

1 any genetic human DNA from the hair.

2 Q Can you explain to the jury why that might happen?

3 A Well, two reasons. There may have been some  
4 material on the hair that to me appeared to be a root  
5 material, but it was some other form of debris, not an actual  
6 root, so it wouldn't have human DNA. Or it could've been root  
7 material that had just degraded to the point that a genetic  
8 profile was not able to be developed.

9 Q Let's talk about your Item 11(e), which was a tape  
10 lift from the rear driver's-side floorboard. Did you observe  
11 -- or did you analyze this particular lift?

12 A Yes, sir, I did.

13 Q What, if anything, did you find there?

14 A My notes reflect that there was a large mass of  
15 apparent brown long hair.

16 Q A large mass?

17 A That's what my notes state; yes, sir.

18 Q What did you do when you observed this large mass of  
19 hair?

20 A I performed DNA analysis on two of the hairs that  
21 root ends had been observed.

22 Q Were you able to obtain a genetic profile from those  
23 root hairs?

24 A Yes, sir, I was.

25 Q Did you compare it against the known DNA profiles

1 submitted to you in this case?

2 A Yes, sir, I did.

3 Q What, if anything, did you find?

4 A Melissa Estores was not excluded as a donor of the  
5 DNA removed from those two hairs.

6 Q Earlier in your testimony you talked about  
7 statistics, and statistical probabilities of being able to  
8 include or, I guess, include individuals in a genetic profile.  
9 Do you remember that?

10 A Yes, sir.

11 Q Can you explain to our jury how the statistical  
12 data, how does that -- how does that provide us insight with  
13 respect to the likelihood that somebody's -- including or  
14 excluding somebody as a donor of biological material?

15 A What we do is we supply -- we perform statistics  
16 based on the genetic profile. The populations have been  
17 screened to see how rare, how common certain of these markers  
18 are, what are called alleles, the different forms of the  
19 genetic markers.

20 So based on these known frequencies, we can then  
21 determine how rare or how common an observed genetic profile  
22 would be in a theoretical population. So what we can do is  
23 basically state how often would we expect to find this profile  
24 to be found one time in a certain population.

25 Q Can you give the jury some sense of the magnitude of

1 the numbers that we're dealing in --

2 A Um --

3 Q -- and how that would relate to, for example, the  
4 earth's population?

5 A Would you like me to actually apply the statistics,  
6 or --

7 Q Sure, sure, if you could.

8 A Sure. For the items, the hair that was removed from  
9 11(e), the probability of observing this profile in a  
10 population was in the -- for the Caucasian population it was  
11 expected to be found once in a population of 3.58 times 10 to  
12 the 13th, or that's 35.8 trillion.

13 Q 35.8 trillion?

14 A You would expect to find it once in a population of  
15 35.8 trillion.

16 Q What is the population of the earth?

17 A I believe the recently -- the estimate is now 7  
18 billion.

19 Q So in the population of the earth, since the number  
20 you've just cited to us is larger than that, you'd expect to  
21 find that genetic profile one time on our planet?

22 A In my opinion, yes, sir, that's correct.

23 Q Do you have an opinion as to who the donor of that  
24 genetic profile is?

25 A Yes, sir, I do.

1 Q What's your opinion?

2 A Based on the rarity of the profile, my opinion is  
3 that Melissa Estores was the donor of the DNA on the hairs.

4 Q I want to talk to you about your Item 11(f), which  
5 is a tape lift from the rear passenger's-side floorboard. Did  
6 you analyze that lift for any DNA material?

7 A 11(f)?

8 Q Yes, sir.

9 A Sorry, again, I apologize.

10 Q That's okay.

11 A Yes, sir, I did.

12 Q What, if anything, did you find on your Item 11(f)?

13 A I saw -- observed many brownish-red hairs is what my  
14 notes state. I did perform DNA analysis on one of the hairs.

15 Q So you were able to find a root?

16 A What appeared to be a root; yes, sir.

17 Q And were you able to extract a genetic profile from  
18 that?

19 A No, sir, I was not. The -- no human DNA was  
20 detected on the hair removed from 11(f).

21 Q I'd like to move to your Item No. 4. There's been  
22 testimony from Jennie Ayers regarding the impounding of a golf  
23 club shaft which she identified as Item 1369-5-5. And for the  
24 benefit of the jury, I'm going to show them State's Exhibit  
25 194.

1           What was your Item No. 4?

2           A     My Item 4 was a broken golf club shaft.

3           Q     How -- did you analyze the shaft?

4           A     Yes, sir, I did.

5           Q     How did you analyze it? What did you do to it?

6           A     I did two forms of analysis on the golf club shaft.  
7 I observed some reddish-brown soiling near the broken end of  
8 the shaft, which did test positive for the possible presence  
9 of blood.

10           I also swabbed the grip area to look for any  
11 possible nucleated epithelial cells, but no nucleated  
12 epithelial cells were observed.

13           Q     So just for the non-golfers, when you talk about a  
14 grip, it's that portion of the golf club that I've just zoomed  
15 in on, in this exhibit it's the far right portion?

16           A     Yes, sir, that's correct.

17           Q     You talked about epithelial cells.

18           A     Yes, sir.

19           Q     What are those?

20           A     Epithelial cells are simply skin cells. The  
21 exterior of our skin is actually made up of dead cells.  
22 They're cells that have lost their nuclei. So they are not a  
23 good source for nuclear DNA. However, there can be times when  
24 nucleated cells could be transferred onto an item. So if we  
25 see nucleated cells, then we can perform DNA analyses on it.

1 Q Why did you choose to look for skin cells on the  
2 grip portion of this golf club shaft?

3 A Looking for if somebody had been handling something  
4 for a long period of time, maybe some of those nucleated cells  
5 had been transferred.

6 Q What did you find when you analyzed this?

7 A I did find non-nucleated cells, what we'd  
8 characterize as, you know, regular skin cells, but no -- none  
9 of the nucleated cells that a genetic profile could be  
10 developed from.

11 Q So you're not able to take the types of material  
12 that you found to the level to obtain a genetic profile?

13 A No, sir, that's correct.

14 Q Now, I think you also testified to analyzing the  
15 other end of the shaft.

16 A Yes, sir, I did.

17 Q What did you find?

18 A Possible blood was swabbed from the -- near the  
19 broken end of the shaft.

20 Q What did you after you reached that conclusion?

21 A The sample was retained for future DNA testing.

22 Q And did you eventually test it?

23 A Yes, sir, I did.

24 Q What, if anything, did you find?

25 A On the -- the swabbing from the broken golf club, I

1 was able to develop a genetic profile.

2 Q Was that a complete profile?

3 A It was not a complete profile.

4 Q What happens when you get an incomplete profile?

5 A There is -- we have a threshold that's required for  
6 us to be able to utilize the data conclusively, either to  
7 include or exclude. And so we look at 13 different regions  
8 for short tandem repeats, each one being independent.

9 We attempt to develop a profile at each of those 13  
10 independent regions. However, there are times that we may not  
11 be able to get all 13. Maybe we'll get 7, we'll get 8, we'll  
12 get 11, however it may be.

13 We can still utilize the data that is -- meets our  
14 threshold level, that meets our level of acceptance. We do  
15 not then use the data that's not. So we can still include or  
16 exclude, but what it does affect is the rarity of the  
17 calculated statistics, because we're not utilizing all of the  
18 regions for comparison.

19 Q Did you compare the partial genetic profile that you  
20 obtained from the golf club shaft against Donald Herb, Jason  
21 McCarty and Domonic Malone?

22 A Yes, sir, I did.

23 Q What, if anything, did you find?

24 A On the swabbing from the golf club shaft, Donald  
25 Herb, Jason McCarty and Domonic Malone were all excluded as

1 potential sources.

2 Q Did you compare the profile, the partial profile  
3 against Christine Combado, Victoria Magee and Melissa Estores?

4 A Yes, sir, I did.

5 Q What, if anything, did you find there?

6 A I found that Victoria Magee and Melissa Estores were  
7 both excluded as a source of the genetic material on the golf  
8 club shaft, and that Charlotte Combado was not excluded.

9 Q I'd like to talk to you about your Item No. 3, which  
10 was a golf club head that we are seeing State's Exhibit 192.  
11 Did you receive an Item No. 3?

12 A Yes, sir, I did.

13 Q What was it?

14 A My Item 3, was identified as a putter head.

15 Q So a specific type of golf club?

16 A Yes, sir.

17 Q And are we seeing a putter head there?

18 A Yes, sir, we are.

19 Q Did you analyze the putter head, the golf club for  
20 the presence of any DNA?

21 A Yes, sir, I did.

22 Q How did you analyze it? What did you do?

23 A The first thing was visually I examined the putter  
24 head and I did notice some reddish-brown, what I termed as  
25 speckling and soiling on the shaft near the hosel.



1           Q     Where -- what's the hosel of this club? You can  
2 actually take your finger and actually draw on your monitor  
3 there.

4           A     The hosel of a club would be this portion where the  
5 shaft marries to the club.

6           Q     So you found some speckling that appeared possibly  
7 to be blood?

8           A     Yes, sir, I did.

9           Q     Did you analyze any other areas of this golf club?

10          A     That was the only portion that I tested chemically.

11          Q     And what did you find when you analyzed that portion  
12 of the hosel further?

13          A     It did test positive for the possible presence of  
14 blood.

15          Q     Were you able to obtain a genetic profile from that  
16 blood?

17          A     Yes, sir, I was.

18          Q     Was it a complete profile?

19          A     No, sir, it was not.

20          Q     Were -- did you compare that profile against the DNA  
21 -- the known sample of Donald Herb, Jason McCarty and Domonic  
22 Malone?

23          A     Yes, sir, I did.

24          Q     What, if anything, did you find?

25          A     On the -- the putter head, I was not able to include

1 nor exclude either -- the three suspects.

2 Q You could not include them or exclude them?

3 A I could not, no, sir.

4 Q You said that there was a partial profile?

5 A Yes, sir, that's correct.

6 Q Why could you not include or exclude them?

7 A At one genetic marker I had a very weak signal of a  
8 Y chromosome. So essentially I was -- I was showing that  
9 there was data from -- that there was a minor contributor of  
10 male DNA, but I don't know who that male contributor was. So  
11 and since I could not exclude any man from being a potential  
12 source inside that mixture as a minor profile.

13 Q Any man anywhere?

14 A That's correct. If --

15 Q So you and I -- you can't exclude you or me from  
16 that genetic profile?

17 A That's correct.

18 Q Okay. When -- what is a mixture?

19 A A mixture is just a genetic sample that has more  
20 than one contributor of DNA in it.

21 Q Was the profile that you obtained from the hosel of  
22 this golf club, was that, in fact, a mixture?

23 A It appears that it was, but a very minor mixture.  
24 Again, I have one genetic marker that appears to be male. But  
25 from all of the other material I'm not seeing a third -- or a

1 second individual, just at this one marker.

2 Q Now, so you were talking about this being a mixture  
3 and a very limited amount of male DNA in it. With respect to  
4 the majority of the profile that you obtained, do you know  
5 whether it was male or female?

6 A Yes, sir. The major donor was female.

7 Q Did you compare that profile against Victoria Magee,  
8 Christine Combado and Melissa Estores?

9 A Yes, sir, I did.

10 Q What, if anything, did you find?

11 A Victoria Magee and Melissa Estores were both  
12 excluded as a source of the genetic material identified on the  
13 putter head.

14 Q What about Christine Combado?

15 A Ms. Combado was not excluded as a donor of the DNA  
16 identified on the putter head.

17 Q With respect to this genetic sample, did you run any  
18 numbers, or obtain any frequency data?

19 A Yes, sir, I did.

20 Q What did you find when you did that?

21 A On the -- the swabbing from the putter head in which  
22 Charlotte Combado was not excluded, I performed -- I  
23 calculated statistics, and we calculate those statistics based  
24 on four ethnicities. For a Caucasian population you would  
25 expect to find the profile once in a population of 543

1 billion.

2 Q Billion?

3 A Billion, with a "b".

4 Q So do you have an opinion, based upon the population  
5 of the earth, as to whose blood was on the hosel of this golf  
6 club?

7 A Yes, sir.

8 Q What's your opinion?

9 A My opinion is that based on the rarity of the  
10 profile, I would state that Charlotte Combado was the donor of  
11 the DNA identified on the putter head.

12 Q I'd like to talk to you about one last item, which  
13 is your Item 5(a). We've had testimony about a knife that was  
14 covered in this case. And I'm going to show the jury State's  
15 Exhibit 195. Can you explain for us, Mr. Reat, what your Item  
16 No. 5(a) was?

17 A My Item 5(a) was a knife.

18 Q Did you also receive an Item 5(b)?

19 A Yes, sir, I did.

20 Q There was testimony from Jennie Ayers regarding a  
21 piece of hair that was associated with this knife. Let's talk  
22 about the hair. What was your Item 5(b)?

23 A My Item 5(b) was identified as hair removed from  
24 knife blade.

25 Q Did you perform any analysis on the hair?

1           A     I did not.

2           Q     With respect to the knife itself, Item 5(a), did you  
3 perform any analysis?

4           A     I did.

5           Q     What did you do?

6           A     I did two forms of analysis. I did see  
7 reddish-brown soiling on both sides of the blade, so that was  
8 tested for the possible presence of blood and it was positive.

9           Q     If you could stop there, I'm going to go to Exhibit  
10 No. 196. And if we zoom in on here, this material we're  
11 seeing on the tip of the blade, is that the reddish-brown  
12 substance that you're talking about?

13          A     Yes, sir, that's correct.

14          Q     So if we go back now to the knife, Exhibit 195. You  
15 tested that substance. What, if anything, did you find?

16          A     It tested positive for the possible presence of  
17 blood.

18          Q     You mention that you conducted two types of tests on  
19 the knife. What was the other test that you performed?

20          A     I swabbed the handle, again, looking for the  
21 presence of nucleated epithelial cells, but none could be  
22 found.

23          Q     With respect to the blade of the knife and your  
24 positive test for blood, what did you do with that sample?

25          A     I then performed a DNA analysis on the material that

1 was swabbed from the knife blade.

2 Q What did you find?

3 A I found that Donald Herb, Domonic Malone and Jason  
4 McCarty were excluded as sources of the DNA on the knife, as  
5 were Charlotte Combado and Melissa Estores.

6 Q All those folks were excluded?

7 A Yes, sir, that's correct.

8 Q What about the known sample from Victoria Magee?

9 A Victoria Magee, we were not able to exclude her as a  
10 source of the DNA on the swabbing from the knife.

11 Q Did you run any statistical analysis on the  
12 frequency of the genetic profile you obtained from that blood?

13 A Yes, sir, I did.

14 Q What did you find?

15 A I found that this profile was expected to be found,  
16 again, just in terms of a Caucasian population, it was  
17 expected to be found once in a population of 526 billion.

18 Q So based upon that and the population of the earth,  
19 do you have an opinion as to whose blood was on the tip of  
20 that knife?

21 A Yes, sir.

22 Q What's your opinion?

23 A Again, based on the rarity of this profile my  
24 opinion is that the DNA on the swabbing from the knife came  
25 from --

1 Q Victoria Magee?

2 A Sorry, yes. Yes, thank you. Victoria Magee.

3 MR. LALLI: Your Honor, that concludes direct  
4 examination.

5 THE COURT: All right. Cross?

6 MR. PIKE: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. PIKE:

9 Q Good morning, sir.

10 A Good morning.

11 Q After your first attempt with the computer, do you  
12 want to go back to paper right away?

13 A It would be a lot easier.

14 Q Okay. I had a few questions to ask you. You  
15 indicate that you work for Bexar Labs?

16 A It's pronounced Bexar, yes, sir.

17 Q Bexar, I'm sorry. I'm sorry. There's a silent "x"  
18 in it?

19 A A silent "x", yes, sir.

20 Q Okay. Is that peculiar to Texas?

21 A It originated from -- it was Bejar, with a "J", so  
22 it's a Spanish derivation.

23 Q Okay. Thank you. I wondered about that. You do a  
24 fair amount of work for the Henderson Police Department, don't  
25 you?

1           A     We've done some work. I couldn't say exactly how  
2 much work we've done for Henderson.

3           Q     During the time frame that you were involved with  
4 doing the actual physical testing of the items that were  
5 submitted to you, would you say that you did it on an  
6 infrequent, or frequent basis for the Henderson Crime Lab?

7           A     For me, I would state infrequently. I can only  
8 recall maybe this case and one, maybe two others, that I've  
9 performed.

10          Q     And correct me if I'm wrong, but the process is that  
11 you receive items to be tested in sealed evidence bags by  
12 Fed Ex or UPS?

13          A     By some form of courier, yes, sir.

14          Q     And that's to preserve the chain of custody so that  
15 there isn't any question about when it was sent and when it  
16 was delivered, and who got it, and then it's returned the same  
17 way?

18          A     Yes, sir, that's correct.

19          Q     And when you go through and performed -- when you  
20 perform a DNA extraction, you try not to tamper with any other  
21 possible evidentiary values that may have -- that that item  
22 may have?

23          A     Yes, sir, that's correct.

24          Q     And that's a long way of saying, you don't just swab  
25 the whole thing, you just try and be detailed in where you



1 swab it, to obtain what you think you can process and get DNA?

2 A For the most part, yes, sir. If something were  
3 submitted for the laboratory just for a general screening,  
4 say, just somebody had handled it, we may swab quite a bit of  
5 it to try to get as much material as we can. But if we see a  
6 stain, we try to be very specific on where -- where we take  
7 the material from.

8 Q For instance, on Exhibit No. 53-A, a cigarette butt,  
9 based upon your training -- and I assume you have some  
10 cross-training with other -- with other CSA's, or with CSA's  
11 on -- on the collection of different types of evidence, like  
12 fingerprints, or footprints. And so when something is given  
13 to you, you generally have a feel that -- whether or not it  
14 might be processed at a later time?

15 A We -- only within our laboratory, it's just  
16 dependent on what has been requested in terms of what they  
17 would like us to perform on the analysis -- or the sample. We  
18 do not perform crime scene work, so any work that would've  
19 been subsequent to its submission we're generally unaware.

20 And so it's just basically whatever is being  
21 requested of us to do.

22 Q Okay. So you're not aware if it's been processed  
23 for fingerprints or not processed for fingerprints?

24 A That's correct.

25 Q And you don't know whether it's going to be

1 processed for fingerprints or not going to be processed for  
2 fingerprints?

3 A Yes, sir, that's also correct.

4 Q So, on State's Exhibit 194, and that is the -- the  
5 golf club shaft that you were -- that the testing was  
6 performed upon, you -- you have no knowledge, independent  
7 knowledge of whether or not that had been processed for  
8 fingerprints along the metal area, or whether it had not?

9 A I don't believe so. I can refer to my notes real  
10 quick.

11 Q And while you're referring to your notes, could you  
12 check and see if you were requested to not interfere with the  
13 metal shaft in order to allow for such fingerprint testing?

14 A I don't see any -- anything in my notes to reflect  
15 had it been processed for fingerprint. A lot of times we may  
16 see blackish powder, or something along those lines, that  
17 would indicate that it may have been -- that it may have been  
18 screened for fingerprints. But again, that's just more of an  
19 observational thing.

20 In terms of any --

21 Q And just specifically, in reference to the  
22 fingerprints.

23 A I don't believe -- I'm looking at the -- I don't --  
24 I don't have any knowledge of -- that the -- of a request  
25 being made to not disturb anything on the shaft.

1           Q     Thank you. And I think as you indicated during the  
2 short questioning since I've been up here, that you receive it  
3 and the request is basically, here, here's the known DNA.  
4 Check these items, and does it match any of them.

5           A     That's essentially what it comes down to, yes, sir.

6           Q     And that's what you were asked to do in this -- in  
7 this case?

8           A     Yes, sir, that's correct.

9           Q     And specifically you were only asked to examine a  
10 certain number of items. Could you look at your notes and  
11 tell me specifically the items that you were requested to  
12 examine?

13          A     All of the material had been submitted for -- to the  
14 laboratory. There was a letter that did have some specific  
15 requests.

16          Q     Which is specifically the items that you were  
17 requested to examine?

18          A     Yes, sir. We were asked to examine the golf club,  
19 and the knife, cigarette butts, as well as it's called a  
20 tissue, fingernail scrapings, and then hairs and fibers.

21          Q     The items that you've tested to -- testified to  
22 today? Except, I don't think you testified about the tissue  
23 paper?

24          A     That's correct. Yes, sir.

25          Q     Everything else that you've testified about are all

1 the items that were given to you to test?

2 A Yes, sir, that's correct.

3 Q All right. And the request for the -- to test the  
4 -- the condom, when did you perform the testing on the condom?

5 A The condom was submitted in 2008. So I tested it in  
6 -- well my report was dated July 15th of 2008, so in and  
7 around that date.

8 Q And you indicated that -- during your testimony,  
9 that latex, the latex of the condom had started to  
10 disintegrate?

11 A That's correct. Yes, sir.

12 Q Do you believe that that disintegration may have  
13 affected your ability to have obtained a -- a viable DNA  
14 sample?

15 A It's possible. I can't say one way or the other.  
16 It just made it difficult to -- to process.

17 Q And unlike -- well, unlike beef jerky, latex doesn't  
18 cure and stay fresh?

19 A That's correct. It does start to break down as it's  
20 dried.

21 Q Is -- would it be a better practice had -- for a  
22 latex item to be processed as soon as possible after it is  
23 collected?

24 A It would've prevented possible further degradation  
25 of the latex; yes, sir, that's correct.

1           Q     Now, when you're going through and looking at DNA,  
2 and in particular, mixed DNA, when did you start testifying as  
3 an expert?

4           A     My first testimony, I believe, was maybe in 2000.

5           Q     Okay. So you've been at this about 12 years now?

6           A     Yes, sir.

7           Q     And the technology of DNA identification is an  
8 evolving science?

9           A     Yes, sir, it is.

10          Q     In fact, the -- now you can just look for that one  
11 root and extract the DNA and that wasn't always possible?

12          A     That's correct; yes, sir.

13          Q     In fact, it's gotten to the point where smaller and  
14 smaller amounts of biological matter are needed in order to  
15 extract DNA and make either inclusion or exclusions?

16          A     Potentially, that's correct; yes, sir.

17          Q     And you anticipate that that science is going to  
18 continue to advance?

19          A     More than likely; yes, sir.

20          Q     As you're going through that and -- well let me  
21 rephrase it as a question.

22                 There is research -- to your knowledge, is there  
23 research going on at this time to determine or to develop  
24 scientific ways to draw DNA out of non-nucleated cells?

25          A     There have been a lot of work with what are called

1 -- it's -- a lot of times it's termed "touch samples,"  
2 basically, just very low, low level amounts of DNA. But it  
3 hasn't been widely accepted in the forensic community as of  
4 yet. But it is ongoing, yes, sir.

5 Q And time will tell?

6 A We'll have to see; yes, sir.

7 Q As you're going through and doing the process that  
8 you're doing -- that you do in this case, you often use  
9 machines?

10 A Yes, sir, that's correct.

11 Q And the machines are the ones -- are the items that  
12 actually break down the DNA -- or the biological matter and  
13 then they generate a report showing the alleles?

14 A That's correct. There are multiple instruments that  
15 may be used, the last one being a genetic analyzer which is  
16 what helps us to determine what the profile is; yes, sir.

17 Q And a profile, when I was trying to describe it, my  
18 hand went up and down like that. Could you describe when you  
19 look at a profile you have a -- like a graph in front of you.  
20 What does a profile look like, what's an allele and how do you  
21 compare the two?

22 A Sure. The -- what's being referred to is what's  
23 called an electropherogram. When DNA is run on a genetic  
24 analyzer, it -- we use a process called capillary  
25 electrophoresis, whereby DNA is separated out based on its

1 size. Small fragments of DNA run faster than larger  
2 fragments. And as they do, they are detected. And when they  
3 are detected by a laser excites them, and then if it gives off  
4 light from a tab that we've placed on it, a CCD camera will  
5 record this fluorescence. We've seen a blip of light,  
6 essentially.

7           So it looks similar to what you might think of as an  
8 EKG, essentially. It's a line, and you'll see a blip. Okay?  
9 A line and then a blip. And each time that we see a blip,  
10 basically that's showing that DNA has just passed the window,  
11 been excited by a laser and picked up by a CCD camera.

12         Q     Thank you. It kind of looks like one of those  
13 heartbeat machines --

14         A     That's correct.

15         Q     -- in a hospital. In going through and doing the  
16 processing, you have to have knowledge about how potential DNA  
17 or biological material may find its way into an area.

18         A     Potentially, yes, sir.

19         Q     And oftentimes you're asked to extract biological  
20 material from clothing, for instance?

21         A     Possibly, yes, sir.

22         Q     Tee-shirts, pullover shirts?

23         A     Yes, sir.

24         Q     And if someone pulls -- takes a tee-shirt off and  
25 pulls it up over their head, it makes contact with their skin

1 and with their hair?

2 A Yes, sir.

3 Q And there's a possibility that cells -- epithelial  
4 cells and/or hair, biological material, may embed itself or  
5 pass by contact from the person to the shirt?

6 A That's possible; yes, sir.

7 Q And, in fact, in your experience you've actually  
8 processed clothing and obtained DNA from it?

9 A I have; yes, sir.

10 Q You were never asked to process any items of  
11 clothing in this case, were you?

12 A No, sir, I was not.

13 Q You were never asked to process any shoes?

14 A No, sir, I was not.

15 Q Shoes can be a source of DNA, can't they?

16 A They could.

17 Q Have you ever processed a shoe and obtained DNA from  
18 them?

19 A I have.

20 Q In going through the analysis, you can also  
21 sometimes take DNA from an item of jewelry?

22 A Potentially, yes, sir.

23 Q Because necklaces are worn around the neck; is that  
24 correct? We're on a recording system so I --

25 A Yes, sir.



1 Q -- apologize. And earrings also?

2 A Yes, sir.

3 Q Because not only are they actually inserted through  
4 the skin, but then there's touch DNA from the backing material  
5 that holds the post onto it?

6 A There could be, yes, sir.

7 Q Do you know what that's called?

8 A The --

9 Q The back part of an earring?

10 A I do not know what that's called.

11 Q Okay.

12 MR. LALLI: You can enlighten us, Mr. Pike.

13 MR. PIKE: Well, it's like the hosel of the golf  
14 club, but I'm not -- it's the post and the shaft.

15 BY MR. PIKE:

16 Q And so anyway, and similarly you were not asked to  
17 process any items of personal grooming such as a toothbrush or  
18 a hairbrush?

19 A No, sir, I was not.

20 Q And those are items that also come into contact with  
21 -- with the human body, the toothbrush with saliva, and the  
22 hairbrush with hair, that may cause a transference of DNA  
23 material?

24 A That's correct.

25 Q So when -- and sometimes when you brush your hair

1 you will remove cells and you'll remove -- I want to say the  
2 root, but you're using a different term.

3 A A follicular tag.

4 Q Okay. Follicular tab?

5 A Tag.

6 Q Tag.

7 A T-a-g. Yes, sir.

8 Q Okay. And the tag then being the portion of the  
9 skin?

10 A Yes, sir, if it was forcibly removed; yes, sir.

11 Q And this doesn't -- and you can't form an opinion as  
12 to whether or not it was forcibly removed from a person  
13 pulling out their own hair, brushing their hair too hard, or  
14 removed by somebody else?

15 A That's correct.

16 Q And when you're processing these items, do you take  
17 photographs of the items along various stages of the  
18 processing?

19 A Generally, no. Generally, our notes are just in a  
20 written form. There have been rare occasions where based on  
21 the uniqueness of an item, or needing to document something  
22 photographically, I have. But for the vast majority it's just  
23 written in the -- in our notes.

24 Q During the time that you were -- are you still  
25 processing items for the Henderson Police Department, or do

1 you know?

2 A I'm not aware, at least in terms of serology DNA, I  
3 don't know if we've had anything from Henderson Police  
4 Department in some time.

5 Q During -- as a result of your involvement in the  
6 processing of this, do you know whether or not that Bexars  
7 Labs were on contract with the Henderson Police Department, or  
8 if they were paid on a piece by piece analysis?

9 A Which laboratory? My laboratory?

10 Q Your laboratory. Did I pronounce it wrong again?

11 A I'm sorry. Yeah. We are a -- we are a fee for  
12 service laboratory. And so based on the tests that we perform  
13 and the number of tests a bill will be issued. So we're not  
14 -- the contract is essentially that they're asking us that  
15 work be done, and we say that we'll work it based on our  
16 standard operating procedures.

17 And based on the type of work that we do, we then  
18 issue a bill.

19 Q So on the shaft you tested two parts of the shaft.  
20 Would you generate two different fees from that, or just from  
21 the one part?

22 A I'd have to go back and look. At -- the way our  
23 billing has changed over time, currently now I believe it  
24 would only be one fee. But at that point in time it may have  
25 been two.

1           Q     Do you know what approximately the fee is to  
2 process, let's say, the golf club, the shaft, at that time?

3           A     I believe the processing fee would've been roughly  
4 about \$35, which it would've been billed. And then probably  
5 another additional \$35 for the presumptive analysis. But  
6 again, I can't recall exactly the value.

7           Q     And under 100 bucks to process one item around that  
8 time?

9           A     Around that time, just for the processing, not for  
10 DNA.

11          Q     Okay. Well, how much was the DNA test?

12          A     DNA costs are then more of around \$400 to \$500 per  
13 sample.

14          Q     And going through the process that you have, suffice  
15 it to say that with that one -- with the exception of that one  
16 mixed item on the golf club --

17          A     Yes, sir.

18          Q     -- shaft -- excuse me -- no, it was actually on the  
19 hosel.

20          A     The head of the golf club; yes, sir.

21          Q     The head of the golf club. Okay. There was no male  
22 DNA extracted from any of the other items except for the known  
23 items?

24          A     That's correct; yes, sir.

25               MR. PIKE: Court's indulgence.

1 Nothing further.

2 THE COURT: Any redirect?

3 MR. LALLI: No, Your Honor.

4 THE COURT: Any questions by any of the jurors? We  
5 do have a question. All right. The Marshal will pick up the  
6 question. Counsel, approach.

7 Sir, in our jurisdiction we allow jurors to ask  
8 questions of witnesses.

9 THE WITNESS: Sure.

10 (Bench conference)

11 THE COURT: Is Collins [inaudible].

12 UNKNOWN MALE SPEAKER: [Inaudible].

13 THE COURT: They just want to know if his crime lab  
14 is accredited.

15 MR. DiGIACOMO: Yeah. Yeah, I know [inaudible].

16 MR. PIKE: Okay. That's fine.

17 MR. LALLI: No objection.

18 (End of bench conference)

19 THE COURT: Sir, the question from our juror is, "Is  
20 your crime lab accredited?"

21 THE WITNESS: Yes, sir, we are. We were accredited  
22 in 1998. We are accredited by the American Society of Crime  
23 Laboratory Directors, Laboratory Accreditation Board. We've  
24 held that accreditation, again, since 1998. We are also  
25 accredited by the Texas Department of Public Safety.

1 THE COURT: All right. Any follow-up by the State?

2 MR. LALLI: No, Your Honor.

3 THE COURT: By the defense?

4 MR. PIKE: Thanks.

5 RECROSS-EXAMINATION

6 BY MR. PIKE:

7 Q That accreditation, that's available nationwide?

8 A Yes, sir, it is.

9 Q And that accreditation means that you maintain your  
10 equipment to certain standards?

11 A Yes, sir.

12 Q You maintain the training of your individual  
13 technicians?

14 A Yes, sir, that's correct.

15 Q And you also have to have a certain amount of  
16 continuing education each year?

17 A For a DNA analyst, yes, that's correct.

18 Q Thank you.

19 MR. PIKE: Nothing further.

20 THE COURT: All right. Any other additional  
21 questions? All right. Thank you, sir, for your testimony.  
22 You are excused.

23 Who will be handling Detective Collins for both  
24 sides?

25 MR. LALLI: Mr. DiGiacomo.

1 THE COURT: Will you two approach, please?

2 THE WITNESS: Thank you.

3 THE COURT: Gentlemen? Thank you.

4 (Bench conference)

5 THE COURT: Since we do need a bathroom break for  
6 just 10 minutes, I mean, it's 10 minutes to 12:00. We should  
7 probably break for lunch now so we'll --

8 MR. DiGIACOMO: That's [inaudible]. That'd be  
9 great.

10 THE COURT: Let's take an hour and a half lunch.

11 MR. DiGIACOMO: Yeah, particularly since I have to  
12 [inaudible] through those phone calls. So if I did that now,  
13 they're going to be asleep before they get to [inaudible].

14 THE COURT: That's right. Try to lighten -- lighten  
15 that up.

16 MR. DiGIACOMO: I'm almost there.

17 MR. PIKE: And we're letting -- and I'm not  
18 objecting to any of the leading or anything. I'm just --

19 MR. DiGIACOMO: [Inaudible].

20 MR. PIKE: -- [inaudible]. Oh, I know. No. And  
21 we're -- we're pretty smooth. We've already discussed some of  
22 the areas so that we know --

23 THE COURT: Okay.

24 MR. PIKE: -- where we're going to go. And I think  
25 so that we can finish him today.

1 THE COURT: All right. Okay.

2 MR. DiGIACOMO: I think we'll get done with him  
3 [inaudible].

4 (End of bench conference)

5 THE COURT: Ladies and gentlemen, since we've been  
6 going for awhile we're going to take a break, but we're so  
7 close to the lunch hour. So we're going to take our lunch  
8 break right now. It's 11:40. And so let's come back at 1:00  
9 o'clock for our lunch break.

