was at the
6 scene, and the Defendant's mother was at the scene.

7 Q. And did you learn that the Defendant's mother's
8 name was Sylvia Cantu?

9 A. That is correct.

10 Q. Once you arrive on the crime scene, what is your job
11 and what is your function?

12 A. Upon arrival at any crime scene, I first get with
13 the first responding officers and speak with them, and they
14 will tell me exactly what's going on. That's even before I
15 enter into the crime scene. I spoke with the responding
16 officers. They told me that they had two people deceased in
17 the rear bedroom. I then asked them to do -- oh, I'm sorry.
18 Let me back up. Then they also told me that the fire
19 department had responded, had broken out a rear window and
20 made -- gained entry into the residence. The fire department
21 was not there upon my arrival. They had already left.

22 Then I asked the officers, just let's do a
23 walk-through, and a walk-through consists of we just enter,
24 and they try to pretty much tell me if they have touched
25 anything and if they have not touched anything, and then we

1 just walk through the crime scene looking at everything, going
2 into where the defendants (sic) are deceased.

3 Q. The victims you mean?

4 A. I'm sorry. The victims are deceased.

5 Q. With regard to the crime scene, do you keep all, I
6 guess I would say, civilians out of the crime scene?

7 A. Yes, we do.

8 Q. Anyone other than fire department, police department
9 or Medical Examiner allowed in the crime scene?

10 A. No.

11 Q. So did you do a walk-through regarding this crime
12 scene?

13 A. Yes, we did.

14 Q. And as you walked through the house, what did you
15 observe?

16 A. Upon entering the residence, you could tell that
17 whoever lived there was very clean, because everything seemed
18 to appear to have been in place. Of course, as -- I don't
19 know if we have -- of course, as we entered the residence, you
20 could see the back window where the fire department had broken
21 it out and gained entry. As we continued on into the back
22 bedroom, that is where we saw the two deceased.

23 MS. FALCO: Your Honor, may I approach the
24 witness?

25 THE COURT: Yes.

1 Q. BY MS. FALCO: Detective, I show you what's been
2 admitted into evidence as State's Exhibit Number 7 with regard
3 to a diagram of the victim's home. Can you orient yourself to
4 this exhibit?
5 A. Yes, ma'am, I can.
6 Q. What entry did you -- how did you enter the home?
7 A. I entered the home through the front door.
8 Q. And as you went through the house, did you notice
9 anything undisturbed as you made your way back to the back
10 bedroom?
11 A. No.
12 Q. When you said that the fire department made entry,
13 broke a window, where was that?
14 A. That was right here.
15 Q. Back by the rear entry door?
16 A. That's correct.
17 Q. Did they break a window?
18 A. That's correct.
19 Q. Was it a window in the door or window in the wall?
20 A. Window in the wall.
21 Q. And where were the victims found?
22 A. The victims was (sic) found in the master bedroom.
23 Mr. Mosqueda was lying in the bed face up. His fiance,
24 Ms. Kitchen, was lying on the side of the bed closer to the
25 wall, face down.

1 Q. When we talk about this location, 18663, what city
2 is that?
3 A. It's City of Dallas, but in Collin County, Texas.
4 Q. Detective, are you familiar with far North Dallas,
5 Dallas area of the Tollway as being part of your jurisdiction?
6 A. Yes, ma'am.
7 Q. And I'm showing you what's being marked as State's
8 Exhibit Number 104. Do you recognize this exhibit?
9 A. Yes, ma'am.
10 Q. Is this a blowup of a Mapsco map indicating the area
11 we're talking about, Gibbons and the surrounding area?
12 A. Yes, ma'am.
13 Q. Is it a fair and accurate depiction of the roads
14 that are depicted on this exhibit?
15 A. Yes, ma'am.
16 MS. FALCO: We'd offer State's Exhibit 104.
17 MR. GOELLER: No objection.
18 THE COURT: Number 104 is admitted.
19 Q. BY MS. FALCO: With regard to this map, Detective, I
20 guess you might want to stand up, or I guess maybe if you want
21 to come down here in front of the jury.
22 So we can orient the jury to what area we're talking
23 about, first of all, the major road going north/south is the
24 Dallas Tollway; is that correct?
25 A. That's correct.

1 Q. And then we have the George Bush Turnpike going east
2 to west?
3 A. That's correct.
4 Q. And with this road right here going east/west, being
5 Frankford, and this road is Gibbons; is that correct?
6 A. Yes, ma'am.
7 Q. Approximately where on Gibbons did the victims
8 reside?
9 A. I know it was around the curve. I believe it was
10 right up in here, if I'm not mistaken.
11 Q. Close to where this "C" is indicated?
12 A. Yes.
13 Q. That would be a good indication?
14 A. Yes, ma'am.
15 Q. Thank you.
16 THE COURT: Ms. Falco, I understand that you
17 will probably substitute that for a smaller piece of paper.
18 MS. FALCO: Yes, actually two pieces of paper.
19 Q. BY MS. FALCO: Once you got to the back bedroom,
20 Detective -- first of all, as you made your way into the
21 house, did you look at every room in the house?
22 A. No. When I first arrived at the scene, I walked
23 straight to the master bedroom where they said the deceased
24 were. There I met with Detective Whitsitt, who was the crime
25 scene response detective, and he showed me what evidence he

1 had recovered -- located at that time.
2 Q. And what evidence would that be?
3 A. Shell casing, I think -- I know it was a shell
4 casing, a projectile -- I may be mistaken on how many shell
5 casings. I believe it was three.
6 Q. Do you recall where those three shell casings were
7 located?
8 A. There was one near the west wall, I believe on the
9 floor, by the bed and door that leads into the master
10 bathroom, just below a purse that we believed belonged to
11 Ms. Kitchen. There was another one that was found on the
12 floor beside the dresser, and I don't recall where the third
13 one was found.
14 Q. As --
15 A. I'll have to look at my notes for that one.
16 Q. As Detective Whitsitt went through the crime scene
17 collecting evidence, did he point out all the evidence
18 collected and where he found it?
19 A. Yes, he did.
20 Q. Is that standard procedure, that he show you, you
21 being the lead detective, where the evidence is located?
22 A. That is correct.
23 Q. And do you document that in your notes?
24 A. That is correct.
25 Q. And you said there may have been also a projectile?

- 1 A. I believe there was, yes, ma'am.
- 2 Q. Was that also recovered from the master bedroom?
- 3 A. That is correct.
- 4 Q. And what is the purpose of Detective Whitsitt
- 5 collecting evidence as opposed to you, a separate detective?
- 6 A. When you're in working a murder scene, that's his
- 7 profession. He's had training as far as collecting the
- 8 evidence. He has training as far as fingerprinting, okay? He
- 9 has had training as far as securing it, and he submits it to
- 10 SWIFS.
- 11 Being a homicide detective, although I am lead
- 12 detective, I'm required, as far as making sure all -- all
- 13 paperwork is done, the identities of the complainants are
- 14 true, interviewing and interrogating any witnesses, as well as
- 15 any suspects.
- 16 Q. While you were at the crime scene did you talk to
- 17 any of the witnesses or civilians that had arrived?
- 18 A. No, did I not.
- 19 Q. While you were there, were you informed of any
- 20 missing property or potentially missing property?
- 21 A. Yes, ma'am, I were (sic).
- 22 Q. What did you look for that you later determined to
- 23 be missing?
- 24 A. We was informed that --
- 25 MR. GOELLER: Judge, I'm going to object. That

- 1 calls for hearsay, was he "informed." First of all, it's
- 2 nonresponsive if it was, and then anything further from this
- 3 point is rank hearsay.
- 4 THE COURT: Well, tell me what purpose you're
- 5 offering it for, to show why he did what he did?
- 6 MS. FALCO: Information acted upon, Your Honor.
- 7 THE COURT: All right. For that purpose, I'll
- 8 allow you to inquire. Yeah, what were you told?
- 9 A. I was told that the -- Ms. Kitchen's engagement ring
- 10 was missing, as well as Mr. Mosqueda's 2000 convertible
- 11 Corvette.
- 12 Q. And did you look in the garage of this home?
- 13 A. Yes, ma'am, we did.
- 14 Q. How many cars were in the garage?
- 15 A. There was one car in the garage.
- 16 Q. And what kind of car was that?
- 17 A. That was Ms. Kitchen's Mercedes Benz.
- 18 Q. And was there an empty spot -- was it a two-car
- 19 garage?
- 20 A. Yes, ma'am.
- 21 Q. Was there an empty spot next to the Mercedes?
- 22 A. Yes, ma'am.
- 23 Q. Was the garage door open or shut?
- 24 A. It was shut when I arrived, but we did open it.
- 25 Q. With regard to the engagement ring on Ms. Kitchen's

- 1 finger, did you -- typically a female will wear an engagement
- 2 ring on her left hand; is that correct?
- 3 A. That is correct.
- 4 Q. Did you observe Ms. Kitchen's left-hand?
- 5 A. Yes, ma'am, I did.
- 6 Q. Was there an engagement ring on it?
- 7 A. No, there was not.
- 8 Q. Did you look at her right hand?
- 9 A. Yes, I did.
- 10 Q. Was there a ring on her right hand?
- 11 A. No, there was not.
- 12 MS. FALCO: May I approach?
- 13 THE COURT: Yes.
- 14 Q. BY MS. FALCO: Officer, just to refresh your memory,
- 15 I'll show you State's Exhibit Number 47. Do you recognize
- 16 that photograph?
- 17 A. Oh, yes, ma'am. I'm sorry, that is Mrs. Amy's --
- 18 Ms. Kitchen's hand.
- 19 Q. Which hand is that?
- 20 A. That would be -- look (sic) like her right hand.
- 21 Q. Is there a ring on her right hand?
- 22 A. Yes, it (sic) is. I apologize. There is a ring on
- 23 her right hand.
- 24 Q. Did you search the house for an engagement ring?
- 25 A. Yes, I did.

- 1 Q. And did you ever locate an engagement ring?
- 2 A. No, ma'am.
- 3 Q. Were you given a general description by the family
- 4 as to what you would be looking for?
- 5 A. Yes, ma'am, I was.
- 6 Q. Did you search the area surrounding the house for
- 7 the Corvette?
- 8 A. Yes, we did.
- 9 Q. Outside the driveway or maybe up and down the
- 10 street?
- 11 A. Yes, ma'am.
- 12 Q. Did you notice a Corvette?
- 13 A. No, ma'am.
- 14 Q. What else did you notice or start looking for that
- 15 you assumed to be missing?
- 16 A. We looked for ID's -- identifications on both the
- 17 deceased, as well as car keys.
- 18 Q. And looking for ID's, is that common procedure in a
- 19 homicide case?
- 20 A. Yes, ma'am.
- 21 Q. And why do you do that?
- 22 A. We pretty much know who the person is, but we just
- 23 like to have an ID for 100 percent positive identification.
- 24 Q. Where did you look for ID's?
- 25 A. We looked in the master bedroom, as well as in the

- 1 kitchen area, and we did not locate any.
- 2 Q. Did you also look in what appeared to be
- 3 Ms. Kitchen's purse?
- 4 A. That is correct.
- 5 Q. And never found any ID's?
- 6 A. No, ma'am.
- 7 Q. And when you said you were looking for keys, what
- 8 kind of keys were you looking for?
- 9 A. Keys to the Mercedes Benz that was in the garage.
- 10 Q. And did you ever locate those at that house?
- 11 A. No, ma'am, I did not.
- 12 Q. How long would you say you were at the house doing
- 13 the investigation?
- 14 A. We were there for several hours.
- 15 Q. As you're making -- doing your investigation and
- 16 going through the house, do you also look for signs of forced
- 17 entry?
- 18 A. Yes, ma'am.
- 19 Q. Why is that important?
- 20 A. That's important -- forced entry would determine if
- 21 it's a stranger that committed this offense, or if there's no
- 22 signs of forced entry, then that pretty much indicates that
- 23 the deceased may have known their assailant because they may
- 24 have allowed them inside the residence.
- 25 Q. And other than the window that the fire department

- 1 broke, did there appear to be any signs of forced entry?
- 2 A. No, ma'am.
- 3 Q. And did you look for them?
- 4 A. Yes, ma'am, I did.
- 5 Q. And with regard to the home, do you also look to see
- 6 if there might be signs of a struggle?
- 7 A. Yes, ma'am.
- 8 Q. And why do you look for that?
- 9 A. Again, you look for that -- signs of a struggle,
- 10 maybe the Defendant was scratched. Maybe there could be some
- 11 of the Defendant's blood there, there could be skin tissue
- 12 there, a number of things. Again -- or it could also indicate
- 13 that if there's no signs of a struggle, then the assailant is
- 14 a good friend -- maybe not a good friend, but a friend of the
- 15 deceased.
- 16 Q. And did you look for signs of a struggle in this
- 17 house?
- 18 A. Yes, ma'am, we did.
- 19 Q. Did you observe any?
- 20 A. No, ma'am, we did not.
- 21 Q. With regard to the Corvette, how did you begin
- 22 looking for the Corvette?
- 23 A. We were later informed, during the course of the
- 24 investigation, that the Corvette was installed with a Lowjack
- 25 system. Once the Lowjack system was activated, a Dallas

- 1 police officer was able to track that vehicle.
- 2 Q. Approximately what time did you instigate or start
- 3 the Lowjack system?
- 4 A. It was well after midnight when we returned to the
- 5 office. We had some complications with the tag number on the
- 6 vehicle, and in order for the Lowjack -- in order for Lowjack
- 7 to work you have to have the correct information. So once we
- 8 got the correct tag number for the vehicle, we -- I spoke with
- 9 the Lowjack representative who called the office, and they
- 10 immediately put it into the system.
- 11 Q. Approximately what time was it when you located the
- 12 Corvette?
- 13 A. A Dallas police officer, a uniformed officer picked
- 14 up the signal and tracked it about 3 a.m. Sunday morning.
- 15 Q. This would have been November 5th?
- 16 A. That is correct.
- 17 Q. Where did you locate the Corvette?
- 18 A. The Corvette was located in the Pear Tree Apartments
- 19 where the Defendant lives.
- 20 Q. And what street is that? Do you need to use your
- 21 notes to refresh your memory?
- 22 A. I did not bring them with me. I do apologize.
- 23 Q. Let me show you that page you're referring to.
- 24 A. The address is 4753 Old Bent Tree.
- 25 Q. And, Officer, again if I could have you step down

- 1 and refer to State's Exhibit Number 104. And we earlier
- 2 indicated the victims live somewhere around this C; is that
- 3 correct?
- 4 A. That is correct.
- 5 Q. Do you see Old Bent Tree?
- 6 A. It's right here (indicating).
- 7 Q. So it's at the corner of Old Bent Tree and Pear
- 8 Ridge?
- 9 A. That is correct.
- 10 Q. Is that where the Defendant's apartment was located?
- 11 A. That is correct.
- 12 Q. Thank you. And when you say that's at the
- 13 Defendant's apartment complex, did you locate later
- 14 specifically the Defendant's apartment?
- 15 A. Yes, I did.
- 16 Q. And how far away was the Corvette parked from the
- 17 Defendant's front door?
- 18 A. We guessed at about 30 yards from the front door.
- 19 Q. Once you discovered the Corvette, what did you do in
- 20 regards to your investigation?
- 21 A. When the Corvette was first discovered by the
- 22 uniformed officer, we have what we call a deployment unit.
- 23 Deployment units are Dallas police officers that works (sic)
- 24 in plain clothes. They were notified, and they set up
- 25 surveillance, which is to watch the vehicle to see if someone

1 is going to come back to it. No one came to the vehicle, so
2 we just -- I was notified on the 5th that the car had been
3 recovered. When I made it to the scene, unfortunately the --
4 we was going to process it there, but it began to rain. So,
5 we had the car loaded on a flatbed wrecker and towed to our
6 city pound.

7 Q. From the time you discovered it at 3 a.m. on
8 November 5th, until the time it was ultimately released to the
9 family -- I'm assuming that was sometime later -- was that in
10 police possession?

11 A. Yes, it was.

12 Q. Was the Corvette in police possession from 3 a.m. on
13 November 5th, for that entire day on November 5th?

14 A. That is correct.

15 Q. So if there's any Toll Tag activity regarding that
16 car at approximately 11 a.m. on November 5th, would that be
17 you taking the car down to the pound?

18 A. That would have been the wrecker transporting that
19 vehicle, that's correct.

20 Q. Now, did you immediately seize the vehicle and take
21 it to the pound, or did you leave it in the parking lot for a
22 while?

23 A. No. Officers sat on it for a little while.

24 Q. What was the purpose of that?

25 A. To see if anyone was going to go back to the

1 vehicle, to see if we can get the vehicle, what we call
2 occupied, and that just means to see if we can get someone
3 driving the vehicle.

4 Q. And how long did they sit on the vehicle?

5 A. They sat on the vehicle, I know, until about 9:00.
6 That's when I arrived at the scene.

7 Q. And when it started to rain, is that when you made
8 the decision to go ahead and impound the car?

9 A. That is correct.

10 Q. When a car is impounded, where is it taken?

11 A. It's taken to the Dallas -- the Dallas Police
12 Department have they (sic) own pound located off of Villbig
13 Road in Dallas. We have what we call a physical evidence
14 shed. Any time we request a vehicle to be processed, they
15 will put this vehicle inside the shed to eliminate (sic) it
16 from any rains or bad weather, tampering with any evidence on
17 that vehicle.

18 Q. Once the car was impounded and taken to the shed,
19 would the physical evidence section then go out and process it
20 for prints and things like that?

21 A. That's correct.

22 Q. Is that information relayed back to you, being the
23 lead homicide detective?

24 A. Yes, ma'am.

25 Q. Going back to the crime scene on November 4th, that

1 Saturday night, you made the statement that Ms. Sylvia Cantu,
2 the Defendant's mother, was there?

3 A. That's correct.

4 Q. Was there some point in time that drew your
5 attention to where she needed police assistance?

6 A. She spoke with my partner, who is Detective Carillo,
7 and let me explain. The way it's set up is, when two
8 detectives arrive to the scene, one detective, who is going to
9 be the lead detective, he's responsible for the crime scene
10 investigation. Usually your partner will speak to all
11 witnesses at the scene, okay? And since I was the lead
12 detective, Detective Carillo spoke with the witnesses at the
13 scene, and he was later informed that Ms. -- Ms. Sylvia (sic)
14 was requesting an officer --

15 MR. GOELLER: Objection, Your Honor, just rank
16 hearsay.

17 THE COURT: I tell you what, I'll sustain the
18 objection. I suppose we're going to hear about it at a later
19 time.

20 Q. BY MS. FALCO: At some point in time did patrol
21 officers leave with Sylvia Cantu?

22 A. Yes, ma'am, they did.

23 Q. And was that while you were still at the residence
24 on Gibbons Drive?

25 A. That is correct.

1 Q. Did Ms. Sylvia Cantu return back to that residence
2 on Gibbons Drive?

3 A. Yes, she did.

4 Q. Did you have a conversation with her?

5 A. No, I did not.

6 Q. Approximately what time did you start allowing the
7 family and the civilians that were outside to go inside the
8 house?

9 A. We do not release a crime scene until we have
10 finished. So it had to be after we left, so sometime, I
11 believe, after midnight is when we released it. I'm not sure
12 exactly what time it was, but no civilians are allowed in the
13 house until we are finished with it.

14 Q. When you were allowing the civilians to go back
15 inside the house, was Ms. Sylvia Cantu one of those women that
16 went back in the house?

17 A. I do not remember who-all went. Once we released
18 it, I do not remember who all.

19 Q. And then you said it was approximately 3 a.m., was
20 when you found the Corvette?

21 A. That is correct.

22 Q. Did you subsequently interview witnesses as part of
23 your investigation?

24 A. Yes, ma'am, I did.

25 Q. On Monday, November 6th, did you speak with a

1 Carlos Gonzalez?
 2 A. Yes, ma'am, I did.
 3 Q. And where did you speak with Mr. Gonzalez?
 4 A. I spoke with Mr. Gonzalez first by phone.
 5 Q. And did you eventually go to Mr. Gonzalez's house?
 6 A. Yes, ma'am, I did.
 7 Q. And do you remember where his house was located?
 8 A. He lived in Frisco.
 9 Q. And why did you go to Mr. Gonzalez's house?
 10 A. Mr. Gonzalez contacted me by phone to say that he
 11 said --
 12 MR. GOELLER: Objection, Your Honor, it's
 13 hearsay. It's rank hearsay.
 14 THE COURT: Sustained.
 15 Q. BY MS. FALCO: You were not going to arrest
 16 Mr. Gonzalez, were you?
 17 A. No, ma'am.
 18 Q. Did he invite you to his home?
 19 A. Yes, ma'am, he did.
 20 Q. And when you arrived at his home, who was there? Do
 21 you recall?
 22 A. Ms. Cantu was there, another guy by the name of
 23 Anthony Fonseca, I believe is his last name, was there, and a
 24 couple of other people. I don't remember their names.
 25 Q. And without telling me what Mr. Gonzalez told you,

1 what was the purpose of your being there?
 2 A. To hear a phone conversation -- telephone
 3 conversation between him and the Defendant.
 4 Q. And while you were there, did the phone ring?
 5 A. Yes, ma'am.
 6 Q. And who answered that phone?
 7 A. Mr. Gonzales -- I'm sorry. I can't remember his
 8 name. What -- I'm sorry.
 9 Q. Carlos?
 10 A. Carlos. Carlos Gonzalez answered the phone, yes.
 11 Q. And after he answered the phone, did he put the
 12 phone on speaker phone?
 13 A. Yes, he did.
 14 Q. And were you able to hear the person on the other
 15 end of the phone conversation?
 16 A. Yes, ma'am.
 17 Q. And did that person -- was that person identified as
 18 Ivan --
 19 MR. GOELLER: Objection, Your Honor. That's
 20 got to be rank hearsay, and hearsay within hearsay within
 21 hearsay.
 22 THE COURT: Overruled.
 23 Q. BY MS. FALCO: Did (sic) the voice that you heard
 24 coming through the speaker phone, was that identified as Ivan
 25 Cantu?