10 So during this lunch recess, it is your duty not to  
11 converse amongst yourselves or with anyone else on any subject  
12 connected with this trial, or to read, watch, or listen to any  
13 report of or commentary on the trial, by any person connected  
14 with the trial, or by any medium of information, including  
15 without limitation, newspapers, television, radio or Internet.  
16 You're not to form or express an opinion on any subject  
17 connected with this case until the case is finally submitted  
18 to you.

19 We'll see you back at 1:00 o'clock.

20 (Court recessed at 11:39 a.m. until 1:02 p.m.)

21 (In the presence of the jury)

22 (Pause in the proceedings)

23 THE MARSHAL: Please remain seated and come to  
24 order. Department 17 of the Eighth Judicial District is again  
25 in session. The Honorable Judge Michael Villani presiding.



1 Let's make sure our cell phones are turned off, please.

2 THE COURT: Sir, do you understand you're still  
3 under oath?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: All right. Go ahead, Mr. DiGiacomo.

6 MR. DiGIACOMO: Thank you, Judge. May I approach?

7 THE COURT: Yes.

8 GERARD COLLINS, STATE'S WITNESS, PREVIOUSLY SWORN

9 DIRECT EXAMINATION (RESUMED)

10 BY MR. DiGIACOMO:

11 Q Detective, during the course of the investigation,  
12 did you issue a number of subpoenas to identify various phone  
13 numbers to various telephones in this case?

14 A Yes, I did.

15 Q I'm showing you what's been marked as State's  
16 proposed Exhibit No. 254, which is a list of phone numbers and  
17 the person who is in possession of that particular phone.

18 MR. DiGIACOMO: I believe it's -- admissibility is  
19 stipulated between the parties, myself, and Mr. Pike, Judge.  
20 So, I'd move to admit 254.

21 MR. PIKE: That's correct, Your Honor.

22 THE COURT: All right. It will be admitted.

23 (State's Exhibit 254 admitted)

24 BY MR. DiGIACOMO:

25 Q Appears to be an accurate list, essentially, a

1 collation of that data that you collected?

2 A Yes, it does.

3 Q In addition, I'm going to show you what's been  
4 marked as State's proposed Exhibits 255 to 261. Do those just  
5 appear to be an additional area of photographs that have both  
6 the red and the yellow towers, so both AT&T and Sprint Nextel  
7 on them?

8 A Yes.

9 MR. DiGIACOMO: Move to admit 255 to 261.

10 MR. PIKE: No objection, Your Honor.

11 THE COURT: They will be admitted.

12 (State's Exhibits 255 to 261 are admitted)

13 THE CLERK: 254 also?

14 MR. DiGIACOMO: What?

15 UNKNOWN FEMALE SPEAKER: He said 255.

16 MR. DiGIACOMO: 255 to 261.

17 THE CLERK: And 254?

18 MR. DiGIACOMO: And [inaudible].

19 BY MR. DiGIACOMO:

20 Q I think yesterday, Detective -- it's kind of late in  
21 the afternoon for doing cell phone records, but essentially  
22 where we were at is we were still in Tuesday. Tuesday  
23 morning, Mr. McCarty's phone was down by the Sportsman's and  
24 it eventually moved up by the Oasis in the morning, and then  
25 we had gone through some more.

1           And I think the last place you left off is that all  
2 three phones now, Mr. Malone's, Mr. Herb's, and Mr. McCarty's,  
3 somewhere around 8:00 p.m., 8:30 p.m., were all generally in  
4 the same area of Mr. Herb's home. So, what I'm going to do is  
5 skip now -- do you still have Exhibit 234 in front of you?

6           A     Yeah, I've got it right here.

7           Q     What I'd ask you to do is go to May 16th of 2006.

8           MR. DiGIACOMO: And Judge, I assume I can publish  
9 255 through --

10          THE COURT: Yes.

11          MR. DiGIACOMO: -- 261 as well?

12 BY MR. DiGIACOMO:

13          Q     And I'm going to ask you about a series of calls  
14 between -- or involving Mr. McCarty's, Rome's, and Mr. Herb's  
15 cell phones between 9:44 and 10:00 p.m. Are there a series of  
16 calls made by those two phones?

17          A     On the 16th?

18          Q     On the 16th, between 9:44 and 10:00 p.m.

19          A     Yes, there are.

20          Q     And I'm going to put up on the aerial here State's  
21 Exhibit No. 259. And a little bit hard for me to read from  
22 back here, but my finger is on top of the Oasis Motel; is that  
23 correct?

24          A     Yes.

25          Q     And my -- the other finger, that's the Stratosphere?

1           A     Yes.

2           Q     Okay. Between 9:44 and 10:00 p.m., the cell tower  
3 that Mr. McCarty's cell phone is hitting off of is Western; is  
4 that correct?

5           A     Yes.

6           Q     Okay. And the cell tower that Mr. Herb's cell phone  
7 is hitting off of is Oakey [phonetic]?

8           A     Yes.

9           Q     And then, I want you to go down just after 10:00  
10 p.m. -- somehow, I just lost my place -- but just after 10:00  
11 p.m., there's a single phone call at 10:01 p.m. by Mr.  
12 Malone's cell phone; is that correct?

13          A     Yes.

14          Q     Can you tell the ladies and gentlemen of the jury  
15 what cell tower that phone was hitting off of?

16          A     Off the Chapman [phonetic].

17          Q     Chapman, where my finger is on State's Exhibit No.  
18 259?

19          A     Yes.

20          Q     And jump forward a little bit. At 2:16 p.m. -- I'm  
21 sorry, 10:16 p.m., is Mr. Malone's phone no longer on Chapman,  
22 but down by the South Cove Apartments at Bruce Temp  
23 [phonetic]?

24               MR. PIKE: Is that by a Direct Connect or a  
25 telephone?

1 MR. DiGIACOMO: Telephone call --

2 MR. PIKE: Thank you.

3 MR. DiGIACOMO: -- at 10:16 p.m.

4 THE WITNESS: Yes, it is off of Bruce Temp.

5 BY MR. DiGIACOMO:

6 Q It's off Bruce Temp, which is the tower that's next  
7 to the South Cove; is that correct?

8 A Yes.

9 Q And then by 10:20, it's now back hitting over on the  
10 tower called Sahara?

11 A Yes.

12 Q At 10:24, Mr. McCarty's cell phone, four minutes  
13 after the one that Mr. Malone's is over by Sahara, where is  
14 that located at?

15 A Western.

16 Q Western? So, it's still down by the Oasis, although  
17 Mr. Malone's phone is no longer on this map; is that correct?

18 A Correct.

19 Q At 10:58 p.m., Mr. McCarty's phone is indicated at a  
20 tower -- that I don't have in my hand right now. I'll skip  
21 forward for us.

22 At 11:24 p.m., Mr. McCarty's cell phone is pingging  
23 off of which cell tower?

24 A Nellis.

25 Q This one isn't as close up. But State's Exhibit

1 No. 258, I'm going to zoom in for the ladies and gentlemen of  
2 the jury so they can see. At 10:58, Mr. McCarty's phone is  
3 pinging off a tower near Donny Herb's house at 140 Sirnoble;  
4 is that correct?

5 A What time again?

6 Q What was the time I just -- oh, sorry. 11:24.

7 A 11:24 it's at Nellis Boulevard tower. It begins at  
8 Nellis Boulevard tower.

9 Q Begins at the Nellis Boulevard tower. And it  
10 actually ends at the Bonanza tower; is that correct?

11 A Yes.

12 Q Okay. So, it's on --

13 MR. PIKE: Excuse me, counsel. That's 11:24 p.m.,  
14 correct?

15 MR. DiGIACOMO: Yeah.

16 MR. PIKE: Okay.

17 BY MR. DiGIACOMO:

18 Q On Tuesday night. So, it's actually on either side  
19 of Donny Herb's house at that time?

20 A Yes.

21 Q After 11:24, at 11:37, does Mr. McCarty's cell phone  
22 make a phone call?

23 A Yeah, it makes an outbound call.

24 Q And what's the tower that it hits?

25 A East Las Vegas.

1           Q     So, it's now down at the Sportsman's, or near the  
2 Sportsman's?

3           A     Yes.

4           Q     At 12:31 a.m., what's the tower that it hits off of?

5           A     12:31 a.m., it's Green Valley. This is on the 17th  
6 now, we're talking?

7           Q     Yes, it's 12:31 a.m. on the 17th.

8           A     Okay. Yeah, that's -- it hits -- it begins off of  
9 Green Valley.

10          Q     And where does it end?

11          A     It ends off of Whitney Ranch.

12          Q     Now, we're on State's Exhibit 256. It goes from the  
13 Green Valley one to the Whitney Ranch one?

14          A     Yes.

15          Q     The next phone call is at 1:02 a.m. What is the  
16 tower it hits off of?

17          A     Railroad Pass.

18          Q     And is that the one that my finger is pointing to,  
19 next to one of the towers near the location where the victims  
20 were found?

21          A     Yes.

22          Q     After -- at 1:03 a.m., what's the tower it hits?

23          A     The Wagonwheel.

24          Q     The one on the other side of where the victims are?

25          A     Yes.

1 Q At 1:13, there is a Direct Connect. Where is that  
2 at?

3 A That is at Pacific.

4 Q So, back north?

5 A Yes.

6 Q And then by -- at 1:22, it hits off of which tower?

7 A East Las Vegas.

8 Q So, back near the Sportsman's?

9 A Yes.

10 Q And then by 2:06, what's the tower that it hits off  
11 of?

12 A Boulevard Mall.

13 Q Going back to State's No. 258. Boulevard Mall is  
14 indicated where my finger is, which is northeast of the Hard  
15 Rock Casino; is that correct?

16 A Yes.

17 Q 2:07, it hits off the Boulevard Mall, again?

18 A Yes.

19 Q 2:07, it hits off the Boulevard Mall, again?

20 A Yes.

21 Q And at 2:24, there's a Direct Connect off of Mr.  
22 McCarty's phone that hits at the tower called Hard Rock?

23 A Yes.

24 Q By 3:03 a.m., where is Mr. McCarty's phone hitting  
25 off of?



1 A Las Vegas. East Las Vegas.

2 Q East Las Vegas? So, the one near the Sportsman's?

3 A Yes.

4 Q Then at -- jump down to 4:17 a.m. The -- Mr.  
5 McCarty's cell phone makes a call and it hits off what tower?

6 A East Tropicana.

7 Q East Tropicana? And then at 4:31 a.m., Mr. Malone's  
8 phone makes a call. What tower did that hit off of?

9 A Callaway [phonetic].

10 Q Callaway? And then at 4:32, Mr. McCarty's cell  
11 phone hits off a tower. Where does it hit?

12 A Paradise.

13 Q Between -- Callaway is on this side of the airport;  
14 is that correct? On the south side of the airport? Do you  
15 need to look at this --

16 A Yeah, I may have to look at that, yeah.

17 Q -- close up? Callaway and Paradise.

18 A Yeah, it's on the east side of the airport. Excuse  
19 me. Would that be -- that's the south side.

20 Q The south side?

21 A The south side of the airport.

22 Q Generally, in the area where the -- where the  
23 pass-through underneath the airport is that takes you out to  
24 where you come up Paradise Road to the Hard Rock?

25 A Yes. That's right around that area, yeah.

1 Q And so at 4:31, D-Roc hits off Callaway. And 4:32,  
2 Mr. McCarty hits off of the Paradise?

3 A Yes.

4 Q We're going to jump forward a period in time here.  
5 Now, I want to go to the daytime, Wednesday during the day.  
6 At 11:59, does Mr. McCarty make a cell phone call; 11:59 a.m.?

7 A I'm sorry?

8 Q 11:59 on Wednesday, May 17th, is there a cell phone  
9 call by Mr. McCarty?

10 A 11:59?

11 Q I'm sorry, 11:49.

12 A Okay. There was an outbound phone call at 11:49.

13 Q And it begins on the Western tower? Oops.

14 A Yes.

15 Q Back up. And at 11:50, Domonic Malone's phone makes  
16 a cell phone call that begins on one tower. What tower is  
17 that?

18 A Circus Circus.

19 Q And ends on what tower?

20 A Western.

21 Q Jump forward to later in the day. At 1:02 p.m.,  
22 does Mr. McCarty make a cell phone call to an individual that  
23 you were able to identify as an Erion Robinson?

24 A Yes.

25 Q And at the time he made that phone call, where was

1 he at? Or where was the phone at, I guess I should say?

2 A The tower that activated was East Las Vegas.

3 Q East Las Vegas?

4 A Yes.

5 Q And at 1:03, does Mr. McCarty -- or I'm sorry, Mr.  
6 Malone make two phone calls to Erion Robinson?

7 A Yes.

8 Q And the last tower that he hits on the 1:03 phone  
9 calls, what tower is that?

10 A East Las Vegas.

11 Q Jump forward to 1:21 p.m. and 1:26 p.m. At 1:21  
12 p.m., does Mr. Malone make a phone call?

13 A Yes. Or he receives a phone call.

14 Q He receives a phone call. And what tower is he  
15 hitting off of?

16 A East Las Vegas.

17 Q And at 1:26 p.m., does Mr. McCarty make a phone call  
18 -- or have a phone call?

19 A He receives a phone call, also from the East Las  
20 Vegas tower.

21 Q So, both phones are hitting off that tower at the  
22 Sportsman's?

23 A Yes.

24 Q At 1:44 p.m., does Mr. -- I'm sorry, Mr. Herb make a  
25 phone call?

1 A He has an inbound call.

2 Q And that particular inbound call, can you tell me  
3 what tower he's hitting off of?

4 A He's hitting off of Stewart.

5 Q The one next to his house?

6 A Yes.

7 Q Jump to 4:54 p.m. During the course of your  
8 investigation, did you learn -- or I guess Correna testified  
9 that she was taken to her work at the Roadrunner. Do you know  
10 generally in the Valley where the Roadrunner Casino is?

11 A Yes.

12 Q And where is that?

13 A It's at Major and Boulder Highway, up in Henderson.

14 Q And for those of us who don't know Major and Boulder  
15 Highway that well, can you tell the ladies and gentlemen of  
16 the jury generally where on Boulder Highway that is? Is it  
17 south of Tropicana?

18 A It's -- yeah, it's well south of Tropicana.

19 Q Okay.

20 A In fact, you continue on, and you get into  
21 Henderson. And you continue south, past Lake Mead. And then  
22 you continue south, past Basic Road off of Boulder Highway.  
23 And then a little further south is Major, the cross-street of  
24 Major. And it's on the southeast corner of that intersection,  
25 up into like a strip mall area.

1 Q So, it is -- if you were to -- if Correna was to go  
2 to work going down Boulder Highway, she would head south down  
3 Boulder Highway?

4 A Yes.

5 Q At 4:54, does Mr. McCarty's phone make a phone call?

6 A At 4:54, he receives a phone call.

7 Q Phone call. Okay. And at 4:55, does Mr. Malone  
8 make a phone call?

9 A Yes.

10 Q And are they both hitting off a tower known as Sky  
11 Time [phonetic]?

12 A Yes.

13 Q Is Sky Time basically along Boulder Highway as you  
14 head south from the Sportsman's?

15 A Yes.

16 Q Jump to 7:18 p.m. on Wednesday. Does Mr. McCarty  
17 receive an inbound phone call?

18 A Yes.

19 Q Where is he at?

20 A East Las Vegas.

21 Q So, near the Sportsman's? Yes? Near the  
22 Sportsman's?

23 A Yes.

24 Q Okay.

25 A I'm sorry.

1 Q And at 8:08, does Mr. Malone's make an outbound cell  
2 call?

3 A Yes, he does. And his is at the Sportsman's also,  
4 East Las Vegas.

5 Q East Las Vegas tower?

6 A Yes.

7 Q Jump to -- well, let me ask you this. At 8:27 --  
8 yeah, 8:27, does Mr. Herb's phone activate from some sort of  
9 call?

10 A He gets an inbound call, yes.

11 Q And that particular inbound call, where is he  
12 hitting off at 8:27 at night?

13 A At Stewart.

14 Q So, out by his house?

15 A Which is out by his house, yes.

16 Q At 9:27 p.m. and 9:45 p.m., do both Mr. McCarty's  
17 and Mr. Malone's cell phones activate?

18 A Yes, direct calls, Direct Connect calls.

19 Q And are both of those on the same tower?

20 A Yes.

21 Q And what tower is it?

22 A East Las Vegas by the Sportsman's.

23 Q And then between 9:45 and 9:51, are there a series  
24 of Direct Connect calls involving Domonic Malone's cell?

25 A Yes.

1           Q     In each and every one of those, is he hitting off  
2 the tower by the Sportsman's?

3           A     Yes.

4           Q     Ms. Phillips also indicated that she had been picked  
5 up around 10:00 o'clock from the Roadrunner Casino after she  
6 got off work. At 9:52, does Mr. McCarty's cell phone activate  
7 on an inbound call?

8           A     Yes.

9           Q     And at 9:53 p.m., does Mr. Malone's phone have an  
10 outbound call?

11          A     Yes.

12          Q     And are both those calls at least begun on the  
13 Silver Bowl tower?

14          A     Yes.

15          Q     And does Mr. Malone's phone call actually end of the  
16 Sky Time tower?

17          A     Yes.

18          Q     Once again, heading south on Boulder Highway?

19          A     Yes.

20          Q     I want you to jump to 11:56 p.m. on Wednesday night,  
21 shortly before the early morning hours of Wednesday morning.  
22 At 11:56 p.m., does Mr. Malone's phone activate?

23          A     Yes.

24          Q     And what tower is he off of?

25          A     East Las Vegas.

1 Q The Sportsman's?

2 A By the Sportsman's, yes.

3 Q And does Mr. McCarty's phone activate at midnight?

4 A Yes, it does.

5 Q And what tower is he at?

6 A East Las Vegas by the Sportsman's.

7 Q Now, I'm going to jump forward to a series of  
8 connections between 12:35 and 12:59 a.m.

9 MR. DiGIACOMO: And for the record, I've now put up  
10 260.

11 BY MR. DiGIACOMO:

12 Q On 260, does that arrow -- the green arrow indicate  
13 the South Cove Apartments?

14 A Yes.

15 Q And does that yellow arrow indicate the South Bruce  
16 Temp cell tower?

17 A Yes.

18 Q And you verified the location of that cell tower?

19 A Yes, I did.

20 Q You had contact with Sarah Matthews in this case,  
21 correct?

22 A Yes, I did.

23 Q And so the ladies and gentlemen of the jury know  
24 essentially where we're at, as Sarah Matthews had -- or  
25 indicated to the jury that she saw Mr. Malone and Mr. McCarty



1 at the South Cove when the girls were taken, correct?

2 A Yes.

3 Q At 12:35 a.m. through 12:39 a.m., are there -- 1, 2,  
4 3, 4, 5 -- six Direct Connect activations on Domonic Malone's  
5 cell?

6 A Yes, there are.

7 Q And those six Direct Connects, are they all at the  
8 same tower?

9 A Yeah, the South Bruce Temp.

10 Q Okay. He's activating off the tower at the South  
11 Cove Apartments?

12 A Yes, near the South Cove. Yeah.

13 Q In addition, at 12:59, does Mr. McCarty's cell phone  
14 make an outbound call?

15 A Yes.

16 Q And can you tell the ladies and gentlemen of the  
17 jury what tower he's hitting off of?

18 A The same tower, Bruce Temp, near the South Cove.

19 Q Now, I'm going to go to a series of calls generally  
20 from that particular spot. At 1:08 a.m., is there an outbound  
21 call from Mr. McCarty's cell phone to Donald Herb's cell  
22 phone?

23 A Yes.

24 Q And at this point, where does that phone call begin?

25 A It begins at the Lear Standards [phonetic] tower.

1 Q So, the one that's essentially along I-93 or 515, as  
2 you head -- I guess that's east and south on 95 -- or on 515?

3 A Yeah, near that area.

4 Q Okay. And when Mr. Herb answers that phone, where  
5 is his location?

6 A He's pinging off the Stewart tower.

7 Q So, he's over by his house?

8 A Over by his house, yes.

9 MR. DiGIACOMO: Can I have the Court's indulgence  
10 for just a moment, Judge?

11 BY MR. DiGIACOMO:

12 Q I guess I don't have a picture of this. But that  
13 1:08 phone call, when it ends, from Mr. McCarty's cell phone,  
14 what's his -- what's the cell tower name?

15 A Mount Vista [phonetic].

16 Q Mount Vista? Do you know where Mountain Vista is in  
17 the Valley?

18 A Yeah. The Mountain Vista tower is west of 95, right  
19 around the eastern -- or I should say the northernmost part of  
20 Henderson, and where Las Vegas kind of like meet up at the  
21 border. So, probably around -- right around, I believe, Trop,  
22 Trop and Mountain Vista in that area.

23 Q So --

24 A Maybe a little south of that.

25 Q That 1:08 phone call, Mr. McCarty's cell phone

1 anyways, it began at the tower that was just down 95 from the  
2 Bruce Temp, and it ended south in the Valley, if you were  
3 going down 95, down by Tropicana somewhere?

4 A Yes.

5 Q By 1:41 a.m., can you tell the ladies and gentlemen  
6 of the jury what tower Mr. McCarty was hitting off of -- his  
7 phone was hitting off of?

8 A 1:41?

9 Q 1:41 a.m.

10 A West Boulder.

11 Q And that phone call, who was that phone call to?

12 A Donny Herb's cell.

13 Q I guess it was actually an inbound call from Donny  
14 Herb's cell; is that correct?

15 A Yes.

16 Q And where is Mr. Herb's cell?

17 A He's at the Stewart tower, over by his house.

18 Q Still by his house?

19 A Yes.

20 Q 1:46 a.m., where is Mr. -- does Mr. McCarty make an  
21 outbound call to Donny Herb's cell?

22 A Yes.

23 Q And where is Mr. McCarty's cell?

24 A It's pinging off of Wagonwheel tower.

25 Q And where is Donny Herb's cell?

1 A It's still at Stewart.

2 Q At 1:46, where is Mr. McCarty's cell phone -- does  
3 he make a call -- or does he receive a call I guess -- no, he  
4 makes a call. Makes a call to Donny Herb's cell?

5 A What time is this again?

6 Q 1:46 a.m.

7 A Didn't we just do that one before?

8 Q I thought we just did 1:41. Did I just do 1:46?

9 MR. PIKE: You did 1:46, yeah.

10 THE WITNESS: Yeah, because I said Wagonwheel.

11 BY MR. DiGIACOMO:

12 Q Oh, okay. Let me ask you, during the course of your  
13 investigation, did Mr. Herb provide you information that he  
14 stopped at an AM/PM at Charleston and Nellis to get gas on his  
15 way out there?

16 A Yes.

17 Q Ultimately, was that video reviewed?

18 A Yes.

19 Q And was Mr. Herb seen with the white Honda on that  
20 video about 1:40 in the morning?

21 A Yes, he was.

22 Q Jump down to 1:54 a.m. Are there -- well, at 1:54,  
23 it's an outbound; at 1:55, it's an inbound call to Donny  
24 Herb's cell from Mr. McCarty's phone?

25 A Yes.

1 Q And where is Mr. McCarty's phone?

2 A Wagonwheel.

3 Q And where is Donny Herb's cell?

4 A Donny Herb's phone call from 1:56 a.m.?

5 Q Yeah, 1:56 -- yeah, both 1:56 on this records.

6 A He's at Tropicana and Mountain Vista.

7 Q So, now he's south of his house, south down 95?

8 A Yes.

9 Q 2:04 a.m., does Jason McCarty make an outbound call  
10 to Donny Herb's cell?

11 A Yes.

12 Q And at 2:04 a.m., where is Mr. McCarty's cell?

13 A He's at Wagonwheel.

14 Q So, he's at Wagonwheel. And where does Mr. Herb's  
15 cell phone ping off of?

16 A He's pinging off the Gibson Road [phonetic] tower.

17 Q So, still now even farther south on 95?

18 A Yes.

19 Q Now, there is a series of calls between McCarty's  
20 cell and Donald Herb's cell between basically 2:11 a.m., all  
21 the way through 3:13 in the morning.

22 A Okay.

23 Q I'm not going to make you go through all of those.  
24 But essentially, from those phone calls, do those two cell  
25 phones head out to the -- towards the lake, and then

1 eventually head back from the lake?

2 A Yes.

3 Q Eventually, from 3:13, to about 3:27 in the morning,  
4 do those phones start heading north towards the Royal  
5 Sportsman's Manor?

6 A Yes.

7 Q At 3:38, does Mr. McCarty's cell phone make an  
8 outbound call to Donald Herb's phone?

9 A Yes.

10 Q And at that point, is his phone pinging off the  
11 Royal Sportsman's's tower -- the East Las Vegas tower?

12 A Yes, it is.

13 Q At 4:20 in the morning, does Donald Herb make a  
14 phone call?

15 A Yes, an outbound phone call.

16 Q And by 4:20, Donald Herb is hitting on the way out  
17 -- I guess that's --

18 A That's --

19 Q -- I-95, heading out towards the western part of the  
20 Valley?

21 A Yes.

22 Q I want you to jump forward to early evening of May  
23 18th of 2006, at 7:46 p.m. At 7:46 p.m., does Mr. Malone's  
24 cell phone make a phone call?

25 A He gets an inbound call.

1 Q Right. He receives a phone call. And what tower is  
2 he on?

3 A East Las Vegas by the Sportsman's.

4 Q At 7:47 p.m., does Mr. McCarty receive a phone call?

5 A Yes.

6 Q What tower is he on?

7 A Las Vegas.

8 Q East Las Vegas?

9 A East Las Vegas.

10 Q So, within a minute of each other, both those phones  
11 are at the Sportsman's?

12 A Yes.

13 Q At 8:17 p.m., do both Mr. Malone's and Mr. McCarty's  
14 phones connect to a tower?

15 A Yes.

16 Q Is it the same tower?

17 A East Las Vegas.

18 Q It's the Sportsman's tower again?

19 A Yes.

20 Q At 8:40 and 8:41 -- well 8:40, I guess, does Mr.  
21 McCarty's phone, make a Direct Connect?

22 A Yes.

23 Q And at 8:41, does Mr. Malone's phone make a Direct  
24 Connect?

25 A Yes.

1 Q And are they both at the Sportsman's, East Las Vegas  
2 tower?

3 A Yes.

4 Q At 8:41 and 8:43, do both those phones make a Direct  
5 Connect?

6 A Yes.

7 Q And are they both at the Sportsman's's tower?

8 A Yeah, same tower.

9 Q Detective, I'm going to move on from the cell phone  
10 records at this point, and ask you some questions about --  
11 after getting these tower records and reviewing them, I think  
12 you indicated that Mr. McCarty and Mr. Malone were charged  
13 with a series of crimes, and Mr. Herb was charged with  
14 accessory to commit murder?

15 A Yes.

16 Q At some point, do you decide to do some forensic  
17 testing?

18 A Yes.

19 Q Let's talk a little bit about what you had to  
20 compare. And Mr. Herb had already provided you his buccal  
21 swab from his interview; is that correct?

22 A Yes, he did.

23 Q And did you eventually get a search warrant to  
24 obtain Mr. Malone's and Mr. McCarty's buccal swabs?

25 A Yes.



1 Q Did you receive from an investigator in my office  
2 Melissa Estores' buccal swabs?

3 A Yes.

4 Q And did you have buccal swabs for the known DNA of  
5 the victims, Victoria and Christine?

6 A Yes.

7 Q What is it that you decided to do DNA testing on?

8 A We decided to do DNA testing on -- or I decided to  
9 do --

10 MR. PIKE: Objection, Your Honor. The use of the  
11 term "we." They -- the question was, what did you decide.

12 MR. DiGIACOMO: I'll rephrase.

13 THE COURT: Okay.

14 THE WITNESS: I corrected myself. I said, "I  
15 decided."

16 THE COURT: Okay.

17 MR. PIKE: Okay.

18 THE COURT: Okay. So, what did you --

19 MR. PIKE: Sorry, I didn't hear it.

20 THE COURT: What did you do directly, Detective?

21 THE WITNESS: The testing I did on it was I tested  
22 the -- I had the golf club head tested, the shaft tested, and  
23 the knife that we recovered tested. Anything that had blood  
24 on it, we had tested.

25 BY MR. DiGIACOMO:

1           Q     Now, prior to sending off the golf club for testing,  
2 had the shaft of the golf club -- and I believe it was -- Kent  
3 Timothy had testified it was on 9/4 of 2006. Did you send off  
4 the DNA testing after September 4th of 2006?

5           A     Yes.

6           Q     Did you initially decide to test any of the clothing  
7 that was located?

8           A     Clothing located where? At the crime scene?

9           Q     Yeah, did you initially decide to -- that's a fair  
10 question. Did you -- let me ask you this. Were there any  
11 clothing -- you said that there was clothing located  
12 throughout kind of the desert area over a period of time. And  
13 that's the clothing I'm talking about.

14                     Either the desert area down by where the weapons  
15 were recovered, or the clothing which was somewhere within the  
16 radius of the crime scene. There was clothing collected from  
17 various areas in the desert; is that a fair characterization?

18          A     Yes.

19          Q     Did you initially decide to test that clothing for  
20 any sort of DNA analysis?

21          A     No.

22          Q     Why not?

23          A     Well, because they had been checked for blood.  
24 There wasn't any blood on it. They were out in the -- it  
25 seemed like they had been out in the desert for a long time.

1 Also, in our investigation, we never really was able to kind  
2 of like attach the clothing to the investigation, as far as  
3 the victims or anything like that. I mean, it didn't appear  
4 to have anything to do with the investigation.

5 Q You also know that there was a condom located  
6 outside the scene, or at least photographed somewhat away from  
7 the scene, but still in the desert area out there?

8 A Yes.

9 Q Did you do any DNA testing initially on the condom?

10 A No.

11 Q Why not?

12 A For the same reasons. It had been out in the desert  
13 -- it appeared to have been out in the desert for a while.  
14 And there really wasn't any indication that it was -- through  
15 our investigation, there really wasn't any indication that it  
16 was involved in the investigation.

17 Q At some point in time, was the condom tested?

18 A Yes.

19 Q Why was the condom tested?

20 A Because the defense asked to have it tested.

21 Q Likewise, did the defense request that the clothes  
22 be checked for blood?

23 A Yes.

24 Q And did you confirm that no blood was found on those  
25 clothes?

1           A     Yes.

2           Q     Now, Detective -- I believe I forgot to grab this  
3 before we started. Based upon your investigation, did you  
4 believe that the victims had been killed sometime in the early  
5 morning of May 18th of 2006?

6           A     Are you saying towards the end of the investigation,  
7 or at the beginning when I went out to the scene?

8           Q     No, as you sit here today.

9           A     As I sit here today? Yeah, in the early morning  
10 hours.

11          Q     Did you recover -- and I think you've testified  
12 previously that you recovered the cell phone records from  
13 Victoria Magee's phone, or at least the phone number that you  
14 had for Victoria?

15          A     Yes.

16          Q     And I'm going to put on the overhead State's  
17 proposed Exhibit No. 236 -- or sorry, Exhibit No. 236, and ask  
18 you if these are the records that we've added the fifth column  
19 on so they can all be seen on one page?

20          A     Okay.

21               MR. PIKE: That is correct, Your Honor. They didn't  
22 come in that form. We agreed that it would be easier for  
23 demonstrative purposes to have that done, and we stipulated to  
24 their admission.

25               THE COURT: All right.

1 BY MR. DiGIACOMO:

2 Q On May 17th of 2006, at 11:40 p.m., was there an  
3 inbound call to Victoria Magee's phone from 458-7071?

4 A Yes.

5 Q So, someone from the Sportsman's called her phone at  
6 11:40 p.m.?

7 A Yes.

8 Q Is it your belief that she was taken from the South  
9 Cove sometime between 12:35 and 12:59?

10 MR. PIKE: Objection as to relevance, Your Honor.  
11 His belief is irrelevant.

12 MR. DiGIACOMO: I'll rephrase.

13 THE COURT: Okay. Thank you.

14 BY MR. DiGIACOMO:

15 Q During the course of your investigation, did the  
16 evidence indicate that they were taken from the South Cove  
17 between 12:35 and 12:59 --

18 MR. PIKE: Objection, Your Honor, misstates the  
19 evidence. The -- Ms. Matthews says that her recollection was  
20 at 8:30. So --

21 MR. DiGIACOMO: Her recollection is that's the first  
22 time she had contact with Mr. Malone. But I'm asking him,  
23 during the course of his investigation, is that approximately  
24 the time he believes they were taken from the South Cove.

25 MR. PIKE: Again, Your Honor, his belief as to what

1 occurred is irrelevant. And we'd just ask -- objection.

2 THE COURT: On the question of his belief --

3 MR. DiGIACOMO: I'll rephrase it.

4 THE COURT: -- I'm going to sustain the objection.

5 BY MR. DiGIACOMO:

6 Q When you put all your evidence together, does the  
7 evidence indicate that they were taken between 12:35 and 12:59  
8 at the South Cove Apartments?

9 MR. PIKE: Objection, Your Honor, speculation. Not  
10 an expert in reconstruction, time frames. Lack of foundation.

11 MR. DiGIACOMO: He's a homicide detective. It's his  
12 investigation.

13 THE COURT: Restate your question again, Mr.  
14 DiGiacomo.

15 MR. DiGIACOMO: Does the course of your  
16 investigation indicate that they were taken from the South  
17 Cove between 12:35 and 12:59 p.m.?

18 MR. PIKE: I'd object, Your Honor. Again, it's --  
19 he can say -- I believe a proper question would be, you were  
20 acting on the belief that this occurred, whether factually it  
21 happened, whether it did not, whether it's supported by any of  
22 the evidence. That would be a permissible question. But  
23 not --

24 THE COURT: Do you want to ask that question, Mr.  
25 DiGiacomo? Because there won't be an --

1 MR. DiGIACOMO: I think I got --

2 THE COURT: -- objection to it.

3 MR. DiGIACOMO: -- objected to, do you believe. So,  
4 I thought that was the same question.

5 BY MR. DiGIACOMO:

6 Q Do you believe that they were taken from the South  
7 Cove between 12:35 and 12:59.

8 MR. PIKE: Objection. Again, he's asking for him to  
9 state that -- based upon that belief -- you know, his belief  
10 is irrelevant. He can say what he saw, he can say what he  
11 observed, he can do everything else. But his belief is  
12 irrelevant.

13 MR. DiGIACOMO: Well, it's either -- it's his  
14 belief, or it's his review of the investigation that indicates  
15 that fact. It's one or the other. I got objected to "on  
16 belief", so I went to "indicate." He objected, said, ask him  
17 if he believes. I ask him if he believes, and he objects  
18 again. I mean, I don't know how to respond at this point.

19 THE COURT: Okay. Mr. Pike, let's just clarify your  
20 objection for either question.

21 MR. PIKE: Can we approach with this? Maybe we  
22 can --

23 THE COURT: Sure.

24 MR. PIKE: -- finish this up here.

25 (Bench conference)

1 MR. DiGIACOMO: I'm going to ask him a series of  
2 questions about 12:35, the early morning hours. And then I'm  
3 going to ask him about Victoria Magee's phone records. That's  
4 all [inaudible] we've already told them [inaudible].

5 MR. PIKE: No, I just -- I didn't know where you  
6 were going. Because you know --

7 MR. DiGIACOMO: We're not going to do anything  
8 [inaudible].

9 MR. PIKE: -- [inaudible]. Yes, you were. No. If  
10 you're just saying that based upon your investigation, you  
11 examined these time frames and this is what you saw, then I  
12 don't have a problem with that. If you were concentrating on  
13 a specific area. But if you're not saying --

14 THE COURT: Okay. All right.

15 MR. PIKE: -- your belief is [inaudible]--

16 THE COURT: Okay.

17 MR. DiGIACOMO: Okay.

18 (Bench conference ended)

19 THE COURT: All right. Detective, I think we have a  
20 new question for you.

21 THE WITNESS: Okay.

22 MR. PIKE: Thank you. We hashed it out, Your Honor.

23 BY MR. DiGIACOMO:

24 Q You were working under a theory that they were taken  
25 between 12:35 and 12:59 p.m. from the South Cove Apartments?



1 A Yes.

2 Q And from there, they were driven south on 95 out to  
3 the desert, where they ultimately were killed?

4 A Yes.

5 Q And then from there, the weapons were taken out  
6 towards the lake, and tossed by the Hacienda?

7 A Yes.

8 Q Let's go back to Ms. Magee's cell phone records.  
9 Based upon that belief, do you believe by the next phone call  
10 after 11:40 p.m., that was inbound from the Sportsman's, that  
11 by 6:35 p.m., any outbound phone calls were not made by her?

12 A Yes, absolutely not.

13 Q And the 6:35 outbound phone call is to her phone  
14 number, indicating potentially somebody trying to access the  
15 voice mail?

16 A I think so, yes.

17 Q There's another one at 8:14 p.m., which is outbound  
18 to her phone number?

19 A Yes.

20 Q And then, obviously, if she is deceased by 6:24 p.m.  
21 on the 18th, on the 19th it ain't her using that phone, right?

22 A Absolutely not.

23 Q Okay. 9:29 a.m., there's an outbound call to Mr.  
24 McCarty's cell phone? It doesn't appear to connect. But at  
25 9:30, there's another one for at least three seconds to Mr.

1   McCarty's cell phone?

2           A     Yes.

3           Q     In your experience, would the individual -- would  
4   Mr. McCarty, if he's in possession of his cell phone, would he  
5   be using a phone to call his own cell phone?

6           A     No.

7           Q     At 9:31 a.m., for 60 seconds, there's an outbound  
8   phone call to the Sportsman's's?

9           A     Yes.

10          Q     And the only other two outbound phone calls are at  
11   9:41 a.m. on the 19th, there's an outbound phone call to Mr.  
12   McCarty's cell?

13          A     Yes.

14          Q     And 11:49 a.m., there's an outbound phone call to  
15   702-638-8005. Are you familiar with that particular phone  
16   number?

17          A     I believe that's Mr. Malone's home phone number.

18          Q     That's this defendant, Domonic Malone's, home phone  
19   number?

20          A     Yes.

21               MR. DiGIACOMO: I have nothing further, Judge.

22               THE COURT: Mr. Pike?

23               MR. PIKE: Court's indulgence.

24               THE COURT: Sure.

25                       (Pause in the proceedings)

1           MR. PIKE: Court's indulgence. If I can have just a  
2 minute to set up.

3           THE COURT: Sure.

4                           CROSS-EXAMINATION

5 BY MR. PIKE:

6           Q     Good afternoon, Detective.

7           A     Good afternoon.

8           Q     We've had occasion to meet prior to today. And I'm  
9 going to be asking you a few questions in reference to the  
10 investigation, and some of the information that was as a  
11 result of that investigation.

12                   Let me start with your training as a detective. How  
13 long have you been a detective?

14          A     About 18 years.

15          Q     And as part of your training to be a detective, you  
16 are trained in various investigative techniques; is that  
17 correct?

18          A     Yes.

19          Q     Do you attend special training in reference to  
20 interrogation of witnesses and or suspects?

21          A     Yes.

22          Q     What sort of training have you received?

23          A     I received the REIT [phonetic] investigative  
24 training techniques.

25          Q     Is that spelled R-E-A-T, for the record?

1           A     I believe it's R-E-I-T, or it might be R-E-A-T. I'm  
2 not sure what the spelling is. And then various homicide  
3 investigation conferences where that subject was touched upon.

4           Q     And as part of your training in that investigative  
5 technique or in how to interrogate people, you are advised  
6 that it's permissible to sometimes raise your voice, certainly  
7 you can't threaten anybody physically. But you can raise your  
8 voice; is that correct?

9           A     Yeah, you can raise your voice.

10          Q     You can raise your voice. You can occasionally -- I  
11 guess the term has been, good cop, bad cop. Is that a  
12 permissible investigative technique?

13          A     Yeah, it's a technique.

14          Q     You can try to make people feel comfortable or  
15 uncomfortable, depending upon what circumstances may generate  
16 the most amount of information, or what you believe may help  
17 generate the most amount of information from that individual?

18          A     That's a technique too, yes.

19          Q     For instance, if somebody's in handcuffs, waiting  
20 for you to take the handcuffs off and get them comfortable,  
21 get them some water; and similarly, if someone's starting to  
22 get agitated, you could put them in handcuffs maybe to try and  
23 calm them down?

24          A     Yes.

25          Q     During the course of this investigation, you went

1 over to talk with a lot of individuals at locations that were  
2 heavily involved in drug trafficking?

3 A Yes.

4 Q Would it be fair to say that people that are  
5 involved in drug trafficking, or selling and using drugs, are  
6 pretty much committing a felony every day?

7 A You could say that, yes.

8 Q And so anybody that you're interviewing, say over at  
9 the Sportsman's Manor, they're going to be suspicious because  
10 you're a detective?

11 A They're going to be suspicious of me?

12 Q Well, they're going to be -- that's --

13 A They certainly will be.

14 Q They're going to be apprehensive; is that a better  
15 word?

16 A Yes.

17 Q Okay. You're going over there and you're  
18 interviewing people, and you're identifying yourself as a law  
19 enforcement representative and that you're part of an  
20 investigation?

21 A Yes.

22 Q As is the rest of your team?

23 A Yes.

24 Q You're the lead detective in this case?

25 A Yes.

1           Q     And as a result of that, responsibility is attached  
2 to that job, doesn't it [sic]?

3           A     I'm sorry.

4           Q     That's a bad question. Let me ask it over. As  
5 lead detective, you have certain responsibilities, different  
6 from other detectives?

7           A     Yes.

8           Q     You supervise the investigation, make assignments,  
9 you're responsible for all the records of the investigation?

10          A     What do you -- define, I'm responsible for all the  
11 records.

12          Q     Okay. Well, to court, you've brought with you a  
13 basket full of notebooks and other items.

14          A     Right.

15          Q     That would be called the case file?

16          A     That's my working case file.

17          Q     That's your working case file?

18          A     Yes.

19          Q     The other detectives have their own working case  
20 file?

21          A     Some might keep their own records for their own  
22 personal -- whatever it is. But if they have any records that  
23 go -- it should end up in this case file. It's put into  
24 records. And then once it gets to records, it comes back to  
25 me.

1           Q     And you keep an ongoing record -- at the Henderson  
2 Police Department, you actually maintain the records in a  
3 chronological order a lot of times so that you can access  
4 other detectives' reports along with your reports?

5           A     Well, the -- when -- in our system, when a report is  
6 written, it's written directly into the case file. Okay?  
7 That's the way our software is set up. So, the other  
8 detectives that are working with me, they have access to my  
9 report, to the case file report. So, when they submit  
10 something, it's authorized -- or I should say it's approved by  
11 the sergeant, but it's directly into the case file.

12          Q     Okay. And that's how you maintain the records, so  
13 that you can keep them to this file and generally in some sort  
14 of order?

15          A     As far as the police reports, yes.

16          Q     The other reports that are generated, they may  
17 either be kept by yourself or somebody else? Such as  
18 surveillance tapes or surveillance records, you may collect  
19 those, but you may obtain the assistance of another detective  
20 in reviewing those?

21          A     Yes.

22          Q     And, in fact, that happened in this case with  
23 surveillance from the Sportsman's Manor and from the AM/PM?

24          A     Yes.

25          Q     Now, you did go and attempt to get surveillance

1 videos from the Hard Rock Hotel and Casino, didn't you?

2 A Yes.

3 Q And what day did you ask -- or specifically, what  
4 surveillance tapes did you ask for from the Hard Rock Casino?

5 A Well, the detectives that went out there to get  
6 them, I told them I wanted for the days basically between --  
7 on Monday and -- I believe I told them Monday and Thursday.

8 Q And did you receive those surveillance tapes or  
9 videos?

10 A Well, they ended up being the wrong tapes. They  
11 didn't -- they didn't --

12 Q When you say the wrong tapes, what do you mean, the  
13 wrong tapes? The wrong day?

14 A They weren't --

15 Q The wrong --

16 A They weren't the proper days that we wanted.

17 Q Did you go back and get the proper days?

18 A No, they didn't have them.

19 Q How long did you wait before you viewed those  
20 videotapes and before you went back and they no longer had  
21 them?

22 A I don't think it was too long of a period. I would  
23 have to look at something to refresh -- I want to say maybe  
24 about -- maybe about a week, but I'm just guessing at that  
25 point.



1           Q     Okay. And going back through the -- would it be  
2 fair to say that if you believe that any of these people --  
3 any of the suspects or people that you arrested or  
4 subsequently charged in this case were at a location, you  
5 would go to that location to determine whether or not there  
6 were surveillance cameras available?

7           A     As best as we could from the information we got,  
8 yes.

9           Q     Okay. And did you -- you got the videotape -- or  
10 excuse me, the surveillance from the AM/PM. Was there a 76  
11 Station that you were looking for to get -- obtain videos?

12          A     A 76 Station?

13          Q     Yeah. Or were you looking for -- let me ask it this  
14 way, rather than just a specific 76 Station. For the night of  
15 -- early morning hours of the 18th rather, did you go to any  
16 specific gas stations or mini-marts that sold gas to look to  
17 determine whether or not there were any surveillance videos of  
18 Mr. Herb buying water?

19          A     Buying water? No.

20          Q     Yeah. Okay. But if Mr. Herb -- if you had reason  
21 to believe he had made a purchase besides just the gas that  
22 evening at another location, you would have gone to that  
23 location and attempted to obtain the video from there?

24          A     Yes.

25          Q     And similar to that, you actually went to the

1 Roadrunner that you've discussed, and you looked for videos of  
2 the individuals that you believe may have been witnesses, or  
3 may have been involved, or may have been suspects at the  
4 Roadrunner Casino?

5 A Yes.

6 Q Were you able to find any video -- any relevant  
7 video surveillance on the date of the 17th or the 18th of May  
8 of 2006?

9 A At the Roadrunner?

10 Q Yes.

11 A No.

12 Q You were able to subsequently obtain video  
13 surveillance at the Roadrunner of some of the individuals that  
14 were involved in this case on a different day, however?

15 A Yes.

16 Q Okay. Do you recall the individuals in that  
17 surveillance tape?

18 A I believe Mr. McCarty was on the tape. Are we  
19 talking about the one on the 24th?

20 Q That's correct.

21 A I believe Mr. McCarty was in the tape.

22 Q If I was to suggest to you -- was it Mr. McCarty,  
23 Herb, and Correna?

24 A Yes.

25 Q And so you were going through. And, in fact, as

1 part of your investigation, you more familiarized yourself  
2 with the locations and the cell site information -- you went  
3 through a process of self-education where you obtained the  
4 cell site locations, went to them, viewed them, and started  
5 hunkering down with the phone records?

6 A Yes.

7 Q And you were the one that -- or excuse me, let me  
8 ask, were you the one that requested the phone records?

9 A From the phone companies?

10 Q Yes.

11 A Yes.

12 Q And you could do that by a number of different ways.  
13 You could issue a subpoena, or you could obtain a search  
14 warrant to obtain the records; is that correct?

15 A Yes.

16 Q In fact --

17 MR. PIKE: May I approach the witness, Your Honor?

18 THE COURT: Yes.

19 BY MR. PIKE:

20 Q I'm showing you State's Exhibit 232. Do you  
21 recognize that?

22 A Yes.

23 Q Okay. And what is it?

24 A It's a return from a subpoena request for telephone  
25 number 237-3308, which is Mr. McCarty's phone number.

1 Q Okay. Thank you. And pursuant to your request, you  
2 were obtaining --

3 A It's upside-down.

4 Q Thanks. Sorry.

5 MR. DiGIACOMO: I apologize. And just to correct  
6 that both --

7 MR. PIKE: That is both.

8 MR. DiGIACOMO: -- Mr. McCarty, and then Mr. Malone  
9 is on there, too. Both returns are on that one document.

10 MR. PIKE: That is correct. That is correct.

11 BY MR. PIKE:

12 Q And in reference to your investigation, you were  
13 looking not only for the date and time of the call, but also  
14 the duration and the cell towers that were associated with it?

15 A Yes.

16 Q Because you knew when you requested this that this  
17 was going to be an archival search? You were going to  
18 investigate something that had happened in the past?

19 A Yes.

20 Q Sometimes, you have an active search, where you're  
21 going out and looking for somebody, or you're attempting to  
22 track down an individual; is that correct?

23 A Yes.

24 Q And so you received training on various ways to  
25 locate and apprehend suspects, or find witnesses, and you have

1 different ways that you look to find individuals?

2 A Well, when you say training, I mean --

3 Q Just general training? Let me ask more  
4 specifically. You're out looking for somebody. You can call  
5 -- if you have their phone number, you can call their phone  
6 number and say, where are you, I'd like to come talk to you.  
7 And that's one way that you could find a witness --

8 A Yes.

9 Q -- or a suspect, isn't it?

10 A Yes.

11 Q Another way would be to say, okay, I've got their  
12 address, this is where they live or this is where they work,  
13 I'm going to go over there and wait for them. Another  
14 technique?

15 A Right.

16 Q In the technological age, if you know that they have  
17 an OnStar, you could actually -- given the right  
18 circumstances, you could contact OnStar and you could locate  
19 where their car is at and you could follow that car -- or find  
20 that car, and find them that way?

21 A That's another technique, yes.

22 Q Similarly, if somebody has a cell phone that is  
23 active, there is a process called pinging, where you can go to  
24 the provider and say, I need to find the location of this  
25 phone, or the cell tower, so that you could have a radius to

1 look. And there is a process whereby that phone can be  
2 located without it actually ringing or a call being made to it  
3 that is discernible by the person, or anybody around the  
4 phones. Are you familiar with that?

5 A I've heard of that.

6 Q Okay. Have you ever used it?

7 A Me personally, no.

8 Q On the 20th, you became aware that -- you went to  
9 the location where the two bodies were located of these young  
10 women?

11 A Yes.

12 Q Started your investigation. And do you recall when  
13 you first had the name Victoria Magee?

14 A That would have been after we talked to Red. So, it  
15 would have been the following day.

16 Q On the 21st?

17 A Yes. The full name, Victoria Magee, yes.

18 Q Did she -- that's hearsay. Sorry. Based upon the  
19 fact of having her name and the availability of search  
20 warrants is -- was there available to you an opportunity to  
21 issue a search warrant to different local providers, cell  
22 phone providers, to determine whether or not a Victoria Magee,  
23 in fact, did have a cell phone?

24 A Well, you could -- you could do that. You would  
25 have to hit every cell phone provider.

1           Q     And there is approximately five cell phone providers  
2 in the Las Vegas area, or fewer?

3           A     No.

4           Q     Do you know?

5           A     Oh, no. You can't go -- you cannot go directly to  
6 the providers in town here. You have to send them off to  
7 their national offices.

8           Q     And you can do an urgent --

9           A     Their clearing houses.

10          Q     -- basis, and have them respond quickly by fax?

11          A     Well, it all depends what -- what they consider  
12 urgent and what we consider urgent are two totally different  
13 things.

14          Q     Okay. And you can give reasons why you believe it's  
15 urgent. In fact, during the time when you were obtaining  
16 these records, you would often -- or you could say, urgent, I  
17 need to locate this person because this individual is still  
18 being sought?

19          A     Well, I'm not quite sure exactly what you're asking  
20 me. Because if you're saying I can go in and declare an  
21 emergency, and say I need this information, cell phone  
22 companies rarely will accept that. There has to be an actual  
23 emergency, like somebody's in the -- like there was a  
24 kidnapping ongoing. There is life and limb at jeopardy here.  
25                I mean, they don't consider an investigation for a

1 homicide an emergency situation, unless you can show somebody  
2 is in imminent jeopardy, or there's some exigent circumstances  
3 why you would need to find the phone right then and there.

4 Q Exigent circumstances. And what you may believe are  
5 exigent circumstances and what they may believe are exigent  
6 circumstances may never coincide?

7 A Correct.

8 Q Just like the phone company saying, I'll be there  
9 sometime between 4:00 and next Thursday?

10 A Right.

11 Q Had you -- if you had the opportunity, and had the  
12 phone company responded to you and provided you the name -- or  
13 the cell phone -- I'm getting ahead of myself.

14 Let me just ask this question. You obtained records  
15 for Victoria Magee that showed that was her name, and you had  
16 those records. And it looks like you got them on, what date?  
17 Is that the date you received them?

18 A 6/16.

19 Q Do you recall that, or do you know?

20 A I -- is this a fax date on it? Or --

21 Q It's at the top. If I can show you --

22 A Was this a --

23 Q -- this, maybe you can look through it --

24 A Was this a faxed one?

25 Q -- and see. It's hard to do it off the screen. Or



1 does it not show the date that you got it?

2 A It doesn't show the date I -- unless that -- I don't  
3 believe that's the date that I received them. That might be  
4 the date they were prepared by the phone company.

5 Q Okay. Thank you. And for the record, the date that  
6 you were pointing to was the 6/16 date that was in the upper  
7 left hand corner?

8 A Yes.

9 Q And the response to this -- or these records are  
10 different than some of the records that you received for some  
11 of the other phones that you were requesting, because I don't  
12 see the cell tower locations on that?

13 A That's just basically subscriber information. And  
14 that's from a subpoena, not a search warrant.

15 Q Okay. And you -- or in this archival search, you're  
16 seeing how important cell towers can be?

17 A Yes.

18 Q So, it would be beneficial for location purposes to  
19 know where each of those calls were on Victoria's phone, from  
20 which cell sites, and to determine whether they matched up to  
21 any other individual, similar to the exercise that we just  
22 went through?

23 A Yes.

24 Q The cell phone with that number, did you ever  
25 recover that cell phone?

1 A No.

2 Q Do you know when the -- do you know when the -- that  
3 phone was turned off and could no longer be used?

4 A No.

5 Q You did however find a number of cell phones at the  
6 location at the South Cove in apartment number 217?

7 A Yes.

8 Q How many cell phones did you find there?

9 A I believe I -- oh, three or four.

10 Q If I suggested to you that you found four cell  
11 phones, would that refresh your recollection?

12 A Yeah, that would.

13 Q Two of them you found to have active numbers?

14 A Yes.

15 Q And as part of your investigation, you called the  
16 number on -- you were able to establish the phone numbers, and  
17 called the numbers; is that correct?

18 A I established the numbers. I tracked down the  
19 owners -- I tried to track down the owners.

20 Q Okay. And you found the owner of those cells?

21 A Yes.

22 Q One was in Mesquite?

23 A Yes.

24 Q Where was the other one located?

25 A I'd have to -- I'd have to look at a report for

1 that --

2 Q Okay.

3 A -- to refresh myself.

4 Q Rather than have you dig through your file, how  
5 about if I --

6 A Thank you. Thank you very much.

7 Q If I approach you with your search warrant return,  
8 would that refresh your recollection?

9 A Yes.

10 Q All right, let's do that.

11 MR. PIKE: May I approach the witness --

12 THE COURT: Yes.

13 MR. PIKE: -- Your Honor?

14 (Pause in the proceedings)

15 THE WITNESS: This is the search warrant return.

16 BY MR. PIKE:

17 Q Right. Does that refresh your recollection as to  
18 the two -- or the four phones?

19 A Yes.

20 Q Okay. Does it refresh your recollection regarding--

21 A The owners of the phone?

22 Q -- the investigation of the owners? Yes.

23 A No, it doesn't.

24 Q Okay. You indicated that you turned the cell phones  
25 that you located over to some other guys, I think was the term

1 that you used. Did you ever retain an expert to examine any  
2 of the phones to determine whether or not any evidence could  
3 be retrieved from them?

4 A An expert?

5 Q Yes.

6 A No, I never retained an expert. No.

7 Q Okay. You are aware that there are individuals  
8 that, similar to Bexar Labs, are experts in the processing of  
9 cellular telephones in retrieving information from both  
10 passive memory, as well as SIM cards?

11 A Sure. Two of the phones didn't have SIM cards  
12 though, so we couldn't get anything from them.

13 Q Well, you couldn't. But you didn't hire an expert  
14 to go in to determine what could be obtained from those  
15 phones?

16 A Well, I was told you couldn't get anything out of it  
17 if it didn't have a SIM card.

18 Q Well, who told you that?

19 A The people that work on our phones at our  
20 department.

21 Q Okay. So, you didn't hire a forensic specialist to  
22 go in and extract that information?

23 A Because I was told that it couldn't be done  
24 without --

25 Q No, that's a yes or no.

1 A No.

2 Q Okay, you were told. You didn't try?

3 A Correct.

4 Q Okay. And did you issue a subpoena or a search  
5 warrant to the various cell phone providers to locate the  
6 cellular telephone records of Charlotte? Did you issue a  
7 subpoena --

8 A No.

9 Q -- to them and say --

10 A To Charlotte Combado?

11 Q Yeah.

12 A Which phone?

13 Q The phone number, her name.

14 A What phone number? What name?

15 Q Her social security number. You didn't go out  
16 looking for it, did you?

17 A She -- there was no indication --

18 Q Yes or no, Detective?

19 A There was no indication she had a phone throughout  
20 the investigation.

21 Q She went by the nickname of Island Girl.

22 A Okay.

23 Q And you had a cell phone that had "Island Girl" on  
24 it.

25 A With no SIM card.

1           Q     Absolutely. And if I tell you I don't have a phone,  
2 or you talk to three or four of my acquaintances and they tell  
3 you I don't have a phone, you could go to the different phone  
4 companies here locally, Sprint or AT&T, and issue a subpoena  
5 for, do you have records for a cellular telephone call under  
6 the name of Randall Pike to see if I had a cell phone?

7           A     Okay.

8           Q     You could do that, couldn't you?

9           A     Yes, I could do that.

10          Q     And you could have done this with Charlotte Combado  
11 or Charlotte Fountain?

12          A     Yeah, but I didn't see any reason to.

13          Q     Okay. And --

14               MR. PIKE: Court's indulgence. I'm sorry.

15               THE COURT: Sure.

16                       (Pause in the proceedings)

17 BY MR. PIKE:

18          Q     You had available to you all of the items that were  
19 impounded by the CSA's in this case; is that correct?

20          A     Yes.

21          Q     You had the -- all of the items that were impounded  
22 at the search warrants that were issued at various locations  
23 in this case?

24          A     Yes.

25          Q     And it was you that made the determination initially

1 which items were going to be sent to be examined?

2 A Yes.

3 Q And in going through, did you attend the search  
4 warrants that were -- as they were being processed?

5 A Not all of them.

6 Q Not all of them? Did you attend the search warrant  
7 that was conducted at apartment number 222?

8 A The corner one, I was there for part of it, yes.

9 Q Okay. It had initially begun by -- with a number --  
10 with other detectives. And then were you called in to attend?  
11 Or did you --

12 A I showed --

13 Q -- were they -- were --

14 A I showed up.

15 Q You showed up? When you showed up to that location,  
16 the apartment was -- was it in a clean condition, or was it in  
17 a disheveled condition?

18 A It was messy. It was kind of disheveled, yeah.

19 Q And there was a woman that was in there. Do you  
20 remember her?

21 A I remember her, yes.

22 Q Do you remember what her name was?

23 A No, not right off the top of my head.

24 Q Do you remember she was a slight woman, and that as  
25 part of the evidence that you were going to impound from that

1 location, you impounded the blouse that she was wearing?

2 A Yeah. She was wearing some clothes that she said  
3 belonged to the -- possibly belonged to the victim.

4 Q Which victim, Victoria or Charlotte?

5 A I can't remember that.

6 Q She also -- as a result of that same conversation,  
7 you also had her empty the purse that she had and leave the  
8 purse, because it was identified as one of the girls'?

9 A Okay. Yes.

10 Q And so that area had been lived in -- or excuse me,  
11 you wouldn't have any personal knowledge as to whether or not  
12 it was being lived in by another woman. But there was a woman  
13 in there that had one of the victim's purses, and one of the  
14 victim's blouses?

15 A Yes.

16 Q Did you remove any jewelry from her?

17 A I didn't. And I don't believe -- I don't remember  
18 if anybody else did.

19 Q And it was during that search warrant that the area  
20 was being processed, wasn't it?

21 A Yes.

22 Q The CSA was there and that's when the CSA took the  
23 pictures and impounded the cigarettes and various other items  
24 for processing?

25 A Yes.



1 Q And you chose specifically those cigarette butts to  
2 be processed because it's a good source of DNA?

3 A Cigarette butts are a good source of DNA, yes.

4 Q There was another item that was sent out for  
5 processing, and that was a tissue with blood on it?

6 A Yes.

7 Q And you chose to have that examined also?

8 A Yes.

9 Q You received the reports on that?

10 A Yes.

11 Q And that -- did that come back as male or female  
12 blood, do you know?

13 A I know it didn't come back any match for us, so --  
14 on our people, but.

15 Q Okay. So, you don't recall, but you know it --

16 A I don't recall.

17 Q -- did not come back as a match on any of the known  
18 exemplars that you submitted to them?

19 A Correct.

20 Q And in going through the telephone calls that were  
21 made, you became aware that there were different types of  
22 calls. There were Direct Connects, and that there were calls  
23 that were direct -- or were regular phone calls between  
24 different providers?

25 A Yes, sir.

1           Q     And those are different because Direct Connects  
2 cannot be done between two different providers, they are the  
3 same providers. And then the calls can connect to different  
4 providers?

5           A     Yes.

6           Q     And we've stipulated to the admission of the chart  
7 that was put together by you and Mr. DiGiacomo with the  
8 highlighted numbers. And you went through and basically  
9 compiled the calls of Mr. McCarty, Mr. Malone and Donald Herb?

10          A     Yes.

11          Q     And to make them more understandable, and going out  
12 to that -- one of the things about the calls is that sometimes  
13 you can look at the calls and say, you know, those people call  
14 each other an awful lot and you can see that there may be a  
15 relationship between them. Would it be fair to say that Jason  
16 McCarty used his phone a lot?

17          A     He used it often.

18          Q     140 times a day. That's pretty often, isn't it?

19          A     Some people use it more. He used it often.

20          Q     And looking here on May the 16th from 4:19 -- oops,  
21 sorry -- from 4:19 at the beginning, through to about 4:23, he  
22 calls Victoria's cell about how many times?

23          A     Ten.

24          Q     And that same day, between 4:28 and 4:50, you can --  
25 he's calling her a lot?

1 A Yes. Often.

2 Q 4:51 to 5:10?

3 A Yes.

4 Q That's all -- the only person he's calling. And it  
5 goes on, and on, and on.

6 A Well, you have other calls for Herb and --

7 Q Okay, well --

8 A -- [inaudible].

9 Q -- here we do.

10 A Yeah.

11 Q We finally, after a few --

12 A But yes, he's calling --

13 Q He finally calls his wife, too. Wasn't that -- and  
14 he starts to call Donald Herb's cell and -- or excuse me.  
15 You're also putting in here calls that were made by Mr. Herb's  
16 cell? So, if this --

17 A Yeah.

18 Q If the jury is going through the reading this, it  
19 will show actually who's making the call by looking at this  
20 second column from the right. And this is -- and the person  
21 on the right is the person that's receiving the call?

22 A It -- no, well, if you look at 6/17, the ones that  
23 you pointed out for Mr. Herb, those are outgoing phone  
24 calls --

25 Q Right.

1 A -- from McCarty's phone.

2 Q They're outbound from McCarty's -- oh, you're  
3 talking about these two up here?

4 A No, I'm talking about the three that you were  
5 saying.

6 Q Okay. These three, those are outbound calls from  
7 Coronado Ranch, and those are made from which phone?

8 A Well, which -- which records are these?

9 Q These are the records that you prepared that have  
10 been admitted into evidence. They just don't -- that's the  
11 color coding that was --

12 A Okay, yeah. Mr. Herb made an outbound phone call.

13 Q Okay.

14 A And he was at Coronado Ranch at 6:17.

15 Q Okay, great. So, we're all on the same page.

16 A Right. Yes.

17 Q These are the callers, and these are the recipients?

18 A Yes.

19 Q Okay. So, these calls from McCarty's cell to  
20 Victoria Magee's cell, one after the other, after the other,  
21 after the other --

22 MR. DiGIACOMO: I apologize --

23 THE WITNESS: Yes.

24 MR. DiGIACOMO: -- counsel.

25 MR. PIKE: Okay. Yes?

1 MR. DiGIACOMO: It depends on if it says inbound or  
2 outbound, who the caller is.

3 MR. PIKE: Okay. All right, I'm sorry. Inbound,  
4 outbound, over here.

5 BY MR. PIKE:

6 Q And you've put here whether it's a Direct Connect?

7 A Yes, for the Direct Connect calls.

8 Q Okay. You were able to determine that at least on  
9 May 16th at the time of 5:51 a.m., there's an outbound call  
10 from Mr. McCarty over to Ramaan Hall, Trey Black's cell phone?

11 A Is this the 16th up here?

12 Q Right. This one.

13 A Yeah. If that's the 16th, because I can't see the  
14 16th on it.

15 THE COURT: Mr. Pike, if you can --

16 MR. PIKE: Oh, I'm sorry.

17 THE COURT: There you go.

18 THE WITNESS: There we go, yeah. On the 16th,  
19 outbound, at 5:51 a.m., from Mr. McCarty to Mr. Hall's cell  
20 phone.

21 BY MR. PIKE:

22 Q And you can tell whether or not it connects -- or  
23 whether or not there is any communication done by the amount  
24 of seconds during the --

25 A Right. It's showing .28.

1 Q So, in the records, you're looking not only for the  
2 number of calls that were made, but the times, the  
3 relationship and how often those calls are made?

4 A Yes, those are some of the things we were looking  
5 for. Yes.

6 Q And sometimes based upon the time between a call  
7 from a phone -- one call from a telephone to another -- to the  
8 next call from that telephone, you can generally tell that the  
9 person that is using that phone has moved from one location to  
10 another?

11 A If you have the cell tower information.

12 Q Right. And that's what this is to demonstrate.  
13 It's here, this phone is making a call at -- and it pings to  
14 this tower. And here it is a few minutes later, pinging to  
15 another tower?

16 A Yes.

17 Q So, from that --

18 A It will show that.

19 Q From that here you can show that that phone is  
20 moving in that area, or it's stationary, or it's moving in  
21 another direction?

22 A Yes.

23 Q It doesn't tell you who's holding the phone, who's  
24 making the call, just that that phone is at that location?

25 A Yeah. The records are for the phone itself, not for

1 the owner.

2 Q All right. Additionally, it could show you that a  
3 person who has a phone may have knowledge of a telephone  
4 number that would be important, such as if you get a number of  
5 calls from Victoria's cell to Ryan Parker's [phonetic]  
6 address, then you would know that at least whoever was using  
7 that phone knew Mr. Parker's telephone number?

8 A You're going to have to repeat that, because that --

9 MR. DiGIACOMO: And I apologize.

10 THE WITNESS: -- was a little confusing.

11 MR. DiGIACOMO: It's David Parker.

12 MR. PIKE: Thank you. I'm mixing up Noe and Parker.

13 BY MR. PIKE:

14 Q Do you know Mr. David Parker?

15 A Yes.

16 Q Okay. Mr. Parker was called, and came and testified  
17 that he went over to pick up Red, Victoria, and Charlotte?

18 A Yes.

19 Q And that call -- the calls that got him to come over  
20 were made from whose cell phone?

21 A I believe they were made from Victoria's cell phone.

22 Q So, at that point in time, you believe that Victoria  
23 or someone who was with her, either Red or Charlotte, was  
24 calling Mr. Parker, he came and got them, they went over to  
25 his house? That's -- based upon your knowledge, that's a fair

1 assumption?