1 A. Yes, ma'am.
 2 Q. Were you able to hear both sides of the
 3 conversation, both from Carlos and from Ivan Cantu?
 4 A. Yes, ma'am.
 5 Q. Approximately what time was this on November 6th?
 6 A. It was during the afternoon hours. I don't remember
 7 exactly what time it was, but it was during the day.
 8 Q. And did you hear Ivan Cantu talk to Carlos
 9 Gonzalez?
 10 A. Yes, ma'am, I did.
 11 Q. Did you know at that time where Ivan Cantu was
 12 calling from?
 13 A. Yes, ma'am.
 14 Q. Where was he calling from?
 15 A. Arkansas.
 16 Q. And what did Ivan Cantu say to Carlos Gonzalez?
 17 MR. GOELLER: Objection, Your Honor. That is
 18 rank hearsay, and I object to the last answer. I'd like to
 19 take the witness on voir dire?
 20 THE COURT: All right. You can take him on
 21 voir dire, but I can tell you that what Mr. Cantu said, if he
 22 said something, is not hearsay, but anyway go ahead.
 23 VOIR DIRE EXAMINATION
 24 BY MR. GOELLER:
 25 Q. Officer, how do you know where the phone call was

1 coming from?
 2 A. I was told by --
 3 MR. GOELLER: Objection, hearsay, Your Honor,
 4 so I renew my previous objection.
 5 THE COURT: Wait a minute, let me hear the
 6 answer.
 7 THE WITNESS: Mr. Carlos told me where he was
 8 calling from, sir.
 9 THE COURT: All right.
 10 MR. GOELLER: So I object to hearsay within
 11 hearsay. It's double hearsay.
 12 THE COURT: All right. Well, I'll object (sic)
 13 to the question's response with regard to where he was calling
 14 from, but I suppose that question is what was he saying.
 15 THE WITNESS: Yes, sir.
 16 MR. GOELLER: Yeah. I think the next question
 17 on the floor is what did he say? And I'd like to object to
 18 hearsay, Your Honor.
 19 THE COURT: Why do you consider it to be
 20 hearsay?
 21 MR. GOELLER: It's an out-of-court statement.
 22 I can't cross-examine it.
 23 THE COURT: You don't consider it to be an
 24 exception to hearsay?
 25 MR. GOELLER: No, sir.

1 THE COURT: All right. Overruled.
 2 MR. GOELLER: May I have a running objection to
 3 any conversations that the officer --
 4 THE COURT: No. There's no running objection.
 5 If there's another question after this one, you can make an
 6 objection, and I'll rule on it.
 7 MR. GOELLER: Yes, sir.
 8 THE COURT: All right. Go ahead.
 9 Q. BY MS. FALCO: What did Ivan Cantu say to Carlos
 10 Gonzalez?
 11 A. He was talking to him about -- he said that there
 12 was a guy in a Domino's pizza uniform that knocked on his
 13 door. He said that the guy -- when he opened the door -- I'm
 14 sorry. When Mr. Cantu said he opened the door, the guy forced
 15 his way in, and he had a handgun. He said that the guy put
 16 the gun to his head and was telling him that he had fronted
 17 his cousin, Mr. Mosqueda, \$300,000 in cocaine. He said that
 18 Mr. Mosqueda had only paid him \$50,000 and he still owe him
 19 \$250,000 dollars.
 20 He also stated that the guy told -- assumed -- no.
 21 He also stated that Mr. Mosqueda told this guy, whom he said
 22 his name was Matt, that Ivan Cantu was going to start back
 23 working for him in the mortgage company to help him collect
 24 this money. Mr. Cantu stated that he told this Matt guy that
 25 he was not going to be working again with Mr. Mosqueda at the

1 mortgage company. That is when the -- Matt got upset and
 2 fired one round into the wall inside his apartment.
 3 He said that he tried to contact Mr. Mosqueda, but
 4 he was not successful. The next day, which would have been
 5 Friday, he tried to contact him by phone. Mr. Mosqueda asked
 6 him to meet him at his residence later on that night. He
 7 stated that he goes over there. Amy is allegedly freaking out
 8 saying, I knew something like this was going to happen --
 9 MR. GOELLER: Judge, at this point I'm going to
 10 object to -- I don't know who's saying what, so it's hearsay
 11 within hearsay. I don't know who the detective is talking
 12 about -- is talking at this point in time.
 13 THE COURT: Well, ask him.
 14 Q. BY MS. FALCO: Just -- we'll break this up a little
 15 bit, Detective.
 16 When Mr. Cantu said the next day being Friday,
 17 that's Friday, November 3rd?
 18 A. Yes, ma'am.
 19 Q. And he stated that he tried to contact James
 20 Mosqueda?
 21 A. That's correct.
 22 Q. And what did Mr. Cantu say happened after he tried
 23 to contact James?
 24 A. He stated that he met -- James told him to meet with
 25 him later that night.

1 Q. And did Mr. Cantu state whether or not he met with
 2 James that night?
 3 A. Yes, ma'am, he said he did.
 4 Q. And what did he say in regards to when he met James
 5 that night, Friday, November 3rd?
 6 A. He stated that they had -- he told him about this
 7 Matt guy in the Domino's Pizza outfit coming over to the
 8 apartment and putting a gun to his head. He stated that Amy
 9 Kitchen was inside the residence freaking out saying, I knew
 10 something like this was going to happen, stated that
 11 Mr. Mosqueda -- again this is Mr. Cantu's (sic) talking --
 12 stated that Mr. Mosqueda -- no, he told Mr. Mosqueda that he
 13 was going to the Albertson's because they was going -- him and
 14 his girlfriend, Amy, was going out of town. He stated that --
 15 again Mr. Cantu stated that Mr. Mosqueda asked him to drive
 16 the Corvette to the store and leave his car in front of the
 17 house so it would appear that they had guests.
 18 He said that he drove Mr. -- Mr. Cantu said that he
 19 drove the car to the Albertson's, purchased whatever he was
 20 going to purchase, and then he returned back to the --
 21 Mosqueda's residence. Mr. Cantu stated that Mr. Mosqueda
 22 said -- asked him to drive his Corvette out of town and to
 23 leave his car there. Mr. Cantu --
 24 MR. GOELLER: Again, Judge, we're getting into
 25 hearsay within hearsay. If this is being offered under

1 exception 24, the Court's got to make a determination that
 2 unless they're corroborating circumstances that clearly
 3 indicates trustworthiness of the statement, so I object to all
 4 of this as hearsay.
 5 THE COURT: Section 24 of what?
 6 MR. GOELLER: 803, Your Honor.
 7 THE COURT: All right. Overruled. Go ahead.
 8 MR. GOELLER: Yes, sir.
 9 And I object on those grounds under -- if it doesn't
 10 come in under Section 24 of 803, I object to the officer
 11 getting into hearsay within hearsay within hearsay. I object
 12 that there's no -- they haven't proved up the authenticity or
 13 the reliableness of the hearsay twice removed and the hearsay
 14 three times removed.
 15 THE COURT: I'm assuming you're not offering it
 16 for the truth of the statements that were made?
 17 MS. FALCO: No, just the fact that the
 18 Defendant made these statements.
 19 MR. GOELLER: So the record is clear, they're
 20 not being offered for the truth?
 21 THE COURT: That Mr. Cantu's statements are not
 22 being offered for the truth?
 23 MR. GOELLER: Or -- I don't know if the
 24 detective is -- they're not offering the detective's
 25 testimony?

1 MS. FALCO: We're not offering the Defendant's
2 statements as statements that he made as truthful. Anything
3 that he said to somebody else -- any statements that were
4 made, were just to offer for information acted upon by the
5 defendant in relaying this story to Carlos Gonzalez.

6 THE COURT: All right. The objection is
7 overruled.

8 MR. GOELLER: Yes, sir.

9 THE COURT: All right.

10 THE WITNESS: Thank you, Judge.

11 A. According to Mr. Cantu, he then stated that
12 Mr. Gonzalez -- Mr. Mosqueda asked him to take the Corvette
13 and drive it out of town. He stated that -- Mr. Cantu stated
14 that he drove the Corvette to his apartment complex, thought
15 about it for a little while, loaded his items up in the car,
16 decided he was not going to drive the Corvette. He then drove
17 the Corvette back over to Mr. Mosqueda, left the Corvette, him
18 and his girlfriend got in the Honda and drove to Arkansas.

19 Q. BY MS. FALCO: And did that pretty much end the
20 conversation between Carlos Gonzalez and Ivan Cantu?

21 A. Yes, ma'am.

22 Q. And that was your purpose for going to
23 Mr. Gonzalez's house, was to hear that phone conversation?

24 A. That is correct.

25 Q. Were you aware, prior to getting to Mr. Gonzalez's

1 house, that that phone conversation might occur?

2 A. Yes, ma'am.

3 Q. After you heard that phone conversation, did you
4 stay at the house?

5 A. We stayed there for a little while longer, yes,
6 ma'am.

7 Q. What did you do there at the house?

8 A. Spoke with Mr. Carlos and then transported
9 Mr. Carlos to the crime -- to my office where we got an
10 affidavit from him.

11 Q. A written statement?

12 A. That's correct.

13 Q. And is that standard procedure in a homicide
14 investigation?

15 A. Yes, ma'am.

16 Q. Did you also get a written statement from Sylvia
17 Cantu?

18 A. Yes, we did.

19 Q. Was that at the same time?

20 A. Yes, it was.

21 Q. Did you get a statement from anyone else during that
22 time?

23 A. No, ma'am.

24 Q. Did you have a conversation regarding Sylvia -- with
25 Sylvia Cantu at that time?

1 A. No. Another detective interviewed Ms. Cantu.

2 MS. FALCO: Your Honor, may I approach?

3 THE COURT: Yes.

4 MS. FALCO: One moment, please.

5 Q. BY MS. FALCO: So you did not personally speak to
6 Sylvia Cantu?

7 A. No, ma'am, I did not.

8 Q. Okay. And that was on Monday, November 6th; is that
9 correct?

10 A. That is correct.

11 Q. During the course of your investigation, did you
12 also learn of Officer Junger's entrance into the Defendant's
13 apartment with Ms. Sylvia Cantu?

14 A. Yes, ma'am.

15 Q. And from that entry into the apartment, were you
16 also made aware of --

17 MR. GOELLER: Objection, Your Honor. This is
18 just running hearsay. It's all inferential hearsay.

19 MS. FALCO: We're Offering it as information
20 acted upon --

21 MR. GOELLER: Excuse me. It's all hearsay.

22 It's inferential hearsay. It's not admissible.

23 THE COURT: Overruled.

24 Q. BY MS. FALCO: Were you made aware of what Officer
25 Junger observed in the apartment regarding what appeared to

1 him to be a bullet hole?

2 A. Yes, ma'am.

3 Q. On Tuesday, November 7th, 2000, did you prepare a
4 search warrant to search the Defendant's apartment?

5 A. Yes, ma'am, I did.

6 Q. And what did you include as the basis for the search
7 warrant?

8 A. The basis of the search warrant, besides the fact
9 Officer Junger had found (sic), the fact that we did find the
10 Defendant's vehicle at the Pear Ridge Apartments, the
11 overheard phone conversation that Mr. Cantu was talking to
12 Carlos Gonzalez, and from those facts we decided that maybe we
13 need to go inside his apartment.

14 Q. And you said the Defendant's vehicle, you mean the
15 victim's?

16 A. Yes, I'm sorry. That's correct.

17 Q. And was that search warrant signed by a judge or
18 magistrate?

19 A. Yes, it was.

20 Q. And did you and other officers make entry into the
21 Defendant's apartment on Pear Ridge?

22 A. Yes, we did.

23 THE COURT: I tell you what, we're going to
24 take a 15-minute recess at this time, and we'll continue the
25 direct examination at 11:00.

1 THE BAILIFF: All rise.

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

3 THE COURT: The jury is not present and the
4 witness is not present, but everybody else is. Tell me what
5 we've got.

6 MR. SCHULTZ: The State's becoming a little
7 concerned about the first alternate juror, and the reason we
8 are is it's been apparent that throughout portions of the
9 trial, our first alternate appears to have been snoozing and,
10 I've been told, although I didn't hear it myself, that at one
11 point somebody thought she was snoring, even that it was at
12 the level of snoozing. And I'm not sure that there's any need
13 at the moment for Court intervention, but I'm trying to think
14 down the road -- I'm thinking well, what happens -- if she
15 stays an alternate, we're fine. But what happens if she
16 doesn't stay an alternate. Somebody gets sick, she becomes
17 the first seated alternated, and becomes a member of the jury.

18 Once again, if there's a complaint about her
19 remaining, even in the line of succession I'd kind of like for
20 us to know about it now. We're not complaining about it, but
21 I'd like for us to know about it now, rather than having to
22 worry about it popping up some time later in some
23 post-conviction proceeding of some kind. And I'm just -- I'm
24 not even sure what our capabilities would be and how we would
25 do it, but if she's sleeping I'm not sure about how she's

1 going to be discharging her oath.

2 THE COURT: All right. Any comment from the
3 Defendant?

4 MR. GOELLER: No, Your Honor.

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

7 THE BAILIFF: Yes, Your Honor.

8 THE COURT: You're right. That would be
9 something we have to face when the time comes. Your assertion
10 is noted, and I don't know what to do.

11 MR. SCHULTZ: Especially, as targeted on that
12 particular individual, I just wanted the record clear that
13 this is a problem that we're all seeing.

14 THE COURT: And I think it's conceivable this
15 may have been a one-day occurrence, and perhaps she'll be
16 bright as the daisy from here on out.

17 MR. SCHULTZ: Yes, sir.

18 THE COURT: And sharp as a tack.

19 THE BAILIFF: All rise.

20 (Jury enters the courtroom at 11:07 a.m.)

21 THE COURT: Please be seated. And let's bring
22 the witness back in.

23 THE BAILIFF: Yes, Your Honor.

24 (Witness enters the courtroom.)

25 THE COURT: All right. Detective Winn, as you

1 know, you're still under oath.

2 THE WITNESS: Yes, sir.

3 THE COURT: Go ahead please, Ms. Falco.

4 Q. BY MS. FALCO: Detective, I believe we were at
5 Tuesday, November 7th. You stated that you had executed a
6 search warrant?

7 A. That is correct.

8 Q. And after you got -- first of all, what is the
9 procedure for obtaining and executing a search warrant?

10 A. It is our responsibility to write up or draw up the
11 search warrant. Then we have to take it and have the search
12 warrant signed by a judge.

13 Q. And did you do that in this case?

14 A. Yes, ma'am, I did.

15 Q. Once you have a search warrant signed by a judge,
16 what is the procedure?

17 A. Then we go ahead and usually try to execute that
18 search warrant that day, and in this case that is what we did.

19 Q. And who all went with you to the Defendant's
20 apartment to execute this search warrant?

21 A. Myself and Detective Carney rode in the same car to
22 the location, and Detective Whitsitt, from the crime scene
23 response, met us at the location.

24 Q. And we're talking about -- the location we're
25 talking about, the Defendant's apartment on Old Bent Tree, the

1 Pear Ridge Apartments?

2 A. That is correct.

3 Q. And specifically, which apartment number?

4 A. Apartment Number 10004.

5 Q. And do you know approximately what time it was when
6 you executed the search warrant?

7 A. No, ma'am, I do not.

8 Q. Do you remember if it was daylight or nighttime?

9 A. Oh, yes, ma'am, it was.

10 Q. Daylight?

11 A. Yes, ma'am.

12 Q. What is the procedure for executing a search
13 warrant?

14 A. When we (sic) doing a search warrant we usually try
15 to obtain a key, if at all possible, which in this case we
16 were (sic) able to by -- through the management. Myself and
17 Detective Carney, as well as Detective Whitsitt, we entered
18 the apartment ourselves because we --

19 MR. GOELLER: Your Honor, I'm sorry. I don't
20 mean to interrupt you, Detective Winn, but I need to. At this
21 point, Your Honor, object to any testimony, any evidence
22 offered by way of this search. It's our position this was an
23 illegal search and seizure. I object that there's been no
24 showing. There's already evidence before this jury that a
25 search took place by another detective. There was never a

1 warrant put in before the jury. We specifically object under
2 the Texas Constitution, Article 1, Section 9, Section 19;
3 United States Constitution, Amendment Four (sic), Fourteenth
4 Amendment. Thereby based on those, thereby depriving my
5 client of his Sixth Amendment right to effective assistance of
6 counsel. We further object under the Code of Criminal
7 Procedure, Article 1.04 and 1.06 and 38.23 of the Texas
8 exclusionary rule for illegal search and seizure and any
9 evidence derived therefrom.

10 THE COURT: All right. The objection is
11 overruled.

12 MR. GOELLER: And, Your Honor, for record
13 purposes, due to the length of the objection, may I have
14 another running objection, the same I did with the previous
15 detective, for all evidence and all testimony regarding
16 anything derived or observed due to the search of my client's
17 habitation?

18 THE COURT: Yes. Yes, you may.

19 MR. GOELLER: And specifically those specific
20 objections I just lodged into the record, those are part of my
21 running objection, Your Honor.

22 THE COURT: All right.

23 MR. GOELLER: Thank you, sir.

24 THE COURT: And those objections are
25 overruled --

1 when you're executing a search warrant?

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

3 Q. And that's an exact copy of the search warrant
4 actually used to enter the Defendant's apartment on November
5 7th, 2000?

6 A. Yes, ma'am.

7 MS. FALCO: At this time we offer State's
8 Exhibit 105.

9 MR. GOELLER: Renew my same objections, Your
10 Honor. There's no probable cause established in his affidavit
11 to gain that search warrant. We further renew our objection
12 that the judge being a city traffic judge signed it. We
13 further renew our objection under the Texas Constitution,
14 Article 1, Section 9, Section 19; United States Constitution,
15 Fourth Amendment, Sixth Amendment and Fourteenth Amendment;
16 Texas Code of Criminal Procedure 1.04, 1.06, 38.23 of the
17 Texas Exclusionary Rule.

18 THE COURT: All right. I tell you what, I'm
19 going to set aside my ruling that you have a running
20 objection. I can see you're making the objection, so just
21 continue to make any objection that you find to be
22 appropriate, and this last objection is overruled.

23 MR. GOELLER: Yes, sir. Your Honor, I'm not
24 trying to --

25 THE COURT: No. I understand.

1 MR. GOELLER: Yes, Your Honor.

2 THE COURT: -- just so the record is clear.

3 MR. GOELLER: Thank you, Judge.

4 THE COURT: And I don't even remember where you
5 were. You were saying that you -- go ahead.

6 MS. FALCO: Your Honor, may I approach the
7 witness?

8 THE COURT: Yes.

9 Q. BY MS. FALCO: Detective, I show you what's been
10 marked as State's Exhibit Number 105. If you will look
11 through that and tell me if you recognize that exhibit?

12 A. Yes, ma'am, this is the search warrant.

13 Q. The search warrant that you obtained on November
14 7th, 2000 to enter the Defendant's apartment?

15 A. That is correct.

16 Q. And what is the -- is the first page a certification
17 of the search warrant?

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

19 Q. And the second page, what is that?

20 A. Second page is where the judge signed the search
21 warrant, and then the last page is what we call a return in
22 inventory where we have to leave a copy at the scene, as well
23 as give a copy to the judge to sign the warrant, of
24 everything -- of all the items that we took out.

25 Q. And is the return and inventory, is that required

1 MR. GOELLER: I wanted to --

2 THE COURT: But, see, I figure if it was
3 running, that this was taken care of, but if -- and perhaps it
4 was necessary.

5 MR. GOELLER: I felt for that particular piece
6 of evidence it was necessary. I'm not trying to play with the
7 Court.

8 THE COURT: I understand that, and I don't find
9 it to be inappropriate in any way.

10 MR. GOELLER: Thank you.

11 THE COURT: But anyway, what we'll do is just
12 go ahead with regard to whatever questions that are asked, I
13 think it might be appropriate to go ahead and make your
14 objection on the record.

15 MR. GOELLER: Yes, sir.

16 THE COURT: All right.

17 MR. GOELLER: Judge, I'm sorry. I am not
18 playing with the Court.

19 THE COURT: Yeah.

20 MR. GOELLER: I would still like my running
21 objection as to his -- the testimony, and I'm just trying to
22 save everybody a lot of time. There's going to be probably
23 hours of testimony from this witness. I would like an
24 agreement with the Court that I keep my running objection as
25 to that, and I would only renew those lengthy objections, if

1 for some other reason I have to, other than testimony or
2 evidence derived from the search of my client's apartment.

3 THE COURT: Okay. No, I tell you what. It
4 would be better to make the objection when the question is
5 asked.

6 MR. GOELLER: Yes, sir.

7 THE COURT: Go ahead.

8 MS. FALCO: Your Honor, one more item before I
9 move on.

10 THE COURT: All right.

11 MS. FALCO: I'd like to, at this time, offer
12 State's Exhibits 106 and 107. State's Exhibit Number 106
13 previously identified and offered at a previous hearing as
14 State's Exhibit Number 5. And State's Exhibit Number 107,
15 previously admitted into evidence at a previous hearing as
16 State's Exhibit 6, regarding the qualifications of the judge
17 who signed the warrant.