2 A Yes.

3 Q And so if prior to that time there was a call from  
4 Mr. -- from any of the other individuals' cells indicating  
5 that they had called Mr. Parker, that would indicate that they  
6 knew that telephone number also?

7 A From another person --

8 Q Yeah, another person's cell.

9 A Yeah, you would think so.

10 Q Or it may be the same person calling off of a  
11 different cell. But whoever had that cell phone knew that  
12 number and called them?

13 A Yeah, I suppose that's possible. Yes.

14 Q And if in an archival search such as you did in this  
15 case, there is no way to go through and say that once a -- if  
16 a phone is not making phone calls, you can't say where that  
17 phone is at, can you?

18 A Correct.

19 Q So -- and going back specifically to the 18th --  
20 well, you don't have these in front of you. Let me -- do you  
21 recognize this? Well, Let me get this out of the way. This  
22 is part of the exhibit that we've been talking about with the  
23 telephone calls, the use of the Direct Connect, and on May  
24 18th of 2006, at approximately 12:35 in the morning, a.m.

25 A Okay.



1           Q     Mr. DiGiacomo went over this with you. Mr. Malone's  
2 cell is being used for Direct Connect calls at that time. Mr.  
3 McCarty's cell is being used for an outbound call at that  
4 time.

5           A     At 11:59.

6           Q     11:59, okay. So, that shows the area where those  
7 phones are at during that period of time. And then as they  
8 start to move from that location, we go to 1:03 -- or excuse  
9 me. Let me do this this way.

10           THE COURT: Actually, Mr. Pike --

11           MR. PIKE: Yeah.

12           THE COURT: -- let's take a break, since you're  
13 going to a new area right now.

14           MR. PIKE: All right. Thank you, Your Honor.

15           THE COURT: Ladies and gentlemen, during this  
16 recess, it is your duty not to converse among yourselves, or  
17 with anyone else on any subject connected with this case. Or  
18 to read, watch or listen to any report of or commentary on the  
19 trial by any person connected with the trial, or by any medium  
20 of information, including without limitation, newspaper,  
21 television, radio, or the Internet. You are not to form or  
22 express an opinion on any subject connected with this case  
23 until this matter is submitted to you.

24           We'll see you after the break.

25           (Court recessed at 2:39 p.m. until 2:52 p.m.)

1 (In the presence of the jury)

2 (Pause in the proceedings)

3 THE MARSHAL: Please remain seated and let's come to  
4 order. Make sure your cell phones are turned off. We're back  
5 in session.

6 THE COURT: Detective, do you understand you're  
7 still under oath?

8 THE WITNESS: Yes, Your Honor, I do.

9 THE COURT: All right. Go ahead, Mr. Pike.

10 MR. PIKE: Okay.

11 BY MR. PIKE:

12 Q Detective, I had an opportunity to show you the  
13 calls made on May 18th at 12:35 a.m. Do you have the exhibit,  
14 and are you reviewing that at the same time?

15 A I've got Exhibit 234 -- State's Exhibit 234.

16 Q That's correct. Okay. But I want to direct your  
17 attention to it. It appears on the six calls that are from  
18 that time and through the 12:39 time, that the first two have  
19 the same time, the second two have the same time, and the  
20 third two -- the third couplet have the same time, showing the  
21 same amount of time.

22 Is that -- were there only three calls, or were  
23 there actually six calls? Or can you recall?

24 A I'm thinking that maybe there were three calls.

25 Q Okay. And then going through, you've taken an

1 opportunity to take a number of maps, and not only have an  
2 overview map of the whole valley to show where the cell towers  
3 are, but also, because sometimes they're in very close  
4 proximity, to separate them out a little bit.

5           And if there is a telephone call that says  
6 "Downtown," that would be on State's No. 257, that would be  
7 the cell tower that says "Downtown" on that? You've --

8           A     Yes.

9           Q     You've [inaudible] --

10          A     Yes.

11          Q     -- that? So, for the orientation purposes? And you  
12 put "Hush Puppy" on one. There's two Hush Puppy restaurants  
13 in town. But you identified this as being the Hush Puppy  
14 that's over on Charleston and Rainbow, right near there?

15          A     Yes.

16          Q     So, if it says "Hush Puppy," it's that one, and  
17 would not be down on Nellis?

18          A     Yes. Down where?

19          Q     Down on Nellis?

20          A     No.

21          Q     Okay. Similarly, the GLIT or GULAC [phonetic], I  
22 believe just an abbreviation of Glitter Gulch, that would be  
23 down near the Fremont Street area?

24          A     We're not looking at a call?

25          Q     No, no. We're just looking at the map here.

1 A Okay.

2 Q Okay.

3 A Glitter Gulch?

4 Q Yes.

5 A Yes, Fremont Street area.

6 Q Okay. And these are identified after local  
7 landmarks. And similarly, the Moulin Rouge?

8 A Yes.

9 Q So, that would be to the north and to the west of  
10 the South Bruce Temp?

11 A Yes.

12 Q And the -- similarly, in State's Exhibit 110, that  
13 shows an Owens cell site. Do you see -- locate where that is  
14 it? Maybe I'll just point to it.

15 A Right where your finger is, yeah.

16 Q Right, okay. And that's closest to 1165  
17 Blankenship?

18 A It's in the vicinity, yes.

19 Q In the vicinity? Okay. Thank you very much,  
20 Detective.

21 MR. PIKE: I don't have any further questions.

22 THE COURT: Any redirect?

23 MR. DiGIACOMO: A little bit.

24 REDIRECT EXAMINATION

25 BY MR. DiGIACOMO:

1 Q There were some questions asked to you about video  
2 by Mr. --

3 MR. PIKE: Pike.

4 BY MR. DiGIACOMO:

5 Q -- Pike. Do you recall those?

6 MR. DiGIACOMO: Thanks, Randy. It's been a long  
7 one.

8 BY MR. DiGIACOMO:

9 Q Do you recall the questions being asked about  
10 various video places?

11 A Yes.

12 Q Okay. There were efforts made to get the Roadrunner  
13 video from, you know, as far back as you could, up until a  
14 particular date, once you learned about the Roadrunner and  
15 that there was relevant information about it, correct?

16 A Yes.

17 Q Okay. But the only video you have is from the 24th.  
18 It's not like there is video from the 17th that doesn't  
19 corroborate any witness or anything like that?

20 A The only video we have is the 24th.

21 Q Is the only thing that was available to you?

22 A Yes.

23 Q Mr. Pike asked about the Hard Rock Casino. And I  
24 don't know if it was his question or the answer, suggested  
25 that somehow there was a police mistake as it related to the

1 Hard Rock Casino. Now, as a police officer, with a major  
2 hotel, do you have the ability to go in there and demand them  
3 to provide you anything immediately?

4 A We have to have a subpoena, some type of subpoena.

5 Q All right. And in this particular case, is  
6 Detective Hosaka a fellow homicide detective with you?

7 A Yes.

8 Q And Detective Hosaka, on the 22nd of May, made the  
9 request from the Hard Rock Casino for the particular dates  
10 between Tuesday, Wednesday and Thursday, correct?

11 A Yes.

12 Q By the time the Hard Rock Casino got back to you,  
13 they provided the wrong dates?

14 A They were the wrong dates, yes.

15 Q And by the time you realized that, the Hard Rock  
16 Casino no longer had the videotape?

17 A Right.

18 Q Likewise, you made efforts to get video from the  
19 Sahara?

20 A Yes.

21 Q And, in fact, there was a request made and the video  
22 was provided to you, correct?

23 A Yes.

24 Q And when you went to open it, you couldn't view the  
25 video, so it was taken back to the Sahara?

1           A     We couldn't -- we just couldn't open the files. So  
2 we took it back to the Sahara and then they couldn't open the  
3 files.

4           Q     And ultimately had no other originals to provide?

5           A     No. Or yes, no other originals.

6           Q     So, there are things that are outside the control of  
7 the police as it relates to investigations, correct?

8           A     Yes.

9           Q     You have to rely upon sometimes other people doing  
10 things, and there's nothing you can do about that?

11          A     Correct.

12          Q     Mr. Pike asked you questions about Victoria's cell  
13 phone. Now, you know, maybe guys like you and I have our  
14 phone and our proper address on our -- with the cell phone  
15 company. But in your experience, is it possible to buy a  
16 phone from 7-Eleven and put Mickey Mouse's name as a  
17 subscriber on it?

18          A     Yes.

19          Q     Mr. Pike put in front of you Victoria Magee's cell  
20 phone records. You learned that phone number from one of the  
21 witnesses, I'm assuming?

22          A     Yes.

23          Q     Okay. And then you made a request, and the request  
24 came in that that was Victoria Magee's cell phone?

25          A     Yes.

1 Q Had you made a request to the company Sprint Nextel  
2 for Victoria Magee, you would have gotten a return back that  
3 said Victoria Magee with a P.O. Box in Irvine, California,  
4 correct?

5 A Right.

6 Q And you would have gotten a return back for I guess  
7 every Victoria Magee in the country?

8 A Well, they probably would have asked me, which one  
9 do you want?

10 Q And you would have to have some sort of identifying  
11 information to make that conclusion, correct?

12 A Absolutely.

13 Q Now, in this particular case, the phone that was in  
14 the possession of Mr. Malone was actually in the name of  
15 Trevon Hall, correct?

16 A Yes.

17 Q The phone that was in possession of Sarah Matthews  
18 was actually in the name of Domonic Malone, correct?

19 A Yes.

20 Q Mr. McCarty's phone was actually in the name of  
21 Jason McCarry (phonetic) --

22 A Yes.

23 Q -- in this particular case?

24 A Yes.

25 Q And so there was a number of phones under a number



1 of names, and what you had to do was establish who actually  
2 was in possession of that phone?

3 A Yes.

4 Q So, merely requesting information on a particular  
5 name may not provide you anything?

6 A Correct.

7 Q During the early course of the investigation --  
8 you're aware of Detective Craig Ridings, correct?

9 A Yes.

10 Q He's another homicide detective that worked with  
11 you?

12 A Yes.

13 Q And early on he made efforts to ping the phone of  
14 Victoria Magee to see it's location; is that correct?

15 A Okay, yes.

16 Q Okay.

17 MR. PIKE: Objection, he's just agreeing with him.  
18 He doesn't have any personal knowledge of that.

19 MR. DiGIACOMO: All right. Well, I'll rephrase.

20 THE COURT: Okay. So, I'm going to sustain the  
21 objection.

22 BY MR. DiGIACOMO:

23 Q On the phone records that you received, you made a  
24 request for phone records from June 16th of 2006, correct?

25 A Yes.

1 Q And they gave you records up until June 16th of  
2 2006?

3 A Yes.

4 Q And the last phone call on those records is on May  
5 19th of 2006?

6 A Yes.

7 Q And you didn't even know the bodies -- you hadn't  
8 even seen the bodies until May 20th of 2006, correct?

9 A Yes.

10 Q In order to ping a phone, does it have to be working  
11 and on?

12 A Yes, it has to be activated.

13 Q Mr. Pike kept saying to you, did you retain an  
14 expert to look at the phone -- the phones. Now, Henderson is  
15 a fairly large police agency, correct?

16 A We're a city of almost 300,000 people.

17 Q How many police officers?

18 A We're about -- total sworn for the police -- or  
19 should I say the police department, excluding the jail,  
20 probably about -- almost 300. 280, 285, right around there.

21 Q And I'm assuming there's a whole lot of other  
22 support personnel that are also hired by your agency as well?

23 A Oh, yeah. Secretaries.

24 Q Do you have a department there who have specialized  
25 knowledge in looking into cell phones and what information can

1 be gathered from cell phones, and researching cell phones that  
2 are collected during the course of your investigations?

3 A Yes, we do.

4 Q And are those the individuals that you provided  
5 these cell phones to, to see if they could get any information  
6 on Victoria Magee's phone?

7 A Yes.

8 Q Or sorry, Charlotte Combado's phone. I apologize.  
9 Did you give that phone that says "Island Girl" -- and did you  
10 hear that her nickname was Island Girl from any witness that  
11 you recall?

12 A I'd heard it. I'd heard that name come up, but I  
13 can't remember exactly when during the investigation it came  
14 up.

15 Q Okay. But you gave the phone that said "Island  
16 Girl" and "Christina" to those people who are experts at the  
17 Henderson Police Department to looking into that information?

18 A Yes.

19 Q There were questions asked to you about Rosalyn  
20 Carter [phonetic] about clothes and purse. By the time you  
21 get to 222, is this the 21st or the 22nd, somewhere in that  
22 range?

23 A Yeah, I believe it was Monday.

24 Q Monday the 22nd?

25 A Second.

1 Q When you get there, there's a -- or when Henderson  
2 gets there, there is someone living in the apartment, correct?

3 A There's somebody in there, yes.

4 Q And there is an interview conducted with that  
5 particular individual; is that correct?

6 A Yes.

7 Q And based on the information that was provided, you  
8 learned that some of Christina's clothes and her purse  
9 happened to be inside this apartment?

10 A Yes.

11 Q And so you -- or do you know whether or not those  
12 were the clothes she was wearing the night she was killed, or  
13 that just because she happened to be living in that apartment,  
14 some of her clothes were inside that apartment?

15 A The clothes just happened to be inside that  
16 apartment.

17 Q And so based upon that, you collected those items?

18 A Yes.

19 Q Lastly, do you still have 234 in front of you,  
20 counsel?

21 A Yes, sir.

22 Q Or Detective?

23 A Thank you. Yes, sir.

24 Q Let me go back to State's Exhibit number 257. Mr.  
25 Pike ended his cross-examination referencing certain cell

1 towers that occur on Mr. McCarty's phone between 1:01 a.m.  
2 and --

3 MR. DiGIACOMO: I think it's 1:08 a.m., counsel.

4 BY MR. DiGIACOMO:

5 Q And I want to start actually a phone call before,  
6 which is at 12:59 a.m. And that's actually a phone call by  
7 Mr. McCarty's phone, an outbound phone call by Mr. McCarty's  
8 phone. So, at 12:59, he's at the Bruce Temp.

9 A I just want to reconfirm this is the 18th that we're  
10 talking about.

11 Q Yeah. 12:59, May 18th, as the girls are taken out  
12 of the South Cove.

13 A Okay.

14 Q The Bruce Temp, next tower two minutes later is  
15 Downtown. The next tower --

16 MR. DiGIACOMO: I believe counsel, because I don't  
17 have it in front of me, is going to be the Moulin Rouge.

18 MR. PIKE: That's correct.

19 BY MR. DiGIACOMO:

20 Q And then after the Moulin Rouge, I think there's one  
21 that connects to the Spaghetti Bowl as well. And from the  
22 Moulin Rouge Spaghetti Bowl, which is right in this general  
23 area from one of the other maps, it's going to hit the Glitter  
24 Gulch. And then by 1:08, it's going to be hitting off Lear  
25 Steads [phonetic].

1           If you were to leave the South Cove Apartments, and  
2 head right, or up Fremont Street, how would you get onto Route  
3 95, or to 515?

4           A     If you left the South Cove, you would head north on  
5 Fremont Street. Then you would come to Las Vegas Boulevard  
6 and turn right. And then you would just merge right onto 95  
7 North -- or excuse me, 95 South.

8           Q     And I believe it's approximately nine minutes  
9 between Bruce Temp, down to the time it hits Lear Steads, in  
10 the general range. Does that sound about reasonably correct  
11 if you were take that route from South Cove, hang a right, go  
12 down to Las Vegas Boulevard, hang another right. Head up to  
13 95, and then jump on the 95, and then have to head back south  
14 down to Lear Steads. Does that sound about a generally  
15 reasonable time period for that to occur?

16          A     Yes. Yes, it does.

17               MR. DiGIACOMO: Nothing further, Judge.

18               THE COURT: Anything further, Mr. Pike?

19               MR. PIKE: Thanks.

20                       RE CROSS-EXAMINATION

21 BY MR. PIKE:

22          Q     You've been in Las Vegas in the Henderson area for a  
23 long period of time?

24          A     Yes.

25          Q     You're familiar with the roadways?

1           A     I hope I am.

2           Q     Did you work your way up from being a patrol  
3 officer, or did you come here as a detective?

4           A     Well, when I was a patrol officer, we were only  
5 58,000 people.

6           Q     Oh, okay. Then you're familiar, at that time with  
7 58,000 people, that the main route between downtown area was  
8 the Boulder Highway, and Fremont Street runs right into the  
9 Boulder Highway, doesn't it?

10          A     Yes.

11          Q     You turn right out of the South Cove Apartments  
12 right here, and you see State Route 582. That's Fremont  
13 Street, and it takes you right directly to Boulder Highway,  
14 and it would take you right directly to the Sportsman's Manor,  
15 wouldn't it?

16          A     Yeah, that's one way. Yes.

17          Q     Okay. In fact, that used to be the only way before  
18 they built the freeway?

19          A     Yes, you're correct.

20          Q     You were asked some questions about following up,  
21 because sometimes information that you receive is inaccurate  
22 or mistaken, or somebody makes a mistake. That's not uncommon  
23 as a detective to have to go back and go to businesses a  
24 couple of times to make sure that you get the correct records?

25          A     Sometimes, yes.

1           Q     And similarly, with the investigation, sometimes,  
2 you have to subpoena records more than one time to expand the  
3 time frame? For instance, early on, you would sometimes just  
4 request records between the 15th and the 20th. As the  
5 investigation extended, you would request them for a longer  
6 period of time?

7           A     Okay.

8           Q     So, you made a couple of different requests from the  
9 cell phone providers in this case in order to expand your  
10 knowledge and database so that you could put together this  
11 exhibit for the jury? Is that yes?

12          A     Yes.

13          Q     Okay. Similarly, while business records will remain  
14 static and not change, sometimes witness statements to you  
15 change?

16          A     I'm sorry, sometimes what?

17          Q     Sometimes witness statements to you change?

18          A     Sometimes.

19          Q     So, you need to keep track of some of the witnesses?

20          A     Sometimes, yes.

21          Q     Sometimes, if they're homeless, you'll have to help  
22 them get someplace to stay?

23          A     All depends on the circumstances.

24          Q     Did you assist Red -- or Melissa Estores in sticking  
25 around so you could interview her again and again?



1 MR. DiGIACOMO: Objection Judge. Beyond the scope,  
2 and somewhat cumulative of Red's cross-examination.

3 THE COURT: It is beyond the scope. I'll sustain  
4 the objection.

5 MR. PIKE: All right. I don't have any further  
6 questions. Thank you.

7 THE COURT: Anything further by the State?

8 MR. DiGIACOMO: No, Judge.

9 THE COURT: Any additional questions by the jurors?  
10 We do have a couple questions. Counsel, approach.

11 (Bench conference)

12 THE COURT: It's our same juror.

13 MR. PIKE: It's Juror 14.

14 MR. CANO: [Inaudible].

15 THE COURT: Pardon?

16 MR. CANO: At least we know she's paying attention.  
17 That's good.

18 MR. DiGIACOMO: Do you -- are you keeping a running  
19 tally?

20 THE COURT: Pardon?

21 MR. DiGIACOMO: Do you keep a running tally up here?  
22 [Inaudible].

23 THE COURT: Well, we have a couple questions.

24 [Inaudible].

25 MR. DiGIACOMO: Okay, that's fair.

1 UNKNOWN MALE SPEAKER: [Inaudible].

2 THE COURT: All right.

3 MR. PIKE: Okay.

4 THE COURT: All right. I'm not going to -- I'm  
5 actually -- x'd out all the other ones.

6 MR. PIKE: Now, I assumed this was just going to be  
7 limited to cross -- or re -- re-questioning, and when contact  
8 was made [inaudible].

9 THE COURT: Pardon?

10 MR. PIKE: He's --

11 THE COURT: DiGiacomo. You've got to pay attention.

12 MR. DiGIACOMO: I know [Inaudible].

13 MR. PIKE: He's -- no.

14 MR. DiGIACOMO: [Inaudible].

15 MR. PIKE: No, I don't. I just want to make sure.

16 Because he's got a warrant out for his arrest [inaudible]  
17 trying to bring him in on this case. And they've arrested him  
18 [inaudible] testify. I'm not going to get into that, I don't  
19 think that opens the door for it.

20 MR. DiGIACOMO: [Inaudible].

21 THE COURT: We'll see how the questions go.

22 MR. DiGIACOMO: Okay.

23 THE MARSHAL: She said it's just the top for number  
24 14.

25 THE COURT: Yeah, yeah. Is this your last witness

1 for the day?

2 MR. CANO: [Inaudible].

3 MR. DiGIACOMO: [Inaudible].

4 THE COURT: No, gentlemen, is this your last witness  
5 for the day on the case?

6 MR. LALLI: [Inaudible].

7 THE COURT: Okay.

8 MR. LALLI: We run a tight ship here.

9 THE COURT: All right.

10 MR. LALLI: We're ahead of schedule and under  
11 budget. [Inaudible].

12 THE COURT: And then do you guys have any witnesses  
13 for today, or do you want to start on Monday? I don't even  
14 know if you're calling one. But I need to give him the Carter  
15 instruction.

16 MR. CANO: All right, we'll do that.

17 MR. PIKE: We'll do that. And then if we can take  
18 like a 20-minute break, let us talk to our client. And  
19 then [inaudible].

20 THE COURT: Okay. All right, okay.

21 (Bench conference ended)

22 THE COURT: Detective, we have a couple questions  
23 from our jurors. One question is, "Was Ramaan Hall ever  
24 questioned?"

25 THE WITNESS: Ramaan Hall?

1 THE COURT: Yes.

2 THE WITNESS: Yes.

3 THE COURT: Okay.

4 THE WITNESS: Yes, he was.

5 THE COURT: All right. The next question is, "What  
6 is the next phone call or Direct Connect made by Domonic  
7 Malone's cell phone after the one at 2:39 a.m. that was off  
8 the South Bruce Temp tower by the South Cove Apartments?"

9 THE WITNESS: The next one?

10 THE COURT: Next call after -- or at 12:39.

11 THE WITNESS: Mr. Malone's cell phone activated at  
12 7:36 a.m. on May 18th, 2006. Do you want the tower  
13 information?

14 THE COURT: Well, if that's the answer to the  
15 question, that's all --

16 THE WITNESS: Okay.

17 THE COURT: -- I can ask right now. And the  
18 attorneys may have a follow up question. Mr. DiGiacomo, do  
19 you have any follow up?

20 FURTHER REDIRECT EXAMINATION

21 BY MR. DiGIACOMO:

22 Q At what tower?

23 A The tower at 7:36 a.m. was the Owens tower.

24 Q The one next to the 1156 Blankenship, Mr. Malone's  
25 home?

1 A Yes.

2 Q Mr. Hall, you said he provided a statement, correct?

3 A Yes.

4 Q And you were involved in the last trial in this  
5 particular case?

6 A Yes.

7 Q And he testified at that last trial?

8 MR. PIKE: Objection, Your Honor.

9 THE COURT: I'm sorry?

10 MR. PIKE: Objection, Your Honor. Outside the scope  
11 of the question.

12 MR. DiGIACOMO: I'm asking --

13 THE COURT: Restate your question, restate your  
14 question.

15 BY MR. DiGIACOMO:

16 Q Mr. Hall testified at the last trial?

17 THE COURT: Now, was that your question?

18 MR. DiGIACOMO: Yeah.

19 BY MR. DiGIACOMO:

20 Q Did Mr. Hall testify at the last trial?

21 MR. PIKE: Objection, Your Honor. Irrelevant.

22 MR. DiGIACOMO: They're asking him if he's a  
23 witness --

24 MR. CANO: Speculation.

25 MR. DiGIACOMO: -- in the case.

1 THE COURT: Okay. Well, they asked, was he ever  
2 questioned. I'm going to sustain the objection, because the  
3 answer was, yes, he has been questioned.

4 Is that correct, Detective?

5 THE WITNESS: He has been questioned. Yes, sir.

6 THE COURT: Okay.

7 MR. DiGIACOMO: Thank you.

8 THE COURT: All right. Mr. Pike?

9 FURTHER RECROSS-EXAMINATION

10 BY MR. PIKE:

11 Q In order to question him, did you ever have to issue  
12 a warrant for his arrest to have him come in?

13 A In order to question Mr. Hall?

14 Q Yes.

15 A Did I issue a warrant for his --

16 Q Yes.

17 A No.

18 Q Do you know where Mr. Hall is today?

19 A No, I don't know where he is today.

20 Q Thank you.

21 THE COURT: Anything further by the State?

22 FURTHER REDIRECT EXAMINATION

23 BY MR. DiGIACOMO:

24 Q Is he a suspect in this case?

25 A No, he's not a suspect in the case.

1 MR. DiGIACOMO: Nothing further, Judge.

2 THE COURT: All right. On that last question?

3 MR. PIKE: Okay. No.

4 THE COURT: Any additional questions by the jurors?

5 No, no additional questions. Thank you, Detective,  
6 for your testimony. You are excused.

7 Next witness for the State?

8 MR. DiGIACOMO: Judge, with the right to confirm  
9 with the clerk that all the -- everything we've offered has  
10 been admitted and we're both on the same page as to that,  
11 otherwise, the State would rest.

12 THE COURT: Okay. The State has rested.

13 Ladies and gentlemen, we're going to take a recess  
14 at this time.

15 So, during this recess, it is your duty not to  
16 converse among yourselves, or with anyone else on any subject  
17 connected with this case. Or to read, watch or listen to any  
18 report of or commentary on the trial by any person connected  
19 with the trial, or by any medium of information, including  
20 without limitation, newspaper, television, radio, or the  
21 Internet. You are not to form or express an opinion on any  
22 subject connected with this case until this matter is  
23 submitted to you.

24 We'll see you back in a few minutes.

25

1 (Jury recessed at 3:21 p.m.)

2 THE COURT: We're outside the presence of the jury  
3 panel. There was an issue on the Agreement to Testify. The  
4 State had offered that pleading as an exhibit. I believe you  
5 did, Mr. Lalli?

6 MR. LALLI: I did, Your Honor.

7 THE COURT: Okay. I think there was something  
8 pending, a pending decision on my part as to whether or not I  
9 was going to excise any language of the agreement.

10 MR. CANO: Yes, Your Honor.

11 THE COURT: Was that you? Okay.

12 MR. CANO: Yes. Well --

13 MR. LALLI: I'm sorry, Your Honor. I thought the  
14 Court had already ruled on that. I don't think there -- I  
15 don't think that was --

16 THE COURT: No, I think I said --

17 MR. LALLI: -- pending.

18 THE COURT: -- I was going to review -- see what was  
19 -- because I had not read the agreement at the time. Okay?  
20 And so I said that it would be admitted, subject to anything  
21 being excised.

22 MR. CANO: I believe that's correct, Your Honor.

23 THE COURT: Okay. And anything further, Mr. Cano?

24 Because --

25 MR. CANO: No. Like I said, we -- our [inaudible]



1 is what it is, it's vouching for the credibility of their  
2 witness by admitting all the truthfulness part of it. They  
3 went into that, I believe, in their examination, if I'm not  
4 mistaken.

5 And we would ask that if that's going to be  
6 submitted to them, that that part be redacted from the  
7 Agreement to Testify.

8 THE COURT: Okay. And I have the Sessions case in  
9 front of me. And it says, "When our trial courts allow juries  
10 to inspect a co-defendant's written plea agreement, it must  
11 excise provisions requiring truthful testimony, and declaring  
12 the agreement void when perverted by false testimony, unless  
13 admitted in response to attacks on the witness's credibility  
14 attributed to the plea agreement."

15 And so I think you've sufficiently -- or you -- I  
16 shouldn't say it that way, but you attacked Mr. Herb's  
17 credibility during your cross-examination. And I'm reading  
18 Sessions then to tell me that I may allow the entire agreement  
19 to go in.

20 And so I'm going to -- I don't know what number this  
21 is. I think it's -- actually, I do. It's 225. It will be  
22 admitted.

23 (State's Exhibit 225 admitted)

24 MR. LALLI: Thank you, Your Honor.

25 THE COURT: All right. Anything -- now, you're

1 going to -- you need about 20 minutes; is that correct? Or --

2 MR. DiGIACOMO: Well, you want --

3 MR. CANO: Do you want me to --

4 MR. DiGIACOMO: Do you want to do the canvass of --

5 THE COURT: Yeah, I'll do that --

6 MR. PIKE: Do the canvass, and then --

7 MR. DiGIACOMO: -- the defendant?

8 THE COURT: -- in just a minute here.

9 MR. CANO: You want to do the canvass now?

10 MR. PIKE: -- give us about five minutes -- 5, 10

11 minutes. We've been meeting with Mr. Malone throughout the

12 trial and before, so.

13 MR. DiGIACOMO: There is also one other issue, which

14 is the stipulation between us on the phone numbers. When Mr.

15 Pike put it on the overhead, I -- or Victoria Magee's phone

16 number on the overhead, I realized that her name is spelled

17 wrong. So, we're going to replace that particular exhibit

18 with the corrected version. Obviously, we're not arguing

19 today, so we'll do it on Monday. Ms. Magee's name is spelled

20 wrong, and that's exhibit number --

21 THE COURT: Okay.

22 MR. PIKE: And that's by -- yeah, that's correct.

23 We actually put that together -- Mr. DiGiacomo and I put that

24 together. So, it came in by stipulation, and I'll put it on.

25 THE COURT: Gentlemen, on Exhibit 256 -- excuse me,

1 225, the Agreement to Testify, I thought I was given a copy of  
2 the exhibit. I had highlighted certain lines in there. So,  
3 we'll need to have -- I'll just have my clerk recopy it and  
4 put a new sticker exhibit tag, okay, Carol?

5 MR. DiGIACOMO: Okay.

6 THE COURT: Mr. Malone, under the Constitution of  
7 the United States of America and the Constitution of the State  
8 of Nevada, you may not be compelled to testify in this case.  
9 Do you understand that, sir?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. You may at your own request give  
12 up this right and take the witness stand and testify. If you  
13 do, you will be subject to cross-examination by one of the  
14 deputy district attorneys. And anything you may say, either  
15 on cross-examination or direct examination will be the subject  
16 of fair comment when the district attorneys speak to the jury  
17 in their final arguments. Do you understand that, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. If you choose not to  
20 testify, the Court will not permit the District Attorneys to  
21 make any comments to the jury because you have not testified.  
22 Do you understand that, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: If you elect not to testify, the Court  
25 will instruct the jury, but only if your attorney specifically

1 requests, as follows -- and I would instruct them as follows:  
2 "The law does not compel a defendant in a criminal case to  
3 take the stand and testify. And no presumption may be raised,  
4 and no inference of any kind may be drawn from the failure of  
5 a defendant to testify."

6 I will give that instruction, or a similar  
7 instruction requested by your attorneys.

8 Do you understand that, sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. Do you have any questions about  
11 these rights?

12 THE DEFENDANT: May I confer with my attorney real  
13 quick?

14 THE COURT: I'm sorry?

15 THE DEFENDANT: May I confer with my attorney --

16 THE COURT: Sure.

17 THE DEFENDANT: -- real quick?

18 (Pause in the proceedings)

19 THE DEFENDANT: Okay. No, sir. Yeah, I understand.

20 THE COURT: Okay.

21 MR. PIKE: Your Honor, there is one additional  
22 thing. And I hate to interrupt the Court, but --

23 THE COURT: Go ahead.

24 MR. PIKE: -- because of -- once a defendant waives  
25 his right to not testify, and does testify at a trial, that is

1 a right that is forever waived. In the event that he was to  
2 come back for a second trial, the State would have a right to  
3 publish his testimony in the event that he did not testify  
4 that time. And I always caution my clients concerning that.  
5 It's not a part of the canvass, but it's something I like to  
6 inform the Court, because that is the understanding that we  
7 have.

8 THE COURT: Does the State concur with that  
9 statement?

10 MR. LALLI: Yes.

11 THE COURT: All right.

12 MR. LALLI: Yes, we do.

13 THE COURT: And do you understand that, Mr. Malone?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. And I'm going to inquire from  
16 you, Mr. Malone, as well as your attorneys, if you have any  
17 felony convictions over the last ten years, and your attorneys  
18 have not sought to exclude that conviction coming before the  
19 jury, I advise you that if you take the stand and testify, if  
20 your attorneys don't ask this question, or perhaps the  
21 District Attorneys will ask in the presence of the jury, and  
22 they'll be permitted to ask if you've ever been convicted of a  
23 felony, what was the felony, and when did it occur. However,  
24 they may not go into the details of the felony. Do you  
25 understand that, sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. And you've discussed all these  
3 rights with your attorneys?

4 THE DEFENDANT: Yes, sir. They've been meeting with  
5 me, sir. Yes, sir.

6 THE COURT: Great. That's their job. All right,  
7 sounds good. And how much time do you need, Mr. Cano, Mr.  
8 Pike?

9 MR. CANO: Give us about 10, 15 minutes tops.

10 THE COURT: Sure.

11 MR. PIKE: Thank you.

12 THE COURT: So, Cliff, have me come in first before  
13 the jury does so we can --

14 THE MARSHAL: Okay.

15 THE COURT: -- meet with counsel.

16 (Court recessed at 3:27 p.m. until 3:40 p.m.)

17 (Outside the presence of the jury)

18 THE MARSHAL: All right. Let's come to order,  
19 please.

20 THE COURT: Outside the presence. Where are we at,  
21 defense?

22 MR. PIKE: Your Honor, we've gone over the  
23 admonishment that the Court has provided to Mr. Malone. And  
24 at this time, Mr. Malone will exercise his right to not  
25 testify --

1 THE COURT: Okay.

2 MR. PIKE: -- in this matter. And the defense will  
3 close our case.

4 THE COURT: All right.

5 MR. CANO: We rest.

6 MR. PIKE: We rest.

7 THE COURT: All right. Okay. Well, we're not going  
8 to do any closing today, that's for sure. Okay.

9 MR. PIKE: No. So --

10 MR. DiGIACOMO: No. I mean, we may as well bring  
11 them in --

12 THE COURT: Right.

13 MR. DiGIACOMO: Finish it out and then --

14 THE COURT: How long do you expect your closing,  
15 State and defense?

16 MR. LALLI: Well, I would imagine my first close --  
17 or the first close --

18 THE COURT: Close, rebuttal.

19 MR. LALLI: -- to be anywhere between an hour and an  
20 hour and-a-half.

21 THE COURT: Okay.

22 MR. LALLI: And I would hope that it's closer to an  
23 hour, but.

24 THE COURT: And then -- then, who's doing the --

25 MR. PIKE: Mr. Cano.

1 MR. DiGIACOMO: -- defense?

2 MR. CANO: Are you going to let us both do it, or  
3 just one?

4 THE COURT: This isn't the penalty phase, is it?

5 MR. CANO: No.

6 THE COURT: Okay.

7 MR. CANO: We could always ask, so. Myself.

8 THE COURT: No, I mean about how long?

9 MR. CANO: Oh, I don't know.

10 THE COURT: I'm not going to stop you. I'm just --

11 MR. CANO: No, no, no.

12 THE COURT: -- trying to schedule here.

13 MR. CANO: Not more than two hours.

14 THE COURT: Okay.

15 MR. DiGIACOMO: And then, 20 minutes. Maybe 30 at  
16 most.

17 THE COURT: Okay. Why don't we have them come back  
18 at 12:30? And in the morning, we'll hash out the jury  
19 instructions, give you an hour and a half or so to change any  
20 -- your Power Points, or whatever, and --

21 MR. PIKE: That would be fine.

22 THE COURT: Because I mean, I don't know if you want  
23 your closing and then take a lunch break, and then --

24 MR. CANO: No, I'd rather just --

25 THE COURT: Yeah.



1 MR. CANO: -- blow straight through.

2 MR. LALLI: I'm -- I would -- if it's possible --

3 MR. CANO: Maybe take a break in between the  
4 closings.

5 MR. LALLI: -- my druthers would be -- it's only --  
6 it's not even 4:00 o'clock yet, would be to hammer out as much  
7 on the jury instructions tonight as we can. Because I have --  
8 my -- I can tell the Court, same as from last time, my power  
9 point is jury instruction-intensive.

10 That's what I'm doing, is explaining the law to the  
11 jury, and then applying the facts to that law. So, my  
12 druthers would be to get through as many of the instructions  
13 tonight as possible. And then if we need to finish up on  
14 Monday, then do it.

15 THE COURT: I -- to be honest with you guys, and I  
16 hope I'm always honest with you guys, because of my other work  
17 that I have to do, I have not had an opportunity to review the  
18 objections and the citations to the instructions you guys are  
19 objecting to.

20 MR. CANO: Okay.

21 THE COURT: And so I want to make sure I make the  
22 right decision on the instructions.

23 MR. PIKE: And --

24 THE COURT: We could start earlier, you know, 8:30  
25 on Monday.

1 MR. PIKE: That would -- the Court's pleasure. I'm  
2 here, and I'll be here.

3 THE COURT: I'll review them all weekend, and we  
4 can, you know, probably hammer them out in an hour I would  
5 think.

6 MR. CANO: We probably could. I don't think we've  
7 got to get in that much earlier. But if they need more time  
8 to work on their Power Points. I mean, I'm assuming, more  
9 than likely -- obviously, the Court's going to make the ruling  
10 on the instruction [inaudible]. But I --

11 THE COURT: I wouldn't -- okay.

12 MR. CANO: -- assume they're not going to be too  
13 dissimilar from the ones last time.

14 THE COURT: In your Power Point, I would just insert  
15 everything, and then it's easier to delete versus to insert  
16 last minute.

17 MR. PIKE: And I did -- and actually --

18 MR. LALLI: It doesn't work that way.

19 THE COURT: Oh, it doesn't?

20 MR. LALLI: It doesn't work that way.

21 MR. PIKE: Well, based upon the instructions that  
22 were given at the last trial, I keyed in my objections to both  
23 the number of those from the previous trial, and the opening  
24 statement. So, there aren't -- there aren't a large number of  
25 objections. I think the --

1 THE COURT: Well, you submitted me a six-page --

2 MR. PIKE: -- basic [inaudible] --

3 THE COURT: -- brief on your objections.

4 MR. LALLI: 15 pages.

5 MR. PIKE: Well, yeah. But I want --

6 MR. DiGIACOMO: That was for the record.

7 MR. PIKE: You know, you want me to --

8 THE COURT: Right.

9 MR. PIKE: -- do it this way. But --

10 THE COURT: For the record, I have to read the  
11 record, okay?

12 MR. PIKE: I appreciate that.

13 THE COURT: And also, to tell you the truth, I  
14 thought, because you guys had talked about perhaps we would  
15 finish up on Monday. So, that's why --

16 MR. PIKE: We just --

17 THE COURT: -- you know, I didn't expect it to be  
18 this fast.

19 MR. PIKE: Well, you know, once we reached the point  
20 where we were going to stipulate to the custodian of records,  
21 and identifying phone numbers, we cleared off common witnesses  
22 that we had that were six, or seven, or eight --

23 THE COURT: Oh, no, I'm not faulting anyone.

24 MR. PIKE: -- people long. Yeah, no.

25 THE COURT: I'm just saying that's why --

1 MR. CANO: Yeah, we're ahead of schedule.

2 THE COURT: -- I wasn't ready.

3 MR. PIKE: No, we're --

4 MR. CANO: I agree. I mean, we should just hash out  
5 the instructions Monday morning, argue in the afternoon.

6 MR. PIKE: Yeah. We're trying not to waste the  
7 jury's or the Court's time. So, we appreciate it.

8 THE COURT: Okay. And I understand, Mr. Lalli.  
9 Unfortunately, like I said, I thought you guys were going to  
10 finish Monday, so then I was planning to spend all weekend  
11 reviewing the instructions so I would be ready to go, but.

12 MR. LALLI: Understood. And that's -- I'm sure that  
13 will work, Your Honor.

14 THE COURT: All right. Let's --

15 MR. PIKE: And I'll --

16 THE COURT: Actually, if we do it at 9:00, will that  
17 give you enough time to change any Power Points?

18 MR. LALLI: I'll work -- you know, I'll work with  
19 whatever schedule the --

20 THE COURT: Yeah. Let's come back at 9:00 o'clock.  
21 So, we'll need Mr. Malone here at 9:00, okay, on Monday. And  
22 hopefully, we can just hash it out in about an hour. And then  
23 we'll have -- we'll tell the jury to come back -- well, if we  
24 have them come back at 1:00, is that enough time?

25 MR. CANO: Oh, I think that --

1 MR. DiGIACOMO: With the breaks, I think --

2 MR. CANO: -- should be more than enough time.

3 MR. DiGIACOMO: -- we're going to have them after  
4 5:00 at that point. And we don't know if they're going to  
5 stay, so.

6 MR. LALLI: Do you want to just have them come back  
7 on Tuesday?

8 MR. DiGIACOMO: I mean, we have so much --

9 MR. LALLI: Tuesday morning, and we'll just go  
10 through?

11 MR. DiGIACOMO: -- extra time, we could have them  
12 come back on Tuesday.

13 MR. LALLI: And then just could --

14 MR. PIKE: Well --

15 MR. LALLI: -- start -- instruct Tuesday morning,  
16 and then just run right through it.

17 MR. DiGIACOMO: And be done. And then you --

18 MR. PIKE: Well --

19 MR. DiGIACOMO: If -- even if there's a short break,  
20 they could just take a late lunch, and you could feed them  
21 lunch back there. The problem with doing it after lunch is  
22 you take the two breaks after the arguments, if you do any  
23 breaks or whatever like that. And now we're pushing up  
24 against 5:00. The jurors --

25 THE COURT: Yeah.

1 MR. DiGIACOMO: -- with their daycare. So, why  
2 don't we just bring them back Tuesday, just be dark on Monday  
3 except for instructions?

4 THE COURT: All right, Tuesday at 10:00 then. We  
5 will have to break at lunch. Which is fine I guess, you know.

6 MR. DiGIACOMO: Oh, that's right. You have 10:00  
7 o'clock.

8 MR. LALLI: That's fine.

9 MR. DiGIACOMO: That's fine. Yeah. I mean, it will  
10 be opening.

11 THE COURT: It would give you guys more opportunity  
12 for your --

13 MR. DiGIACOMO: There will be a break.

14 THE COURT: -- for your argument.

15 MR. DiGIACOMO: There will be Charlie's, and then it  
16 will be mine.

17 THE COURT: Okay.

18 MR. DiGIACOMO: And that will go a lot smoother I  
19 think, Judge, than trying to cram it, if we talk too long.

20 THE COURT: Okay. So, just so I'm clear. We're  
21 going to hash out the instructions between ourselves Monday.

22 MR. DiGIACOMO: Yes.

23 THE COURT: Tuesday, they come back at 10:00. I'll  
24 read the instructions, you do your arguments, so we'll have  
25 all Tuesday. And we'll provide them -- okay.

1 MR. PIKE: Thank you.

2 THE COURT: All right?

3 MR. CANO: Can we come back -- since we're going to  
4 do that, can we come back Monday at 10:00, as opposed to 9:00?

5 THE COURT: Mr. Cano, anything for you, okay?

6 MR. CANO: Thank you.

7 (Pause in the proceedings)

8 THE COURT RECORDER: Off the record?

9 THE COURT: No, we're going to bring the jury in.

10 MR. DiGIACOMO: No, we got to bring the jury in.

11 THE COURT RECORDER: Oh, that's right.

12 THE MARSHAL: Ready?

13 (Pause in the proceedings)

14 THE MARSHAL: Officers and members of the Court,  
15 Department 17 jurors.

16 (Jury reconvened at 3:48 p.m.)

17 (Pause in the proceedings)

18 THE MARSHAL: All right, you may be seated, ladies  
19 and gentlemen. Let's make sure our cell phones are turned  
20 off, please.

21 THE COURT: All right. Welcome back, ladies and  
22 gentlemen. The State has rested. Defense, are you going to  
23 be calling any witnesses?

24 MR. PIKE: Thank you, Your Honor. The defense will  
25 not be calling any witnesses at this time, and the defense

1 rests.

2 THE COURT: All right. Ladies and gentlemen, both  
3 sides have rested. As I advised you before, at the end of the  
4 trial, I would read to you the jury instructions, which are  
5 the law that applies to this particular case.

6 We will be hashing out those instructions on Monday,  
7 so we're going to give you Monday off, have you come back on  
8 Tuesday, 10:00 o'clock. And Tuesday, closing arguments will  
9 commence. All right? We are, as you can tell, ahead of  
10 schedule, well ahead of schedule on this case.

11 And so we're going to see you back at 10:00. Please  
12 get a good night's sleep on Monday night, because Tuesday will  
13 be a long day for you. Okay? And we will continue to take  
14 breaks as necessary. And we will provide your lunch for you  
15 on Tuesday. Okay?

16 Ladies and gentlemen, during this weekend recess  
17 through Tuesday, you are ordered not to discuss -- it is your  
18 duty not to converse among yourselves, or with anyone else on  
19 any subject connected with this case, read, watch or listen to  
20 any report of or commentary on the trial by any person  
21 connected with the trial, or by any medium of information,  
22 including without limitation, newspaper, television, radio, or  
23 the Internet. You are not to form or express an opinion on  
24 any subject connected with this case until this matter is  
25 submitted to you.



1 We will see you Tuesday at 10:00. Have a good  
2 weekend.

3 (Jury recessed at 3:50 p.m.)

4 THE COURT: I'm sorry, counsel, I'm writing so many  
5 things down. We're coming back Monday at 10:00, right?

6 MR. CANO: Yes.

7 MR. PIKE: Yes, Your Honor. Thank you very much,  
8 Your Honor.

9 THE COURT: All right. Have a good weekend.

10 MR. LALLI: Thank you, Your Honor.

11 MR. CANO: You too, as well.

12 (Court recessed at 3:51 p.m., until the following day,  
13 Monday, January 30, 2012, at 10:00 a.m.)

14 \* \* \* \* \*

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INDEXWITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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STATE'S WITNESSES:

Erin Reat	23	67	--	82
Gerard Collins	85	119	153, 168, 170	162, 170

\* \* \* \* \*

EXHIBITS

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**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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1-30-12  
DATE

IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \*

DOMONIC MALONE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO. 61006

Electronically Filed  
Jan 14 2013 04:28 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

APPELLANT'S APPENDIX

VOLUME 16

Direct Appeal From A Judgment of Conviction  
Eighth Judicial District Court  
The Honorable Michael Villani, District Court Judge  
District Court No. C224572

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## I N D E X

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ORIGINAL

0001

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FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

JAN 27 2012

BY, *Carol Donahoo*  
CAROL DONAHOO, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

CASE NO. C224572  
DEPT. NO. XVII

vs.

DOMONIC MALONE,

Defendant.

06C224572-2  
PTAT  
Points and Authorities  
1757269



DATE:  
TIME: 8:30 A.M.

**POINTS AND AUTHORITIES IN OPPOSITION TO THE INTRODUCTION OF THE NON-TESTIFYING CO-DEFENDANT'S RECORDED TELEPHONE CALL**

COMES NOW, the Defendant, DOMONIC MALONE, by and through his attorneys, DAVID M. SCHIECK, Special Public Defender, CHARLES A. CANO, Deputy Special Public Defender and RANDALL H. PIKE, Deputy Special Public Defender and respectfully files the within opposition to the admission of the hearsay recording.

**FACTS**

The State alleges that the telephone call made on June 8, 2006 by co-defendant McCarty is admissible in the present case upon the theory that it is either (1) a statement made by a co-conspirator during the course of the conspiracy and/or that under the provisions of NRS 51.069, would allow for the "credibility of the declarant" may be attacked or supported."

1 **POINTS AND AUTHORITIES**

2 During the examination of Donald Herb, Counsel for the Defendant was attempting to  
3 elicit the impact that the Detective's interrogation had upon him. During the interrogation, it  
4 was the detective that was spinning the version that "somebody's singing something, who  
5 knows" and "Somebody got to be talking because I'm here." (P.30). The Detective further  
6 continues his interrogation saying "How do you D-Rock didn't give me the story?" A. "I don't".  
7 Q. "How do you know he's not flipping on me? A. "I don't" (See statement attached hereto  
8 as Exhibit A).

9 Counsel had an obligation to seek the impact that this interrogation technique had upon  
10 the then suspect, Donald Herb. The examination of the witness did not elicit any hearsay  
11 statements specifically (note the numerous objections by the State on page 100, 101 and  
12 10 sustained by the Court.) Accordingly, without the actual introduction of any hearsay  
13 statement, the application sought by the State is not allowed under their proposed theory.

14 NRS 51.069 provides that:

- 15 1. 1. When a hearsay statement **has been admitted in evidence, the credibility of the declarant**  
16 may be attacked or supported by any evidence which would be admissible for those purposes if the  
17 declarant had testified as a witness.  
18 2. Evidence of a statement or conduct by the declarant at any time, which is inconsistent with the  
19 declarant's hearsay statement, is not subject to any requirement that the declarant must have been  
20 afforded an opportunity to deny or explain.  
21 3. If the party against whom a hearsay statement has been admitted calls the declarant as a witness,  
22 the party may examine the witness on that statement as if the witness were under cross-examination.

23 The specific declaration is not articulated in the State's presentation. Is the hearsay  
24 the detectives "story" to Donald Herb? If so, the testimony elicited was solely to serve as a  
25 basis for cross examination of the detective's investigative technique and it's effect on the listener  
26 and not for the truth of the matter asserted, accordingly it is not hearsay within the parameters of  
27 NRS 51.035. See also Wallach v. State, 106 Nev. 470, 796 P.2d 224, 1990 Nev. LEXIS 90  
28 (1990). "[A] statement merely offered to show that the statement was made and the listener was

1 affected by the statement, and which is not offered to show the truth of the matter asserted, is  
2 admissible as non-hearsay." Wallach v. State, 106 Nev. 470, 473, 796 P.2d 224, 227 (1990) v. State,  
3 106 Nev. 470, 473, 796 P.2d 224, 227 (1990) as cited by Grosjean v. Imperial Palace, Inc., 212 P.3d  
4 1068, 1077 (Nev. 2009)  
5

6 **THE RECORDED TELEPHONE CALL WAS NOT IN THE FURTHERANCE OF A**  
7 **CONSPIRACY**

8 Under NRS 51.035 (3)(e) the hearsay rule does not require exclusion of statements made by a  
9 co-conspirator of a party during the course of and in furtherance of the conspiracy. For NRS  
10 51.035(3)(e) to apply, the existence of the continued existence of a conspiracy must be established by  
11 independent evidence. Carr v. State, 96 Nev. 238, 607 P.2d 114 (1980). While a prima facie  
12 showing of the conspiracy is sufficient under the authority of Goldsmith v. Sheriff, 85 Nev. 295,  
13 304, 454 P.2d 86 (1969) In the present case, the facts as presented providesufficient independent  
14 evidence that the conspiracy, if one existed, between the parties had ended.  
15  
16

17 The defense further contends that under the rule of Foss v. State, 92 Nev. 163, 547 P.2d 688  
18 (1976) as reviewed in Crew v. State, 100 Nev. 38 (19 84) although the duration of a conspiracy is not  
19 limited to the commission of the principal crime, but extends to affirmative acts of concealment, the  
20 language contained within the recording appears nothing more than the wailing and gnashing of teeth  
21 of Romeo as he laments his betrayal by his long time friend "White boy." There was no plan to  
22 destroy evidence, or even harm White boy, which may be considered such evidence. Leaving him  
23 alone did nothing to further the alleged conspiracy.  
24

25 DAVID M. SCHIECK  
26 SPECIAL PUBLIC DEFENDER

27   
28 RANDALL H. PIKE

**iWRITE**  
transcription, Inc.

We write for you!

**COPY,**

**INTERVIEW OF DONALD HERB**

**DR #08-11513**

**May 25, 2006; 10:00 p.m.**

Prepared for the  
**HENDERSON POLICE DEPARTMENT**  
**INVESTIGATIONS BUREAU**

**BY: Mona Shield Payne**

Henderson, Nevada (702) 450-3350

**EXHIBIT A176**

1 STATE OF NEVADA) DATE: 05/25/06  
 2 SS: HENDERSON  
 3 COUNTY OF CLARK) TIME: 10:00 p.m.  
 4  
 5  
 6 This taped interview of DONALD HERB, date of birth 12/08/76,  
 7 did hereby take place outside 140 Sir Noble, Las Vegas, Nevada,  
 8 reference DR #06-11513.  
 9  
 10 Person present during this interview is DONALD HERB. Persons  
 11 conducting the interview and tape recording are DETECTIVE GERARD  
 12 COLLINS and DETECTIVE MARK HOSAKA of the Henderson Police  
 13 Department. Also present is DETECTIVE FELICIA BENJAMINS.  
 14 Transcription of taped statement by Mona Shield Payne of i WRITE  
 15 transcription, inc.  
 16  
 17  
 18 (Inaudible statements due to clandestine audio recording  
 19 and background noise.)  
 20 DETECTIVE HOSAKA: All right. It's 25th of May, 2006,  
 21 about 2200 hours. We're at 140 -- what's that?  
 22 DETECTIVE COLLINS: Is this the same cars that were  
 23 here?  
 24 DETECTIVE HOSAKA: Yeah.  
 25 DETECTIVE COLLINS: (Inaudible) first, you can just

1 introduce me.  
 2 DETECTIVE HOSAKA: Okay.  
 3 (Knock on door.)  
 4 DETECTIVE HOSAKA: We'll see if we can get with  
 5 Donnie again. Got upstairs light on. Hey, Donnie? Hey, Detective  
 6 Hosaka. Hey, we have a couple more questions just to kind of follow  
 7 up, and it's not going to take that much time. Is it all right we talk to  
 8 you?  
 9 DONALD HERB: Hold on, (inaudible) grab my shoes.  
 10 DETECTIVE BENJAMINS: It's okay, puppies. All right.  
 11 DETECTIVE HOSAKA: Let me get on this side. Do you  
 12 want -- do you want him out, or do you want us to go in? Gerry, do  
 13 you want him out, or do you want us to go in? He's probably putting  
 14 the dogs up right now. Cool, thanks, man. Oh, you can step up.  
 15 He --  
 16 DETECTIVE COLLINS: (Inaudible.)  
 17 DETECTIVE HOSAKA: Yeah, we just talk -- I guess that  
 18 way -- you allowed to smoke in the house? Not --  
 19 DONALD HERB: No.  
 20 DETECTIVE BENJAMINS: -- really. Okay. That's cool.  
 21 DETECTIVE COLLINS: You're Donnie?  
 22 DONALD HERB: Yes, sir.  
 23 DETECTIVE COLLINS: Donnie, I'm Detective Collins.  
 24 How you doing? Okay? I got a couple questions because here's the  
 25 whole thing. This -- I'll tell you what I'm investigating. Okay? I'm

1 investigating a beating. Okay? You know a girl named Red?  
 2 DONALD HERB: Yeah.  
 3 DETECTIVE COLLINS: Okay. And she was beat up  
 4 pretty bad. Okay?  
 5 DONALD HERB: Okay.  
 6 DETECTIVE COLLINS: And so I'm -- so I'm investigating  
 7 that. And the thing -- the thing about it -- the thing -- I think that your  
 8 green car was used. Okay?  
 9 DONALD HERB: Okay.  
 10 DETECTIVE COLLINS: I don't think you -- I don't think  
 11 you were there. Okay? But the thing about it is, and I'm trying to put  
 12 a couple things together, all right, and I was wondering if you can  
 13 help me out. Can you help me out?  
 14 DONALD HERB: I'll try.  
 15 BY DETECTIVE COLLINS:  
 16 Q. Okay. First of all, let me just get a little information from  
 17 you. Okay. What's -- what's your name?  
 18 A. Donald.  
 19 Q. Donald.  
 20 A. Herb, H-E-R-B.  
 21 Q. What's -- what's your middle name?  
 22 A. Jay.  
 23 Q. Jay. Is that --  
 24 A. J-A-Y.  
 25 Q. J-A-Y. And it's H, what?

1 A. E --, H-E-R-B.  
 2 Q. H-E-R-B. Okay. And what's your date of birth, Donnie?  
 3 A. 12/8/76.  
 4 Q. 12/8/76. Okay. And your social number?  
 5 A. 530 --  
 6 Q. 530.  
 7 A. -- 23.  
 8 Q. 23.  
 9 A. -- 2638.  
 10 Q. 2638. Okay. You live here?  
 11 A. Yes, sir.  
 12 Q. 140?  
 13 A. Uh-huh, Sir Noble.  
 14 Q. Sir Noble?  
 15 A. S-I-R, N-O-B-L-E.  
 16 Q. Why does this address sound -- I've been on this street for  
 17 some reason.  
 18 A. Yeah.  
 19 Q. I don't know why.  
 20 A. There's some guys that live here. The police are always  
 21 here investigating them --  
 22 Q. Really?  
 23 A. -- for something. I -- I don't know about Henderson  
 24 Police, but Metro's been there a lot.  
 25 Q. Really? Okay. This is Las Vegas. Do you know what the

Page 5

Page 7

1 zip is here?  
 2 A. 89110.  
 3 Q. 89110. Okay. This your mom and dad's house?  
 4 A. Yes.  
 5 Q. Okay. Are they here right now?  
 6 A. No.  
 7 Q. And what's the telephone number?  
 8 A. 453 --  
 9 Q. 453.  
 10 A. -- 9274.  
 11 Q. 9274. And if I need to get a hold of you again, what's  
 12 your cell? You got a cell phone number?  
 13 A. Oh, yeah. 408 --  
 14 Q. 408.  
 15 A. -- 2845.  
 16 Q. 2845. Okay. Is this your cell phone?  
 17 A. Yes.  
 18 Q. Okay. One of them Tracafones?  
 19 A. No.  
 20 Q. It's a real cell phone?  
 21 A. It's prepaid, but it's a real phone.  
 22 Q. Oh, yeah? Okay. And let me see what else I need. And  
 23 are you working?  
 24 A. Yes.  
 25 Q. Where do you work?

Page 6

Page 8

1 A. Creel printing.  
 2 Q. Got to spell it.  
 3 A. C-R-E-E-L.  
 4 Q. C-R --  
 5 A. E-E-L, Printing.  
 6 Q. Yeah. Where's that?  
 7 A. Rainbow and 215. I'll give you the exact address if you  
 8 want.  
 9 Q. No, that's all right. Rainbow and 215?  
 10 A. Uh-huh.  
 11 Q. Is there a work number?  
 12 A. There's a main number, 735-8161.  
 13 Q. Okay. 735-8161?  
 14 A. Uh-huh.  
 15 Q. Okay. All right. Just need you to clear up (inaudible). My  
 16 understanding is that, and I haven't -- haven't -- still trying to  
 17 find -- do you know where this guy named Romeo is?  
 18 A. No, I don't. I thought they had 'em. I don't know.  
 19 DETECTIVE BENJAMINS: No.  
 20 BY DETECTIVE COLLINS:  
 21 Q. We ain't got -- nobody got (inaudible). I'm looking for  
 22 him. I'm --  
 23 A. Yeah?  
 24 Q. -- looking for him.  
 25 A. I haven't seen him. 'Cause earlier in the day when they

1 were -- when everybody was here.  
 2 Q. Was he here when the -- when the cops showed up?  
 3 A. He was here right before they showed up. They went  
 4 looking for him while they were talking.  
 5 DETECTIVE COLLINS: You guys didn't get him?  
 6 DETECTIVE HOSAKA: No.  
 7 DETECTIVE BENJAMINS: No.  
 8 BY DETECTIVE COLLINS:  
 9 Q. Okay. So anyways, my understanding is that Romeo has  
 10 been driving your car.  
 11 A. Yes, sir.  
 12 Q. Okay? And how long has he been driving your car?  
 13 A. About two months.  
 14 Q. About two months?  
 15 A. Maybe a little longer.  
 16 Q. Now, did you let him drive your car?  
 17 A. Yeah.  
 18 Q. Why?  
 19 A. He was taking his kids back and forth to school and take  
 20 care of his business.  
 21 Q. Okay. What car were you driving?  
 22 A. The white Honda Accord.  
 23 Q. White Honda Accord. Okay. That -- that one -- that one's  
 24 gone, right?  
 25 A. They took 'em both, yeah.

1 Q. Okay. All right. And my understanding, okay, is that the  
 2 green car was here, right? When did he bring it back?  
 3 A. Last night.  
 4 Q. Last night?  
 5 A. Uh-huh. He had it today, too, for a little while, but he  
 6 brought it back last night.  
 7 Q. Okay. And so you said he had it because he was taking  
 8 his kids to and from school --  
 9 A. Yes, sir.  
 10 Q. -- and all that?  
 11 A. That he -- 'cause they move around a lot. So he would  
 12 take his kids to school in the morning, and then pick 'em up in the  
 13 afternoon --  
 14 Q. All right.  
 15 A. -- take 'em to his mom's house or wherever they needed  
 16 to go.  
 17 Q. Okay. It was a time last week -- okay. I'm not sure if  
 18 it was Tuesday or Wednesday, I'm not sure. Okay? But did you  
 19 have -- when Romeo had the car, okay, these last two months, okay,  
 20 did you have the car at any time without Romeo?  
 21 A. No.  
 22 Q. Is it possible -- like is it --  
 23 A. Once or twice in the last couple days when I go -- when  
 24 I take it to work 'cause I need that car instead of the white car.  
 25 Q. In the last couple days?

Page 9

1 A. Yeah.  
 2 Q. Okay. Last week, did you have the car without Romeo?  
 3 A. I don't think so.  
 4 Q. No? Okay. I think it was -- I think it was Tuesday or  
 5 Wednesday, I'm not quite sure, but did you -- did you go to the  
 6 Sahara Hotel?  
 7 A. Yes, I did.  
 8 Q. Okay.  
 9 A. I don't know if it was Tuesday or Wednesday. I thought  
 10 it was earlier than that, but.  
 11 Q. Okay. Well, I'm not sure of the day. This is what I'm  
 12 trying -- these -- these are a couple things I'm trying to figure out.  
 13 A. Think it was Friday or Saturday that I did that.  
 14 Q. You mean this past Friday or Saturday?  
 15 A. No. This past Friday I was -- this past Saturday, I was in  
 16 jail on the weekend. Talking the week before that.  
 17 Q. Oh, okay. The week before. Okay. And did you go pick  
 18 up Romeo?  
 19 A. Yeah, and Red.  
 20 Q. Okay. And who?  
 21 A. And Red.  
 22 Q. Red. Okay, Red. All right. That's the girl.  
 23 A. That's the girl. Yeah, that's what she goes by. That's the  
 24 only name I know.  
 25 Q. Okay. And which car did you have?

Page 10

1 A. The green car.  
 2 Q. How did you get the green car?  
 3 A. They came and picked me up.  
 4 Q. Who did?  
 5 A. Romeo, D-Rock and Christine.  
 6 Q. Romeo, D-Rock and Christine, they came to pick you up  
 7 that day?  
 8 A. Uh-huh.  
 9 Q. Okay.  
 10 A. Probably like, I don't know, it was in the eveningtime. I'm  
 11 not sure when. Probably 5:00 or 6 o'clock.  
 12 Q. How did -- how did Romeo get separated from you?  
 13 Because didn't you guys go back to --  
 14 A. We went downtown --  
 15 Q. Yeah?  
 16 A. -- going to meet Victoria.  
 17 Q. Right.  
 18 A. I think Red was down there in the room that they had.  
 19 Q. Right.  
 20 A. And we went down there. We got out the car.  
 21 Q. Where downtown was it?  
 22 A. I don't know. Think it's the Oasis --  
 23 Q. Okay.  
 24 A. -- but was right there by White Cross Road on --  
 25 Q. Yeah.

Page 11

1 A. -- think it's Saint Louis and --  
 2 Q. Uh-huh.  
 3 A. -- Las Vegas Boulevard, something like that.  
 4 Q. Do you know how -- do you know how -- how he got  
 5 down there? No?  
 6 A. Well, he was with us at first --  
 7 Q. Right.  
 8 A. -- and then we went down there. He got out the car. We  
 9 all did at the Denny's walking around --  
 10 Q. Okay.  
 11 A. -- to meet Red and Victoria.  
 12 Q. Okay. 'Cause you --  
 13 A. We went back to the car.  
 14 Q. It was you --  
 15 A. Me, D-Rock, Christine and Romeo at first.  
 16 Q. Okay, okay.  
 17 A. Came -- they came and picked me up and my car. Romeo  
 18 was driving.  
 19 Q. Okay. So then you went and dropped Romeo off down  
 20 there.  
 21 A. Yeah, we went down there. They got out the car.  
 22 Victoria and Red walked up --  
 23 Q. Uh-huh.  
 24 A. -- and we got back in the car --  
 25 Q. Right.

Page 12

1 A. Red and Romeo stayed down there.  
 2 Q. Right.  
 3 A. We came back over here.  
 4 Q. Right.  
 5 A. And then they called me and said they're at Sahara, at the  
 6 valet in the back on Paradise, come pick --  
 7 Q. Where --  
 8 A. -- us up.  
 9 Q. Where were -- when -- when you guys left, when you  
 10 guys left Romeo and all that --  
 11 A. Uh-huh.  
 12 Q. -- where did you guys go?  
 13 A. D-Rock, Christine and I, we came back here. I had to  
 14 come back to my house.  
 15 Q. Okay.  
 16 A. And then they called and said, okay, come pick us up,  
 17 we're at Sahara. So we all went back to Sahara, picked him and Red  
 18 up.  
 19 Q. How -- how long was that?  
 20 A. Maybe -- we were away from him and Red for maybe 45  
 21 minutes --  
 22 Q. Yeah?  
 23 A. -- maybe an hour the longest.  
 24 Q. Okay. And so you -- you went down to Sahara and picked  
 25 them up?



Page 13

1 A. Yes, sir.  
 2 Q. Okay. And when you got to the Sahara, you picked up  
 3 who again?  
 4 A. Red and --  
 5 Q. Red.  
 6 A. -- Romeo.  
 7 Q. Okay. And so who was in the car with you when you  
 8 went to pick 'em up?  
 9 A. At that time, it was me, D-Rock, Christine and Victoria.  
 10 Q. Okay. So then six of you ended up in the car.  
 11 A. Yes.  
 12 Q. Okay. So in the car when you guys left the Sahara, it  
 13 was -- who was driving?  
 14 A. I was driving.  
 15 Q. You were driving. Okay. So there was you. There was  
 16 D-Rock. There was Christina. What's --  
 17 A. Victoria.  
 18 Q. Victoria.  
 19 A. Red and Romeo.  
 20 Q. Okay. And who was in the passenger's seat with you?  
 21 A. See how did we get in? Red and Christine were in the  
 22 back in their seat.  
 23 Q. Red and Christine?  
 24 A. Yes. Christine -- Christine was sitting -- no, Red was  
 25 sitting on Christine's lap.