18 THE COURT: 106 and 107?

19 MS. FALCO: Yes, sir.

20 THE COURT: Ms. Falco, so the record is clear,
21 tell me once again what 106 and 107 are?

22 MS. FALCO: State's Exhibit Number 106, being a
23 statement of appointed officer, previously identified as
24 State's Exhibit Number 5. And State's Exhibit Number 107 is
25 an Acceptance of Appointment and Oath of Office previously

1 response, and then we went on inside.

2 Q. Once you went inside the apartment, first of all,
3 how big was the apartment? Was it one bedroom, two bedroom?

4 MR. GOELLER: Excuse me, Detective. Your
5 Honor, at this time I object if he's going to offer testimony
6 as to the inside of my client's apartment. I object. It's an
7 illegal search and seizure. I object under Texas

8 Constitution, Article 1, Section 9, Section 19; United States
9 Constitution, Amendment Four, Amendment Fourteen, Sixth
10 Amendment; Code of Criminal Procedure, Section 1.06, Section
11 1.04; Texas Exclusionary Rule, Article 38.23.

12 THE COURT: All right. Objection is overruled.

13 Q. BY MS. FALCO: Go ahead.

14 A. It's a small, one-bedroom apartment.

15 Q. Once you went inside the apartment, what did you do?

16 A. We began to search -- myself and Detective Carney
17 began the search of the apartment. I began to search in the
18 kitchen, was the first area that I began searching. As I was
19 searching the kitchen there was --

20 MR. GOELLER: Objection, Your Honor. I'm
21 sorry. At this point in time I need to object to illegal
22 search and seizure. Object under Texas Constitution, Article
23 1, Section 9, Section 19; United States Constitution, Fourth
24 Amendment, Fourteenth Amendment and Sixth Amendment; Texas
25 Code of Criminal Procedure, 1.04, 1.06; 38.23 of the Texas

1 admitted as State's Exhibit Number 6.

2 THE COURT: All right.

3 MR. GOELLER: Judge, I'd object to those
4 documents. Number one, they're hearsay. There's no official
5 seal attached to them. There's no appropriate affidavit.
6 There's no evidence that the traffic judge in Dallas had
7 authority to grant this. I renew all my objections I lodged
8 at the Motion to Suppress as well.

9 THE COURT: All right. Objection is overruled,
10 and 106 and 107 are admitted.

11 Q. BY MS. FALCO: Detective, once you have the search
12 warrant in hand, and -- did you actually take that physical
13 piece of paper to the location?

14 A. Yes, ma'am, we did.

15 Q. Once you arrived at that location, what is the
16 procedure?

17 A. Then it's time to try to gain entry into the
18 apartment, and in this case I went to the manager's office,
19 explained to her that I had a search warrant. I even showed
20 her the search warrant, and she allowed us to gain entry into
21 the apartment.

22 Q. And prior to going in there, did you knock to see if
23 there was going to be any response?

24 A. No, I -- no. What the manager did is, when she
25 unlocked the door she screamed "manager." There was no

1 Exclusionary Rule.

2 THE COURT: Overruled.

3 MR. GOELLER: Ask to approach sidebar?

4 THE COURT: Yeah.

5 (Sidebar discussion had outside the hearing of the
6 court reporter and jury.)

7 THE COURT: All right. Mr. Goeller.

8 MR. GOELLER: May I address the Court, Your
9 Honor?

10 THE COURT: Yes, sir.

11 MR. GOELLER: Judge, at this time I'd ask the
12 Court to allow me -- grant me a running objection on the
13 specifics of my last objection dictated into the record
14 regarding the testimony and evidence from this officer.

15 THE COURT: All right. Your running objection
16 is granted.

17 MR. GOELLER: Thank you, Your Honor.

18 MS. FALCO: Your Honor, just to clarify his
19 request for a running objection, as opposed to the objection?

20 THE COURT: Yes. The request is granted, and
21 the objection, of course, is overruled. Go ahead.

22 Q. BY MS. FALCO: Detective, you stated you went into
23 the kitchen and began searching the kitchen?

24 A. Yes, ma'am, I did.

25 Q. Where in the kitchen did you look?

1 A. I began looking through drawers, making my way
2 closer to the refrigerator. As I got closer to the
3 refrigerator, there was a trash can that was placed -- that's
4 against the wall. I looked inside that trash can. That's
5 where I saw several clothing (sic) that was blue jeans and
6 some socks with a reddish substance on it that appears to have
7 been blood.

8 Q. Once you observed that in the trash can, what did
9 you do with that information?

10 A. I immediately called Detective Whitsitt over who
11 photographed the trash can with these items on the inside, and
12 then we retrieved these items from out of the trash can.

13 Q. Were you present when Detective Whitsitt retrieved
14 those items from the trash can?

15 A. Yes, ma'am, I was.

16 MS. FALCO: Your Honor, may I approach the
17 witness?

18 THE COURT: Yes.

19 Q. BY MS. FALCO: Detective, I show you what's been
20 previously admitted as 71-B. Inside, one sock.

21 A. Yes, ma'am.

22 Q. Is that the same sock that was in the trash can?

23 A. Yes, ma'am.

24 Q. State's Exhibit 71-C, inside also one sock.

25 A. Yes, ma'am.

1 Q. Was that sock in the trash can?

2 A. Yes, ma'am.

3 Q. And State's Exhibit 71-A, the blue jeans,
4 specifically Arizona brand blue jeans. Were these the blue
5 jeans that were in the trash can?

6 A. Yes, ma'am.

7 Q. I show you what's been marked as State's Exhibits
8 94, 97, on the back is 98, on the back is 99, on the back is
9 100, 101, and 95 and 96. Do you recognize what's illustrated
10 in those photographs?

11 A. Yes, ma'am, I do.

12 Q. And what's illustrated in those photographs?

13 A. Those are the photos of the socks, as well as the
14 blue jeans with the red substance that appeared to be blood on
15 them.

16 Q. Are each one of those pictures a fair and accurate
17 depiction of the socks and the blue jeans as you found them on
18 November 7th, 2000?

19 A. That's correct, yes, ma'am.

20 MS. FALCO: At this time, Your Honor, we offer
21 State's Exhibits 95, 96, 94, 97, 98, 99, 100 and 101 into
22 evidence.

23 MR. GOELLER: May I have just one moment,
24 Judge?

25 THE COURT: Yes, sure.

1 (Brief pause in proceedings.)

2 MR. GOELLER: Renew my same running objection,
3 Your Honor.

4 THE COURT: All right. The objection is
5 overruled, and 94 through 101 are admitted.

6 Q. BY MS. FALCO: With regard to the blue jeans,
7 Detective, did you take note of the size and the brand of
8 those particular blue jeans?

9 A. Yes, ma'am, I did.

10 Q. What was the size and what was the brand?

11 A. The brand was Arizona, size 34/34.

12 Q. Is it possible 34/32?

13 MS. FALCO: Your Honor, may I --

14 A. Wait a minute, excuse me. I have it right here.

15 Q. BY MS. FALCO: I show you what's been marked as
16 State's Exhibit 71-A, the blue jeans in reference to the tag.

17 A. 34/32.

18 Q. And you would have made note of that in your
19 supplement?

20 A. That's correct.

21 Q. Did you do anything with regard to that particular
22 information regarding the brand and size of jeans?

23 A. Yes, ma'am, I did.

24 Q. What did you do?

25 A. I then went to the master bedroom closet where there

1 was another pair, same color, same brand, same size hanging
2 up.

3 Q. So the pair of blue jeans in the trash were
4 identical in size and brand as a pair of jeans in the master
5 bedroom closet?

6 A. Yes, ma'am.

7 Q. Did Detective Whitsitt gather up the jeans and the
8 socks and take them into custody?

9 A. Yes, he did.

10 Q. Did you continue your search in the kitchen?

11 A. Yes, ma'am, I did.

12 Q. Did you remove, or were you aware of whether or not
13 Detective Whitsitt removed anything else from the kitchen?

14 MR. GOELLER: Judge, I'm sorry to interrupt.
15 I'm going to have to object to the witness reading from some
16 documents. He earlier testified he did not bring his notes or
17 offense report, and now he seems to be reading from something.
18 So, no proper predicate has been laid for him to answer
19 questions from the State merely by reading from documents
20 sitting in front of him.

21 THE COURT: Sustained.

22 Q. BY MS. FALCO: Detective, earlier when I asked you
23 if you could refresh your memory, at that time you stated you
24 didn't have your notes with you, correct?

25 A. Yes, ma'am.

1 Q. Where were your notes?
 2 A. They was in the witness room.
 3 Q. What happened that you ended up on the witness
 4 stand without your notes?
 5 A. When I was called, I just put on my jacket and
 6 exited the room and left them on the chair.
 7 Q. During the break were you able to pick them back up?
 8 A. Yes, ma'am, I was.
 9 Q. And are those your notes that you've been using to
 10 refresh your memory?
 11 A. Yes, ma'am.
 12 MS. FALCO: Your Honor, at this time I'd ask
 13 that he be allowed to use those notes to refresh his memory.
 14 THE COURT: All right. Go ahead and refresh
 15 your memory, and then we'll hear another question.
 16 THE WITNESS: Thank you, sir.
 17 A. I'm sorry, the question was?
 18 Q. BY MS. FALCO: Did you observe Detective Whitsitt
 19 remove any other items from the kitchen?
 20 A. No, ma'am.
 21 Q. What's the next room that you searched?
 22 A. We then searched the living area, and that's
 23 where we noticed the bullet hole in the wall. We did not find
 24 anything in that area. Detective Carney -- there is a
 25 washroom with a full-size washer and dryer. She noticed a red

1 substance on the washer, and Detective Whitsitt gathered
 2 samples from there -- from that.
 3 In the master bedroom, just as you enter, to the
 4 left is the light switch. There was another red substance
 5 underneath that light switch, and Detective Whitsitt also
 6 gathered samples from that. In the master's (sic) bedroom,
 7 I -- after I looked at the jeans, I began searching the
 8 closet. And in the closet I found a pair of men's nine and a
 9 half black shoes that was on the top shelf inside -- in the
 10 closet. Inside -- in the -- inside this shoe I recovered
 11 several different items, that include a Dooney & Bourke key
 12 ring with several rings on it, a silver Mercedes Benz key
 13 ring, a black Mercedes Benz car key --
 14 MR. GOELLER: Judge, I'm sorry. I've got to
 15 renew my objection. He is reading from some documents.
 16 THE COURT: Sustained.
 17 Q. BY MS. FALCO: And, Detective, what that means is
 18 you can't just read off the document or your notes. You can
 19 look at it to refresh your memory, but you have to testify
 20 from your refreshed memory, as opposed to reading --
 21 A. Yes, ma'am.
 22 MR. GOELLER: And I would further object to
 23 that comment, unless the proper predicate has been laid for
 24 present -- I don't know whether it's past recollection,
 25 recorded present recollection, refreshed. There's certainly

1 no predicate as to either one of those, so I object to her
 2 comment, "just read it when you don't know."
 3 THE COURT: Sustained.
 4 Q. BY MS. FALCO: Detective, when did you make your
 5 report?
 6 A. When I returned to the office.
 7 Q. What date would that have been?
 8 A. That would -- if I may?
 9 (Laughter in the courtroom.)
 10 THE COURT: We're going to have to see about
 11 that. You may refresh your recollection --
 12 THE WITNESS: Thank you.
 13 THE COURT: -- from the date, and we'll see
 14 what happens after that.
 15 A. That was on October 7th.
 16 MR. GOELLER: I'll let that one slide.
 17 Q. BY MS. FALCO: October or November?
 18 A. I'm sorry, November the 7th.
 19 Q. Did you make the report the same day you conducted
 20 the search?
 21 A. Yes, ma'am, I did.
 22 Q. Was your memory better at the time that you wrote
 23 your report than it is today?
 24 A. Oh, yes, ma'am.
 25 Q. And what is the purpose of you making a report?

1 A. To refresh my memory, because we handle a lot of
 2 cases. So, it's just good to document everything to refresh
 3 your memory.
 4 Q. And is it fair to say that since you've worked on
 5 this homicide case, you've had others that you worked on?
 6 A. Yes, ma'am.
 7 Q. And since you investigated this homicide, have you
 8 testified in other cases?
 9 A. Yes, ma'am.
 10 Q. And is it necessary to be able to review your notes
 11 to refresh your memory?
 12 A. Yes, ma'am.
 13 MS. FALCO: Your Honor, based on that I'd ask
 14 that the detective be allowed to refresh his memory with his
 15 report.
 16 THE COURT: Let me ask you this: Do you recall
 17 the question that you wanted him to refresh his memory?
 18 MS. FALCO: I do not.
 19 (Laughter.)
 20 THE COURT: Can you refresh your memory?
 21 I tell you what, my understanding is that if his
 22 memory is exhausted with regard to the question then he can
 23 refresh his memory from a note, right?
 24 MS. FALCO: Yes.
 25 THE COURT: And then you ask him if his memory

1 is refreshed; is that correct?

2 MS. FALCO: Yes.

3 THE COURT: And then we find out -- do you
4 figure that's the way to do it?

5 MR. GOELLER: I'm not saying, Judge.

6 THE COURT: All right.

7 Q. BY MS. FALCO: Detective, let me just back up. You
8 searched the Defendant -- the closet in the Defendant's
9 apartment in the master bedroom?

10 A. Yes, ma'am.

11 Q. When you searched that closet in the master bedroom,
12 what did you find?

13 A. I found a pair of jeans that was identical to the
14 pair that we had recovered in the trash can. On the top shelf
15 in a pair of nine and a half black shoes, I retrieved several
16 keys that included -- on a key ring that was on a Dooney &
17 Bourke. I retrieved a silver Mercedes Benz key ring. I also
18 retrieved a Mercedes Benz car key. I retrieved another key
19 ring -- black key ring with several different keys on it, and
20 then next to the shoes was a box of .38 ammunition.

21 Q. When you observed those items, what did you do with
22 that information?

23 A. I then immediately called Detective Whitsitt, who
24 came to the back. We laid these items out, and he
25 photographed them.

1 MS. FALCO: Your Honor, may I approach?

2 THE COURT: Yes.

3 Q. BY MS. FALCO: I'm showing you State's Exhibit 8-A,
4 State's Exhibit 68, State's Exhibit 69, State's Exhibit 70.
5 Do you recognize those items?

6 A. Yes, ma'am.

7 Q. Are those the items that you saw in the top of the
8 shelf in the master bedroom closet?

9 A. Yes, ma'am. The keys were in the shoes, and the box
10 of ammunition were next to them -- was next to them.

11 Q. Did you observe Detective Whitsitt photograph and
12 collect those items?

13 A. Yes, ma'am, I did.

14 Q. With regard to those keys, at some point in time did
15 you take those keys to the crime scene, 18663 Gibbons?

16 A. Yes, ma'am, I did.

17 Q. And was that approximately November 25th?

18 A. Yes, ma'am.

19 Q. When you went to that address, who met you there?

20 A. Mr. Mark Kitchen, who is the brother of Amy Kitchen,
21 met us at the location.

22 Q. And what was your purpose of going to the house with
23 those keys?

24 A. We had the Mercedes keys, and we was trying to
25 determine if this was the key that started the Mercedes Benz

1 that was in the garage. Since we had the various keys, we was
2 just curious to know if any of these keys would unlock that
3 residence.

4 Q. And with regard to the Mercedes key, is that
5 actually sitting in front of you?

6 A. No, ma'am, it's not.

7 Q. What happened with the Mercedes key?

8 A. After I unlocked the Mercedes and was able to start
9 the car, I then gave the key to Mr. Kitchen.

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

12 THE COURT: Yes.

13 Q. BY MS. FALCO: So the key that you found in the
14 Defendant's apartment was the same key that started and
15 operated Ms. Kitchen's Mercedes?

16 A. That is correct.

17 Q. Is that Mercedes key unusual in any regard?

18 A. Yes, it is, very unusual.

19 Q. Explain that to the jury.

20 A. Most car keys --

21 THE WITNESS: If I may show my keys, Your
22 Honor, to demonstrate?

23 THE COURT: All right.

24 Q. BY MS. FALCO: Or if you want to use -- go ahead.

25 A. Most car keys, as you know, has teeth here, okay,

1 and this is what you insert into the ignition to start the
2 vehicle. Well, this particular Mercedes key, it did not,
3 okay? It was flat, and it did have teeth to it that you could
4 push out, but it would not fit into the ignition. So we sat
5 there for a long time trying to figure it out, and then
6 finally we figured it out to just insert the flat section into
7 the ignition, which is the computer, and it started the
8 vehicle.

9 Q. And with regard to State's Exhibit Number 67, is the
10 Mercedes key shown in that picture?

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

12 Q. And once you realized that that key is one and the
13 same key that started and operated Amy Kitchen's car, you
14 stated you returned that key to Mr. Kitchen?

15 A. That is correct.

16 Q. For what purpose did you return the key to
17 Mr. Kitchen?

18 A. We did not need it, and they was needing to remove
19 the car, so I relinquished the key to them -- to him.

20 Q. And with regard to the other keys that you had with
21 you, did you try any of those keys at that residence?

22 A. Yes, ma'am, I did.

23 Q. And explain that to the jury, what you did?

24 A. Mr. Kitchen had told me that --

25 MR. GOELLER: Objection as to hearsay, Your

1 Honor.

2 THE COURT: Sustained.

3 Q. BY MS. FALCO: Without going into what Mr. Kitchen
4 told you, what did you do with the keys?

5 A. I attempted to -- I used the keys to see if any of
6 them would unlock the residence.

7 Q. Did you use -- did you try any specific door?

8 A. Yes, ma'am. I tried the door lock that led from the
9 kitchen to the garage.

10 Q. And which sets of keys did you try with -- or which
11 sets of keys did you try with that door?

12 A. Just try each key -- one of the keys on this key
13 ring actually unlocked the garage door that leads into the --
14 that leads from the kitchen to the garage.

15 Q. So one of those keys -- on which State's exhibit are
16 you looking at?

17 A. Number 68.

18 Q. One of the keys on State's Exhibit Number 68
19 actually unlocked the door to that house?

20 A. That is correct.

21 Q. And while you were at the Defendant's apartment
22 searching it, Detective Whitsitt's job, obviously, is to
23 collect and gather the evidence and take photographs?

24 A. Yes, ma'am.

25 Q. And you were actually doing the searching, along

1 with Detective Carney; is that correct?

2 A. Yes, ma'am.

3 Q. With regard to the bullet hole, or what appeared to
4 be the bullet hole, first of all, where did you see that?

5 A. As you entered the apartment, it's on the -- to the
6 left in the wall, just about eye level.

7 Q. Okay. And with regard to the bullet hole, what did
8 you do while you were in the apartment at that time?

9 A. We decided not to attempt to retrieve the
10 apartment (sic) because this is a downstairs apartment. We
11 were not sure if we would mess up the structure of that
12 apartment, so we decided we would try to get it on a later
13 date -- we would attempt to get it on a later date.

14 MS. FALCO: Your Honor, may I approach?

15 THE COURT: Yes.

16 Q. BY MS. FALCO: At the time you went in on this
17 search warrant, did you have the equipment and the capability
18 to retrieve the bullet out of the wall without causing
19 structural damage?

20 A. No, we did not.

21 Q. I show you what's been marked as State's Exhibits 75
22 and 74. Do you recognize what's in those photographs?

23 A. Yes, ma'am, I do.

24 Q. What is in 74 and 75?

25 A. Each is a photo of the bullet hole in the wall. One

1 is a close-up view, and the other one is -- I'm sorry,

2 Number 4 -- Number 75 is a close-up view and Number 74 is a
3 distant view.

4 Q. Is that the same bullet hole that you saw when you
5 went in on a search warrant on November 7th?

6 A. Yes, ma'am.

7 Q. Did that conclude your search of the Defendant's
8 apartment on November 7th?

9 A. Yes, ma'am.

10 Q. Do you recall anything -- doing anything else that
11 day with regard to the Defendant's apartment or interviewing
12 any witnesses on November 7th?

13 THE COURT: Sir, I suppose the answer at this
14 time is no?

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

16 MS. FALCO: Would you like to refresh your
17 memory?

18 THE WITNESS: Yes.

19 A. No, that would be all.

20 Q. BY MS. FALCO: The next day, November 8th, 2000,
21 with regard to your investigation, was an arrest made?

22 A. Yes, it was.

23 Q. Who was arrested?

24 A. Mr. Cantu was arrested.

25 Q. Do you see Mr. Cantu in the courtroom?

1 A. Yes, ma'am, I do.

2 Q. Can you point to him and identify something he's
3 wearing?

4 A. He's wearing a white, look like, shirt with a navy
5 pullover sweater with designs on it.

6 MS. FALCO: Your Honor, may the record reflect
7 he's identified the Defendant, Ivan Cantu.

8 THE COURT: All right. It will so reflect.

9 MR. GOELLER: Your Honor, at this time we'd
10 object to any arrest. There's been no showing of probable
11 cause. There's been no warrant of arrest produced, supported
12 by sworn affidavit, and, therefore, we object to any testimony
13 stemming from the arrest of Ivan Cantu. There's been no
14 showing there's been probable cause to make an arrest.

15 THE COURT: Overruled.

16 MR. GOELLER: Thank you, sir.

17 Q. BY MS. FALCO: On November 9th, 2000, did you
18 receive a phone call regarding going to another location to
19 look for evidence?

20 A. If I may refresh my memory? I believe I did, yes.

21 Q. Who did you receive a phone call from?

22 A. Yes, ma'am. I received a phone call from an
23 attorney by the name of David Pye, and he was telling me that
24 he -- he informed me that --

25 MR. GOELLER: Judge, I'm sorry. I'm going to

1 object to, number one, it's nonresponsive, and, number two,
2 it's rank hearsay.

3 THE COURT: Sustained.

4 Q. BY MS. FALCO: Without telling me what that person
5 said, did you go to a certain location based on that phone
6 call?

7 A. Yes, ma'am, we did.

8 Q. Where did you go?

9 A. We went to 717 North Harwood, Suite 2650 first.

10 Q. Who did you meet there?

11 A. We meet a Mr. Pye, a Twana -- let me spell the last
12 name.

13 Q. Tawny Svihovec?

14 A. Yes. And her attorney, by the name of --

15 MR. GOELLER: I'm sorry. I don't mean to keep
16 interrupting, but again it's just rank hearsay, reading from a
17 document. And continuing my objection --

18 THE COURT: The objection is sustained.

19 MR. GOELLER: -- no proper predicate. Thanks.

20 Q. BY MS. FALCO: Detective, do you remember the name
21 of her attorney?

22 A. No, ma'am.

23 Q. Do you need to refresh your memory?

24 A. Yes, ma'am.

25 MS. FALCO: Your Honor, may he refresh his

1 A. To retrieve a pistol.

2 Q. And did Ms. Svihovec let you into her apartment?

3 A. Yes, she did.

4 Q. And once you were inside her apartment, did she
5 direct you to a certain location?

6 A. Yes, she did.

7 Q. Where did she direct you?

8 A. She directed us to a cabinet where this handgun was.

9 Q. And did you open the cabinet, or did someone else
10 open the cabinet?

11 A. I don't remember who opened the cabinet.

12 Q. Was the cabinet opened?

13 A. Yes, it was.

14 Q. Once the cabinet was opened, what did you observe
15 inside?

16 A. The handgun that was on a shelf inside the cabinet.

17 MS. FALCO: Your Honor, may I approach?

18 THE COURT: Yes.

19 Q. BY MS. FALCO: Detective, I show you 76-B. Do you
20 recognize that handgun?

21 A. Yes, ma'am.

22 Q. Is that the same handgun you observed inside

23 Ms. Svihovec's apartment inside the cabinet?

24 A. Yes, ma'am.

25 Q. Was there anything else inside the cabinet besides

1 memory?

2 THE COURT: Yes.

3 A. The attorney present was Ms. Sheryl Schneider.

4 Q. Once -- were you by yourself, or did you have other
5 detectives with you?

6 A. Detective Brady was with me.

7 Q. Once you met them at that location on Harwood, where
8 did you go?

9 A. We then went to her -- Ms. Twaney's (sic) apartment.

10 Q. And where was her apartment located?

11 A. I don't remember. If I may --

12 Q. You don't remember. Do you need to refresh your
13 memory?

14 A. Yes, ma'am.

15 MS. FALCO: Your Honor, may he refresh his
16 memory?

17 THE COURT: Yes.

18 THE WITNESS: Thank you.

19 A. Her apartment was 7780 McCallum, Number 26322 at the
20 Gables Apartments.

21 Q. And who-all went to that location on November 9th?

22 A. Myself, Detective Brady, Attorney Pye, Schneider,
23 Twaney (sic) and Detective Forrest (sic) from the Crime Scene
24 Response section met us there.

25 Q. And for what purpose did you go to that apartment?

1 the gun that you remember?

2 A. I don't remember.

3 MS. FALCO: Your Honor, may he refresh his
4 memory?

5 THE COURT: Yes.

6 THE WITNESS: Thank you.

7 A. Yes, ma'am. There was a box of .38 automatic
8 ammunition that was removed from the cabinet, also.

9 Q. Do you recall what brand that was?

10 A. Federal.

11 Q. Was that evidence -- the box of ammunition and the
12 gun, was that evidence taken into evidence by the Dallas
13 Police Department?

14 A. Yes, ma'am, it was.

15 Q. And who collected that evidence?

16 A. Detective Forrest -- Forrest Smith.

17 Q. Do you recall whether or not the gun was loaded when
18 it was seized?

19 A. It was loaded, but I don't remember if there was a
20 round in the chamber. But I do know there was rounds in the
21 clips -- in the clip.

22 Q. And Detective Forrest (sic) is the one that
23 handled -- I'm sorry. Detective Smith is the one that handled
24 that?

25 A. That is correct.

1 Q. Did you seize anything else at Ms. Svihovec's
2 apartment?

3 A. Yes, we did.

4 Q. What else did you seize?

5 A. I don't remember. If I may refresh my memory,
6 please?

7 MS. FALCO: Your Honor, may he refresh his
8 memory?

9 THE COURT: Yes.

10 THE WITNESS: Thank you.

11 A. Okay. We seized diazepam.

12 Q. Is that a drug?

13 A. Yes, it is.

14 Q. Why did you seize the diazepam?

15 A. She told us that it belonged --

16 MR. GOELLER: Objection, Your Honor. It's just
17 rank hearsay. I don't know who the "she" is. I can't
18 cross-examine.

19 THE COURT: Sustained.

20 Q. BY MS. FALCO: After you collected the evidence,
21 did you leave Ms. Svihovec's apartment?

22 A. Yes, we did.

23 Q. At some point in time, did you interview
24 Ms. Svihovec?

25 A. I'm sorry?

1 Q. Did you interview Ms. Svihovec?

2 A. Yes, we did.

3 Q. Was it at that time or a later time?

4 A. We interviewed her at that time.

5 Q. And was she willing and cooperative to speak with
6 you?

7 A. Yes, ma'am.

8 MS. FALCO: Your Honor, may I approach the
9 witness?

10 THE COURT: Yes.

11 Q. BY MS. FALCO: Detective, I show you what's been
12 marked as State's Exhibit Number 108. Do you recognize this
13 exhibit?

14 A. Yes, ma'am.

15 Q. What is this exhibit?

16 A. That's an aerial photo of McCallum where
17 Ms. Tawana (sic) lives and looks like an aerial photo of where
18 these offense occurred on Gibbons, as well as Old Bent Tree
19 Lane where the Defendant lived.

20 Q. Is this a fair and accurate depiction of their
21 location, and the area where they're depicted?

22 A. Yes, ma'am.

23 MS. FALCO: Your Honor, at this time we'd offer
24 State's Exhibit 108.

25 MR. GOELLER: I don't have any objection to

1 that.

2 THE COURT: All right. State's Exhibit 108 is
3 admitted.

4 Q. BY MS. FALCO: Detective, if I could ask you to step
5 down.

6 A. Yes, ma'am.

7 Q. If you could, just point out to the jury with
8 reference to the roads and what numbers 1, 2 and 3 indicate?

9 A. Number 3 is McCallum, indicates where
10 Ms. Tawana (sic) lived, and this is where we recovered the
11 handgun, as well as the .38 bullets and the drug. Number 1 is
12 18663 Gibbons, this is where this offense occurred. This is
13 where Mr. Mosqueda, as well as Ms. Kitchen, was found deceased
14 inside their residence. Number 2 is where the Defendant --
15 I'm sorry, it's Old Bent Tree Lane, and that's where the
16 Defendant lived. Also, that's where we recovered the
17 Corvette.

18 Q. And with regard to this blowup containing 1 and 2,
19 does this reflect how close 1, the victim's residence, is to
20 2, the Defendant's residence?

21 A. Yes.

22 Q. With the major road north/south being the Dallas
23 Tollway?

24 A. That's correct.

25 Q. Thank you.

1 Detective, through the course of your investigation
2 did you come to interview a person named Amy Boettcher?

3 A. Yes, ma'am, I did.

4 Q. Who is Amy Boettcher?

5 A. Amy Boettcher was the girlfriend of Ivan Cantu.

6 Q. And how did you first learn about her whereabouts?

7 A. Her dad called our office.

8 Q. And where was Amy Boettcher located at that time?

9 MR. GOELLER: Objection, Your Honor, calls for
10 hearsay within hearsay. With no ability to cross-examine, it
11 denies my client's Sixth Amendment effective right to
12 assistance of counsel, on top of hearsay within hearsay.

13 THE COURT: Sustained.

14 Q. BY MS. FALCO: When did Amy Boettcher's father call
15 you?

16 A. Several days after this incident happened. I don't
17 know exactly what day it was.

18 Q. And did you go to a location to interview Amy
19 Boettcher?

20 A. Yes, ma'am, I did.

21 Q. Where did you go?

22 A. Franklin, Arkansas, I believe.

23 Q. And did you speak with Amy Boettcher?

24 A. Yes, ma'am, I did.

25 Q. And what was her demeanor when you spoke to her?

1 A. She was very nervous and scared during this
 2 interview in Arkansas.
 3 Q. Was she cooperative or uncooperative?
 4 A. Very cooperative.
 5 Q. During the course of your investigation, were you
 6 aware of Ms. Boettcher's whereabouts at all times?
 7 A. Yes, we were.
 8 Q. Did she ever try to run or hide from you?
 9 A. Upon going to Arkansas, no, ma'am.
 10 Q. Did -- any time you asked to talk to her or
 11 interview her, was she willing to do so?
 12 A. Yes, ma'am, she was.
 13 Q. Did she answer all of your questions?
 14 A. Yes, ma'am.
 15 Q. Did she give you written statements?
 16 A. Yes, she did.
 17 Q. With regard to Ms. Boettcher, was there a time that
 18 you met her in Dallas?
 19 A. Yes, ma'am, we -- I did.
 20 Q. And do you remember when that was?
 21 A. No, but I need to refresh my memory.
 22 MS. FALCO: Your Honor, may he refresh his
 23 memory?
 24 THE COURT: All right.
 25 THE WITNESS: Thank you, sir.

1 A. It was November 29th at 1:05 p.m.
 2 Q. BY MS. FALCO: And where did you meet
 3 Ms. Boettcher?
 4 A. I met her at 4753 Old Bent Tree in the manager's
 5 office at the Pear Ridge Apartment complex.
 6 Q. And previously identified as the Defendant's
 7 apartment complex?
 8 A. That is correct.
 9 Q. For what purpose did you meet Ms. Boettcher at that
 10 location?
 11 A. We had obtained a second search warrant to attempt
 12 to retrieve the bullet that was inside the Defendant's
 13 apartment.
 14 Q. And did Amy Boettcher know you were going to be
 15 there at that time? Had you let her know?
 16 A. Yes, ma'am. That's why she met us there because she
 17 wanted to remove some of her property out of the apartment.
 18 Q. And was she wanting you to be there when she went
 19 into the apartment?
 20 A. Yes, ma'am.
 21 Q. When you say you got a secondary search warrant,
 22 why did you do that?
 23 A. Because we were not able to retrieve the bullet the
 24 first time. That warrant had been executed. We have a
 25 certain amount of days that you have to execute that warrant.

1 In order to gain entry into that apartment again, we had to
 2 obtain a second search warrant. Therefore, also we had to get
 3 a district judge to sign that warrant.
 4 Q. And did you get a district judge to sign the
 5 secondary warrant?
 6 A. Yes, ma'am, I did.
 7 Q. And did you execute the warrant on the same day you
 8 had the judge sign it?
 9 A. Yes, ma'am.
 10 MR. GOELLER: Your Honor, at this time, for
 11 purposes of this second search, we would object that there's
 12 no probable cause. There was no lawful entry into those
 13 premises. We object, Your Honor, under Texas Constitution --
 14 under the Constitution, Article 1, Section 9, Section 19;
 15 under the United States Constitution, Fourth Amendment,
 16 Fourteenth Amendment and Sixth Amendment; Code of Criminal
 17 Procedure 1.04, 1.06; 38.23 of the Texas Exclusionary Rule
 18 regarding this second search.
 19 THE COURT: All right. The objection is
 20 overruled.
 21 MR. GOELLER: Your Honor, again I would request
 22 for a running objection on those grounds to any testimony or
 23 evidence offered through this witness regarding the second
 24 search.
 25 THE COURT: All right. Your request is

1 granted.
 2 MR. GOELLER: Thank you, sir.
 3 MS. FALCO: Your Honor, may I approach the
 4 witness?
 5 THE COURT: Yes.
 6 Q. BY MS. FALCO: Detective, I show you what's been
 7 marked as State's Exhibit 109. Do you recognize that exhibit?
 8 A. Yes, ma'am, I do.
 9 Q. What is that?
 10 A. This is the copy of the judge's signature that
 11 signed our search warrant.
 12 Q. And what is the second page?
 13 A. Second page is -- again is a copy of the inventory
 14 and return on what we all retrieved out of that apartment when
 15 we executed the search warrant.
 16 Q. And is it a fair and accurate copy of the exact
 17 search warrant you used to enter the Defendant's apartment for
 18 a second time?
 19 A. Yes, ma'am.
 20 MS. FALCO: Your Honor, we'd offer State's
 21 Exhibit 109 as a certified copy of a public document.
 22 MR. GOELLER: May I have just a moment, Judge?
 23 THE COURT: Yes.
 24 MR. GOELLER: May I take the witness on voir
 25 dire, Your Honor?

1 THE COURT: Yes.

2 MR. GOELLER: May I approach the witness?

3 THE COURT: (Nods head.)

4 VOIR DIRE EXAMINATION

5 BY MR. GOELLER:

6 Q. Good afternoon, Detective Winn.

7 A. How you doing?

8 Q. Let me show you what's been marked as State's
9 Exhibit 109. Is this the warrant you obtained from the Dallas
10 judge?

11 A. From the district -- yes. I -- Yes. I had it
12 signed by a district judge. Yes, sir.

13 Q. And -- okay. And I believe the judge -- who fills
14 in the date and the time? Was that the judge?

15 A. Yes.

16 Q. Okay. So the judge wrote that down; he or she?

17 A. Female, Faith Johnson.

18 Q. Judge Johnson signed this on November 29th of the
19 year 2000, correct?

20 A. Yes.

21 Q. Okay. And also attached to this State's Exhibit 109
22 is what's called the inventory, correct?

23 A. Yes.

24 Q. And I think you explained to the jury earlier, the
25 inventory is what you take back to the judge, the document?

1 A. That's correct.

2 Q. And is this dated October of 2000?

3 A. Yes.

4 Q. Okay.

5 THE COURT: Could I see it, Mr. Goeller?

6 MR. GOELLER: (Hands to Court.)

7 All right. Your Honor, I specifically object to
8 State's Exhibit 109. First of all, there's been absolutely no
9 showing of probable cause in support of this so-called search
10 warrant. I further object under Article 18.06 of the Code of
11 Criminal Procedure for execution of search warrants and --

12 MR. HIGH: Subsection A.

13 MR. GOELLER: -- Subsection A. And I would
14 further object to the Court that this document is so
15 inherently untrustworthy that it would be a gross miscarriage
16 of justice to even allow this thing into evidence.

17 THE COURT: I tell you what, we're going to do,
18 it's about noon so we probably ought to break for lunch. And
19 I'm going to instruct you, as I always do, not to discuss the
20 case among yourselves or with anyone else, and let's be at
21 lunch until 1:30.

22 THE BAILIFF: All rise.

23 (Jury exits the courtroom at 12:08 p.m.)

24 THE COURT: Let me ask the State, if you could
25 figure out what documents he's entitled to on cross instead of

1 now, and we'll see you-all at 1:30.

2 (Lunch recess taken.)

3 THE COURT: Back on the record. There was an
4 objection on the floor, I believe, and I haven't ruled.

5 Anything else from the State with regard to the objection?

6 MS. FALCO: Your Honor, I do need to redirect,
7 yes, and I'll wait for the jury.

8 MR. GOELLER: Did you rule on the objection,
9 Your Honor?

10 MS. FALCO: I don't believe you did.

11 THE COURT: No, I haven't ruled. The objection
12 is sustained.

13 Hey, I tell you what, hold off on the jury. Let me
14 see, I understand that return is dated prior to the time of
15 the search warrant, right?

16 MS. FALCO: Yes, Your Honor. That's why I
17 need to ask him a question.

18 THE COURT: Okay. So then I'll sustain the
19 objection in front of the jury, and you can ask another
20 question, or you can come in and ask him a question and I'll
21 rule again. I tell you what, redirect, and then let me hear
22 what you have to say and make another offer, and if it fixes
23 it, it does; and if it doesn't, it doesn't.

24 MR. SCHULTZ: Before we bring the jury in, I
25 also recall part of the objection to have been founded upon

1 no -- no probable cause, which creates a dilemma for us. We
2 can certainly offer the probable cause affidavit, also. It's
3 always been my experience that the objection was hearsay to
4 the jury because it's not really -- it's a recitation of
5 factual material. I don't want to get hung there. I guess
6 technically we may not have made a demonstration of probable
7 cause, which we could do. I'm not trying to blind somebody.

8 But we did it in the record. There's already been
9 that demonstration for record purposes of probable cause
10 because you overruled his Motion to Suppress on those grounds,
11 but I'm -- I think all I'm saying is I'm more concerned about
12 the objection. We can cure it with the affidavit, but I'm not
13 trying -- it's not my purpose to do that unless that's what
14 we've got to do. Are you with me? I mean, if that's the
15 objection, we can offer the affidavit and that will -- do you
16 know what I'm saying?

17 MR. GOELLER: Could I have just a minute,
18 Judge?

19 THE COURT: Yes.

20 (Brief pause in proceedings.)

21 THE COURT: You guys ready to bring the jury
22 in? Do you have anything you want to tell me?

23 MR. GOELLER: No, Your Honor, I'm ready to
24 bring the jury in.

25 THE COURT: All right. You did get the

1 reports, too, is that correct, Mr. Goeller?
 2 MR. GOELLER: Yes, Your Honor.
 3 THE BAILIFF: All rise.
 4 (The jury enters the courtroom at 1:45 p.m.)
 5 THE COURT: Please be seated. Ms. Falco.
 6 MS. FALCO: Your Honor, may I ask one more
 7 question of this witness?
 8 THE COURT: All right.
 9 MR. GOELLER: Your Honor, could I get a ruling
 10 in front of the jury on my objection?
 11 THE COURT: The objection is sustained.
 12 MR. GOELLER: Thank you, sir.
 13 Q. BY MS. FALCO: Detective, on State's Exhibit Number
 14 109, looking at the second page of the return, that date,
 15 October -- I'm not sure what the number --
 16 A. Yes.
 17 Q. -- there is. Explain why that says October?
 18 A. It's a mistake. It is a mistake on the return that
 19 I done (sic).
 20 Q. And on what date was that return done?
 21 A. It was done on the 29th, also, when this warrant was
 22 executed -- when this search warrant was executed.
 23 Q. So the return was not done prior to the warrant
 24 being executed?
 25 A. No, ma'am.

1 Q. It was done on the same day as the date on the first
 2 page of the warrant where the judge signed it?
 3 A. That's correct.
 4 Q. And the date of October, I believe that says 4th,
 5 2000, is a mistake on your part?
 6 A. That is correct.
 7 Q. An administrative violation?
 8 A. That's correct.
 9 MS. FALCO: Your Honor, in that regard, we'd
 10 reoffer State's Exhibit 109.
 11 THE COURT: All right. Any objection?
 12 MR. GOELLER: Yes, Your Honor. Take the
 13 witness on voir dire?
 14 THE COURT: All right.
 15 VOIR DIRE EXAMINATION
 16 BY MR. GOELLER:
 17 Q. Sir, you first went into that apartment on what day?
 18 A. The first search warrant?
 19 Q. Yes.
 20 THE WITNESS: If I may look in my notes,
 21 Judge?
 22 THE COURT: You're saying you don't remember?
 23 THE WITNESS: Yes, sir. Just to be sure, sir.
 24 A. The first search warrant was executed November the
 25 7th.

1 Q. BY MR. GOELLER: And what time?
 2 A. I don't remember the time, but it was during the
 3 daylight hours.
 4 Q. Morning, evening?
 5 A. It was more probably around the evening, afternoon
 6 hours. I'm sorry.
 7 Q. What was your purpose of securing the second search
 8 warrant?
 9 A. The purpose of securing the second search warrant
 10 was to retrieve the projectile from the wall.
 11 Q. Okay. And you could not have done that during the
 12 first search warrant?
 13 A. No, sir.
 14 Q. You had the premises under your control, correct?
 15 A. Yes, sir, we did.
 16 Q. And there was no reason that you had to release the
 17 premises, correct?
 18 A. No, sir.
 19 Q. Okay. How many officers are employed by the City
 20 of Dallas?
 21 A. I do not know, sir.
 22 Q. Hundreds?
 23 A. Yes, sir.
 24 Q. Okay.
 25 MS. FALCO: Your Honor, I'm going to object at

1 this time, going beyond the scope of voir dire regarding the
 2 introduction of this document into evidence.
 3 THE COURT: Yeah. If you're going someplace
 4 beyond voir dire, I will tell you not to go there. But if
 5 this is legitimate voir dire, go ahead and ask him whatever
 6 you need to ask him.
 7 MR. GOELLER: I think it goes to probable
 8 cause, Your Honor.
 9 THE COURT: All right.
 10 Q. BY MR. GOELLER: So it was your choosing not to take
 11 whatever steps were necessary to gather what evidence you
 12 thought was proper at the first search warrant, but to release
 13 and come back, well, weeks later, correct?
 14 A. Well, choosing is not the exact word I would use.
 15 We did not know exactly what type equipment would have been
 16 needed to retrieve this projectile from this wall.
 17 Q. Did you take the time during the first search
 18 warrant to figure that out?
 19 A. We looked at it on the first search warrant, and I'm
 20 not being (sic) a carpenter. We're wasn't sure if the bullet
 21 penetrated -- we know it penetrated the Sheetrock, but we do
 22 not know how far it went into the outside of the structure of
 23 the building.
 24 Q. You had the manager right there, didn't you?
 25 A. Yes, we did.

1 Q. Did you call for a superintendent, did you call for
2 maintenance folks, anything of that nature during the first
3 search warrant?