Page 14

1 Q. Red was sitting on Christine's lap? Oh, okay. So they  
 2 doubled up in the seat?  
 3 A. Yeah.  
 4 Q. Okay. You guys got stopped?  
 5 A. No.  
 6 Q. You didn't get stopped?  
 7 A. No. The windows are pretty dark, so --  
 8 Q. Oh, are they?  
 9 A. -- at night so.  
 10 Q. All right. What time was that that you picked them up  
 11 from?  
 12 A. Picked them probably around 8:00 or 9:00 I think.  
 13 Q. Uh-huh, 8:00 or 9:00?  
 14 A. 8:00 or 9 o'clock.  
 15 Q. In the evening?  
 16 A. Yeah.  
 17 Q. Okay. And where did you go when -- when --  
 18 A. We came here. They dropped me off at my house.  
 19 Q. Okay.  
 20 A. Then they all left.  
 21 Q. They all left? Okay. Do you know where they went?  
 22 A. No.  
 23 Q. You don't have any idea what they were going to do?  
 24 A. No. Probably going to hang out. I don't know what  
 25 they're going to do.

Page 15

1 Q. Okay. When was the next time that you met up with any  
 2 of them?  
 3 A. The next day, I seen Romeo, and I think D-Rock was  
 4 there.  
 5 Q. Where?  
 6 A. They came over -- they came and picked me up. I think  
 7 they were at the Sportsman's or something like that.  
 8 Q. Both of them came to pick you up?  
 9 A. Pretty sure was both. I know Romeo did.  
 10 Q. Okay. What car?  
 11 A. They had the green car.  
 12 Q. Okay. So what else -- what'd you do -- what'd you do  
 13 when they came and picked you up?  
 14 A. We went back to the Sportsman to hang out.  
 15 Q. Okay.  
 16 A. And then we were there for I don't even know how long,  
 17 a couple hours, and then I come back home.  
 18 Q. How did you get home?  
 19 A. They dropped me off at the house.  
 20 Q. They dropped you off at the house? And so was D-Rock  
 21 and -- and Romeo that dropped you off at the house?  
 22 A. Right.  
 23 Q. Okay. And what time was that they dropped you off at  
 24 the house?  
 25 A. 9:00 or 10 o'clock maybe.

Page 16

1 Q. 9:00 or 10 o'clock? Okay. And do you know where they  
 2 were going? Did they say where they were going?  
 3 A. No. I figured they -- he was taking D-Rock home and I  
 4 don't know. He was going back to Sportsman's, I guess.  
 5 Q. Okay. Did you hear anything about -- about Romeo  
 6 getting his ass kicked?  
 7 A. Yeah. I think that was Tuesday or Wednesday of last  
 8 week.  
 9 Q. Was that --  
 10 A. That was at the Sportsman's at like --  
 11 Q. Was that -- well, let me ask you this. The night that he  
 12 got his ass kicked, was that the night before you guys picked him up  
 13 at the Sahara or was --  
 14 A. No, that was after.  
 15 Q. -- it right after that? It was the night after?  
 16 A. I think it was the night or two after.  
 17 Q. The night or two after?  
 18 A. Couple nights I think. I'm -- I'm pretty sure we went to  
 19 Sahara Friday or Saturday.  
 20 Q. Okay.  
 21 A. I do. May -- might have been Saturday then. He got beat  
 22 up on Tuesday I think.  
 23 Q. Oh, yeah?  
 24 A. That's what he said.  
 25 Q. All right. Did you -- did you see him when he told you

Page 17

1 that?

2 A. I seen him -- I didn't even know it happened. Then the

3 next day, late in the afternoon --

4 Q. Uh-huh.

5 A. -- he came and got me, and that's when he told me that

6 three guys --

7 Q. Came and got you?

8 A. -- jumped -- yeah, he came and got me.

9 Q. Where'd you guys go?

10 A. Back to Sportsman.

11 Q. Back to the Sportsman?

12 A. That's pretty much where we hang out at every night.

13 Q. Yeah. Okay. And go back a little bit. The night after

14 Sahara, okay --

15 A. Okay.

16 Q. -- you went down to the Sportsman with him, right?

17 A. Uh-huh.

18 Q. And you said he came back here, they dropped you back

19 off --

20 A. Uh-huh.

21 Q. -- at about 10 o'clock you said?

22 A. Something like that time.

23 Q. What did you do after you got here?

24 A. Watched a little TV, went to bed.

25 Q. Was anybody here?

Page 18

1 A. My parents and my brother.

2 Q. Yeah? Your parents and your brother were here?

3 A. And my son and the whole family was here.

4 Q. You got a son?

5 A. Yeah.

6 Q. How old is your son?

7 A. Nine years old.

8 Q. Oh, really. Oh. You got a wife?

9 A. No, we're separated right now.

10 Q. Oh, you're separated right now? That's too bad. So

11 anyways, so that night you got here about 10 o'clock. Okay? And

12 then when was the next time that you saw D-Rock?

13 A. Maybe two days later, two or three days later.

14 Q. And how did you -- why did you see him? What were the

15 circumstances of that meeting?

16 A. Just a casual meeting at Sportsman's, I think it was.

17 Q. At the Sportsman. And you drove down to the

18 Sportsman?

19 A. That night I probably think I did with the white car.

20 Q. With the white car? Okay. And how long did you stay

21 down there?

22 A. Couple hours.

23 Q. Couple hours?

24 A. Usually only stay for a few hours. I got to go work and

25 get up at 3:30 in the morning and go to work.

Page 19

1 Q. So what'd you do -- what'd you do after you -- after you

2 left the Sportsman?

3 A. Come back home.

4 Q. Come back home? Okay. And was there anybody in the

5 white car with ya?

6 A. One of the nights D-Rock was with me. I dropped him off.

7 Q. Where'd you drop him off?

8 A. Let me see. Up close to Northtown, I think.

9 Q. Close to Northtown?

10 A. By Lake Mead and Martin Luther King.

11 Q. What was up there?

12 A. He didn't say. Somebody -- some girl's house he wanted

13 to go to, I guess.

14 Q. All right.

15 A. I dropped him off up there and came back.

16 Q. How many times you been up there?

17 A. Just once.

18 Q. Just once? That was the only time?

19 A. Uh-huh.

20 Q. Okay. And when you dropped him up -- up -- what day

21 was that? Was that last week or?

22 A. Yeah, it was last week.

23 Q. Oh, yeah, was last week 'cause you said it was last week.

24 A. Yeah.

25 Q. Okay. So what day was that about? Was that -- was that

Page 20

1 after the night that you guys went to the Sahara or before that?

2 A. That was after the night we went to Sahara.

3 Q. After the night you went to Sahara. Was that -- was that

4 after the time that you heard that -- that Romeo got his ass kicked, or

5 was that before the time you heard that Romeo got his ass kicked?

6 A. Think that was right before.

7 Q. Right before?

8 A. The day before, I think.

9 Q. Right before? The day before?

10 A. The day before. Not right -- the night -- 'cause the night,

11 I didn't hear about it 'til the next day.

12 Q. Right.

13 A. So I think it was the night before. It had to be the night

14 before.

15 Q. Yeah?

16 A. And I don't know what they did then, and then I talked to

17 Romeo.

18 Q. Now, when you got -- let me ask you a question. When

19 you -- when you had D-Rock with you and the night that you dropped

20 him off at the house, you guys went to the Sportsman?

21 A. We were come --

22 Q. Before you dropped him off at --

23 A. Yeah, before we dropped him off.

24 Q. -- up there, you went to Sportsman's?

25 A. Right.

Page 21

1 Q. So did he ride in the car down there with you?  
 2 A. To where?  
 3 Q. To the Sportsman?  
 4 A. No.  
 5 Q. Where -- did you pick him up there?  
 6 A. No -- yeah, I pick him up there. Him and Romeo were  
 7 there.  
 8 Q. Him and Romeo were there. Okay. Romeo had the green  
 9 car, right?  
 10 A. Right.  
 11 Q. Okay. And then -- excuse me -- and then Rock said I need  
 12 a ride?  
 13 A. Basically, he's, "I need a ride up there."  
 14 Q. Okay.  
 15 A. I was coming to go home, so I figured I'm going this way.  
 16 Q. And this was, again, at what time?  
 17 A. That was probably like 10 o'clock at night.  
 18 Q. At 10 o'clock at night?  
 19 A. 10:00 or 11:00, something like that.  
 20 Q. Okay.  
 21 A. I need to be here by 11 o'clock at the very latest, got to  
 22 get some sleep.  
 23 Q. Yeah. Okay. What was the --  
 24 DETECTIVE COLLINS: I know we talked about what time  
 25 the car -- what was the confusing part about the car?

Page 22

1 DETECTIVE BENJAMINS: Switching.  
 2 DETECTIVE HOSAKA: Switching.  
 3 BY DETECTIVE COLLINS:  
 4 Q. Did you guys switch cars at any time?  
 5 A. Just this last week.  
 6 Q. Just this last week?  
 7 A. Probably last two or three days.  
 8 Q. Tell me about switching the cars.  
 9 A. Because my white car doesn't have any registration.  
 10 Q. Right.  
 11 A. It has a 30-day on it and expired on the 18th.  
 12 Q. Right.  
 13 A. So I don't like driving it too much if I can help it.  
 14 Q. Right.  
 15 A. So I would take that car to the Sportsman's --  
 16 Q. Yeah.  
 17 A. -- pick up the green car and go to work --  
 18 Q. Right.  
 19 A. -- and then come back and meet him up, switch up cars  
 20 again 'cause he doesn't -- he won't drive the white car right now  
 21 'cause it doesn't have registration.  
 22 Q. How many -- how many times did -- how many times did  
 23 you do that last week?  
 24 A. That's just this last couple days of this week.  
 25 Q. Oh, this one?

Page 23

1 A. Monday, Tuesday and Wednesday, yesterday.  
 2 Q. So it wasn't any time last week? Did you switch out cars  
 3 last week?  
 4 A. Nah, I don't think so. I think he had the white car one  
 5 time --  
 6 Q. Did --  
 7 A. -- 'cause I left it down there, but he took it to his mom's  
 8 house and parked it as far as I know.  
 9 Q. Well, when was that?  
 10 A. Maybe Friday, Thursday or Friday.  
 11 Q. Was that after he got his ass kicked or before?  
 12 A. That was after.  
 13 Q. After he got his ass kicked that he had the white car?  
 14 A. Think so.  
 15 Q. So he took it -- he took the white car down to his mom's?  
 16 A. Yeah. That's where I --  
 17 Q. Okay.  
 18 A. -- (inaudible) to get it from today.  
 19 Q. So where was the green car?  
 20 A. He still had it. He had -- he came here and picked me up  
 21 two days, took me to work, and then -- where did he go? Thursday?  
 22 Wednesday, Thursday? One of them two days, he came, he picked  
 23 me up 'cause I need -- I needed that car 'cause I had to go --  
 24 Q. Which car?  
 25 A. -- in the afternoon. The green car. I needed that back

Page 24

1 'cause I had to go to drug court and see my PO, stuff like that.  
 2 Q. Okay.  
 3 A. And I don't want to drive that other car.  
 4 Q. What day was that?  
 5 A. I believe it was Wednesday or Thursday.  
 6 Q. Wednesday or Thursday?  
 7 A. And he came here --  
 8 Q. Uh-huh.  
 9 A. He picked me up in the green car.  
 10 Q. Okay.  
 11 A. He took me to work --  
 12 Q. Right.  
 13 A. -- and then he came back and picked me up from work.  
 14 Q. Okay.  
 15 A. Then we switched out cars. I took the green car to drug  
 16 court --  
 17 Q. Yeah.  
 18 A. -- and then after that was done, I came back and got the  
 19 white car --  
 20 Q. Right.  
 21 A. -- 'cause I can -- I'll drive it more than he will because I  
 22 have insurance.  
 23 Q. He came back where?  
 24 A. He was at the Sportsman every week.  
 25 Q. At the Sportsman. And what time was that about?

Page 25

1 A. Let's see, drug court lets out at 7:00, 8 o'clock depending  
 2 on which day.  
 3 Q. Yeah.  
 4 A. So it had to be 8:30, 9 o'clock.  
 5 Q. So you went down to the Sportsman's in the white car.  
 6 A. Right.  
 7 Q. Okay. Yeah, 'cause that would make sense because  
 8 people saw you down at the Sportsman's in a white car. Okay.  
 9 Now, when you got to the Sportsman in the white car, did you  
 10 change out cars at that time?  
 11 A. Did we change back? No. I think I brought the white car  
 12 home.  
 13 Q. Is that the night that you gave D-Rock a ride?  
 14 A. Might -- that might have been all the same day.  
 15 Q. It might have been all the same day. See, now, that's the  
 16 confusing part because -- because people said they saw that you  
 17 came in the white car, okay, but then you switched -- they saw you  
 18 in the white car, but then a few minutes later, they saw you and  
 19 D-Rock in a green car. Yeah.  
 20 A. (Inaudible.)  
 21 Q. Yeah, yeah.  
 22 A. I never been in the green car with D-Rock by myself ever.  
 23 Q. Uh-huh. I'm tell that -- that's what they're saying. Okay?  
 24 So I mean that's where the switch comes in, and we're not -- we're  
 25 not sure about the switch. I mean it's like --

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1 A. I don't know.  
 2 Q. You've never been in -- you've never been in the green car  
 3 with D-Rock by yourself?  
 4 A. Yeah, by myself. There's always been someone else with  
 5 us.  
 6 Q. Really?  
 7 A. As far as I know.  
 8 Q. As far as you know? What if I tell -- okay. All right. Let  
 9 me ask -- let me ask you this. If I tell you we got you on tape, you  
 10 and D-Rock getting in the green car --  
 11 A. Well, then obviously you have it --  
 12 Q. Okay.  
 13 A. -- 'cause you obviously have it if it's on tape.  
 14 Q. Okay.  
 15 A. Just trying to --  
 16 Q. So is it --  
 17 A. -- think when it was.  
 18 Q. Is it possible that you got into the green car with Rock  
 19 that night and probably took him home?  
 20 A. Might have been.  
 21 Q. Yeah?  
 22 A. It was possible.  
 23 Q. Okay. Is it possible before you brought him home that you  
 24 made a stop at South Cove Apartments --  
 25 A. No.

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1 Q. -- down at 15th and Fremont?  
 2 A. No. Never been to South Cove.  
 3 Q. Okay. Is it possible that at South Cove you guys went up  
 4 to somebody's room and -- and met with two girls?  
 5 A. No.  
 6 Q. Okay?  
 7 A. Did not happen.  
 8 Q. Is it possible that you left with the two girls and got back  
 9 into the green car and then drove away?  
 10 A. Did not happen.  
 11 Q. Is it possible that you could be on tape at South Cove  
 12 and --  
 13 A. No, not at all. I've never been in South Cove.  
 14 Q. Okay. Is it possible that you could have left South Cove  
 15 with the two girls and driven up to a place in Henderson, okay, and  
 16 came to a desert area and stopped with the two girls in the car?  
 17 A. No, not at all.  
 18 Q. Is it possible that you guys got out of the car, took the  
 19 two girls out of the car, beat the hell out of them, killed them and left  
 20 them there?  
 21 A. No, not at all.  
 22 Q. Okay. And then is it possible that you guys leave there  
 23 and drive back down to the Sportsman's pub (Inaudible), okay, and is  
 24 it possible that you could have given the car back to -- to Romeo and  
 25 told him if they ask you about the cars, tell 'em we switched the cars

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1 after this (Inaudible)?  
 2 A. No, not at all.  
 3 Q. Okay. I'm going to tell you right now, you can either be  
 4 a witness or you can be a suspect. What do you want to be?  
 5 A. I'd rather be a witness, but I -- I --  
 6 Q. Okay.  
 7 A. -- never did any of that. Never been to South Cove or any  
 8 of that.  
 9 Q. Do you know where -- do you know where D-Rock is right  
 10 now?  
 11 A. No, I don't.  
 12 Q. He's in jail.  
 13 A. Okay.  
 14 Q. You know where Romeo is right now? He's in jail. Okay?  
 15 Let me tell you a story. Okay? Let me tell you a story. You tell me  
 16 how accurate I'm going. Okay? You, D-Rock, Victoria and Christine  
 17 drive to Sahara Hotel and you pick up Romeo and Red. You get in the  
 18 car. You're driving. Okay? Two girls in the front seat, the rest are  
 19 in the back. You drive over here. Okay? You get out and you go in  
 20 the house because you got to go to work. Okay? They leave. But  
 21 you know what happens when they leave? And tell me if I'm wrong.  
 22 Okay? Tell me if I got it wrong. They end up driving back to the  
 23 Sports pub, Sportsman's pub, and then they leave a little bit after  
 24 that. This is in the green car. Okay?  
 25 A. Okay.

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1 Q. And while going up, driving down Boulder Highway and all  
2 that, D-Rock starts beating on Red. Okay? Hang on. Let me finish.  
3 Let me finish.  
4 A. (Inaudible.)  
5 Q. D-Rock starts beating on Red. They end up driving to a  
6 remote location. Everybody gets out of the car, and D-Rock beats the  
7 shit out of Red, beats her senseless, okay, because apparently, people  
8 are saying that she owed D-Rock some money. D-Rock wants to get  
9 his money. But then they all get back in the car, and they all drive  
10 back down to the Sportsman. Okay? And then from the Sportsman,  
11 they decide we're going to the Hard Rock. They go to the Hard Rock,  
12 and they leave the girls off there.  
13 A. Okay.  
14 Q. And they leave the girls off there because the girls have  
15 got to make some money. Okay? And then they leave. Well, what  
16 happens is the girls disappear. Okay? And after the girls disappear,  
17 they show up back at South Cove the following night.  
18 A. Okay.  
19 Q. Okay? About, yeah, roughly 10:00, 10:30 at night, just  
20 about the time that you and D-Rock pull in to the pub, okay, the  
21 Sportsman's pub, in the white car. Okay?  
22 A. What'd I do?  
23 Q. Then you trade off cars with Romeo. So Romeo's got the  
24 white car now, and you've got the green car, and you and D-Rock go  
25 back to South Cove, go into the apartment, take the girls out --

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1 A. Everything sounds good 'til you get to that part right  
2 there.  
3 Q. -- drive all the way up to Henderson again and do the  
4 bastardly deed.  
5 A. No.  
6 Q. Okay. What have I got wrong?  
7 A. The part of me and D-Rock going to the South Cove. I  
8 ain't been to the South Cove.  
9 Q. Tell me who he went with.  
10 A. The only person I know he would go with is Romeo. I  
11 never been there. I guarantee that, never been to South Cove.  
12 Q. Tell me -- tell me who he went with.  
13 A. It'd have to be Romeo. It's the only person I know of that  
14 he would go with.  
15 Q. No. I can tell you're scared.  
16 A. Of course.  
17 Q. Now, how do you know -- see, I -- I want to know what  
18 happened at the scene. Now, remember, I got two in jail right now,  
19 and if somebody's singing something, who knows.  
20 A. Okay.  
21 Q. Okay? Somebody got to be talking because I'm here.  
22 A. Right.  
23 Q. How do you know D-Rock didn't give me the story?  
24 A. I don't.  
25 Q. How do you know he's not flipping on me?

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1 A. I don't --  
2 Q. How --  
3 A. -- but I -- I can tell you honestly I've never been to the  
4 South Cove. I did not take him to South Cove in a green car and pick  
5 up any girls; did not happen. Did not happen.  
6 Q. How can we prove that you didn't do it? How can we  
7 prove that you didn't do it? Where were ya at that time?  
8 A. Here.  
9 Q. With your parents?  
10 A. Uh-huh.  
11 Q. Did you swap up cars with -- with Romeo that night?  
12 A. No. I had the white car that night. They had the green  
13 car the whole night, I'm pretty sure.  
14 Q. You're pretty sure.  
15 A. 'Cause I had the white car here. I was at home with my  
16 parents. They had the green car. Everything else you said is --  
17 Q. What night --  
18 A. -- probably right on the point.  
19 Q. What night did -- why? How -- how -- why am I on point?  
20 A. I mean it sound exactly right about them taking Red out  
21 there and beating her up.  
22 Q. How do you know that?  
23 A. Because they told me.  
24 Q. Who told you?  
25 A. D-Rock.

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1 Q. D-Rock told you?  
2 A. And Ro' -- they were both there.  
3 Q. So it stands to reason that he would trust you, D-Rock  
4 would trust you.  
5 A. Some -- what I understand, he thinks I'm a loose end.  
6 That's what I was told.  
7 Q. He's probably thinking so right now.  
8 A. That he wanted to come get me 'cause I knew too much.  
9 Q. He probably thinking so right now. Maybe that's why he's  
10 switching on you. Maybe that's why he's saying -- telling me a story.  
11 Okay? Now, you know what happens when people go like this? Like  
12 I said, we're giving you your one chance. Witness or suspect. 'Cause  
13 right now, I am leaning towards the fact that you are probably a  
14 suspect and think you're a suspect, and I know you're a suspect.  
15 A. I am not a suspect.  
16 Q. Okay? I'm really -- I really --  
17 A. I'll be a witness. I am not a suspect. I did not go to the  
18 South Cove.  
19 Q. Well, who did go down at the South Cove?  
20 A. Romeo and D.  
21 Q. Romeo and D?  
22 A. D-Rock.  
23 Q. How do you know that?  
24 A. That's what they said.  
25 Q. That's what they said?

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1 A. They said they picked the girls up at some guy's room at  
 2 the South Cove, and they all left together arm and arm, like everything  
 3 was great.  
 4 Q. Yeah?  
 5 A. That's what happened.  
 6 Q. Now, who said that to you?  
 7 A. Romeo and D-Rock.  
 8 Q. They both told you that?  
 9 A. Uh-huh.  
 10 Q. When did they tell you that?  
 11 A. The day after it happened.  
 12 Q. The day after it happened?  
 13 A. I'm not sure exactly what day it is. My days are kind of  
 14 fuzzy but --  
 15 Q. Okay.  
 16 A. -- the day after it happened, they told me that -- that they  
 17 picked them up from some guy's house and that Red was still with  
 18 the guy, but they picked up Victoria and Christine only.  
 19 Q. That Red was still with what guy?  
 20 A. Whatever room they were in, I guess. That name Black,  
 21 the guy y'all were talking about earlier.  
 22 Q. Okay. Now, repeat that part again, about Red being with  
 23 Black. Say that again.  
 24 A. They said Red was still with Black but they picked up  
 25 Victoria and Christine. They were going to pick up Red, too, but Red

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1 wasn't there.  
 2 Q. Did they know where Red was?  
 3 A. As far as I know, no.  
 4 Q. Okay. And where did they go after that?  
 5 A. That I don't know. I wasn't with 'em.  
 6 Q. They didn't tell ya?  
 7 A. No.  
 8 Q. Come on, man. You -- I know you're lying to me right  
 9 now. Now I know you're lying to me. Tell me the truth.  
 10 A. From what I understand, they took 'em out there where  
 11 they beat her up at.  
 12 Q. Now, why should I believe you and not them?  
 13 A. I don't know. 'Cause it's truth, and I was here.  
 14 Q. Your mom and dad were here?  
 15 A. My brother and my son.  
 16 Q. What day did this happen? You got --  
 17 A. Maybe that was Tuesday. It was Tuesday night.  
 18 Q. You don't know?  
 19 A. Not positive. Was Tuesday or Wednesday, I know that  
 20 much, but I don't remember exactly what day.  
 21 Q. What did they say they did to her?  
 22 A. They said they beat 'em up.  
 23 Q. With what?  
 24 A. They didn't tell me that. They said they beat 'em up real  
 25 good.

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1 Q. They said they killed 'em?  
 2 A. Not -- not really, didn't. Was implied. Didn't ask me --  
 3 say who killed 'em.  
 4 Q. What did they say they did to them before they killed 'em?  
 5 A. They just said they beat 'em up and left 'em there.  
 6 Q. Yeah? Did they say -- did they say what they did to them  
 7 before they left them there?  
 8 A. No. They just said they beat 'em up real bad and left 'em  
 9 there. I think they messed 'em up taking their clothes off, leaving 'em  
 10 naked or something like that, talking about I wouldn't want to see it.  
 11 I was like, "All right, I don't want to be involved."  
 12 Q. Why'd they take their clothes off?  
 13 A. I guess it's supposed to be so they couldn't come back in  
 14 town right away or something. I don't know, (Incomprehensible).  
 15 Q. And so did they say how they beat 'em up?  
 16 A. I think Rome said that D-Rock used his fist. I don't know.  
 17 Q. I'll tell you what, you want to -- you want to prove to me  
 18 that you're not involved in this?  
 19 A. Yeah.  
 20 Q. You do? That you really do? Okay.  
 21 DETECTIVE COLLINS: You got a Buc' kit? You got a  
 22 Buc' kit?  
 23 DETECTIVE BENJAMINS: (Inaudible.)  
 24 DETECTIVE HOSAKA: What do you need?  
 25 DETECTIVE COLLINS: A Buccal swab?

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1 DETECTIVE HOSAKA: Got one.  
 2 BY DETECTIVE COLLINS:  
 3 Q. What I'd like you to do (Inaudible). He's going to get a  
 4 Buccal swab.  
 5 A. (Inaudible.)  
 6 (Verbiage becomes inaudible due to Detective Hosaka  
 7 moving the recorder away from the interview location.)  
 8 BY DETECTIVE COLLINS:  
 9 Q. (Inaudible.)  
 10 A. (Inaudible.)  
 11 Q. (Inaudible) they're dead.  
 12 A. Well, I understand that, but I -- I didn't know the whole  
 13 version (Inaudible) --  
 14 Q. Oh, no, no, no.  
 15 A. -- (Inaudible).  
 16 Q. You're right. All murders are (Inaudible).  
 17 A. That's why I'm asking. What makes the death penalty?  
 18 Q. (Inaudible.) How do I know all three (Inaudible)?  
 19 A. (Inaudible) not lying.  
 20 Q. How (Inaudible)? I want you -- I really want you  
 21 (Inaudible). I really want (Inaudible).  
 22 A. (Inaudible.)  
 23 Q. Jesus Christ (Inaudible).  
 24 A. I don't even know (Inaudible). I have no -- I have no  
 25 reason to hurt them at all.

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1 Q. Why would Romeo, though -- why would Romeo lie about  
2 that? Why would he want to lie about you?  
3 A. (Inaudible) wouldn't believe that he would do it.  
4 Q. Well, let me ask you this. You tell me how can we prove  
5 that Romeo (Inaudible) instead of you? How can we prove that? He  
6 must have told you how he did it. I know (Inaudible).  
7 A. They called me on my cell phone.  
8 Q. They called you on the -- what --  
9 A. (Inaudible) tell 'em --  
10 Q. -- time --  
11 A. -- where I was at, though.  
12 Q. (Inaudible) what time was that?  
13 A. Probably like 1:30.  
14 Q. In the morning, after they did it?  
15 A. I don't know if while they (Inaudible).  
16 Q. While they were doing it, (Inaudible)?  
17 A. I think. I'm not sure. They called me and said they were  
18 out somewhere, if I want to come pick up my car, they were leaving  
19 town, if I want to come pick up my car.  
20 Q. What time was that?  
21 A. Like 1:30 in the morning.  
22 Q. Who called?  
23 A. Romeo.  
24 Q. Romeo did. Whose phone was this?  
25 A. His phone.

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1 Q. How do you know that?  
2 A. 'Cause his phone number (Inaudible).  
3 Q. Are you sure they were up -- they were still there  
4 (Inaudible)? They said they were way out there in Henderson? Okay.  
5 And they said they were still there, way out there in Henderson, says  
6 man, come pick up your car?  
7 A. (Inaudible) he told me was leaving town.  
8 Q. Okay.  
9 A. Romeo told me he was leaving town, do I want to pick up  
10 my car at Stateline or, yeah, Stateline, they was going to drive it  
11 there, do I want to come pick it up.  
12 Q. You're saying that it's -- it's about 1:30?  
13 A. Yes, sir.  
14 Q. Did you make any other phone calls? When he called you,  
15 did you make phone calls?  
16 A. He left (Inaudible).  
17 Q. Oh, he (Inaudible) a few times? How many times would  
18 you say? At right around 1:30?  
19 A. About 1:30 until 3 o'clock (Inaudible) wouldn't say why  
20 he was leaving, say I have to leave right now.  
21 Q. And did he answer every time?  
22 A. Yeah.  
23 Q. He did. How about before 1:30, did you talk to them?  
24 A. Probably 8:00 or 9 o'clock at night maybe. I was here  
25 writing sentences all night. Had to write sentences for drug court,

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1 3,000.  
2 Q. 8 o'clock. Had to write sentences for drug court?  
3 A. Say I will never use drugs ever again, and I was sitting  
4 right there on that couch writing 'em all night long. My parents here  
5 right there watching TV with this.  
6 Q. He called wanting to talk to you. What did he say, you  
7 know, before they went out and did this?  
8 A. He said -- the first time he called me, they were on the  
9 freeway, I think he said, on the way out there.  
10 Q. Yeah. He said he had the girls?  
11 A. Yeah.  
12 Q. Did he say he had the girls?  
13 A. Yeah, he said he had the girls with him (Inaudible).  
14 Q. And they were going out there. Did you ask him what  
15 they were going to do?  
16 A. (Inaudible) what they were doing.  
17 Q. What time was (Inaudible)?  
18 A. (Inaudible).  
19 Q. You called him or he called you?  
20 A. He called me.  
21 Q. He called you.  
22 A. Probably about 1:00 or 1:30 (Inaudible). At 8:00 or  
23 9 o'clock when I talked to him -- I think it was 8:00 or 9 o'clock -- he  
24 was asking what I was doing, if I was going to come out and play or  
25 not.

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1 Q. Well, that's -- that's what I -- that's what I'm asking.  
2 Because at about 1:30, he called you, right, and he told you that --  
3 that we're way out in Henderson? Now, you said they called and said  
4 that they were on the highway?  
5 A. On the highway out towards Henderson. It was like 1:00,  
6 1:30, and I called him back.  
7 Q. Did you ask him where they were?  
8 A. Not exactly, no. I just -- I just said -- 'cause he told me in  
9 my car. He said, "I'm on the freeway heading south toward Railroad  
10 Pass."  
11 Q. Okay.  
12 A. And I said, "Okay, I'll call you back."  
13 Q. All right.  
14 A. I call -- I think I called him back five -- five minutes, five,  
15 ten minutes later.  
16 Q. Yeah.  
17 A. And he said they were out there somewhere by  
18 exit -- some exit, 56 or something like that.  
19 Q. Right.  
20 A. And said, "I'm out here. If you want to come get your  
21 car, come get it."  
22 Q. Now, before 1:30, when did you talk to him?  
23 A. I think I talked to him around 8:00 or 9 o'clock when I got  
24 home from --  
25 Q. Did you --

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1 A. -- drug court.  
 2 Q. Did he call you or you call him?  
 3 A. I believe he called me.  
 4 Q. Okay. And what did he tell ya?  
 5 A. He asked if I was going to come out and play or not.  
 6 Said, "No, I'm writing sentences. I'm not coming out."  
 7 Q. Where did he say he was?  
 8 A. At that time, he didn't tell me where he was.  
 9 Q. Okay. Okay. What -- what'd he say to you to come out  
 10 and play? Say -- what'd he say?  
 11 A. That's exactly what he said, "Are you going to come out  
 12 and play tonight?" You know, am I going to come hang out, am I  
 13 going --  
 14 Q. Right.  
 15 A. -- to Sportsman.  
 16 Q. And you said no?  
 17 A. Yeah, I said no, I had to write sentences. I had to be done  
 18 by --  
 19 Q. How many times did he call you after that, before 1:30?  
 20 A. Before 1:30?  
 21 Q. Yeah.  
 22 A. He didn't call me back before -- after that until around  
 23 1:00 in the morning. They said they had the girls.  
 24 Q. 1:00 in the morning.  
 25 A. Said (incomprehensible) anything. "We have the girls."

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1 We're headed out there."  
 2 Q. Yeah. Okay. And when he told you to come pick up his  
 3 truck -- I mean come and pick up your car, if you wanted to pick it up  
 4 and all that, did he say, okay, where the girls were?  
 5 A. No.  
 6 Q. He didn't? Did you ask him?  
 7 A. He said the -- I mean aside from fact they beat 'em up and  
 8 left 'em in the desert. That's all I knew.  
 9 Q. Say that again.  
 10 A. He said they beat 'em up and left 'em in the desert.  
 11 Q. Romeo told you that?  
 12 A. Romeo said that.  
 13 Q. What'd he say about the clothes?  
 14 A. He said they took their clothes.  
 15 Q. Oh, that was after, though. That was when you talked to  
 16 him the next day, or did he tell you that on the phone?  
 17 A. Think that was the next day. He didn't say that on the  
 18 phone. He said they took their clothes and left them out there so they  
 19 wouldn't be able to come back --  
 20 Q. That's --  
 21 A. -- that they couldn't -- they couldn't leave the desert  
 22 naked or --  
 23 Q. That's when you saw him?  
 24 A. That's when I saw him.  
 25 Q. Okay. Now, when he was talking to you, you know, at

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1 the scene, where they were and all that, he said they beat 'em and  
 2 left 'em in the desert, okay, did you talk to him after that again on the  
 3 phone?  
 4 A. I think a couple times, make sure they bring my car back.  
 5 Q. And --  
 6 A. I told him he couldn't go -- he couldn't drive to Stateline,  
 7 he couldn't take my car to California or any of that and send it back  
 8 'cause I need that car.  
 9 Q. Right. So when did you get your car back?  
 10 A. Just the other night. He still had it that whole time.  
 11 Q. Oh. So you let him keep the car?  
 12 A. He still had it since he -- since that happened.  
 13 Q. Okay. So now Sunday morning, okay --  
 14 A. (Inaudible.)  
 15 Q. Okay. Go ahead. Sunday morning, okay, when you found  
 16 out the girls are dead -- or when did you find out the girls were dead?  
 17 A. (Inaudible) Sunday night (inaudible).  
 18 Q. He told you they were dead?  
 19 A. Yeah, (inaudible). And then he asked me if I've been  
 20 watching the news --  
 21 Q. Yeah.  
 22 A. -- to see if there's anything mentioned about it.  
 23 Q. He was concerned about it?  
 24 A. (Incomprehensible.)  
 25 Q. Let me ask you a question, another one. D-Rock, did you

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1 talk to him after this?  
 2 A. No, just Rome.  
 3 Q. Just Rome. Have you seen D-Rock since then?  
 4 A. A couple of times.  
 5 Q. Couple times. And what did he -- did he say anything to  
 6 you?  
 7 A. Not really.  
 8 Q. No? You and D-Rock pretty tight?  
 9 A. Not at all. I don't even know him. Just met him.  
 10 Q. Really?  
 11 A. Through Romeo.  
 12 Q. How'd you meet him? Through Romeo. Through Romeo.  
 13 Romeo says you and D are pretty tight.  
 14 A. No.  
 15 Q. No? Not at all?  
 16 A. Not at all. I met him through Romeo.  
 17 Q. Okay. But him and Romeo -- D-Rock and Romeo are  
 18 pretty tight?  
 19 A. I don't really know.  
 20 Q. You don't know?  
 21 A. Couldn't tell you. I haven't seen D-Rock before  
 22 until -- until recently --  
 23 Q. Okay.  
 24 A. -- and I've been with Romeo for about four or five years.  
 25 Q. Okay.