4 A. No.

5 Q. Did you try?

6 A. No.

7 MR. GOELLER: That's all I have on voir dire,
8 Your Honor.

9 THE COURT: Let me see it one more time?

10 THE WITNESS: There you go, sir.

11 THE COURT: All right. I'll overrule the
12 objection and admit State's 109.

13 Q. BY MS. FALCO: Additionally, Detective, with regard
14 to that date, November 29th, 2000, who was the name on the
15 lease for that apartment?

16 A. It was Ms. Boettcher. Amy Boettcher's name was on
17 the lease.

18 Q. Did Ms. Amy Boettcher know that you were wanting to
19 go back into that apartment to retrieve that bullet?

20 A. Yes, ma'am, she did.

21 Q. Did she voluntarily consent to letting you go into
22 that apartment?

23 MR. GOELLER: Objection. That calls for a
24 hearsay response, Your Honor.

25 THE COURT: Overruled.

1 A. Yes, ma'am, she did.

2 Q. BY MS. FALCO: In fact, did she coordinate her
3 going into the apartment at the same time with you?

4 A. Yes, ma'am, she did.

5 Q. And did you make entry into the Defendant's
6 apartment on November 29th, 2000?

7 A. Yes, ma'am, I did.

8 Q. And who was with you?

9 A. My partner, Detective Ned, the manager was with me,
10 Ms. Amy Boettcher was with us, as well as her dad, and
11 Detective Pepsis from the Crime Scene Response Section was
12 also with us.

13 Q. At that time did you have the instruments or the
14 tools you needed to extract the bullet?

15 A. Yes. Detective Pepsis looked at it, and he was able
16 to retrieve the bullet from the wall.

17 Q. And did you obtain anything else from the apartment
18 at that date?

19 A. No.

20 Q. And was that your sole purpose for going in on that
21 date?

22 A. Yes, ma'am.

23 Q. Once the bullet was retrieved, did Detective Pepsis
24 take custody of that bullet?

25 A. Yes, he did.

1 Q. Was that bullet also sent to the Southwest Institute
2 of Forensic Science?

3 A. Yes, ma'am.

4 Q. At some point in time did you also meet with Amy
5 Boettcher's stepfather, Dick Kramer?

6 A. Yes, ma'am, sure did.

7 Q. Did you meet him both in Arkansas and in Dallas?

8 A. Yes, ma'am, I did.

9 Q. At some point did he give you a piece of jewelry?

10 A. Yes, ma'am.

11 MR. GOELLER: Judge, I'm going to object to the
12 continued repetitive leading.

13 THE COURT: Sustained.

14 A. Yes, ma'am, he did.

15 MS. FALCO: Your Honor, may I approach the
16 witness?

17 THE COURT: Say, the objection was sustained.

18 THE WITNESS: Oh, I'm sorry, Your Honor. I
19 apologize.

20 THE COURT: That's all right.

21 MS. FALCO: Your Honor, may I approach the
22 witness?

23 THE COURT: Yes.

24 Q. BY MS. FALCO: Detective, I show you what's been
25 marked as State's Exhibit 110. Do you recognize that exhibit?

1 A. Yes, ma'am.

2 Q. What is that?

3 A. It's a man's gold bracelet.

4 Q. And where did you -- have you seen that gold
5 bracelet before?

6 A. Yes, ma'am.

7 Q. Where did you see it?

8 A. Ms. Boettcher's stepdad gave it to me.

9 Q. When did he give it to you?

10 A. When we was at the apartment complex doing the
11 second search warrant -- conducting the second search warrant.

12 Q. On November 29th, 2000?

13 A. Yes, ma'am.

14 Q. And did you take possession of that gold bracelet?

15 A. Yes, I did.

16 Q. Until you turned it over to our office?

17 A. That is correct.

18 Q. Was that the last time you talked to either Amy
19 Boettcher or her stepdad, Dick Kramer, prior to preparing for
20 this trial?

21 A. Yes, ma'am.

22 MS. FALCO: Your Honor, may I approach the
23 witness?

24 THE COURT: Yes.

25 Q. BY MS. FALCO: Detective, just getting back to the

- 1 crime scene. Detective, you were there at the crime scene
 2 while Detective Whitsitt was taking photographs and taking
 3 custody of the physical evidence; is that correct?
 4 A. Yes, ma'am.
 5 Q. And I guess you previously testified that there had
 6 been three casings found?
 7 A. Yes, ma'am.
 8 Q. And a projectile?
 9 A. Yes, ma'am.
 10 Q. Were you there when Detective Whitsitt took apart
 11 the bed and took additional pictures?
 12 A. Yes, ma'am.
 13 Q. I show you what's been marked as State's Exhibit 92.
 14 Do you recognize that photograph?
 15 A. Yes, ma'am.
 16 Q. What is in that photograph?
 17 A. This is the mattress with a blood stain on it of the
 18 complainant.
 19 Q. Is that a fair and accurate depiction of what the
 20 mattress looked like when Detective Whitsitt took a picture of
 21 it November 4th of 2000?
 22 A. Yes, ma'am.
 23 Q. Does it also contain an illustration of the bullet
 24 hole through the center of the stain?
 25 A. Yes, ma'am.

- 1 MS. FALCO: We offer State's Exhibit 92.
 2 MR. GOELLER: No objection.
 3 THE COURT: State's Exhibit 92 is admitted.
 4 Q. BY MS. FALCO: Detective, with regard to this
 5 investigation and being the lead detective, you were in each
 6 location when items were seized, and you were there to either
 7 search the place or to make sure that evidence was gathered?
 8 A. Yes, ma'am.
 9 MS. FALCO: Your Honor, at this time I would
 10 like to illustrate for -- or publish to the jury State's
 11 Exhibits 9, 10, 11, 16, 17, 18, 12, 19, 20, 21, 22, 56, 23,
 12 24, 13, 27, 55, 54, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37,
 13 38, 39, 40, 41, 14, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51,
 14 52, 53, 15, 4, 5, 60, 61, 62, 101, 100, 99, 98, 97, 63, 96,
 15 94, 95, 64, 65, 66, 67, 77, and 78 by way of power point to
 16 the jury.
 17 THE COURT: All right.
 18 Q. BY MS. FALCO: Detective, we're looking at State's
 19 Exhibit 9. Can you tell me what this is a photograph of?
 20 A. Yes, ma'am. That's the rear window that was broken
 21 out by the fire department to gain entry into the residence.
 22 Q. And around the corner from the window, is that the
 23 rear-entry door?
 24 A. Yes, ma'am.
 25 Q. Where does the rear-entry door lead to?

- 1 A. Leads to the back yard.
 2 Q. State's Exhibit Number 10, what are we looking at
 3 here?
 4 A. That is the hallway that leads into the master
 5 bedroom.
 6 Q. And again to the left, we see the rear-entry door
 7 that we were just looking at --
 8 A. Yes, ma'am.
 9 Q. -- for perspective.
 10 State's Exhibit Number 11, what is this a photograph
 11 of?
 12 A. That is the master bedroom where both the
 13 complainants are deceased.
 14 Q. And we see a foot kind of in the center of the
 15 photograph. Whose foot is that?
 16 A. That's Mr. Mosqueda's foot.
 17 Q. And on the ground we can see a head. Whose head is
 18 that?
 19 A. That's Ms. Kitchen.
 20 Q. And is that how they were found when you went in the
 21 home on November 4th of 2000?
 22 A. Yes, ma'am.
 23 Q. State's Exhibit Number 16, what is that a photo of?
 24 A. I believe right there is a photo of one of the shell
 25 casings that was retrieved.

- 1 Q. And this is a distant photo. Is this in the master
 2 bedroom?
 3 A. Yes, ma'am, it is.
 4 Q. And State's Exhibit Number 17, what is that
 5 depicting? Is this a closer view?
 6 A. Yes, that is. That's a closer view of it.
 7 Q. Is that -- to the left, is that the same potted
 8 plant we saw in State's Exhibit Number 16?
 9 A. Yes, ma'am.
 10 Q. In the master bedroom?
 11 A. Yes, ma'am.
 12 Q. State's Exhibit Number 18, is that a closer view of
 13 the projectile that you were referring to?
 14 A. Yes, ma'am.
 15 Q. And that was also seized into evidence by
 16 Detective Whitsitt?
 17 A. Yes, ma'am.
 18 Q. State's Exhibit Number 12, what is that a picture
 19 of?
 20 A. That's Mr. Mosqueda lying on the bed. There's a
 21 bloody pillow here (indicating).
 22 Q. Is that how Mr. Mosqueda was positioned when you
 23 found him on November 4th?
 24 A. Yes, ma'am.
 25 Q. State's Exhibit Number 19, what does this

1 illustrate?

2 A. That is -- that's the west wall where you have
3 blood -- this is the headboard, of course, and then there's
4 blood. This is blood here (indicating) on the west wall.

5 Q. Okay. State's Exhibit Number 20, what does this
6 illustrate?

7 A. That's the same wall, but now you can just see --
8 the door here leads inside the master's (sic) bathroom. Here
9 is Ms. Kitchen's purse.

10 Q. Okay. State's Exhibit Number 21, what is this a
11 photo of?

12 A. That's a bloody pillowcase.

13 Q. And this is at the foot of the bed?

14 A. Yes, ma'am.

15 Q. And State's Exhibit Number 22?

16 A. Same pillowcase.

17 Q. Is this a close-up view of the pillowcase?

18 A. Yes, ma'am.

19 Q. State's Exhibit Number 56, what is this a photograph
20 of?

21 A. That's just a different angle, but again, you can
22 see the blood on the wall, and Mr. Mosqueda lying in the bed.

23 Q. State's Exhibit Number 23.

24 A. Just a different angle, again blood on the wall,
25 Mr. Mosqueda lying in the bed.

1 Q. Okay. State's Exhibit Number 24.

2 A. It's a blood stain on the sheet, looked like the
3 right leg of Mr. Mosqueda with blood on it, as well as his
4 right arm with blood -- with two -- about two -- with several
5 blood stains -- blood spots on them.

6 Q. Is this how he was found on November 4th, 2000?

7 A. Yes, ma'am.

8 Q. State's Exhibit 13?

9 A. That's his hands.

10 Q. And the bluing, or purpling of his fingertips, is
11 that how he was found when you were there on November 4th,
12 2000?

13 A. Yes, ma'am.

14 Q. Is that what is referred to as lividity?

15 A. Yes, ma'am.

16 Q. State's Exhibit Number 27, what is this?

17 A. That's his foot.

18 Q. On the edge of the bed there appears to be spots?

19 A. Yes, ma'am.

20 Q. Is that blood spots?

21 A. Yes, ma'am, in this area here (indicating).

22 Q. State's Exhibit Number 55, what is --

23 A. Again, his foot. We have blood here and blood there
24 (indicating).

25 Q. State's Exhibit 54, what is this a picture of?

1 A. That is Mr. Mosqueda, his head, left arm and chest
2 area, and blood to the left of his face.

3 Q. And is that how you found him on November 4th, 2000?

4 A. Yes, ma'am.

5 Q. Okay. State's Exhibit Number 28.

6 A. That is the right side of Mr. Mosqueda's head.

7 There's a bullet hole right there, and then blood underneath
8 it.

9 Q. Okay. State's exhibit 29.

10 A. That is the sheet. The body has been removed at
11 this time, and this is just the blood on the sheet on the bed.

12 Q. Okay. State's Exhibit 30.

13 A. Same sheet, just blood.

14 Q. Okay.

15 A. At the edge of like --

16 Q. State's Exhibit Number 31.

17 A. Same sheet with blood on it.

18 Q. Detective, were one of the casings found between the
19 mattress and the headboard?

20 A. Yes, ma'am, it was.

21 Q. Would this be approximately where that casing was
22 found?

23 A. Yes, ma'am.

24 Q. State's Exhibit 32, what is this a picture of?

25 A. It's a bullet hole in the box springs underneath the

1 mattress of the bed.

2 Q. And did you examine the bullet hole that went
3 through both the mattress and the box springs?

4 A. I observed them, yes, ma'am.

5 Q. And it went straight through the mattress and
6 straight through the box spring?

7 A. Yes, ma'am.

8 Q. Other than the projectile that we saw in earlier
9 pictures, did you find any other bullets or projectiles?

10 A. No, ma'am.

11 Q. Just the casings?

12 A. Yes, ma'am.

13 Q. State's Exhibit 33, what is this?

14 A. I see blood. Look like (sic) this picture is of
15 blood that has run down on the ceiling to the floor.

16 Q. And are we looking underneath the bed?

17 A. Yes.

18 Q. State's Exhibit Number 34, what is this a picture
19 of?

20 A. That is a picture of the door that leads into the
21 master bedroom and also Ms. Kitchen's purse.

22 Q. Underneath Ms. Kitchen's purse, was there also a
23 casing found?

24 A. Yes, ma'am, there was, right there (indicating).

25 Q. State's Exhibit 35, what is this a picture of?

- 1 A. Same photo, just a little bit closer to the
2 projectile that was recovered.
- 3 Q. Okay. State's Exhibit 36?
- 4 A. That is the -- that is the projectile recovered.
- 5 Q. State's Exhibit 37.
- 6 A. That is blood on the wall.
- 7 Q. Is this on a different wall than the west wall we
8 were previously looking at?
- 9 A. From that angle, I'm not sure. I'm not sure on that
10 angle.
- 11 Q. State's Exhibit 39, what is this a picture of?
- 12 A. That's a picture of blood that is going to be on the
13 north wall in the master bedroom, which has blood in this area
14 here (indicating).
- 15 Q. And obviously that's adjacent to the wall we were
16 looking at with the headboard; is that correct?
- 17 A. Yes, ma'am.
- 18 Q. And the door that we see in the bottom left-hand
19 corner, is that the door to the bathroom?
- 20 A. Yes, ma'am.
- 21 Q. State's Exhibit Number 38, is this looking just
22 below where we were looking at State's Exhibit 36?
- 23 A. Yes, ma'am.
- 24 Q. And again, the door on the left-hand side is the
25 door leading into the bathroom?

- 1 A. Yes, ma'am.
- 2 Q. And the picture in the far, top, right corner, is
3 that the picture we just saw in the previous --
- 4 A. Yes, ma'am.
- 5 Q. State's Exhibit Number 40, what are we looking at
6 here?
- 7 A. That is blood on the ceiling of the master bedroom.
- 8 Q. And the blood splatter that we see on the ceiling,
9 where is that in relationship to anything that's on the
10 ground?
- 11 A. Just about over the bed, the master bed.
- 12 Q. State's Exhibit Number 41, what is that a photo of?
- 13 A. I believe that's a closer photo of the blood on the
14 ceiling.
- 15 Q. State's Exhibit Number 14, what is that a photograph
16 of?
- 17 A. That is Ms. Kitchen.
- 18 Q. Is that how she was found on November 4th, 2000?
- 19 A. Yes, ma'am.
- 20 Q. State's Exhibit 42, what is this a photograph of?
- 21 A. Just a different angle, again of Ms. Kitchen.
- 22 Q. That black towel laying across her back, is that how
23 it was when you saw her on November 4th, 2000?
- 24 A. Yes, ma'am.
- 25 Q. State's Exhibit 43, what is this a photograph of?

- 1 A. That is the -- her legs, Ms. Kitchen's legs.
- 2 Q. And the pillow that is laying on the back of her
3 legs, is that how you found it on November 4th of 2000?
- 4 A. Yes, ma'am.
- 5 Q. State's Exhibit Number 44, what is this a photograph
6 of?
- 7 A. That's a picture of Ms. Kitchen's left hand -- left
8 arm and hand.
- 9 Q. With regard to the left hand, it appears to get
10 kind of dark on this power point, but in the picture you can
11 see close up on her hand; is that correct?
- 12 A. Yes, ma'am.
- 13 Q. Is there any ring on her left finger?
- 14 A. No.
- 15 Q. State's Exhibit 45, what is this a picture of?
- 16 A. That is Ms. Kitchen's right hand?
- 17 Q. Well, if the bed is to the left --
- 18 A. No. I'm sorry. That's a closer picture of her left
19 hand.
- 20 Q. Is there any ring -- this is State's Exhibit Number
21 46, the closer picture?
- 22 A. Yes, ma'am. That's a closer photo of her left hand.
- 23 Q. Is there any ring on her left finger?
- 24 A. No.
- 25 Q. State's Exhibit Number 47, what is this a picture

- 1 of?
- 2 A. Now, that is going to be Ms. Kitchen's right hand.
- 3 Q. Because she's laying face down, it's on the right
4 side?
- 5 A. That's correct.
- 6 Q. Is there a ring on her right hand?
- 7 A. Yes, there is.
- 8 Q. State's Exhibit Number 48, what is that a photo of?
- 9 A. That's a closer shot of her right hand and the ring.
- 10 Q. State's Exhibit Number 49, what is this a photograph
11 of?
- 12 A. Hum.
- 13 Q. Was Ms. Kitchen shot in the back?
- 14 A. Yes, she was. I really can't make -- I can see the
15 blood but --
- 16 Q. Does there appear to be a hole in the very center of
17 the screen in the material?
- 18 A. Right there (indicating), yes.
- 19 Q. State's Exhibit Number 50, what is that a picture
20 of?
- 21 A. That is a picture of a bullet hole.
- 22 Q. Is that Ms. Kitchen's shirt lifted up revealing the
23 bra and where the bullet hole is in relationship to her bra?
- 24 A. Yes, ma'am.
- 25 Q. State's Exhibit Number 51, what is this a photo of?

- 1 It's kind of hard to tell.
- 2 A. It's very hard to tell.
- 3 Q. We'll move on to the next one. State's Exhibit
- 4 Number 52, what is this a photo of?
- 5 A. That's Ms. Kitchen's face.
- 6 Q. Is that her being rolled over?
- 7 A. Yes, ma'am.
- 8 Q. Is that how her face appeared on November 4th, 2000?
- 9 A. Yes, ma'am.
- 10 Q. State's Exhibit Number 53, what is this a photograph
- 11 of?
- 12 A. That's pictures of clothing that belonged to
- 13 Mr. Mosqueda.
- 14 Q. And what room in the house are we in?
- 15 A. You're in -- I believe that's the -- right here is
- 16 the kitchen. This is the bar, so I believe this may be
- 17 just -- I think this is the dining area, if I'm not mistaken.
- 18 It leads into the dining area. I'm sorry.
- 19 Q. And we're looking into the kitchen?
- 20 A. That is correct.
- 21 Q. Are those how you found the clothes on November 4th,
- 22 2000?
- 23 A. Yes, ma'am.
- 24 Q. State's Exhibit Number 15, what is this a picture
- 25 of?

- 1 A. That is a picture of another bedroom inside the
- 2 offense location, and that is the way we found it.
- 3 Q. And with regard to those sheets, is there a pillow
- 4 in the master bedroom that appeared to match these sheets?
- 5 A. Yes, ma'am.
- 6 Q. State's Exhibit Number 4, what is this a photograph
- 7 of?
- 8 A. That is a photo of Mr. Mosqueda's convertible
- 9 Corvette -- black convertible Corvette.
- 10 Q. And where is this picture taken?
- 11 A. This picture was taken in the Bent Tree apartment
- 12 complex in one of the parking spaces there.
- 13 Q. And that's the Defendant's apartment complex?
- 14 A. Yes, ma'am.
- 15 Q. And in relationship to the Corvette, where would the
- 16 Defendant's front door be; is it in front of us, to the left,
- 17 to the right?
- 18 A. If we were -- the vehicle was parked east, so the
- 19 apartments would be to the west.
- 20 Q. Is it behind?
- 21 A. Yes.
- 22 Q. We would be standing, like, where his front door is?
- 23 A. Yes.
- 24 Q. And looking at this picture, State's Exhibit Number
- 25 5, what is this a photograph of?

- 1 A. That is the front photo of the Corvette.
- 2 Q. And in this picture, can you show us where the
- 3 Defendant's front door would be?
- 4 A. It's back in this area here (indicating).
- 5 Q. Right behind the stairwell you're pointing to?
- 6 A. Yes.
- 7 Q. State's Exhibit Number 60, what is that a photograph
- 8 of?
- 9 A. That's a photograph of the inside of the black
- 10 Corvette.
- 11 Q. Is that a receipt book on the floorboard?
- 12 A. Yes, ma'am.
- 13 Q. State's Exhibit Number 61, what is that a photograph
- 14 of?
- 15 A. That is a photograph of the kitchen and the trash
- 16 can where we retrieved the clothing from.
- 17 Q. And this is the Defendant's apartment?
- 18 A. Yes, ma'am, it is.
- 19 Q. Is that where the trash can was located when you
- 20 went in on the search warrant on November 7th?
- 21 A. Yes, ma'am.
- 22 Q. And what is State's Exhibit Number 62 a picture of?
- 23 A. That is a picture of the contents inside the trash
- 24 can that included the socks and the jeans.
- 25 Q. Did you observe these items in the trash can as they

- 1 are?
- 2 A. Yes, ma'am.
- 3 Q. Do you notice to the right in the trash can
- 4 underneath the blue cup what appears to be latex gloves?
- 5 A. Yes, ma'am.
- 6 Q. Did the Dallas Police Department seize those gloves?
- 7 A. No, we did not.
- 8 Q. And why were those gloves not seized?
- 9 A. There was no blood on them, and at the time we did
- 10 not know they was part of this offense.
- 11 Q. Okay. State's Exhibit 101, what is this a
- 12 photograph of?
- 13 A. That's a pair of -- that's a photograph of the jeans
- 14 that was removed from the trash can.
- 15 Q. State's Exhibit 100, what is that a photograph of?
- 16 A. Same photograph of the jeans that was taken from the
- 17 trash can.
- 18 Q. State's Exhibit 99, those are a little bit dark in
- 19 the photograph. What is that a picture of?
- 20 A. Right here is the red substance that we believe to
- 21 be blood on the pants leg of the jeans.
- 22 Q. State's Exhibit 98, what is this a photograph of?
- 23 A. Again, blood on the jeans.
- 24 Q. And State's Exhibit 97, what is that a photograph
- 25 of?

- 1 A. In this area here (indicating), blood on the jeans.
 2 Q. State's Exhibit 63, what is that a photograph of?
 3 A. That is a photograph of the sock that was retrieved,
 4 and it looks like blonde hair in the sock in this area and up
 5 in this area (indicating).
 6 Q. And is that how you found the sock with the hair on
 7 it?
 8 A. Yes, ma'am.
 9 Q. State's Exhibit 96, what is that a photograph of?
 10 A. That's a photograph of the socks that were removed
 11 from the trash bin, and you could see, again, the red
 12 substance on them that's believed to be blood.
 13 Q. And that's the condition you found them in on
 14 November 7th, 2000?
 15 A. That's correct.
 16 Q. State's Exhibit Number 94, what is that a picture
 17 of?
 18 A. Again, a picture of the sock with blood -- with the
 19 red substance on it. That's blood.
 20 Q. And State's Exhibit 95?
 21 A. Yes, ma'am, the same, the other sock with blood on
 22 the bottom.
 23 Q. State's Exhibit 64, what is that a photograph of?
 24 A. That is a photo of the Winchester ammo that was
 25 recovered in the master's (sic) bedroom closet at the

- 1 Defendant's apartment.
 2 Q. Okay. State's Exhibit 65, what is that a photograph
 3 of?
 4 A. Same photo of the .38 ammo that were (sic)
 5 recovered.
 6 Q. And this is the same closet that you saw
 7 additionally a pair of Arizona brand jeans, size 34/32?
 8 A. Yes, ma'am.
 9 Q. Similar to the ones in the trash can?
 10 A. Yes, ma'am.
 11 Q. In State's Exhibit 66, what is this a photo of?
 12 A. That's a photo of the .38 ammo, Winchester, that was
 13 recovered in the Defendant's apartment.
 14 Q. State's Exhibit Number 67, what was this a picture
 15 of?
 16 A. Those are the keys that I found in the nine and a
 17 half pair -- nine and a half shoe that was inside the closet
 18 on the top shelf inside the Defendant's apartment.
 19 Q. And when we've been talking about the Mercedes key,
 20 which one is the Mercedes key?
 21 A. This is the Mercedes key (indicating).
 22 Q. And that's the same one you used to start Amy
 23 Kitchen's car, and then you ultimately turned over to
 24 Mr. Kitchen?
 25 A. That is correct.

- 1 Q. State's Exhibit Number 77, what is this a photograph
 2 of?
 3 A. This is a photograph of Ms. Shavisky (sic),
 4 Tawana's (sic) apartment.
 5 Q. And, in particular, a couch in her living room?
 6 A. That is correct.
 7 Q. State's Exhibit Number 78, what is this a photograph
 8 of?
 9 A. That is a photograph, again, inside her apartment
 10 where we retrieved -- the cabinet of where we retrieved the
 11 weapon from.
 12 Q. And where was the cabinet in relationship to the
 13 couch that we just -- was it in the same room?
 14 A. In the same room just off to the left as you enter
 15 her apartment.
 16 Q. State's Exhibit 80, what is this a picture of?
 17 A. That is a picture of the weapon that we retrieved
 18 from inside her apartment.
 19 Q. And is that where you found it when you went to her
 20 apartment?
 21 A. That is correct.
 22 Q. State's Exhibit 81, what is this a photograph of?
 23 A. Those are photographs of the Federal .38
 24 automatic -- auto bullets that was also recovered at her
 25 apartment.

- 1 Q. And is that the location where you found the box of
 2 bullets?
 3 A. Yes, ma'am.
 4 Q. State's Exhibit Number 82, what is this a picture
 5 of?
 6 A. That is a picture of the handgun, as well as the
 7 Federal .38 bullets that was recovered inside her apartment.
 8 Q. State's Exhibit 83, what is this a picture of?
 9 A. That is a breakdown of, again, the same weapon and
 10 the clip and the bullets that was inside that weapon.
 11 Q. Does this photograph demonstrate the bullets that
 12 were in the magazine, as well as the bullet that had been in
 13 the chamber?
 14 A. Yes, ma'am.
 15 Q. The person that you previously identified as Ivan
 16 Cantu, that's Ivan Abner Cantu; is that correct?
 17 A. Yes, ma'am.
 18 MS. FALCO: Thank you, Detective. Pass the
 19 witness.
 20 THE COURT: Mr. Goeller.
 21 MR. GOELLER: Thank you.
 22 CROSS-EXAMINATION
 23 BY MR. GOELLER:
 24 Q. Detective Winn, did you make any statements or
 25 produce any memorandums or reports in connection with your

- 1 investigation into this matter?
 2 A. I'm sorry, did I do what?
 3 Q. Did you make any reports?
 4 A. Yes, I did.
 5 Q. Did you take any field notes?
 6 A. Yes, I did.
 7 Q. And do you have those on you?
 8 A. Yes.
 9 Q. Your field notes?
 10 A. Yes.
 11 Q. May I see those?
 12 A. Sure.
 13 Q. You didn't generate this in the field, did you?
 14 A. No, no. I done that when I returned to the office.
 15 Q. Okay. You don't have your originals, do you?
 16 A. No, sir, I do not.
 17 Q. Okay. How many -- would you say that you've
 18 adopted as your own statement other officer's statements and
 19 other detective's statements working under you as lead
 20 detective?
 21 A. Yes, sir.
 22 Q. Okay. And did you review those materials as well as
 23 the lead detective?
 24 A. Yes, sir.
 25 Q. Okay. And did you review any statements, other than

- 1 law enforcement, in preparation for your testimony today?
 2 A. No.
 3 Q. All right.
 4 MR. GOELLER: Judge, I've been handed some
 5 documents from the State, but I'd ask for production of any
 6 other statements or documents that he's adopted as his own as
 7 well.
 8 MS. FALCO: Your Honor, we handed him
 9 everything that contained his name. If he wanted to approach
 10 the witness and ask him what is missing, we'll provide that to
 11 them.
 12 MR. GOELLER: Well, that's just it. I don't
 13 know, so that's why I'm asking.
 14 THE COURT: I don't want to run this case, but
 15 it seems to me like if you ask him what else have you
 16 reviewed, that might be a way to find out.
 17 Q. BY MR. GOELLER: Did you see what the State gave me?
 18 A. No, I have not.
 19 Q. Well, let me let you look at it, and see if you can
 20 tell me if there's anything else that you've reviewed?
 21 A. No, sir. You have everything I reviewed.
 22 Q. Okay. Who would you say was the second in
 23 command of this case?
 24 A. We do not have a second in command.
 25 Q. Who would be directly under you with the next most

- 1 investigative responsibility?
 2 A. That would be my partner, Detective Carillo, who was
 3 at the scene with me at the time.
 4 Q. Did he generate any reports or documents?
 5 A. No. The detective assigned to the case -- besides
 6 the notes that Detective Carillo made, all other documents
 7 would be generated by the lead detective.
 8 Q. Going back to the initial scene on Gibbons Drive,
 9 what time did you arrive, would you say?
 10 A. I believe I arrived there around 6:15 p.m.
 11 Q. Okay. And when -- I think you said you did your
 12 walk-through with the patrol officers?
 13 A. That's correct.
 14 Q. And who were they? Do you recall who that would
 15 have been?
 16 A. Whoever was the first officer on the scene. I don't
 17 remember who it was.
 18 Q. Okay. What did they tell you?
 19 A. They just briefed me that we had two deceased in the
 20 master bedroom and that the fire department had been out and
 21 they had broken out a window in order to gain entry into the
 22 residence, and also Ms. Kitchen's mother was at the scene.
 23 Q. Okay. When you arrived, you had already been told
 24 that a -- when you arrived, you were told that a black
 25 Corvette was missing, correct?

- 1 A. Not immediately when I arrived, but during the
 2 course of the investigation while I was there, I was told that
 3 the Corvette was missing.
 4 Q. Okay. About what time do you think that was?
 5 A. I do not know.
 6 Q. We know you got there around 6:15. What time do you
 7 think you left?
 8 A. We left the scene, I know, probably between 11:30
 9 and midnight.
 10 Q. So sometime between 6:15 and 11:30 you were told
 11 that a black Corvette was missing from the house?
 12 A. That's correct.
 13 Q. That was a pretty important piece of information,
 14 wasn't it?
 15 A. Yes, sir.
 16 Q. Now, as lead detective on the scene, I'm sure you
 17 know that some patrol officers went over to Ivan's apartment
 18 during that time period, correct?
 19 A. I was informed about that, yes, sir.
 20 Q. Okay. And did you speak with those patrol officers?
 21 A. No, I did not.
 22 Q. Okay. Who informed you they had been over to Ivan's
 23 apartment?
 24 A. Detective Carillo informed me.
 25 Q. So sometime between 6:30 and 6:15, 11:30 you know a

1 black Corvette is missing, and you say it was recovered due to
 2 the -- was it --
 3 A. Lowjack system.
 4 Q. Lowjack?
 5 A. Yes, sir.
 6 Q. And that was at 3:00 Sunday morning?
 7 A. That's correct.
 8 Q. Okay. And that was located right outside
 9 Apartment 1004?
 10 A. In the complex, yes, sir.
 11 Q. Okay. Well, how close to the apartment? When you
 12 say "right in the complex," was it not just outside
 13 Apartment 1004?
 14 A. I estimated about 30 feet, I believe, from the front
 15 door, and I was guessing.
 16 Q. Certainly from, oh, where the back wall and back of
 17 the judge is to the back of that courtroom, I know that's more
 18 than 30 feet, would you agree?
 19 A. Possibly.
 20 Q. Okay. When you were in the master bedroom, we've
 21 seen pictures of blood on, was it the wall -- walls, ceiling,
 22 bed. What about blood on the floor, outside of the blood
 23 underneath the female body? I mean, blood trails going out of
 24 the bedroom, into the bedroom, into other parts of the house,
 25 did you find any of that?

1 A. No, sir.
 2 Q. And you would certainly have looked, right?
 3 A. Yes, sir.
 4 Q. I mean, that would have been a very important piece
 5 of evidence to determine if blood was tracked out of that
 6 bedroom?
 7 A. Yes, sir.
 8 Q. Okay. In fact, you would have diligently searched
 9 the entire house looking for any blood residue from tracking
 10 from feet?
 11 A. Yes, sir.
 12 Q. Okay. Anything else peculiar, besides the bodies
 13 and maybe the pillowcase that -- I think you testified one of
 14 the pillowcases or pillows looked like it came from another
 15 room?
 16 A. Yes, sir.
 17 Q. Outside of that, anything peculiar about this crime
 18 scene?
 19 A. No. I mean, nothing I can think of right offhand.
 20 Outside of the crime scene, no, sir.
 21 Q. Certainly nothing that would be significant enough
 22 to have either noted or that you would have remembered today
 23 in the course of your investigation -- supposedly a capital
 24 murder investigation, right?
 25 A. Well, we removed some marijuana out of the

1 residence. I guess I should have asked more clear what you
 2 mean by "peculiar." But other than that, the residence
 3 were -- was in -- really very clean, besides the crime scene
 4 and that one other bed in the bedroom.
 5 Q. Oh, I agree with you it was clean. But when I said
 6 peculiar in the course of investigation -- a capital murder
 7 investigation, did you think I was talking about cleanliness,
 8 or lack of it, in that home?
 9 A. Well, I wasn't sure. I guess I should have asked
 10 for a definition of exactly where you was going with that
 11 particular word. But, again, nothing just stood out inside
 12 the residence.
 13 Q. A little marijuana?
 14 A. There was some marijuana that was recovered inside
 15 the residence.
 16 Q. Where was that recovered from?
 17 A. It was recovered from one of the drawers that was in
 18 the kitchen.
 19 Q. And that was it?
 20 A. Yes, sir.
 21 Q. Okay. Nothing else by way of contraband or
 22 anything peculiar that may have given you some insight into
 23 why y'all were there in the first place in that home?
 24 A. I'm sorry. Redirect that question, please.
 25 Q. Outside of the marijuana, was there anything else

1 unusual or peculiar or something that you considered important
 2 in your overall investigative responsibilities in a
 3 theoretical capital murder case?
 4 A. No. Not right offhand that I can think of, no.
 5 Q. You know Detective Whitsitt?
 6 A. Yes, sir, I do.
 7 Q. What do you think about him? Is he a pretty smart
 8 guy?
 9 A. He's a very good detective.
 10 Q. One of the best, right?
 11 A. Yes, sir.
 12 Q. You met with Carlos Gonzalez, didn't you?
 13 A. Yes, sir.
 14 Q. And he had a written alibi for you, correct?
 15 A. I don't know what you mean --
 16 MS. FALCO: Your Honor, I'm going to object to
 17 him assuming facts not in evidence and phrasing it "alibi."
 18 THE COURT: Sustained.
 19 Q. BY MR. GOELLER: Carlos Gonzalez offered you a
 20 statement that was supposed to be an alibi, right?
 21 A. He provided us with a written affidavit, yes, sir.
 22 Q. Before you even asked for one?
 23 A. No, sir. I asked him for the affidavit.
 24 Q. What about -- I'm talking about up in Frisco?
 25 A. Yes, sir.

1 Q. Did he not tell you he's already got a statement
2 prepared about where he was?
3 A. I'm sorry?
4 Q. Did he not tell you he already had a statement --
5 his own statement prepared about where he was?
6 A. I don't recall him saying he had a statement. A
7 written statement?
8 Q. Uh-huh.
9 A. No. The only statement that I obtained from him was
10 at our office.
11 Q. Okay. So, to the best of your recollection, as lead
12 detective in this case, there were never any drug scales found
13 in that home?
14 A. I believe there was a drug scale recovered in the
15 house.
16 Q. Okay. So there was more than marijuana?
17 A. Well, marijuana is a drug. I mean, I -- I mean,
18 yeah, the scale was also recovered, but when you asked me
19 about the marijuana, you asked was there any other drugs, I
20 believe, and I told you no.
21 Q. Contraband.
22 A. Then that would fall into that category, the scale
23 would.
24 Q. Were they found together?
25 A. I don't remember where -- if the scale was found in

1 the kitchen.
2 Q. Early on did you form any investigative opinions as
3 to the cause of this homicide?
4 A. At the offense location?
5 Q. Uh-huh.
6 A. At that time I was not sure exactly what I had. All
7 I knew was I had two dead people in the master bedroom.
8 Q. Okay.
9 MR. GOELLER: May I approach, Your Honor, and
10 retrieve -- I don't know if it's up at the bench.
11 THE COURT: Yes, sir.
12 Q. BY MR. GOELLER: Detective Winn, in your initial
13 search warrant did you make a sworn statement to a judge
14 stating under oath that you would find certain items in
15 Apartment 1004, 4753 Old Bent Tree Lane?
16 A. No. I swore that we were going into that apartment
17 looking to find those items.
18 Q. Did you ever make this sworn statement, "There is
19 at the said suspected place and premises" --
20 MS. FALCO: Your Honor, I would object to him
21 reading from a document not admitted into evidence. If he
22 wants to admit it and offer it, we have no objection.
23 MR. GOELLER: Well, this is cross-examination.
24 I can ask him any sworn -- any previous statements he's made,
25 whether I'm reading it or not, Your Honor.

1 THE COURT: Overruled.
2 Q. BY MR. GOELLER: Did you make a sworn statement that
3 there is "At the said suspected place and premises the
4 following items: A .38 caliber handgun, .38 ammunition,
5 clothing containing human blood, a spent .38 projectile lodged
6 inside the interior wall of the apartment, a man's gold Rolex
7 watch, a leather wallet with approximately 100 dollars in
8 cash, and assorted papers and identification belonging to a
9 James Mosqueda, and a ring, and keys to a '99 Mercedes and a
10 2001 Corvette. Did you make that sworn statement?
11 A. I listed everything --
12 Q. Sir --
13 MR. GOELLER: Objection, Your Honor,
14 nonresponsive.
15 THE COURT: Sustained.
16 Q. BY MR. GOELLER: That calls for a yes or no answer,
17 sir. Did you make that sworn statement?
18 A. Yes, sir.
19 Q. Did you -- have you previously stated under oath in
20 this courtroom that you had no probable cause to believe that
21 those items were in that apartment, but you wanted to get in
22 there and see if you could find them?
23 MS. FALCO: Objection, Your Honor, that's a
24 misstatement of prior testimony.
25 THE COURT: My impression is that it is, too,

1 but he can ask the question, if he made the statement.
2 Q. BY MR. GOELLER: Did you previously state under oath
3 that you had no probable cause to believe those items were in
4 that apartment; that you wanted to get in there and see if you
5 could find them?
6 A. I don't remember.
7 Q. Okay. I got to pin you down a little bit more.
8 When you say you don't remember, are you saying you might have
9 said that, or you might not have said that. You just don't
10 recall?
11 A. I said I don't remember.
12 Q. Okay. If you had probable cause, you'd have
13 remembered that, correct?
14 A. Possible.
15 Q. I'm sorry?
16 A. I said possible.
17 Q. Possibly?
18 A. Yes, sir.
19 Q. Okay. Now, in your sworn statement you said you
20 would find there was, in that apartment, .38 -- when I say .38
21 you know what I'm talking about. Point 38, .38 caliber
22 ammunition.
23 A. Yes.
24 Q. You said there would be -- there will be found .38
25 ammunition, correct?

- 1 A. Yes, sir.
 2 Q. Okay. And prior to going in this apartment on your
 3 first entry with your search warrant, you had never been in
 4 that apartment before, correct?
 5 A. That is correct.
 6 Q. Okay. And were you told by one of the other
 7 officers what you would find once you got in there?
 8 A. Such as?
 9 Q. What did they tell you you'd find?
 10 A. The only thing that I knew that was inside that
 11 apartment was that bullet hole.
 12 Q. Okay. And you had never seen the bullet hole,
 13 correct?
 14 A. That is correct.
 15 Q. Yet, in a sworn statement you said there was a .38
 16 projectile lodged inside the interior wall of the apartment,
 17 correct?
 18 A. Yes, sir.
 19 Q. You had never been in the apartment?
 20 A. That is correct.
 21 Q. You didn't even know for sure there was a bullet
 22 hole -- if whatever perforation in the wallboard was a bullet
 23 hole, correct?
 24 A. I was going by an officer's statement, that's
 25 correct.

- 1 Q. And he told you it looked like it might be?
 2 A. I don't remember his exact words, but -- I don't
 3 remember his exact words.
 4 Q. Okay. But somehow in your sworn statement, you
 5 figure out that perforation in the wallboard is exactly a .38
 6 projectile?
 7 A. Yes, sir.
 8 Q. Okay. Yet, you had never seen it?
 9 A. That's correct.
 10 Q. Never been in there?
 11 A. That's correct.
 12 Q. And supposedly you had never been told what was in
 13 that apartment, correct?
 14 A. That is correct, other than the bullet hole.
 15 Q. Which you were not told it was a bullet -- well, did
 16 they tell you it was a .38 caliber bullet hole?
 17 A. I don't remember exactly what his words were.
 18 Q. Okay. You do know those two officers have already
 19 testified in this case?
 20 A. Yes, sir.
 21 Q. Okay. I mean, that seemed like it would be pretty
 22 important, don't you think, when you have a conversation with
 23 these officers? In fact, did you have the initial
 24 conversation with them?
 25 A. No, I did not.

- 1 Q. Who did you have a conversation with?
 2 A. I did the crime scene investigation.
 3 Detective Carillo actually spoke with the officer.
 4 Q. You swore that man's black leather wallet
 5 containing approximately 100 dollars in cash belonging to
 6 James Mosqueda would be found in that apartment, correct?
 7 A. Yes, sir.
 8 Q. Okay. Did you speak with anybody in narcotics or
 9 in intelligence regarding the crime scene location?
 10 A. Not the location, but the complainant.
 11 Q. You testified that -- well, after you cleared the
 12 crime scene, and then your entry -- I think you established
 13 that you spoke to the patrol officers at the crime scene? You
 14 spoke with the Physical Evidence Section at the crime scene,
 15 correct?
 16 A. That's correct.
 17 Q. Who else did you speak to prior to swearing to facts
 18 to get your search warrant?
 19 A. I don't remember every one that I spoke with.
 20 Q. Okay. Would your investigative notes help refresh
 21 your memory?
 22 A. I don't think that information is in there, every
 23 officer that I spoke with. Now, in the information, you will
 24 have every officer that's at the crime scene, but I do not
 25 detail every officer that I spoke with.

- 1 Q. Did you maintain a master file, or a notebook or
 2 something about all the details as the lead detective in a
 3 capital murder case. Certainly you did that?
 4 A. Yes, sir, I did.
 5 Q. Where is that?
 6 A. It's in the witness room.
 7 MR. GOELLER: I'd ask the witness be able to
 8 step down and go retrieve that, Your Honor.
 9 THE COURT: Well, I tell you what, let's take
 10 about a 15-minutes recess for this afternoon, come back at
 11 3:05, and if -- after the jurors clear, if you'd get that and
 12 show it to the DA and show it to the other side, and we'll
 13 give you a chance to take a look at it.
 14 MR. GOELLER: Yes. After the jury is retired,
 15 I need to make a request to the Court.
 16 THE COURT: Ladies and Gentlemen, remember the
 17 admonitions and don't talk about the case, and we'll see you
 18 in 15 minutes.
 19 THE BAILIFF: All rise.
 20 (Jury exits the courtroom at 2:50 p.m.)
 21 MR. GOELLER: Make my request during my
 22 periods of crossing him -- during my cross-examination of
 23 witnesses, I'd ask the Court to instruct the State not to
 24 discuss testimony or anything with the witnesses during my
 25 cross. It's unfair.