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1 A. So I don't -- I can't say they're tight.  
 2 Q. When did you meet D-Rock? When would you say?  
 3 A. Probably about two weeks, three weeks ago.  
 4 Q. Two or three weeks ago. Okay. And let's see here. The  
 5 last time that you talked to him on the phone after they (inaudible) up  
 6 in Henderson, okay, what was the conversation?  
 7 A. Well, what they were doing, if he was leaving or not.  
 8 Q. Oh, okay. But they never mentioned anything about the  
 9 girls?  
 10 A. No. They weren't around anymore.  
 11 Q. They weren't around anymore.  
 12 A. They left 'em in the desert.  
 13 Q. And that's what he said; he said he just left 'em in the  
 14 desert?  
 15 A. Beat 'em up and left 'em in the desert, beat 'em up bad.  
 16 That's what he said.  
 17 Q. Oh, and beat 'em up bad. Okay. And didn't say they  
 18 used anything?  
 19 A. No.  
 20 Q. No? When you got your car back, did you look in your  
 21 car?  
 22 A. Not really.  
 23 Q. You made a comment to officer who was with that you  
 24 don't know what's in the trunk. Why did you make that comment?  
 25 A. They asked -- 'cause they asked me if he had stuff, if he

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1 left stuff at my house, like his clothes and stuff like that, and they  
 2 asked. I said, "No. He's got stuff in the trunk. I don't know what  
 3 all's in there." I don't go in my trunk. I have no reason to. I know  
 4 his baby's car seat was in there, blankets, whatever.  
 5 Q. Okay. Let me ask you a pretty obvious question. Okay?  
 6 So you knew they did something to the girls.  
 7 A. Uh-huh.  
 8 Q. All right. And then you know that they were dead. Okay?  
 9 Number one, why didn't you call the police?  
 10 A. I didn't want to get involved.  
 11 Q. Okay.  
 12 A. He had already told me D-Rock said I was a liability.  
 13 Q. Did -- D-Rock told you that?  
 14 A. Rome told me D-Rock said that, that he wanted to do me  
 15 the same way.  
 16 Q. Really?  
 17 A. That he thought I was loose end. 'Cause he told me he  
 18 told D-Rock that I wasn't.  
 19 Q. Yeah.  
 20 A. But I don't know if that actually happened or not. That's  
 21 just what he told me.  
 22 Q. And then -- I'm still stuck on one problem, stuck on one  
 23 problem. So you -- he's got this car. He's got your car.  
 24 A. Uh-huh.  
 25 Q. The car's registered to ya.

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1 A. Yes.  
 2 Q. You know they go out and they do these two girls. Okay?  
 3 They kill these two girls. And he brings the car back. This is the car  
 4 that they had. Picked up the girls, put in the car, took 'em to where  
 5 they killed 'em, and then came back, gave you back that car, and you  
 6 took it back. The amazing thing is you didn't even look in it.  
 7 A. He said he cleaned it up.  
 8 Q. And you believe him?  
 9 A. Yeah.  
 10 Q. Because he's a good friend of yours --  
 11 A. (Inaudible.)  
 12 Q. -- and he wouldn't -- he wouldn't fuck you over?  
 13 A. Not at all. Least I didn't think he would.  
 14 Q. Not like he's done tonight, where he says you was the one  
 15 that went out there.  
 16 A. No, I didn't go out there, I promise you that.  
 17 Q. And so now you got that car. Now you're going to be  
 18 driving in that car, all right, and you're driving along. The sun's  
 19 shining. You're having a great time. You're going to work. You're  
 20 doing whatever you got to do, and you get stopped, and let's say you  
 21 got a little dope on ya. Okay? 'Cause I know you do -- if you hang  
 22 with those guys, I know you do dope.  
 23 A. I don't. Not anymore.  
 24 Q. I know. But I mean I don't care if you do or not. I could  
 25 care less about that; but. So now let's say Metro or Henderson pulls

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1 you over, and you got a little dope on ya, now you're going to jail.  
 2 They happen to look through your car, and dammit if they don't find  
 3 the girls' clothes in the car and maybe find the weapon that killed her.  
 4 So now what's your explanation?  
 5 A. Found the weapon?  
 6 Q. What's your explanation?  
 7 A. I don't have -- wouldn't have one.  
 8 Q. It's your car.  
 9 A. I didn't have it.  
 10 Q. You've got -- yeah, but we got you now. We've got the  
 11 car. We've got the clothes. We've got whatever was -- was used to  
 12 kill her, both girls. What's your explanation here?  
 13 A. I'd get into trouble.  
 14 Q. I'm sorry?  
 15 A. I would be in a lot of trouble. I don't know -- I wouldn't  
 16 have an explanation. That's from --  
 17 Q. How do you --  
 18 A. -- what they told me.  
 19 Q. How do you know that's not what's happened here? How  
 20 do you know that's not what happened here, that we got your car,  
 21 and the clothes are in the trunk, and the weapon that's used to kill  
 22 'em are in the trunk? It's your car and we got it out in front of your  
 23 house. Now, you tell me why I should believe anything you're telling  
 24 me right now.  
 25 A. 'Cause the truth.

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1 Q. Yeah?

2 A. Cause it the truth.

3 Q. It's the truth?

4 A. Now, nobody -- I -- I don't even know how these traffic

5 cameras are, we can check 'em or not.

6 Q. That's -- that's like --

7 A. But --

8 Q. That's like -- that's like people walk in, hear a shot, go

9 around the corner, see a guy standing with a gun and a guy on the

10 ground. "I didn't do." "You got the gun in your hand. We heard the

11 shot. Nobody else here. You can't get out. You can't get in."

12 Explain to me, clothes in the car, the weapon used to kill, how come,

13 and it's in your possession?

14 A. I can't. I didn't know they were in there. Thought they

15 rid everything.

16 Q. So you believed them?

17 A. Yeah.

18 Q. Believed 'em. That's the tough part, especially when --

19 especially when you got killers that go around doing this kind of stuff,

20 and of course, everybody knows that people commit crimes are so

21 loyal to each other, especially when they use drugs. You know

22 druggies are. You know how crackheads are and all that. They are

23 so loyal to each other. They wouldn't steal from each other. They

24 wouldn't snitch each other out. They wouldn't do anything like that.

25 Right? Am I -- am I right or not?

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1 A. Typically, that's how it's supposed to be.

2 Q. Well, that's how it's supposed to be.

3 A. I guess. I mean that's what everybody says, you don't tell

4 on each other, keep your mouth shut, all that.

5 Q. How many times have you heard people telling on each

6 other?

7 A. All the time.

8 Q. All the time. So now you're going to tell me you trust

9 Romeo when he gives you back the car after he's killed two people?

10 Him and D-Rock put two people in that car, drove up to an area and

11 killed them, that you trust them to clean up the car, and you don't

12 even check?

13 A. I knew -- I trusted him to clean out the car. They said

14 they got rid of everything.

15 Q. Waw.

16 A. I mean I --

17 Q. He said they got -- he said they got rid of everything.

18 A. Uh-huh.

19 Q. Where did they get rid of it? You know where they got rid

20 of it. Tell me. Come on.

21 A. What you mean, you just said it was in the car.

22 Q. I never said it was in the car. Where did they get rid of it?

23 A. Somewhere out that way as far as I know. I mean --

24 Q. What did he tell you?

25 A. -- they didn't tell me exactly.

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1 Q. What did he tell you?

2 A. They said they drove out farther and got rid of the stuff

3 and then drove here.

4 Q. They drove out further and got rid of the stuff.

5 A. Towards the lake, I guess. That's the only thing in that

6 direction.

7 Q. When did they tell you that?

8 A. When they told me what they did.

9 Q. They told you what they did. (Incomprehensible) back

10 (incomprehensible). Come on. Give me -- give me the whole story.

11 'Cause remember, it doesn't end. Give me the whole story.

12 A. That is pretty much the whole story, but I drove out that

13 way.

14 Q. What's that?

15 A. I drove out that way --

16 Q. You --

17 A. -- in the white car --

18 Q. You drove out that way in the white car?

19 A. -- later that night.

20 Q. Okay. Why?

21 A. To go get my other car, make sure he was coming back.

22 Q. And so what happened after that?

23 A. I met 'em up out -- I met with them out there by

24 Railroad Pass Casino.

25 Q. Right.

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1 A. We came back this way. We stopped at a store on Russell

2 and Boulder Highway --

3 Q. Yeah.

4 A. -- Circle K, am/pm, something like that --

5 Q. Yeah.

6 A. -- right down the corner by Sierra -- think the Sierra Vista

7 Apartments --

8 Q. Yeah.

9 A. -- not Sierra but -- Sierra something. But anyway, we

10 stopped there. Romeo took the green car back to the Sportsman's,

11 and I drove D-Rock -- D-Rock up that way and dropped him off and

12 then came back home. I went straight to work after that.

13 Q. Okay. Now, where did you meet them? Tell me where

14 you met them again.

15 A. At Railroad Pass.

16 Q. At Railroad Pass?

17 A. At the turn-around up there.

18 Q. At the turn-around. Okay. What'd the bodies look like?

19 A. I don't know. I have no idea, none whatsoever.

20 Q. You went up -- you went up there. They told you they

21 killed 'em.

22 A. I didn't go look at no bodies.

23 Q. But they told you they killed 'em?

24 A. Ycs.

25 Q. You see -- see, you've been lying to me here. You've

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1 I been lying to me here, and you know -- none of it -- now I'm not --  
 2 I'm starting not to believe you here on certain things.  
 3 A. That's what happened. That's the whole story. You said  
 4 you wanted the whole story. That's the whole story.  
 5 Q. Yeah?  
 6 A. Just like I said, they called me around 1:00, 1:30, said  
 7 they were on their way out to the desert. They said it was the same  
 8 place they had took Red and beat her up before.  
 9 Q. Right.  
 10 A. And then he said, "I'm leaving, taking your car. I'm going  
 11 to drive it to Arizona or California. I'll leave it at Stateline or I'll ship  
 12 it back on a tote, on a flat-bed, whatever." I told him, "No, you can't  
 13 do that. I need that car."  
 14 Q. Romeo told you that?  
 15 A. Yes.  
 16 Q. Did you talk to D-Rock at all that night?  
 17 A. Just -- not really. When I drove him home, he didn't really  
 18 say nothing. He was just quiet, sitting in the passenger's seat.  
 19 Q. Right. Were they -- did they have blood on them?  
 20 A. I didn't really look that close. I didn't see no obvious like,  
 21 you know, blood marks on their clothes or nothing.  
 22 Q. Yeah? What was D-Rock wearing?  
 23 A. Black shorts --  
 24 Q. Uh-huh.  
 25 A. -- kind of like long, call 'em Bermuda shorts, like they're

1 Q. They did tell you they were dead. How did they say  
 2 they're dead?  
 3 A. They -- they said they beat 'em up real bad. Not sure.  
 4 They said they beat 'em real bad. That was all he said. Took their  
 5 clothes and left 'em there for dead.  
 6 Q. But now we get to the point where you're out there now.  
 7 You drove out there, and you met 'em at Railroad Pass, which is  
 8 something you were hiding from me. Okay? 'Cause it always seems  
 9 like when you see yourself going deeper and deeper into this, is that  
 10 you start telling me a little more and a little more of the truth. Okay?  
 11 This is why it's your one time that you have to be able to tell me right  
 12 now the whole story, and you're still not telling me the whole story.  
 13 A. That is the whole story.  
 14 Q. I don't believe that. But now you want me to believe you.  
 15 You want me to believe you after you've been lying to me and jerking  
 16 my chain all this time. You see what I'm saying?  
 17 A. Uh-huh.  
 18 Q. Okay? So now why don't you tell me the rest of the  
 19 story. Tell me the rest of the story.  
 20 A. The only thing I didn't tell is I didn't -- I didn't really meet  
 21 'em at Railroad Pass.  
 22 Q. Okay.  
 23 A. I went past there. I went --  
 24 Q. Yeah.  
 25 A. They were on side of the road.

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1 jeans but they're like down to knee.  
 2 Q. Right.  
 3 A. Some sandals.  
 4 Q. Yeah.  
 5 A. A white T-shirt and black shirt -- a long-sleeve shirt over,  
 6 I believe, is what he had on at first.  
 7 Q. What color was the long-sleeve shirt?  
 8 A. It was black.  
 9 Q. Was he wearing a hat?  
 10 A. He had a hat on? I don't think, uh-huh. I don't think so.  
 11 Q. All right. What was Romeo wearing?  
 12 A. Blue jeans and white T-shirt.  
 13 Q. Blue jeans and a white T-shirt. What were you wearing?  
 14 A. What did I throw on when I left the house? Pretty much  
 15 what I'm wearing right now.  
 16 Q. Same -- you mean these like bluish-gray shorts?  
 17 A. I think I had -- might had on blue-blue shorts but --  
 18 Q. Same sneakers?  
 19 A. No.  
 20 Q. No. Different sneakers? Where are those?  
 21 A. They're upstairs.  
 22 Q. Upstairs. I know you went to see the bodies.  
 23 A. I did not go see the bodies. I promise you that. That's no  
 24 lie. I did not see any bodies. They told me they were dead. That's  
 25 all I know.

1 Q. Yeah. Where?  
 2 A. I'm not sure the exact spot. I don't know. I might be able  
 3 to show it to you if I drove back out there, but I'm not sure.  
 4 Q. Why were they on the side of the road?  
 5 A. Think they were -- that's where they were getting rid of  
 6 evidence at.  
 7 Q. Okay. Now, I know you probably can show it to me.  
 8 A. It was pretty dark out there. I can probably pick it out.  
 9 Q. I know, but you probably could show it to me, but if you  
 10 were out there, originally, you'd be able to show me the place.  
 11 A. I wasn't out there.  
 12 Q. See, that's another little lie now.  
 13 A. I wasn't out there originally. I promise you that. I didn't  
 14 see any bodies. I don't know what they look like or anything. They  
 15 told me I did not want to see it, and I told them that, right, I don't  
 16 want to be anywhere near there 'cause I have no DNA up there or  
 17 nothing. I did not go up there. And I didn't even know Red got beat  
 18 up again. Is that what you said, what you're investigating right now?  
 19 Q. What's that?  
 20 A. You told -- when -- when you came up here, you told me  
 21 you were investigating Red getting beat up.  
 22 Q. Yeah. Yeah, Red got beat up.  
 23 A. I didn't even know that. I ain't even seen her in a while.  
 24 Q. And so now you're -- now I'm trying to help you out. I'm  
 25 trying to get you to tell me how -- how to prove that you weren't

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1 there, but now you're telling me you went further and you're on video  
 2 at a store, you know. Jesus Christ, how do we know all three of  
 3 them do this?  
 4 A. No. I was not there.  
 5 Q. I mean how the hell -- how the hell is Romeo going to be  
 6 a tough guy when he's got a piece of vermicelli hanging off his  
 7 Goddamn shoulder? Explain that.  
 8 A. He can't -- he can't --  
 9 Q. Explain it to me.  
 10 A. That's not what he looks like.  
 11 Q. How do you know that?  
 12 A. 'Cause I've seen him before fighting with his wife  
 13 and -- and stuff like that.  
 14 Q. Fighting with his wife. How big is his wife?  
 15 A. Punch and stuff. I've seen her fight people before.  
 16 Q. How big is his wife?  
 17 A. About as big as he is.  
 18 Q. Did you ever see him fight a guy?  
 19 A. No. He always backed down.  
 20 Q. So now his wife is about as big as he is, and he weighs  
 21 about how much?  
 22 A. 130, 140.  
 23 Q. A hundred and nothing, 130/40 pounds. Christine  
 24 weighed 160 pounds, and she was feisty.  
 25 A. If you

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1 Q. You're trying to tell me that -- that Romeo took care of  
 2 her?  
 3 A. I think D-Rock did it, but --  
 4 Q. How do you know? What do you mean you think D-Rock  
 5 did it?  
 6 A. From what he told me, from what Romeo told me, D-Rock  
 7 was the one that beat her up. 'Cause I don't know if that's the truth.  
 8 If he's telling you I did other stuff, I don't know if he's telling me the  
 9 truth.  
 10 Q. All right. So now we've opened up another door here.  
 11 'Cause you didn't -- you told me the only thing they told you, and  
 12 correct me if I'm wrong, Romeo said they beat 'em up bad, left 'em  
 13 in the desert, we beat 'em up bad. And now you're telling me that  
 14 D-Rock beat 'em. So that's a little more than what you gave me  
 15 before 'cause I asked you who did it and what did they do, and you  
 16 said I don't know. So now --  
 17 A. That's what I'm saying, that's what Rome told me, that  
 18 D-Rock did it.  
 19 Q. What else did he tell ya?  
 20 A. That he was there, but he said D-Rock --  
 21 Q. What else did --  
 22 A. -- did her.  
 23 Q. -- he tell you?  
 24 A. He said -- when we were on the phone, I heard him say  
 25 something about "hit the bitch with a rock" or something like that.

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1 Q. Who said that?  
 2 A. I think Romeo said it to D-Rock. Romeo's on the phone  
 3 with me. He said like -- something like, "Hit her in the head with a  
 4 rock. Let's go."  
 5 Q. So Romeo was on the phone --  
 6 A. With me.  
 7 Q. -- with you, and he yelled it out to D-Rock? He said, hit  
 8 the bitch in the head with a rock? And what else? So -- so now --  
 9 now we got it to the point now to where you're talking to them while  
 10 it's being done. Right? That's something else you didn't tell me, that  
 11 you kind of little white lie about. So tell me the conversation. Tell me  
 12 about the conversation you had on the phone while they were doing  
 13 it.  
 14 A. That's -- that's pretty much the whole conversation there.  
 15 He -- he called --  
 16 Q. Who called --  
 17 A. -- me.  
 18 Q. Who called who?  
 19 A. Romeo called me.  
 20 Q. All right.  
 21 A. He told me, "We found them bitches."  
 22 Q. Uh-huh.  
 23 A. "We're" -- the whole conversation started, he said, "We  
 24 found them bitches" --  
 25 Q. Yeah.

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1 A. -- "along the freeway. Do you want to meet us at that  
 2 spot where we put some work in it?"  
 3 Q. "That spot where we put some work in it." What's that?  
 4 A. I assume that he's talking about Red, beating Red up  
 5 before then.  
 6 Q. Oh, okay, put some work in it. Okay. I understand that.  
 7 Go ahead.  
 8 A. "You want to meet us out there?" I'm like, "No, I'm cool.  
 9 I got to work in (inaudible) hours."  
 10 Q. How did he -- how did he know where -- how did he know  
 11 you knew where it was?  
 12 A. Because they told me where they beat Red up at, like the  
 13 general area. He said that we -- they took 'em out there by some  
 14 building in the desert off that freeway.  
 15 Q. Do you know that area?  
 16 A. No. I don't really know.  
 17 Q. Why are they -- why did they go to that area?  
 18 A. I have no idea.  
 19 Q. Okay. So they talked to them. Okay. (Inaudible) phone.  
 20 A. Then I said, "No. I have to go to work. I have to get up  
 21 and go to work in like two hours."  
 22 Q. Right.  
 23 A. "I'm cool. I don't want no paris whatever you guys are  
 24 doing." And he said, "Well, you want to come get your car 'cause  
 25 I'm going to drive it to Arizona or California" --

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1 Q. Uh-huh.  
 2 A. -- "and leave it there. You going to come pick it up?"  
 3 Q. Right.  
 4 A. I said, "Okay. You cannot take my car like that. I need  
 5 my car" --  
 6 Q. Right.  
 7 A. -- "cannot take it and leave it anywhere else." He said,  
 8 "Well, you need to come get it."  
 9 Q. Right.  
 10 A. So I was like, "Okay." I hung up the phone, and I don't  
 11 remember, I think I called him back five or ten minutes later and asked  
 12 them where they were at.  
 13 Q. Yeah?  
 14 A. The first time all he said was they're on the freeway  
 15 headed south.  
 16 Q. Uh-huh.  
 17 A. Then he said, "We got off the freeway at exit 56A."  
 18 Q. Uh-huh.  
 19 A. "Just come towards the casino, the Railroad -- Railroad  
 20 Pass. Before you get there, you'll see the turn-off."  
 21 Q. Uh-huh.  
 22 A. "You got to look for it. It says access road or something  
 23 like that." I said, "Man, you're putting me in a bad spot." Then we  
 24 hung up.  
 25 Q. Uh-huh.

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1 A. Then he called me back ten or 15 minutes maybe at the  
 2 most --  
 3 Q. Really?  
 4 A. -- then asked, "Where you at? Where you at?" I said,  
 5 "On the freeway headed south."  
 6 Q. Uh-huh.  
 7 A. "Just left my house." He said, "Okay," and hung up.  
 8 Then I called him back.  
 9 Q. You said you were on the freeway headed south?  
 10 A. Right.  
 11 Q. Okay.  
 12 A. I called him back --  
 13 Q. Uh-huh.  
 14 A. -- asked him, "Where you at?"  
 15 Q. Uh-huh.  
 16 A. He said, "Just keep coming. When you get to 56A, it's  
 17 right there. It's exit 56A. You can't miss it."  
 18 Q. Okay.  
 19 A. And I said, "Okay," hung up.  
 20 Q. Uh-huh.  
 21 A. When I got off the freeway --  
 22 Q. Uh-huh.  
 23 A. -- he calls me back and says, "I see your lights. Just stop  
 24 right there and wait. We'll be right down." So I stopped right there.  
 25 A few minutes later, they came pulling out of the desert in the green

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1 car, and we drove south towards the lake.  
 2 Q. Okay.  
 3 A. We're going on some windy road. I don't even know what  
 4 road it is.  
 5 Q. Why?  
 6 A. I don't know. I just followed 'em.  
 7 Q. Okay.  
 8 A. We get out there. They pull off the side of the road.  
 9 Q. Okay.  
 10 A. They come up to the white car.  
 11 Q. Uh-huh.  
 12 A. I didn't even want to get out. Just sitting in the car. He's  
 13 like, "Stop acting like a bitch. Get out the car."  
 14 Q. Okay.  
 15 A. So I get out.  
 16 Q. Who said that?  
 17 A. Romeo did.  
 18 Q. Yeah.  
 19 A. I get out the car.  
 20 Q. Yeah.  
 21 A. I lean against the car. We're all standing there.  
 22 Q. Uh-huh.  
 23 A. Start throwing rocks over the side of the road, looked like  
 24 a little cliff or something right there. I don't know. It drops down.  
 25 Q. Yeah.

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1 A. We were throwing rocks over the side of the road.  
 2 Q. Right.  
 3 A. Romeo walks up into the desert behind us --  
 4 Q. Yeah.  
 5 A. -- on the other side of the street and then comes back a  
 6 few minutes later.  
 7 Q. Yeah.  
 8 A. He's like, "All right. Let's go."  
 9 Q. What'd he do?  
 10 A. I don't know what he did up there. I assume he buried  
 11 something or did something. I didn't ask him. I was standing in my  
 12 car.  
 13 Q. Uh-huh.  
 14 A. We get back on the road. We're coming back into town.  
 15 Romeo and D-Rock and are in the green car. I'm in the white car by  
 16 myself.  
 17 Q. Uh-huh.  
 18 A. They get lost trying to get back on the freeway by -- I'm  
 19 not sure what road it is, but it's like 95 south like dead ends right  
 20 there.  
 21 Q. Uh-huh.  
 22 A. We go past a Highway patrolman that's sitting on the side  
 23 of the road with his lights flashing.  
 24 Q. Right.  
 25 A. They kind of slow it down. I guess they got scared. They

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1 I didn't want to get stopped 'cause I don't have no plates on my car.  
 2 Q. Right.  
 3 A. I follow 'em to Russell and Boulder Highway at that store.  
 4 Q. Uh-huh.  
 5 A. Rome calls me on the phone and says, "Run in there and  
 6 grab me a bottle of water, please." I grab him a bottle of water, and  
 7 I come back out. They're standing outside the green car.  
 8 Q. Uh-huh.  
 9 A. He asked me if I can take D-Rock home. I said, "Yes." He  
 10 gets in the green car and leaves, goes to the Sportsman's. That's  
 11 where he said he was going. D-Rock and I are still there at the store  
 12 in the white car. The car wouldn't start at first. Took about five, ten  
 13 minutes to get it started. I drove him up there to Lake Mead and  
 14 Martin Luther King.  
 15 Q. Uh-huh.  
 16 A. I drop him off right there. I stop at the McDonald's on  
 17 Martin Luther King and Lake Mead right there --  
 18 Q. Uh-huh.  
 19 A. -- and grab a value meal.  
 20 Q. Uh-huh.  
 21 A. I then go to my friend Lenny's house that works with  
 22 me --  
 23 Q. Uh-huh.  
 24 A. -- pick him up to give him a ride to work.  
 25 Q. What time was that?

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1 A. I dropped him off -- actually, wait a minute. I came here  
 2 first. I had D-Rock in the car. We left the store. I came here. I got  
 3 here like 3:37.  
 4 Q. Uh-huh. Why do you say 3:37?  
 5 A. 'Cause my alarm clock was going off.  
 6 Q. Okay.  
 7 A. So I come in here. I turn the alarm off --  
 8 Q. Uh-huh.  
 9 A. -- so it doesn't wake everybody up.  
 10 Q. Right.  
 11 A. Come back out. Get in the car with D-Rock. Take him up  
 12 there. Go to McDonald's.  
 13 Q. Uh-huh.  
 14 A. Go to Lenny's house. Get to his house at probably about  
 15 4:15.  
 16 Q. Right.  
 17 A. Pick him up. We go to work, get to work at about 4:45.  
 18 Q. Uh-huh.  
 19 A. And then me and him are at work, and that's the whole  
 20 story.  
 21 Q. How'd you get the cut on your hand?  
 22 A. That's from work.  
 23 Q. That's from work?  
 24 A. Cut it on the trimmer at work.  
 25 Q. Want to give up the Buccal swab?

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1 A. Sure. I'll give you DNA, no problem.  
 2 Q. Okay. All right. He's going to take care of you.  
 3 DETECTIVE COLLINS: Why don't you, you know --  
 4 BY DETECTIVE HOSAKA:  
 5 Q. All right. I'm going to put your name here. Donald, right?  
 6 A. Uh-huh.  
 7 Q. And Herb. Erb? Herb?  
 8 A. Herb.  
 9 Q. Herb. This is a consent to search. We have to do that  
 10 because we're just getting a Buccal swab. All -- all it is is like a Q-tip  
 11 going in your mouth.  
 12 A. DNA.  
 13 Q. Correct.  
 14 A. I've seen it (inaudible).  
 15 Q. Okay. Go ahead and read this. This says I, Donald Herb,  
 16 having been informed of my right not to have a search made of the  
 17 premises, property listed hereafter without a search warrant issued by  
 18 a Court of jurisdiction and of my right to refuse to consent to a search  
 19 for items directly or indirectly related to investigation of homicide do  
 20 hereby voluntary consent to search of -- and that's going to be you --  
 21 Donald Herb. What's your -- give me your birth date again.  
 22 A. 12/8/76.  
 23 Q. 12/8/76. And Buccal swab for DNA.  
 24 A. Okay.  
 25 Q. All right? You agree to that?

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1 A. Uh-huh.  
 2 Q. All right. Go ahead and sign right there for me. While I'm  
 3 setting this up -- just real quick, I'm going to witness it, too -- when  
 4 you guys go out, you said you drive out to Lake Mead area, right?  
 5 A. Uh-huh.  
 6 Q. You guys -- do you guys go past the -- the little guard  
 7 shack thing?  
 8 A. No. We didn't pass no guard shack.  
 9 Q. Okay. Do you guys pull off on the right side of the road  
 10 or on the left side?  
 11 A. If we're going that way, it's going southbound, it'd be the  
 12 left.  
 13 Q. Okay.  
 14 A. 'Cause the right side is just a guardrail --  
 15 Q. Right, right, right.  
 16 A. -- and a cliff --  
 17 Q. Okay.  
 18 A. -- on the other side.  
 19 Q. All right. Did you -- did you see the guard shack up there?  
 20 A. I don't think so, no.  
 21 Q. You've been out there before?  
 22 A. Not in a long time.  
 23 Q. Okay. Past lake Las Vegas.  
 24 A. No. We were -- when we -- when we left the area down  
 25 there on the freeway, there's a --

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1 Q. The freeway, you're talking about Boulder Highway?  
 2 A. No, no, no. On the exit 56A --  
 3 Q. Okay.  
 4 A. -- out there by where they were at, instead of getting back  
 5 on the freeway, they took surface street. It was just like a -- it was  
 6 all one big street and it just curved around like this. It went past  
 7 another casino. It looked like a small casino. I don't know the name  
 8 of it, and then they stopped and turned around and parked right on  
 9 the shoulder of the road.  
 10 Q. Did it seem like Romeo walked off very far? Was he gone  
 11 very long?  
 12 A. No, a few minutes.  
 13 Q. All right. We told you to be straight-up with us, right?  
 14 Now you got -- got to be straight-up, you know. Go take a seat.  
 15 Relax. Just a minute. Got to make sure I do this right. I got to read  
 16 the instructions. All right. All you're going to do is just open your  
 17 mouth. I'm going to go on your right cheek -- cheek first. Okay.  
 18 And we're going to go on your left cheek. Okay. Just relax. Just  
 19 grabbing a smoke.  
 20 DETECTIVE COLLINS: All done?  
 21 DETECTIVE HOSAKA: Yeah.  
 22 BY DETECTIVE COLLINS:  
 23 Q. One thing I'm confused about --  
 24 A. Okay.  
 25 Q. -- maybe you can help me out on this. You say you didn't

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1 do anything.  
 2 A. Not at all.  
 3 Q. Then why have you been completely lying to me? Explain  
 4 that to me.  
 5 A. Trying to keep Rome out of trouble.  
 6 Q. Keep Rome out of trouble? The mother fucker  
 7 switches -- this guy switched on you.  
 8 A. I didn't know that at the time.  
 9 Q. I've been telling you that all night. He switched on you.  
 10 Why do you think we're here? That's a tough one -- that's a tough  
 11 one to swallow.  
 12 A. That's the truth. I --  
 13 Q. That's a tough thing to swallow. Well, I know you were  
 14 trying to keep him out of trouble, but the reason why you're lying to  
 15 me, I don't know about that.  
 16 A. That's the truth, sir. Honestly. The DNA will show you  
 17 I ain't go anywhere near no bodies, I ain't see no bodies, none of that.  
 18 Q. All right. You did drive out there, and you did -- and you  
 19 were there when they got rid of the evidence. And you didn't call the  
 20 police. You know what I'm saying?  
 21 A. (Inaudible.)  
 22 Q. You didn't tell the police.  
 23 A. I was scared, man.  
 24 Q. You know what that -- know what that -- you know what  
 25 that's called? I know you know what it's called. Tell me what it's

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1 called.  
 2 A. Accessory.  
 3 Q. Few more words. Few more words after accessory.  
 4 A. After the fact?  
 5 Q. Accessory after the fact means -- basically means you're  
 6 not -- not a principal, not a player.  
 7 A. (Incomprehensible) say nothing, I was scared.  
 8 Q. What's that?  
 9 A. Only reason I didn't say nothing earlier, I'm scared.  
 10 Q. (Inaudible.)  
 11 A. I -- I didn't know you had D-Rock in jail either.  
 12 Q. What are you scared off?  
 13 A. 'Cause the way Romeo was talking, D-Rock would come  
 14 after me. He knows where I live.  
 15 Q. What was -- what was Roman saying?  
 16 A. Who? Romeo?  
 17 Q. Romeo, excuse me.  
 18 A. He just said that, like I told you before, he said that  
 19 D-Rock said he wanted to get rid of all loose ends, I'm a loose end --  
 20 Q. But -- hang on.  
 21 A. -- I know went down, he wanted to come after me.  
 22 Q. One time? What'd you say?  
 23 A. He said -- he said I know too much. D-Rock wanted to  
 24 come after me --  
 25 Q. Well, how come --

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1 A. -- and silence me.  
 2 Q. How come he hasn't come after you yet? I only put  
 3 him --  
 4 A. Romeo said he told him that I'm not a -- I'm not a --  
 5 Q. I only put him in jail like a day and a half ago.  
 6 A. Rome told me that -- he said Rome told him, no, I'm not  
 7 a liability, I'm a rider, I'm not going to say nothing.  
 8 Q. You're a what?  
 9 A. A rider.  
 10 Q. Rider? You're a rider.  
 11 A. That's what he said.  
 12 Q. Obviously, 'cause you rode up to -- you rode up there.  
 13 You know, the thing -- the thing that bugs me the most, the thing that  
 14 bugs me the most is that ever since we started talking, you've been  
 15 lying. I know you've been telling me after, okay, you've been telling  
 16 me after, but you continually lie, you know. It's almost like the  
 17 deeper shit you get into, okay, I'll give him a little more. Okay?  
 18 That's why I'm thinking he's still holding something back.  
 19 A. No, I'm not. I promise you that's everything.  
 20 DETECTIVE COLLINS: Mark, are you all set with that  
 21 Buccal swab?  
 22 DETECTIVE HOSAKA: Yeah, I'm good.  
 23 DETECTIVE COLLINS: You're all good with it? You got  
 24 everything you need?  
 25 DETECTIVE HOSAKA: Yes, I got everything.