1 THE COURT: Not do any when we take a break?

2 MR. GOELLER: When we take breaks and recesses.

3 That's my request to the Court. That's my relief I'm seeking.

4 THE COURT: All right. You-all don't have any
5 problem with that, do you?

6 MS. FALCO: Unless something comes up. I mean,
7 I need to talk to him about scheduling, or something comes up
8 unrelated to what Mr. Goeller -- I mean, if he's my witness,
9 I'd like to be able to talk to him about that.

10 MR. GOELLER: Sure. As long as she just grabs
11 me, that's no problem.

12 THE COURT: And there's always the question,
13 have you talked to the DA during the break, a tremendous
14 deterrent.

15 Anyway, see you in 15 minutes.

16 THE BAILIFF: All rise.

17 (Recess taken.)

18 THE COURT: Tell me what we're doing.

19 MS. FALCO: Your Honor, we do have Detective
20 Winn's notebooks, but our concern -- we object to turning over
21 the notebooks to Defense counsel at this time because it
22 contains a lot of information that Detective Winn has not
23 reviewed or used to refresh his memory; that being a lot of
24 civilian witnesses statements who have not yet testified, and
25 my understanding of what was ordered at the pretrial is those

1 further cite to the Court 615, Statement. A written statement

2 made by the witness that is signed or otherwise adopted or

3 approved by the witness. Now, I suppose

4 theoretically -- now, the problem here, Your Honor, is this is

5 the lead detective. This isn't some minor witness on some

6 tangential matter in this case.

7 Those notebooks are his statements. Now, the problem we run
8 into is any --

9 THE COURT: Just a minute, those notebooks
10 aren't his statements. There's a lot of statements from a lot
11 of people in there. They're not his statements.

12 MR. GOELLER: When I say his statements, those
13 are his product. That's his work product. There may be
14 actual statements in there signed by other people, but he has
15 reviewed those. He's told you he's reviewed them. He'd have
16 to. How can he get on the witness stand and not have reviewed
17 those? Why would he have kept two notebooks?

18 THE COURT: From what I can tell from his
19 testimony, I don't think he did review them. (Laughter.)

20 But anyway, I tell you what, I will order the
21 State to turn over whatever -- in fact, I understand they
22 already have turned over the actual documents that he might
23 have reviewed. And with regard to all the witnesses'
24 statements and all that stuff, I won't let you have that
25 until they testify.

1 statements don't have to be turned over until those witnesses
2 testify.

3 THE COURT: That's true.

4 MS. FALCO: And since this detective has not
5 used them to refresh his memory, nor has he adopted them as
6 his own, we would object to turning over the entirety of these
7 two notebooks, giving the Defense counsel these witness
8 statements at this time.

9 THE COURT: Okay.

10 MR. GOELLER: Judge, my response to that is --
11 I make a two-prong response under Rule of Evidence 612 and
12 Rule of Evidence 615. These are his notebooks. These are the
13 Government agent's writings. He previously had given
14 testimony, the reason why he writes things -- these things
15 down is so he can remember and refresh his memory because he
16 says he does a lot of cases. He's worked other homicides
17 since.

18 Now, I find it extremely odd that the lead detective
19 in this case, his two main notebooks that he keeps, he
20 wouldn't bring into the courtroom. I'm asking the Court to
21 order production of these under 612. Before testifying in
22 criminal cases, an adverse party is entitled to have the
23 writing produced at the hearing, inspected, cross-examine the
24 witnesses thereon, introduce into evidence those portions
25 which relate to the testimony of the witness. And I'd

1 And 612 is a writing used to refresh memory, which
2 I believe you have those. And 615 is -- well, in fact, we've
3 already talked about 615 in the context of this case. And I
4 believe you have all the 615 documents. But if there's
5 something -- if there are actual statements that he used to
6 refresh his memory in order to testify here, you are entitled
7 to those.

8 MR. GOELLER: Right.

9 THE COURT: But I don't know that there's
10 anything in that stack there that qualifies, and that's what
11 you're telling me, that it doesn't, right?

12 MS. FALCO: Based on what the officer has
13 testified to, in looking through here there are police
14 reports. We have turned over everything, to my understanding,
15 that Detective Winn has reviewed for his testimony. The
16 remaining things are civilian witness statements, and that's
17 what we are objecting to turning over at this time because he
18 has not reviewed them for his testimony.

19 MR. GOELLER: In that case, Your Honor, per the
20 rule, I'd like to mark those. I'd like to -- I want copies of
21 those for the record so the appellate courts can review this
22 matter and see what I didn't get. That's fine. I'm not going
23 to get them. Although, I would say this: This -- what they
24 have handed me, and I'm not going to look in them, Gail. I
25 just want to reference them. That's what I got, Judge. And

1 I'm looking at two, three-ring binders here.
 2 So I suppose the Court could ask the detective to
 3 remove actual statements -- statements written out of other
 4 witnesses and give me the law enforcement. Obviously, he's
 5 the lead detective. He has adopted all law enforcement
 6 statements, in fact, he said that, and any other writings.
 7 So -- they were law-enforcement generated from the lead
 8 detective. I'm certainly entitled to that, and they could
 9 maybe take out actual handwritten statements of other people,
 10 you know, pure civilian witnesses. I'll certainly agree to
 11 that.

12 THE COURT: Well, no, we're not going to do
 13 that, Mr. Goeller.

14 MR. GOELLER: I'm sorry?

15 THE COURT: You're not entitled to that, and
 16 you don't get it.

17 MR. GOELLER: Okay.

18 THE COURT: And the list of things that you
 19 have not gotten are without limit, you know.

20 MR. GOELLER: I don't follow you, Judge.

21 THE COURT: In other words, you've gotten
 22 certain things. The world is full of things that you have not
 23 gotten in this case, and that includes those two ring binders
 24 there, but I don't believe that you -- if you can convince me
 25 that you're entitled to it under the rules or under the law,

1 THE COURT: That -- let me see it. Let me take
 2 a look at it.

3 THE WITNESS: We usually make one large photo.
 4 There's nothing but photos and an offense report in that other
 5 one, Judge.

6 THE COURT: Okay. Let me tell you something.
 7 I've reviewed the table of contents in both of these notebooks
 8 that this detective has kept in these cases, and I see nothing
 9 in here that they -- that the Defendant is entitled to review
 10 prior to the time that any witnesses testify, so --

11 MR. GOELLER: Sir, I would respectfully point
 12 out, under my Motion for Production under Rule of Evidence
 13 615, it says "After a witness, other than the defendant has
 14 testified on direct, the Court, on motion of this party would
 15 did not call the witness, shall order the attorney for the
 16 state or the defendant, as the case may be, to produce for the
 17 examination and use of the moving party, any statement that
 18 the witness has in their possession and that relates to the
 19 subject matter concerning which the witness has testified."

20 THE COURT: That's right, and let me tell you
 21 something, so far we've done that with every witness and will
 22 continue to do that with every witness. But what I'm telling
 23 you is the stuff you've just talked about in that rule doesn't
 24 apply to the stuff in his notebook. But -- and you have --
 25 you showed me a little stack of stuff that you have that was

1 then I'll order her to turn it over to you, but you haven't
 2 convinced me that you're entitled to any of that stuff in
 3 those two black binders.

4 MR. GOELLER: Can I take the witness, Judge?

5 THE COURT: Sure.

6 Q. BY MR. GOELLER: Detective Winn, let me show you
 7 what I've marked as Exhibits 3 and 4, and ask if you can
 8 identify those?

9 A. Yes, sir. Those are my case filings.

10 Q. Those are your case filings?

11 A. Yes, sir.

12 Q. When you say "case filings," is that in regards to
 13 this case only?

14 A. That's correct.

15 Q. And can you tell me what the case filings consist
 16 of?

17 A. Consist of documents that I've made, of witnesses
 18 information as far as affidavits from them, the autopsies --
 19 let me just do this. It would be easier.

20 THE WITNESS: If I may, Judge, because there's
 21 a number of things that this case file contains, and I have a
 22 table of contents in the front that I could read out.

23 THE COURT: Well, look we're not going anywhere
 24 with this. That's what I'm telling you.

25 THE WITNESS: Yes, sir.

1 turned over to you by the State, and that's, from what I can
 2 see, a quarter to half-an-inch high, and there appear to be at
 3 least half a dozen different reports of various people that
 4 you have received, subject to Rule 615. So you have gotten
 5 everything that I believe you're entitled to at this point.

6 And, in fact, I should add that you received them
 7 before the witness finished testifying so you got them even
 8 prior to the time that they were required to be turned over by
 9 the law. So that's just about the end of the inquiry as far
 10 as I'm concerned, but go ahead and make whatever record you
 11 need.

12 MR. GOELLER: Yes, Your Honor. At this time
 13 I'd ask that -- just ask that the contents of those two
 14 notebooks, although I'm not going to get them, that they be
 15 made part of the record.

16 THE COURT: Okay. Request is denied. Both
 17 sides ready to bring in the jury?

18 MR. GOELLER: Your Honor, what I've marked as
 19 State's Exhibit 3 and 4, I'm asking the Court, at the
 20 appropriate time, that the contents of 3 and 4 -- that I've
 21 marked Defendant's Exhibit 3 and 4 be made part of the
 22 appellate record.

23 THE COURT: Okay. That's good. We'll do
 24 that. Let's bring the jury in.

25 THE BAILIFF: All rise.

(The jury enters the courtroom at 3:25 p.m.)

1 THE COURT: Please be seated. All right. You
2 still have the witnesses, is that correct, Ms. Falco?
3 MS. FALCO: No, Your Honor, I had passed him.
4 THE COURT: You just passed the witness. Okay,
5 go ahead.

6 MR. GOELLER: Thank you, Your Honor.
7 Q. BY MR. GOELLER: Detective Winn, sitting in front
8 of the Prosecutor Lowry at that table are two, three-ring
9 binders, correct?

10 A. Yes, sir.

11 Q. What are those?

12 A. Those are my case files.

13 Q. Do you have any objection if I go through those?

14 THE COURT: Excuse me, just a second. I'm
15 going to ask the bailiff to take the jury outside.

16 Let's wait until Billy gets back in. I'll just ask
17 the court reporter.

18 (The jury exits the courtroom.)

19 THE COURT: Hold on just a second. All right.
20 Tell me what you're doing.

21 MR. GOELLER: Judge, at this point in time,
22 although the State doesn't want to give me those notebooks, I
23 haven't had the chance to ask Detective Winn, does he mind if
24 I goes through them. They're his property, his personal

1 possession. He might just let me do it, if he's not doing
2 anything.

3 THE COURT: Well, they're owned by the State of
4 Texas, I suppose, if you want to talk about whose property
5 they are. But we've already had a hearing on that matter,
6 Mr. Goeller, and I don't care what he thinks. I don't care
7 what he thinks about what his desire is. I've already made a
8 ruling. Do you understand my ruling?

9 MR. GOELLER: I understand your ruling, Your
10 Honor.

11 THE COURT: Then your question is kind of
12 irrelevant, isn't it, as to what he thinks of the idea?

13 MR. GOELLER: I've been in a lot of situations
14 in trial, Your Honor, where somebody says, well, do you
15 mind -- do you mind if -- when we recess for the day, you
16 bring that back tomorrow; you don't have any problem with me
17 looking at that, do you? And the witness says no.

18 THE COURT: Let's ask the State instead of the
19 witness. What's the State's position on those two notebooks?

20 MS. FALCO: Our position, Your Honor, is that
21 we do not want to turn over witness statements of witnesses
22 who have not yet testified and whose statements this detective
23 has not reviewed to refresh his memory, or testimony. We do
24 not want to turn those over.

25 THE COURT: Is that clear, Mr. Goeller? That's

1 their desire. They represent the State; this witness doesn't,
2 and so it doesn't matter what he wants.

3 MR. GOELLER: All right, Judge. If I could
4 ask the State, what they've given me I've marked for
5 identification as Defendant's Exhibit Number 5, and although I
6 can't ask them directly, I would ask the Court to ask the
7 State, outside of what I have, is there anything else by way
8 of law enforcement notes that this detective has adopted,
9 other than other witness statements in those notebooks? I'm
10 looking at the volume here, and I find it just frankly hard to
11 believe.

12 THE COURT: Let me ask you this, you've already
13 asked him what he's reviewed, right? We've already talked
14 about -- haven't we been down this road? You've asked him
15 what he's reviewed, and he said you've got everything in your
16 hand that he's reviewed prior to testifying here. Don't you
17 understand that to be the testimony so far?

18 MR. GOELLER: Your Honor, I was asking what he
19 reviewed in -- respectfully, Judge, you interrupted me, took
20 the notebooks and said he would look at the table of
21 contents --

22 THE COURT: No. I'm talking about when we
23 first got started here. Remember you asked me -- or you asked
24 kind of rhetorically, I think, what else is there? And I
25 said, why don't you ask the witness what you did. Remember

1 that? The jury was in the box, and you asked the witness; do
2 you remember that?

3 MR. GOELLER: Yes, sir.

4 THE COURT: All right. What did he respond?

5 MR. GOELLER: He responded that he has his case
6 report in the back.

7 THE COURT: No. That isn't what he responded.
8 But anyway, just go ahead and ask the DA. I'll
9 allow you to ask the DA right now whatever you want to ask the
10 DA, and I'll tell her to answer your question. Ask her
11 whatever you want to ask her.

12 MR. GOELLER: Ms. Falco, you've handed me what
13 I've marked as Defendant's Exhibit Number 5, and those are
14 some -- no handwriting, printed offense reports of -- law
15 enforcement reports?

16 MS. FALCO: Yes, they are.

17 MR. GOELLER: And in what I've marked as
18 Defendant's Exhibits 3 and 4, are there any other law
19 enforcement notes from this detective or any other detective
20 outside of what you've -- what I've marked as Defendant's
21 Exhibit Number 5?

22 MS. FALCO: Ms. Lowry is double-checking right
23 now. My understanding of what you have in your hand is
24 everything from law enforcement that this detective has
25 reviewed for his testimony. Everything you have in your hand,

1 marked as Defendant's Exhibits 3?

2 MR. GOELLER: Five.

3 MS. FALCO: -- 5, is an exact copy of what the
4 detective has been using the entire time he's been on the
5 stand. But Ms. Lowry is double-checking to make sure.

6 MR. GOELLER: Are there any other statements
7 of this witness, or statements he has adopted, not what he's
8 reviewed for his testimony that are contained in Defendant's
9 Exhibit -- marked for Exhibit 3 and 4?

10 THE COURT: What do you mean, Mr. Goeller, just
11 so it's clear to me, that he has adopted? What do you mean by
12 that, what statements he has adopted? What exactly does that
13 mean? I mean, does he like them, or does he own them, or
14 what does that -- how do you adopt something?

15 MR. GOELLER: Okay, Judge. "Statement. A
16 written statement made by the witness that is signed or
17 otherwise adopted or approved by the witness."

18 THE COURT: What does that mean? What do you
19 understand that to mean?

20 MR. GOELLER: For example, let's say he gives a
21 lot of testimony about facts that he relays to the jury that
22 are in Detective -- for example, like he's done. Detective
23 Pepsis, recovered by Lowjack, and they sat on that car. He
24 wasn't there. Those detectives told him that. He adopted
25 those statements as his own. That's why we have the rule.

1 THE COURT: Now, wait a minute. If there's
2 some hearsay exception that allows that evidence in, then
3 fine, you know, it comes in, and I suppose there has been some
4 of it. But actually, what you're talking to me about is a
5 hearsay statement, right? Something that somebody else said?

6 MR. GOELLER: Right, but he adopted those. If
7 he adopts those, if he gives truth and veracity to them, and
8 incorporates them as his own statements, plus, the reason why
9 I'm asking him are there -- it doesn't matter. It just
10 absolutely doesn't matter that he didn't review other of his
11 own statements prior to testifying. If he's made other
12 statements in those notebooks, whether he's looked at them any
13 time, I'm entitled to them. I will -- I absolutely can tell
14 the Court I know what I'm talking about on that ground.

15 It doesn't matter that he -- it's not -- it's not
16 that he just reviewed certain statements. I mean, think about
17 it, Your Honor. He's got two notebooks there. Let's say he
18 says, prior to coming to trial today, I looked at two pieces
19 of paper. Is that all I'm entitled to get if those notebooks
20 are full of his other statements? That's not what the law is.
21 Those are his statements. If they're in there, I'm entitled
22 to those. Whether or not he's reviewed them prior to
23 testifying, if they're prior statements of the witness, I get
24 them.

5 THE COURT: If he authored them, right, if he

1 was the author of those statements?

2 MR. GOELLER: Or adopted them.

3 THE COURT: Well, depends on what you mean by
4 "adopted them."

5 MR. GOELLER: I've never run into this problem
6 in a law enforcement -- he's not going to say, well, three
7 other detectives working this case are a bunch of liars. He
8 took their statements. He adopted them as his own in putting
9 together 3 and 4. So, I'm certainly entitled to anything else
10 he's written, other than this stack I've marked as 5 that's in
11 those.

12 THE COURT: All right.

13 MR. GOELLER: And I would further make my
14 request that I be able to observe, or at least inspect those
15 under Brady versus Maryland because I think at this point, the
16 fight tells it all. There's something in there they don't
17 want me seeing, or I'd ask the Court to inspect it in
18 chambers.

19 THE COURT: I'll inspect them in chambers.

20 MR. GOELLER: Judge, if these witnesses are
21 going to testify, and I'm going to get their statements at
22 cross-examination time, why are we fighting?

23 MR. SCHULTZ: We could ask him the same thing.

24 THE COURT: Because that's when you're supposed
25 to get them. The rules say that you get them after they

1 testify. That's what the law in the State of Texas is.
2 That's when you get them.

3 MR. GOELLER: I understand, unless there's
4 Brady material in there.

5 THE COURT: That's right. We've already had a
6 Brady hearing, pretrial. I specifically remember that one.
7 Anyway, what else do we have? But here's the
8 point, Mr. Goeller, your question with regard to this witness
9 about what he thinks of the idea of you getting those
10 statements, I don't care. I don't care what he thinks about
11 it. I don't care if he thinks it's a great idea that you get
12 them or it's a horrible idea. The State of Texas has taken
13 the position you're not entitled to those. I've looked at the
14 law, and I believe they're right, so that's the end of
15 inquiry. If you've got any more of a record to make, make it
16 now before we call the jury back in.

17 MR. GOELLER: Yes, sir. I would simply ask the
18 Court at this time to order the State to produce to me any
19 statements of this witness, other than what I have, that are
20 contained in those notebooks. Ms. Lowry said a few minutes
21 ago they were checking.

22 THE COURT: All right. Yeah, if there's any
23 other statements of this witness, give them to him. I
24 understood that he had all the statements of this witness.
25 Listen, I tell you what, does the State need some time to

1 figure out what it's got and what it doesn't have?
 2 MS. FALCO: Yes, sir. Now, that we've just
 3 gotten Detective Winn's books just to compare what we already
 4 had to his.

5 THE COURT: Well, I tell you what, let me step
 6 down. Take all the time that you need. Just come and get me
 7 when you're ready to answer his question.

8 THE BAILIFF: All rise.
 9 (Recess taken.)

10 THE COURT: I understand both sides would
 11 rather I let the jury go for the day; is that correct?

12 MR. SCHULTZ: That's fine.

13 THE COURT: I want to admonish them before the
 14 weekend.

15 MR. GOELLER: Judge, I'm waiving Ivan's
 16 appearance for this, and we're not doing testimony or
 17 anything. That's okay.

18 MR. SCHULTZ: They're going to waive Ivan's
 19 appearance for this?

20 THE COURT: Okay. We're just bringing the jury
 21 in and sending them home. That's all.

22 MR. GOELLER: I unequivocally waive Ivan's
 23 appearance for this non-evidentiary testimony.

24 THE COURT: And I want to tell them not to
 25 discuss the case with anybody, and then we'll let them go

1 until Monday morning at 9:00.

2 THE BAILIFF: All rise.
 3 (Jury enters the courtroom.)

4 THE COURT: Please be seated.

5 Ladies and Gentlemen, we're going to break for the
 6 weekend, so everybody is going to get to go home a little bit
 7 early today. I want to read you the thing that I suppose I
 8 read you perhaps this afternoon. Maybe you'll be able to read
 9 it to me by the time this trial is over. You are instructed
 10 that it is your duty not to converse among yourselves or with
 11 anyone else on any subject connected with the trial, or to
 12 form or express any opinion thereon until the cause is
 13 finally submitted to you.

14 (Discussion off the record.)

15 THE COURT: At any rate, come in at 9:00 on
 16 Monday morning, and let's reconvene at that time.

17 THE BAILIFF: All rise.
 18 (Jury exits the courtroom.)

19 THE COURT: Please be seated, everyone. All
 20 right. At the time that we broke --

21 MR. SCHULTZ: Excuse me, just a second. I
 22 don't think the Defendant is here.

23 MS. LOWRY: They waived.

24 MR. GOELLER: I've waived his appearance for
 25 anything that we're doing right now outside of a live body.

1 MR. SCHULTZ: Okay, excuse me.

2 THE COURT: At the time that we broke, the DA
 3 was going to go through its materials and see what it could
 4 come up with. I understand that you found some things; is
 5 that correct?

6 MS. FALCO: There are some things, Your Honor,
 7 that are another officer's report that Detective Winn did not
 8 use to refresh his memory, but at the top of the report, it
 9 says "For Detective Winn," so we're just pulling all those
 10 things out and copying them for the Defense. There are a
 11 couple of things that I -- since I've been ordered not to talk
 12 to my detective, I need to ask him what they are because it
 13 would just be a page with handwriting, and I don't know whose
 14 handwriting and what it is, or if it was given to him. So, I
 15 do request permission to be able to talk to him to see --
 16 because these were items never in our possession, being the
 17 District Attorney's office, so if we could speak to him to
 18 find out.

19 THE COURT: Let me ask you this: At this point
 20 how many documents do you expect to turn over to the Defense?

21 MS. FALCO: We're also turning over an evidence
 22 sheets, but anything that has his name -- Detective Winn's
 23 name on it, we're turning over. And so it appears to be quite
 24 thick, but there's a huge stack that's nothing but, like, a
 25 stack of evidence, like every single piece of evidence that

1 was on the computer and printed out, it's bar code number and
 2 things like that. It appears to be a thick stack. There's
 3 not a whole lot of additional information.

4 Some of the stuff I know I turned over in
 5 discovery, but it wasn't in the stack that Mr. Goeller had in
 6 his hand marked as Defense Exhibit Number 5. So as far as
 7 extra reading material, there's not a whole lot of extra
 8 reading material.

9 THE COURT: But there are going to be some
 10 other things?

11 MS. FALCO: There are going to be some other
 12 things, yes, sir.

13 THE COURT: Okay. And I guess that's what I
 14 want to ask you: Do you have any feel for how much it's going
 15 to be right now?

16 MS. FALCO: It's this stack in my hand, Your
 17 Honor. Again, there's two -- the two thickest stacks -- it
 18 appears also they would run, like either the Defendant's
 19 address or the victim's home address, and it pulls up, like,
 20 all their neighbors and it's just data. So, one thick stack,
 21 it's just data regarding neighbors, and there's another stack
 22 regarding data just involving vehicle information. And the
 23 Defendant's data as far as -- and where he's lived, vehicles
 24 he's owned, things that have been in his name. But it's the
 25 stack in my hand, which is about two inches thick, three

1 inches thick.

2 THE COURT: You think that you'll be turning
3 that over?

4 MS. FALCO: Yes, sir.

5 MR. GOELLER: Yes, sir, that's acceptable or --
6 or what are you asking me? I don't know what I'm --

7 MR. SCHULTZ: We also have one document, Judge,
8 that albeit probably not probative and not admissible, appears
9 to be covered by Brady, which we had never seen before until
10 he got this from the officer. Appears to be a lead sheet that
11 some anonymous caller to the police department says the killer
12 is a fellow named Mario Rojas, and that Mario is, apparently,
13 a major drug dealer, and this is a lead sheet that was
14 received. And I'm assuming that's exculpatory, if it's
15 supposed to be somebody else doing the killing, and it's a
16 lead sheet.

17 THE COURT: But at any rate, you've just
18 discovered it for the first time today?

19 MR. SCHULTZ: We just -- it was the first time
20 we saw it, and we pulled it out. But there was some others
21 with him, so I mean, that wouldn't necessarily exculpate the
22 Defendant. He could have been one of those with him (sic),
23 too, so that's why I'm vague on the issue.

24 MR. GOELLER: Your Honor, I think the State has
25 brought up a conspiracy theory, Judge. I'm going to need a

1 MS. FALCO: We've been making copies as we've
2 been going through --

3 THE COURT: Oh, I see.

4 MS. FALCO: So what I have in my hand is
5 Mr. Goeller's copy. The originals have gone back into the
6 book, and the only thing I have left to look through is this
7 very small stack.

8 THE COURT: Okay. Then you guys just want to
9 stick around today and finish going through the stack?

10 MS. FALCO: Yes, sir.

11 THE COURT: And you'll turn over everything to
12 him by the end of the day today?

13 MR. GOELLER: Just, if I could impose on the
14 Court, I'd ask, is Detective Winn still here?

15 MS. FALCO: I don't know.

16 INVESTIGATOR: He's still here.

17 MR. GOELLER: I'd like to ask him just one or
18 two questions.

19 THE COURT: All right. Bring him in.

20 (Witness enters the courtroom.)

21 THE COURT: All right. Mr. Goeller, do you
22 have some more questions of this witness?

23 MR. GOELLER: Yes, Your Honor, very briefly.
24 (No omissions.)
25

1 very lengthy continuance to investigate this. Judge, you know
2 I'm teasing, right?

3 THE COURT: All right. And I tell you what,
4 if you -- if you're going to err on one side or the other, err
5 on the side of giving it to him.

6 MS. FALCO: And that's exactly what we've done,
7 Your Honor. Anything that just said, "for Detective Winn,"
8 even though he didn't have it with him up there, and he hadn't
9 reviewed it, if it said for Detective Winn, we're turning it
10 over. Even if it's a property sheet that he signed, we're
11 turning it over.

12 THE COURT: Okay. When do you expect to give
13 it to the other side?

14 MS. FALCO: I'm sorry?

15 THE COURT: When do you expect to give it to
16 the other side?

17 MS. FALCO: In just a moment. Are you done? I
18 think all we have left is just this little stack right here,
19 and if there's anything we need to copy, then we'll be done.

20 THE COURT: Okay. But you've got copies for
21 you and one for him, right?

22 MS. FALCO: No. For him, just this copy in my
23 hand I intend to turn over --

24 MR. GOELLER: They've been making the copies,
25 Judge.

1 SUB ROSA HEARING

2 BY MR. GOELLER:

3 Q. All right, sir. You're one and the same Anthony
4 Winn, Detective with the Dallas Police Department that's
5 previously been sworn and given testimony in this cause,
6 correct?

7 A. Yes, sir.

8 Q. Detective Winn, in your case report, the two -- the
9 two, three-ring binder volumes, we've discovered an entry that
10 was exculpatory, or Brady in nature. Do you understand what
11 that term means?

12 A. No, sir.

13 Q. Have you ever heard of Brady material?

14 A. No, sir.

15 Q. Were you ever asked by the District Attorney's
16 office in this case to turn over Brady material?

17 A. I don't know what Brady means.

18 Q. Okay. Brady means when evidence that you have, in
19 any form or fashion, that may be exculpatory or mitigating.
20 Let me show you --

21 MR. GOELLER: Well, I think we'll just mark
22 this.

23 THE COURT: Do you know what exculpatory
24 means?

25 THE WITNESS: Yes, sir.

1 Q. BY MR. GOELLER: And what does that mean, Detective?

2 A. That's what we are exploring, correct?

3 Q. I got to say wrong. It was really the Judge's
4 question.

5 MR. GOELLER: Can I talk to him, Judge.

6 THE COURT: Have at it.

7 Q. BY MR. GOELLER: No. Exculpatory -- you've never --
8 as a detective, you've never heard that term before?

9 A. I have, but I guess I --

10 Q. It means evidence tending to show that the accused
11 did not commit the crime. Have you ever been asked by the
12 DA's office to give them any exculpatory material or Brady
13 material?

14 A. I -- they don't exactly use those words. We usually
15 just present them with our case files.

16 Q. Did you present the District Attorney with your
17 case file in this case?

18 A. Yes.

19 Q. Did you present -- let me show you what I've marked
20 as Defense Exhibit 6, and I guess I need this for the record.
21 But let me ask you to take a look at that document, which was
22 given to me by Prosecutor Schultz, and ask you if you've ever
23 laid your eyes on that before?

24 A. Yes, sir, I have.

25 Q. And would you -- what would you call the character

1 Q. Okay. Do you have -- are you with me? Do you kind
2 of understand what exculpatory or Brady -- Brady is a case.
3 It's called Brady versus Maryland. It talks about the law
4 that the Government should turn over to the Defense lawyer
5 anything that even tends to point the finger at somebody else,
6 and there's a line of cases after that called Bagley and
7 Whitley. And it even goes to mitigation of punishment and
8 things like that. Do you have anything that might be
9 favorable to that kid or me like this in your possession
10 anywhere else?

11 A. No. Not to my knowledge, no.

12 Q. Do you have any other documents associated with this
13 case, other than what's in your case report, which has been
14 marked as Defendant's Exhibits 3 and 4?

15 A. No, sir.

16 Q. Okay. So in full fairness to the District
17 Attorney -- the prosecutor, Mr. Schultz anyhow, you don't know
18 what Johnson -- DA Investigator Johnson photocopied in your
19 office?

20 A. He photographed the case file. That's all I know.

21 Q. The entire thing?

22 A. I believe so, yes, sir.

23 Q. I mean, were you there watching him do that?

24 A. We have had several meetings with him. I don't
25 remember exactly if I was actually present when it was done.

1 of that document? Is it something that we call Brady or
2 exculpatory that tends to point at someone else as the guilty
3 party?

4 A. It was -- let me read it first.

5 Q. Okay.

6 A. It was an anonymous tip received.

7 Q. Okay. And the gist of it is the killer was somebody
8 other than Ivan Cantu?

9 A. He wanted to pass on some information saying that,
10 that's correct.

11 Q. Okay. Did you give this document to the Collin
12 County District Attorney's office?

13 A. All documents were inside my case filing.

14 Q. What I'm saying, your case filing is what I
15 previously marked as Defense Exhibit 3 and 4? Those
16 three-ring binders you had in the back room, right?

17 A. Yes, sir.

18 Q. You gave those to the DA's office?

19 A. They were -- they copied everything, to my
20 knowledge, out of that, the thick, three-ring binder.

21 Q. Who copied it?

22 A. I believe Mr. Johnson came to my office and copied
23 it.

24 Q. Jerry Johnson, the DA investigator?

25 A. Yes, yes.

1 I don't remember.

2 Q. But certainly you've never -- you've never told any
3 of these three prosecutors that this document existed,
4 specifically?

5 A. No. I mean, it's part of the case file, so it was
6 inside the case file.

7 Q. Okay. Our -- what I've marked as Defendant's
8 Exhibit 3 and 4, your three-ring binders that you identified
9 as the case file. Are you the only one that maintains a case
10 file in State versus Ivan Abner Cantu?

11 A. Yes, I do.

12 Q. Okay. Does any other detective have any other case
13 files or a collection of material that may not be called a
14 case file, but data stored somewhere else?

15 A. I do not know.

16 Q. Okay. Who is your immediate supervisor?

17 A. Ross Alvarino.

18 Q. Does he have any files in State of Texas versus
19 Ivan Abner Cantu?

20 A. No, sir.

21 Q. Are you sure of that?

22 A. Yes, sir.

23 Q. Okay. When did you turn your case file over,
24 approximately, to DA Investigator Jerry Johnson?

25 A. Oh, it's been a while back. I don't remember

1 exactly what day that was.
 2 Q. I don't have to know exactly, but could you pin it
 3 down to approximate? Let's start with this season. This
 4 happened in the fall of 2000, and then we had January and
 5 February and I guess part of March is the winter of 2001, and
 6 then we got spring, summer and now we're in the fall. Any
 7 ballpark using seasons?
 8 A. No, sir. I just know it was 2001. I don't remember
 9 when.
 10 Q. Was it before you came up here in August -- yeah,
 11 around the first week of August on the Motion to Suppress
 12 where you gave testimony?
 13 A. I don't remember.
 14 Q. Well, you remember coming up here and testifying,
 15 right?
 16 A. Yes, sir, I do.
 17 Q. Certainly, I've got to believe you talked to
 18 Detective Jerry Johnson before you came down here for a court
 19 hearing?
 20 A. That's not what you asked me. You asked me did I --
 21 when did I give him a copy, and I was answering I don't
 22 remember.
 23 Q. Well, was it before that?
 24 A. I don't remember.
 25 Q. Okay. Well, how many times -- you said you've had

1 several meetings with Detective Jerry -- Investigator Jerry
 2 Johnson. Were those meetings before this trial started at the
 3 Motion to Suppress in the first week of August or after?
 4 A. We've met before. We've met after -- well, we've
 5 spoken after the suppression, but I can't recall when we did
 6 the case file.
 7 Q. Okay, all right. Do you know what day, or
 8 approximate day if you look at those, that you could tell when
 9 you completed your case file?
 10 A. No, sir.
 11 Q. Well, if you looked at the last document in there,
 12 it might have a date on it, no?
 13 A. The last document does not necessarily mean it was
 14 completed on that date.
 15 Q. How about a table of contents; would that help you?
 16 A. No, sir.
 17 Q. Okay.
 18 MR. GOELLER: That's all I have, Your Honor.
 19 Pass the witness.
 20 THE COURT: (Indicating.)
 21 CROSS-EXAMINATION
 22 BY MR. SCHULTZ:
 23 Q. What is that defense exhibit? Is that like an
 24 investigative lead sheet? What would you call that?
 25 A. It's an investigative note, and another detective

1 received it and he just made this notation exactly what was
 2 being -- what was said on that phone conversation.
 3 Q. Did anybody ever check that out, by the way, do you
 4 know?
 5 A. Well, we were not able to check who the person was
 6 because they wanted to remain anonymous, but I did contact our
 7 narcotics division regarding the name that he -- the person
 8 that he named.
 9 Q. That's Mario Rojas?
 10 A. That is correct.
 11 Q. Supposed to be a major drug dealer?
 12 A. That is correct.
 13 Q. Did they know of him?
 14 A. They were aware of him. They did say that he was a
 15 major drug dealer, but other than that, I was not able to tie
 16 him into the complainant -- knowing the deceased.
 17 MR. SCHULTZ: That's all we have.
 18 MR. GOELLER: That's all I have, Judge. For
 19 record purposes only, I'd offer Defendant's Exhibit 6.
 20 THE COURT: Could you describe that better for
 21 the record? That's what's called a lead sheet?
 22 MR. GOELLER: It's entitled "Investigative
 23 Information," submitting Officer R.R. Laboda, badge number
 24 4881.
 25 THE COURT: Is there a date on it?

1 MR. GOELLER: Yes, sir. It's dated November
 2 5th of 2000 at 5:26 p.m. Obtained on date, November 5th of
 3 2000, 5:26 p.m. It goes -- narrative, about a page and a
 4 paragraph.
 5 THE COURT: Okay. That's admitted for record
 6 purposes.
 7 MR. GOELLER: Yes, sir. Thank you, Judge. And
 8 that's all I have, Your Honor.
 9 THE COURT: All right. Anything else at this
 10 point?
 11 MR. SCHULTZ: Not of this witness, no.
 12 THE COURT: All right. You may step down.
 13 THE WITNESS: Thank you, Judge.
 14 THE COURT: Do you have anyone else to call?
 15 MR. GOELLER: No, Your Honor.
 16 MR. SCHULTZ: We'd ask leave of Court to make
 17 an oral motion, if we might.
 18 THE COURT: All right.
 19 MR. SCHULTZ: This being in the form of an Oral
 20 Motion in Limine, comes now the State of Texas, by and through
 21 its Assistant District Attorney respectfully requesting the
 22 Court to direct the defense attorney and any defense witnesses
 23 not to make reference to the Mario Rojas situation until such
 24 time as the Court has had an opportunity to hear that evidence
 25 outside the presence of the jury.

1 It is our belief that information would probably be
 2 inadmissible since all it is is from some anonymous person
 3 that has absolutely no connection, but it would have an
 4 enormous prejudicial effect on the State of Texas, just the
 5 asking of that question about did you consider Mario Rojas
 6 because somebody called in and said that he's the killer,
 7 along with his gang, and they're major drug dealers. And all
 8 we're asking for is an evidentiary hearing to see what, if
 9 anything, they choose to do with that because it's -- because
 10 the court would certainly understand that the -- the probative
 11 value of it might be very, very low since it's probably not in
 12 admissible form, and the prejudicial effect might be very,
 13 very high.

14 THE COURT: Have the hearing right now. He's
 15 the witness, right?

16 MR. SCHULTZ: Well, maybe. I wouldn't --
 17 possibly. I wouldn't know how the Defense would go about
 18 putting it on. Whenever we have the hearing, it would just be
 19 before the evidence is offered by them.

20 THE COURT: Well, if you were going to offer,
 21 it would be through him, right? Let's have the hearing right
 22 now. Call him back in. Go ahead, Billy.

23 (Witness enters the courtroom.)

24 THE COURT: Go ahead.

25 MR. GOELLER: I don't know what to do, Your

1 Honor.

2 THE COURT: Are you planning to offer any
 3 evidence with regard to Mario Rojas?

4 Let me ask you, you got a tip on Mario Rojas, right?

5 THE WITNESS: Yes, sir.

6 THE COURT: What did you do?

7 THE WITNESS: Like I said, the person wanted to
 8 remain anonymous, so what I did, I contacted -- we have a
 9 narcotic task force.

10 THE COURT: Who was the tip made to?

11 THE WITNESS: Detective Laboda actually
 12 received the phone call.

13 THE COURT: And he knows who it was from?

14 THE WITNESS: No. The person said that he
 15 wanted to remain anonymous, but he wanted to provide this
 16 information.

17 THE COURT: Then what happened?

18 THE WITNESS: That information was then given
 19 to me. I contacted our narcotic task force. They had heard
 20 of Mr. Rojas. They -- we was able to pull up a rap sheet on
 21 him, but I was not able to tie him into knowing the deceased.

22 THE COURT: What steps did you take to do that?

23 THE WITNESS: Just talking with my -- the
 24 narcotics division. They knew more about him, but again,
 25 there was nothing to indicate that he knew the guy.

1 THE COURT: That he knew --

2 THE WITNESS: The deceased, Mr. Rojas knew the
 3 deceased.

4 THE COURT: How did they inquire?

5 THE WITNESS: I'm sorry, sir?

6 THE COURT: How did they inquire?

7 THE WITNESS: The narcotics division?

8 THE COURT: Yeah.

9 THE WITNESS: They have -- my understanding
 10 they have had some dealings with him.

11 THE COURT: With Mario?

12 THE WITNESS: That's correct. I have not. I
 13 never had, but they have had some dealings with him, and they
 14 was able to provide me with information to say -- to confirm
 15 that he was a major drug dealer.

16 THE COURT: But that's all you know?

17 THE WITNESS: That's all I know.

18 THE COURT: Do you know what they did?

19 THE WITNESS: No, sir, I do --

20 THE COURT: What's his name, Laboda?

21 THE WITNESS: Detective Laboda did absolutely
 22 nothing. He just took the message, did the investigative
 23 note, and then gave it to me. He done (sic) absolutely
 24 nothing on it.

25 THE COURT: And you didn't do anything, either?

1 THE WITNESS: That was all that was done, yes,
 2 sir.

3 THE COURT: So he didn't do anything and you
 4 didn't do anything?

5 THE WITNESS: Well, I notified the narcotics
 6 division, but other than that, that's all I did, yes, sir.

7 THE COURT: So you notified them, and what did
 8 they do?

9 THE WITNESS: They did not do anything because
 10 at the time, I don't remember when this came in, but they just
 11 supplied me with intelligent information. That's all.

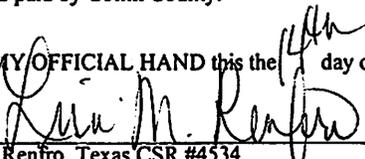
12 THE COURT: Do you have any other questions?

13 MR. GOELLER: No, judge. And at this time I
 14 don't want to be in the position to telegraph my
 15 cross-examination to this witness in front of the State, so --
 16 you know, this is nothing else, other than -- I understand
 17 where Mr. Schultz is coming from, but why should I have to
 18 start schooling him on what my strategy and my
 19 cross-examination is going to be. I may ask him, did you go
 20 down to that old pool hall in old Oak Cliff and start jawing
 21 with the boys?

22 THE COURT: Okay. I tell you what the Motion
 23 in Limine is denied, and we're getting started Monday morning
 24 at 9 a.m. And is there anything else from either side?

25 MR. GOELLER: No, sir.

1 MS. FALCO: No, Your Honor.
2 THE COURT: All right. We'll see y'all Monday
3 morning.
4 (End of Volume 33.)
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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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Tel. Number: 972/424-1460, ext. 4661

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<p>S</p> <p>\$250,000 70:19 \$300,000 70:17 \$50,000 70:18</p> <hr/> <p>0</p> <p>00787450 2:4 08059260 2:12 09605050 2:13</p> <hr/> <p>I</p> <p>1 5:15 8:18 10:12 10:14 12:7,7 82:2 84:14 88:8 88:23 112:8,11 112:18,19 116:14 1-A 5:18 6:4,21 10:12,15,16 1-B 5:18 7:22 8:19 9:7 10:12 10:15,17 1.04 82:7 84:16 88:11,25 116:17 1.06 82:7 84:16 88:10,25 116:17 1:05 115:1 1:30 119:21 120:1 1:45 122:4 10 3:5 131:11 132:2 10:45 78:2 100 57:23 91:9,21 131:14 145:15 160:7 164:5 10004 81:4 1004 154:9,13 159:15 101 91:9,21 92:5 131:14 145:11 102 27:8 28:8,24 33:24 103 29:5 30:4 32:3,22 104 51:8,16,18 61:1 105 83:10 84:8 106 86:12,12,18 86:21,22 87:10 107 86:12,14,18 86:21,24 87:10 108 111:12,24 112:2 109 117:7,21 118:9,21 119:8 122:14 123:10 126:12 11 62:16 131:11 132:10 11:00 77:25 11:07 79:20 11:30 153:8,10,25 110 128:25 111/111 4:15 117 3:8 117/126 4:15 12 131:11 133:18 12:08 119:23 122 3:9 123 3:9</p>	<p>126 3:9 12th 28:17,18,19 29:1,10 37:17 39:12 13 131:12 135:8 13/14 4:4,5,6,6,7 4:7 130/130 4:5 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