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1 BY DETECTIVE COLLINS:  
 2 Q. Your mom and dad home?  
 3 A. No.  
 4 Q. Where they at?  
 5 A. They're in Idaho right now visiting my brother.  
 6 Q. (Inaudible.)  
 7 A. Oh, they just left yesterday morning.  
 8 Q. Yesterday morning? Your mom and dad (inaudible)? Who  
 9 knows about this? I know you told somebody.  
 10 A. I haven't told anybody.  
 11 Q. Well, who knows about it?  
 12 A. Just the three of us, I think. I mean as far as I know,  
 13 that's about all. I mean Red might know something about it, but I  
 14 don't know what she -- how much she knows.  
 15 Q. Why would Red know about it?  
 16 A. She was involved with it.  
 17 Q. Yeah, but she wasn't involved with the killing, right?  
 18 A. No. I mean she would know -- not say how much she  
 19 would know, but --  
 20 Q. Especially --  
 21 A. -- I'm sure she knows --  
 22 Q. Especially if they wanted to take Red, too, but she wasn't  
 23 there. That's what you said, right?  
 24 A. That's what they told me. They said she was still with  
 25 that guy Black.

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1 Q. Yeah. So I mean how would Red know about it?  
 2 A. I mean just from what they're talking about. I don't know  
 3 if they talked to D -- talked to D-Rock since then or not.  
 4 Q. Right.  
 5 A. The two white girls in the Sportsman's might know a little  
 6 bit about it.  
 7 Q. What -- what white girls in the Sportsman?  
 8 A. Corrina, the ones I was telling you about that I hang out  
 9 at. They might have heard 'em talking.  
 10 Q. Corrina?  
 11 A. Corrina and Lynn.  
 12 Q. Corrina and Lynn. How are they -- they might have heard  
 13 who talking?  
 14 A. Romeo and D-Rock.  
 15 Q. Romeo and D-Rock. But you've been there, too.  
 16 A. Yeah.  
 17 Q. And you were sitting with them, and so she's going to tell  
 18 me, well, yeah, Donnie was with 'em, too, when they were talking  
 19 about it, right?  
 20 A. Right. But they came -- they -- Romeo went to her house,  
 21 I guess, that night afterwards. I think that's where he went to --  
 22 Q. To whose house?  
 23 A. -- then I wasn't with 'em. Corrina and Lynn's house.  
 24 Q. Oh, really? Are they lesbians?  
 25 A. Yes.

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1 Q. Is that the ones that Romeo hangs with?  
 2 A. Two of 'em.  
 3 Q. Yeah?  
 4 A. I -- I guess you say hangs with. He's been over there for  
 5 the last couple of days.  
 6 Q. Yeah? And what -- you said -- you said go talk to them.  
 7 What are they going to tell me?  
 8 A. I don't know. I know they've heard him talk. I mean he  
 9 doesn't actually say, oh, we killed them or whatever, but he's asked  
 10 them to watch the news --  
 11 Q. Right.  
 12 A. -- and talk -- I guess one of them knows somebody -- one  
 13 of -- the girl Corrina works with, I guess, knows somebody on  
 14 Henderson Police.  
 15 Q. No kidding?  
 16 A. And I guess they come to that bar a lot or something. I  
 17 don't know.  
 18 Q. Really?  
 19 A. And -- he -- she's the one that told 'em that you guys had  
 20 arrested somebody already and the all evidence pointed to him but  
 21 didn't know who it was arrested or anything --  
 22 Q. When was that?  
 23 A. -- but that's it. Two days ago.  
 24 Q. Okay. And they -- they told who that?  
 25 A. They told Romeo that, that this girl told Corrina they

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1 arrested somebody already --  
 2 Q. Yeah.  
 3 A. -- and all the evidence points to that person.  
 4 Q. Right.  
 5 A. -- but don't say -- don't tell anybody we told you.  
 6 Q. And Corrina's the one that -- you said Corrina's friend who  
 7 told Corrina?  
 8 A. Uh-huh. I don't know the girl's name, some girl that  
 9 works with her.  
 10 Q. The one with the -- is the friends with the Henderson cop?  
 11 A. Yeah. Corrina's friend is (inaudible).  
 12 Q. Well, okay, I'll tell you what I'm going to do. Okay?  
 13 What I need you to do is I need you to stand up, put your hands  
 14 behind your back. Okay? Because right now -- right now, Donnie,  
 15 you're under arrest. Okay?  
 16 DETECTIVE COLLINS: Now, listen up. You have the  
 17 right to remain silent. If you give up that right to remain silent,  
 18 anything you say is going to be used against you in a court of law.  
 19 You have the right to speak to an attorney before answering any  
 20 questions and to have attorney present (inaudible) questions. If you  
 21 cannot afford an attorney, attorney will be appointed for you by the  
 22 Court at no cost to you and you need not answer any questions until  
 23 that attorney has been appointed for you. If you decide to answer  
 24 questions now, you may stop at any time and ask to talk to an  
 25 attorney before any questioning continues. If you decide to stop



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1 I answering questions once you have begun, all questioning will stop.  
 2 Now, I know we've been doing a lot of talking, okay, and first of all,  
 3 I want to ask you, do you understand your rights?  
 4 DONALD HERB: Yes.  
 5 DETECTIVE COLLINS: Okay. I know we've been doing  
 6 a lot of talking. Now, I want to ask you, do you still want to keep  
 7 talking?  
 8 DONALD HERB: Yeah.  
 9 BY DETECTIVE COLLINS:  
 10 Q. Okay. Do you have something else to tell me?  
 11 A. I don't know what else I can tell. That's it. If I show you  
 12 where they -- where they threw all the stuff out at, that's all I know.  
 13 I mean, like I told you, I don't know if the -- if you guys can use those  
 14 traffic cameras or not to see when I left, where I went. When I drove  
 15 down the street, I know I passed plenty of 'em on the way to where  
 16 they were at.  
 17 Q. This phone you got, what kind of phone you got?  
 18 A. It's a Tracfone.  
 19 Q. A Tracfone?  
 20 A. Prepaid phone.  
 21 Q. Prepaid phone. What company's it with?  
 22 A. Tracfone. That's the name of company (inaudible).  
 23 Q. A Tracfone. Okay. So what you do is you go in --  
 24 A. At Wal-Mart or Circle K, buy a phone card, put time on  
 25 it --

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1 Q. Yeah.  
 2 A. -- put a code in the phone and it gives me -- less than \$20,  
 3 I get 50 minutes or whatever.  
 4 Q. Where is your phone?  
 5 A. It's upstairs.  
 6 Q. Okay. Let me ask you (inaudible). Who's in the house?  
 7 A. My brother. Just my brother.  
 8 Q. Brother? Just -- just one brother?  
 9 A. His girlfriend left. I don't see her car here. No. It's just  
 10 him. He's probably asleep.  
 11 Q. Would you be willing to give me your phone?  
 12 A. If it'll help me, yeah.  
 13 Q. Well, what do you mean if it can help you?  
 14 A. I mean I'll give it to you I mean if you need it. I mean  
 15 all -- I guess all it can do is help me, but I mean I don't know why you  
 16 would need it, but here, you can have it.  
 17 Q. No, because -- because I want to check those phone calls  
 18 that you told me about.  
 19 A. It should still be on the call list, as a matter of fact. I  
 20 didn't delete 'em. All that should be on there, were the times he  
 21 called and all that.  
 22 Q. Really?  
 23 A. Pretty sure.  
 24 Q. Can we take a look at it?  
 25 A. Go in right now.

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1 Q. Well, hang on, hang on just a second. Okay. So you're  
 2 going to let us look at the phone?  
 3 A. Yes.  
 4 Q. Okay. Probably what we're going to have to do is we're  
 5 going to have your brother bring your phone down to us 'cause I  
 6 mean we're not going to walk you through the house.  
 7 A. Okay.  
 8 Q. Does your brother know where your phone is?  
 9 A. I don't know. It's like right on the desk inside the door of  
 10 my bedroom.  
 11 Q. Okay. Let me -- let me go knock on the door.  
 12 BY DETECTIVE HOSAKA:  
 13 Q. Okay. What's your brother's name?  
 14 A. David.  
 15 BY DETECTIVE COLLINS:  
 16 Q. David? Is David awake?  
 17 A. He's probably asleep.  
 18 BY DETECTIVE HOSAKA:  
 19 Q. How --  
 20 A. I was getting ready to go to sleep.  
 21 Q. How old is he?  
 22 A. Nineteen.  
 23 Q. Okay.  
 24 DETECTIVE HOSAKA: He's 19.  
 25 DETECTIVE COLLINS: Nineteen?

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1 DETECTIVE HOSAKA: Nineteen.  
 2 DETECTIVE COLLINS: Okay.  
 3 BY DETECTIVE COLLINS:  
 4 Q. Where are the dogs?  
 5 A. I don't know. They're not locked up.  
 6 Q. They're in the house, right?  
 7 A. Yeah.  
 8 Q. Are they locked up?  
 9 A. No.  
 10 Q. Okay.  
 11 A. I don't think so.  
 12 DETECTIVE HOSAKA: David.  
 13 BY DETECTIVE COLLINS:  
 14 Q. Whose room is this?  
 15 A. That's my room.  
 16 Q. Your room. Where's your brother (inaudible)?  
 17 A. His is -- his is two doors over from mine, right in the  
 18 middle of the hallway. You might need to ring the doorbell. I don't  
 19 know if he'll hear you.  
 20 BY DETECTIVE HOSAKA:  
 21 Q. If David hears the phone, will he answer it? Your -- your  
 22 home phone?  
 23 BY DETECTIVE COLLINS:  
 24 Q. The problem -- the problem is if we let you in the house  
 25 and the dogs are there, we can't take the cuffs off. You know what

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1 I mean? You got a house phone in there?  
 2 A. Yeah.  
 3 BY DETECTIVE HOSAKA:  
 4 Q. What's your house phone number?  
 5 A. 453 --  
 6 Q. Hold on. Hold on. 453.  
 7 A. -- 9274.  
 8 Q. Will he answer the phone?  
 9 A. He might if he wakes up. I don't know. He might --  
 10 DETECTIVE COLLINS: All right. Unblock the call.  
 11 BY DETECTIVE HOSAKA:  
 12 Q. 453-9274?  
 13 A. Yeah.  
 14 DETECTIVE COLLINS: Technology.  
 15 BY DETECTIVE HOSAKA:  
 16 Q. Does he have a cell phone?  
 17 A. He does. I don't know if it's upstairs with him, though.  
 18 Q. Okay.  
 19 BY DETECTIVE COLLINS:  
 20 Q. Is his name David?  
 21 A. Yes.  
 22 BY DETECTIVE HOSAKA:  
 23 Q. Just sit down (inaudible). Does he work tomorrow?  
 24 A. Yeah. Think he leaves about 4:30, 5 o'clock in the  
 25 morning.

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1 BY DETECTIVE COLLINS:  
 2 Q. I think he's coming. Might have been the dogs.  
 3 A. Probably running down the stairs.  
 4 Q. (Inaudible) bite?  
 5 A. No. They won't bite you.  
 6 DETECTIVE HOSAKA: You want to try his cell phone?  
 7 BY DETECTIVE COLLINS:  
 8 Q. What is it? What's his cell?  
 9 A. 286-5991.  
 10 BY DETECTIVE HOSAKA:  
 11 Q. Same last name as yours, Herb?  
 12 A. Yeah.  
 13 Q. One of these his car out here?  
 14 A. Yeah, the gray one right there.  
 15 Q. That Mustang? That Mustang?  
 16 A. Yeah.  
 17 Q. Yeah.  
 18 BY DETECTIVE COLLINS:  
 19 Q. The guy sleeps like a log.  
 20 (Knocking on door.)  
 21 BY DETECTIVE HOSAKA:  
 22 Q. You said that's his room up there?  
 23 A. That's my room with the light on it.  
 24 Q. No, the one straight ahead.  
 25 A. No, that's the hallway.

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1 Q. Oh, all right.  
 2 A. Stairs. It shouldn't be a problem.  
 3 (Knocking on door.)  
 4 BY DETECTIVE COLLINS:  
 5 Q. Wow.  
 6 A. The door's unlocked. We probably going in there. The  
 7 dogs aren't going -- won't touch you or anything.  
 8 Q. The dogs aren't going to be a problem?  
 9 A. No. They might jump on you little bit, trying to lick you,  
 10 but they're not going to bite you or nothing else.  
 11 Q. Okay. They're out back (inaudible). Okay. Slow down,  
 12 slow down, slow down, slow down. This your room?  
 13 A. Yeah. Yeah, so it must be downstairs, (inaudible) right  
 14 there.  
 15 Q. Yeah.  
 16 A. I don't see it up here. It might be downstairs on top of  
 17 the TV then.  
 18 Q. Okay, (inaudible). Take your time going down the stairs.  
 19 A. Calm down. Holly, come here.  
 20 BY DETECTIVE HOSAKA:  
 21 Q. All right, all right, all right. Leave it there, right now. Is  
 22 that it right here?  
 23 A. Yeah.  
 24 Q. Okay.  
 25 BY DETECTIVE COLLINS:

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1 Q. Is that it right here?  
 2 A. The gray phone right there.  
 3 Q. This one right here, the small one?  
 4 A. Yes.  
 5 BY DETECTIVE HOSAKA:  
 6 Q. Okay. Hold on. Hold on.  
 7 A. Holly, get in here.  
 8 DETECTIVE COLLINS: Who left the door open?  
 9 DETECTIVE HOSAKA: Flea was running out.  
 10 DETECTIVE COLLINS: Okay. Let's go back outside.  
 11 DETECTIVE HOSAKA: All right. Stay. I got him. Stay  
 12 there, no, no, no, stay, stay there. Good boy. Good boy. Stay. Stay  
 13 there. Good boy. Are we going to go in anymore or should I lock it?  
 14 DETECTIVE COLLINS: Don't lock it.  
 15 DETECTIVE HOSAKA: Okay.  
 16 DETECTIVE COLLINS: Don't lock it.  
 17 DETECTIVE HOSAKA: Wow.  
 18 BY DETECTIVE COLLINS:  
 19 Q. So what button am I pushing?  
 20 A. That little round button in the middle.  
 21 Q. Right here?  
 22 A. Push that button. Actually, it's not locked. So hit exit.  
 23 Q. Exit right there.  
 24 A. Exit again. Okay. Now hit the little round button in the  
 25 middle. Scroll down. Keep going, (incomprehensible) the next one.

1 Select. The received called and dialed calls (incomprehensible) look  
2 through.  
3 Q. There's no received calls and --  
4 A. Scroll down. These are the most recent ones.  
5 Q. Wow, 50 calls (incomprehensible)?  
6 A. I don't ever delete no call list.  
7 Q. What's his -- what's Romeo's number?  
8 A. It'll say Romco.  
9 Q. It'll say Romeo?  
10 A. Oh, right there. Romc, Romc.  
11 Q. Okay.  
12 A. Then you hit view. That's Thursday. So you're not far  
13 enough down I guess.  
14 Q. That's just today, huh? (Inaudible), 23rd.  
15 5/19, 4:47 p.m. That's Friday. 5/19. No more.  
16 A. Probably too many calls on there.  
17 Q. 5/18.  
18 A. I don't know how far -- how far you're trying to go back.  
19 Q. 5/18, 9:50 p.m. Okay. Let's try -- let's try dialed calls.  
20 That's probably not going to work either because you probably -- let's  
21 go right up to the first one and view that. 5/9, hmmm, okay. Is it  
22 going to say Rome's name?  
23 A. Yeah, it should.  
24 Q. 5/13. Where they going? Oh, okay, 14. There's one.  
25 5/16, 4:53. The 16 was a Tuesday.

1 Q. Whose phone?  
2 A. Romco's. We can pull it up on the computer.  
3 Q. Romeo's?  
4 A. We can pull his account up on boostmobil.com and see all  
5 ingoing and outgoing call.  
6 Q. Yeah, he told me that. He told me that. Go to missed  
7 calls. It starts on the 23rd. So that's -- that ain't going to work.  
8 Who's Robbie?  
9 A. A friend from work.  
10 Q. He calls you a lot, doesn't he?  
11 A. Uh-huh.  
12 Q. What's this 616 number, 616-340-9427?  
13 A. I don't know. 616?  
14 Q. Is this your phone?  
15 A. Yeah, that's my phone.  
16 Q. Well, your received calls only go back to the 18th, but  
17 your dialed calls go all the way back to -- your dialed calls go all the  
18 way back to the 9th, Tuesday, the 9th. And we know it happened  
19 well after Tuesday, the 9th. Yeah.  
20 A. I don't know. Like I said, I don't call (incomprehensible)  
21 always call me. And we might be able to pull this one up on the  
22 computer. I'm not sure if you can check 'em on there or not. I never  
23 tried.  
24 Q. I'll tell ya what. Do you mind if I keep this phone?  
25 A. Go ahead.

1 DETECTIVE BENJAMINS: What time was that, the call?  
2 DONALD HERB: Like 5 o'clock in the afternoon.  
3 DETECTIVE COLLINS: 4:53 in the afternoon.  
4 BY DETECTIVE COLLINS:  
5 Q. We're at 5/18 now 2:20.  
6 DETECTIVE BENJAMINS: Do you ever erase calls?  
7 DONALD HERB: Not usually.  
8 BY DETECTIVE COLLINS:  
9 Q. "Not usually"? What's that mean?  
10 A. I don't really erase 'em. If I miss calls, I do sometimes just  
11 to empty out but not the received or dialed calls.  
12 Q. What day did they call?  
13 A. Tuesday night.  
14 Q. Tuesday night?  
15 A. Tuesday or Wednesday night, I think.  
16 Q. Yeah?  
17 A. It had to be Wednesday.  
18 Q. Tuesday, 10:40 p.m.  
19 A. It had to be Wednesday 'cause I went to court  
20 Wednesday. That's when they gave me my sentences to write.  
21 Q. You got no calls on here, buddy.  
22 A. They should be on there. I called him a bunch of times.  
23 Q. Did you use this phone?  
24 A. Yeah. I'm not sure if we can check that one on the  
25 Web site or not. I know his phone we can check.

1 Q. Yeah? So you're saying I can have the phone? Well, I  
2 mean are you saying I can have the phone, yes or no?  
3 A. Yeah, you can have the phone.  
4 Q. Okay. I don't want you to feel like you're being pressured  
5 into it because I mean --  
6 A. I mean I do, but I mean at the same time --  
7 Q. Well, I mean --  
8 A. -- I'm trying to get out of trouble here. I -- I didn't do  
9 nothing. I'm -- well, I mean I didn't kill anybody. I didn't do, you  
10 know, none of that stuff.  
11 Q. But we have established -- we have established that -- that  
12 you kind of helped 'em out a little bit.  
13 A. Right.  
14 Q. Yeah.  
15 A. But I'm saying I didn't kill anybody.  
16 Q. Right.  
17 A. I'll testify whatever, but I mean --  
18 Q. Okay.  
19 A. -- I didn't murder anybody.  
20 Q. All right.  
21 BY DETECTIVE HOSAKA:  
22 Q. Where's the charger for it?  
23 A. It's upstairs in my room.  
24 BY DETECTIVE COLLINS:  
25 Q. Upstairs in your room?

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1 A. It only got like one line I think.  
 2 Q. Money over bitches. Bitches is E-S.  
 3 A. It won't fit on there.  
 4 DETECTIVE BENJAMINS: Can you get text on that,  
 5 though?  
 6 DONALD HERB: Actually, yeah.  
 7 BY DETECTIVE COLLINS:  
 8 Q. Do ya?  
 9 A. But I don't think there's any in there. Nobody really text  
 10 me. I don't use it.  
 11 Q. Nothing. Nothing there. We're going to need the charger  
 12 for this so we can keep it charged.  
 13 A. We can go get it.  
 14 Q. Go and get it.  
 15 DETECTIVE BENJAMINS: Hey, we'll -- I'll get your car.  
 16 DETECTIVE COLLINS: What's that?  
 17 DETECTIVE BENJAMINS: Want me to move the car up?  
 18 DETECTIVE COLLINS: You're going to what?  
 19 DETECTIVE BENJAMINS: Roll your car up here.  
 20 DETECTIVE COLLINS: Oh, okay.  
 21 DETECTIVE HOSAKA: Thanks. Just throw that in there  
 22 for me.  
 23 BY DETECTIVE COLLINS:  
 24 A. (Inaudible) power cord right there.  
 25 Q. Right there? Okay. This one?

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1 A. Yeah.  
 2 Q. Okay.  
 3 A. Yes, sir. Can I like get my wallet if you're taking me in?  
 4 Q. All right. Okay.  
 5 A. You know, I mean I don't know what else can I do to help  
 6 you, or what do you need?  
 7 Q. Well, we'll see. And the thing, I really do want to believe  
 8 ya. Do you think I can let your brother know?  
 9 A. Yeah. Wake him up. I might have to have him call my  
 10 boss.  
 11 Q. I'll tell you what, why don't you -- hey, what's his name?  
 12 DETECTIVE HOSAKA: David.  
 13 DETECTIVE COLLINS: David?  
 14 DONALD HERB: David. That door straight ahead of you.  
 15 DETECTIVE COLLINS: Right.  
 16 (Knock on door.)  
 17 DAVID HERB: Huh?  
 18 DETECTIVE COLLINS: David? David?  
 19 DETECTIVE HOSAKA: Does he have any weapons or  
 20 anything inside his room?  
 21 DONALD HERB: No. He might have his work tools, but  
 22 he won't use 'em as weapons.  
 23 DETECTIVE HOSAKA: No guns or anything?  
 24 DETECTIVE COLLINS: David?  
 25 DONALD HERB: No, no guns. He has some -- some

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1 knives and stuff he uses.  
 2 DETECTIVE COLLINS: David?  
 3 DETECTIVE HOSAKA: Okay.  
 4 DONALD HERB: He's -- he's a masonry.  
 5 DETECTIVE COLLINS: David?  
 6 (Knock on door.)  
 7 DAVID HERB: All right.  
 8 DETECTIVE COLLINS: David, it's the police. I need you  
 9 to step outside your room for a minute, please. David?  
 10 DAVID HERB: Yeah.  
 11 DETECTIVE COLLINS: It's the police. I need you to step  
 12 outside your room for a minute, please. We got to talk to you. He's  
 13 a heavy sleeper.  
 14 DONALD HERB: Yeah, he is.  
 15 DAVID HERB: (Inaudible.)  
 16 DETECTIVE COLLINS: Are you coming? Oh, okay.  
 17 Yeah, I hate to bother ya. We're going to be taking your brother.  
 18 DAVID HERB: Yeah?  
 19 DETECTIVE COLLINS: Okay? So I just wanted to let you  
 20 know because we didn't want you waking up wondering where your  
 21 brother was.  
 22 DAVID HERB: Okay.  
 23 DETECTIVE COLLINS: Okay?  
 24 DAVID HERB: Okay.  
 25 DETECTIVE COLLINS: All right.

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1 DETECTIVE HOSAKA: All right.  
 2 DONALD HERB: Hey, call mom and dad and let 'em  
 3 know.  
 4 DAVID HERB: Okay.  
 5 DONALD HERB: And then you got a pen? I need you to  
 6 write down a number to call my work and tell 'em I'm not going to be  
 7 in.  
 8 DAVID HERB: Okay.  
 9 DONALD HERB: 735-8161. Ask for -- what is  
 10 tomorrow, Friday? Ask for Dave or Robbie.  
 11 DAVID HERB: Okay.  
 12 DONALD HERB: Just tell 'em --  
 13 DAVID HERB: Tell 'em you're not going to be in?  
 14 DONALD HERB: Tell I've been arrested. I don't know  
 15 when I'll be back.  
 16 DAVID HERB: Okay.  
 17 DETECTIVE HOSAKA: All right. Go ahead and step on  
 18 down.  
 19 DETECTIVE COLLINS: The dogs (inaudible).  
 20 DETECTIVE HOSAKA: No, (incomprehensible).  
 21 DETECTIVE COLLINS: Dave, you want to call the dogs  
 22 up?  
 23 DAVID HERB: Holly, (incomprehensible).  
 24 DETECTIVE COLLINS: Get, go, go.  
 25 DETECTIVE HOSAKA: All right. Go on and step on out.

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1 DETECTIVE COLLINS: Come on. Get up there.  
2 DETECTIVE HOSAKA: Right there.  
3 DETECTIVE COLLINS: Here he comes. All right. Let's  
4 go.  
5 DETECTIVE HOSAKA: Thank you.  
6 DETECTIVE COLLINS: You search him?  
7 DETECTIVE HOSAKA: No, I haven't searched him.  
8 Want me to do a search on him?  
9 DETECTIVE COLLINS: Yes, please.  
10 DETECTIVE HOSAKA: Anything's going to stick or poke  
11 me?  
12 DONALD HERB: No.  
13 DETECTIVE HOSAKA: All right. Anything in your  
14 pockets?  
15 DONALD HERB: No, just my wallet and --  
16 DETECTIVE HOSAKA: Lighter.  
17 DONALD HERB: -- cigarettes and lighter.  
18 DETECTIVE HOSAKA: I'm just going to check your  
19 wallet. I know -- I know we just got it up there. I just want to make  
20 sure there's nothing in it. I'll check it out in a minute. Okay? Why  
21 you got so much cash with you? How much cash do you have? How  
22 much cash do you have?  
23 DONALD HERB: Probably three or four hundred dollars.  
24 DETECTIVE HOSAKA: Why?  
25 DONALD HERB: I always carry that much. That's my

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1 paycheck. I just got another paycheck.  
2 DETECTIVE HOSAKA: What's -- what's this?  
3 DONALD HERB: Security card for work.  
4 DETECTIVE HOSAKA: Okay. Sure double-locked. Okay.  
5 Just hang tight right here. Whenever you're ready, let me know.  
6 DONALD HERB: Can I lean on your car?  
7 DETECTIVE HOSAKA: Yeah, go ahead and lean. If we  
8 took you out to --  
9 DETECTIVE COLLINS: Go ahead and put him in.  
10 DETECTIVE HOSAKA: If we took you out to where the  
11 desert is, you think you'd be able to show us? Go ahead and take a  
12 seat.  
13 DETECTIVE COLLINS: All right?  
14 DETECTIVE HOSAKA: All right.  
15 DONALD HERB: You mean up by Lake Mead --  
16 DETECTIVE HOSAKA: Yeah.  
17 DONALD HERB: -- where they threw stuff at? I should  
18 be able to.  
19 DETECTIVE HOSAKA: All right. The time is  
20 approximately 1150 hours. Secured in Detective Collins' car.  
21 I certify that the foregoing is a true and accurate  
22 transcript of the electronic audio recording from the interview  
23 in the above-entitled matter.  
24 \_\_\_\_\_  
25 Mona Shield Payne, Transcriptionist Date

ORIGINAL

1 RPLY

2 MARY-ANNE MILLER  
3 Clark County District Attorney  
4 Nevada Bar #001419  
5 MARC DIGIACOMO  
6 Chief Deputy District Attorney  
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8 200 Lewis Avenue  
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11 Attorney for Plaintiff

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

JAN 27 2012

BY, Carol Donahoo  
CAROL DONAHOO, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,  
11 Plaintiff,

CASE NO: 06C224572-2

DEPT NO: XVII

12 -vs-

13 DOMINIC RONALDO MALONE,  
14 #1670891

15 Defendant.

06C224572-2  
PTAT  
Points and Authorities  
1757276



16 **POINTS AND AUTHORITIES IN REPLY TO DEFENDANT'S OPPOSITION TO**  
17 **THE INTRODUCTION OF THE NON-TESTIFYING CO-DEFENDANT'S**  
18 **RECORDED TELEPHONE CALL**

19 DATE OF HEARING: 01/27/2012

20 TIME OF HEARING: 9:45 AM

21 COMES NOW, the STATE OF NEVADA, by and through MARY-ANNE MILLER,  
22 Interim District Attorney, through MARC DIGIACOMO, Chief Deputy District Attorney,  
23 and respectfully files the within reply to opposition to the admission of the telephone  
24 recording.

25 **FACTS**

26 The State asserts that once Defendant Malone linked the "story" told by Detective  
27 Collins to a particular declarant having told Detective Collins the "story," the State is  
28 entitled to attack the credibility of that declarant as if he testified.

///

1 POINTS AND AUTHORITIES

2 In response to the State's right to correct an unfair impression provided to the jury,  
3 Defendant Malone has asserted a number of statements contained in the taped statement of  
4 Donny Herb which were never admitted at trial allows Defendant to gain an unfair advantage  
5 in the trial by linking the statements he asserted during the objections were "not offered for  
6 the truth of the matter" to a particular out of court declarant, Jason McCarty. The Court  
7 initially allowed only the "story" of Detective Collins into evidence based upon their effect  
8 upon the listener. Thereafter, Defendant attributed those statements which he asserted were  
9 "not offered for the truth of the matter" to the story of the co-defendant. Subsequent to those  
10 statements being made by the co-defendant, McCarty made statements inconsistent with the  
11 statements offered by Defendant Malone. Both NRS 51.069, 51.035 and basic rules of  
12 fairness permit the State to rebut the prejudicial impact of that questioning.

13 Initially, Defendant Malone asked Mr. Herb about a version of events provided by  
14 Detective Collins to Donny Herb. While the State objected, he asserted that the statements  
15 were "not offered for the truth of the matter asserted." The Court overruled the objection  
16 and allowed the non-hearsay statement of Detective Collins to be asked. Those statements  
17 did not elicit the basis of knowledge for the "story" provided by Detective Collins. As such,  
18 the fact that Co-Defendant McCarty provided that version of events to Detective Collins was  
19 not implicated in the initial questions allowed by the Court.

20 Subsequent to offering the non-hearsay statements, Defendant Malone, through a  
21 series of questions of Donny Herb, elicited the fact that it was McCarty's version of events  
22 which provided the basis for Detective Collins' "story." In other words, Defendant Malone  
23 proved not just that Detective Collins was telling Donny Herb a "story," but that Jason  
24 McCarty had told Detective Collins the "story." Thus, while initially the fact that Detective  
25 Collins was providing a version of events was offered for a non-hearsay purpose, by the  
26 completion of the series of questions, Defendant Malone established that Defendant McCarty  
27 had spoken to Detective Collins and provided that version of events. Therefore, at the end of  
28 the questioning, not merely was the non-hearsay "story" provided for the effect on the

1 listener, but that McCarty himself had made the statement. Thus, once Defendant Malone  
2 established that McCarty made the statements, they were no longer "non-hearsay," and the  
3 credibility of McCarty was not only implicated, but relevant.

4 Clearly, the series of questions were offered to prove that McCarty had told Detective  
5 Collins that Defendant Herb had committed the crimes, and not McCarty. Thus, while  
6 initially offered for a non-hearsay purpose, Defendant chose to expand upon the court's basis  
7 for overruling the objection and offered the truth of what Detective Collins was saying. In  
8 other words, he was not offering that Detective Collins told Mr. Herb that Detective Collins  
9 thought Donny Herb had committed the crime for its effect upon Donny Herb to change his  
10 story. Defendant Malone, in fact, offered that McCarty had told Detective Collins that  
11 Donny Herb was guilty. At that point, the fact that McCarty told Detective Collins that story  
12 made it hearsay, subject to NRS 51.069 and NRS 51.035.

13 NRS 51.069 provides that:

14 1. When a hearsay statement has been admitted in evidence, the credibility  
15 of the declarant may be attacked or supported by any evidence which  
16 would be admissible for those purposes if the declarant had testified as a  
witness.

17 2. Evidence of a statement or conduct by the declarant at any time, which is  
18 inconsistent with the declarant's hearsay statement, is not subject to any  
19 requirement that the declarant must have been afforded an opportunity to  
deny or explain.

20 3. If the party against whom a hearsay statement has been admitted calls  
21 the declarant as a witness, the party may examine the witness on that  
statement as if the witness were under cross-examination.

22 NRS 51.035 allows for a statement inconsistent with the testimony of the witness to be  
23 admitted into evidence. Subsequent to telling Detective Collins that Donny Herb was guilty  
24 of taking the girls from the South Cove and killing them, McCarty was captured on a  
25 recording indicating that such a statement was false. Clearly, the fact that McCarty  
26 acknowledges that the story he told Detective Collins was false must be admissible to clarify  
27 a false impression left with the jury, i.e., the Donny was the person that committed the crime.  
28



1 The recording from June 8, 2012, as redacted (or even further redacted as suggested during  
2 the argument) is admissible for that purpose.

3 Moreover, even if the fact that McCarty made the statements to Detective Collins is  
4 "non-hearsay," the State may still admit the portion of the Erion Robinson call as non-  
5 hearsay as well. While NRS 51.035 allows inconsistent statements to be admissible hearsay  
6 considered for the truth of the matter asserted, Nevada is an almost unique jurisdiction.  
7 Under the Federal Rules of Evidence, an inconsistent statement in most circumstances may  
8 only be offered for a non-hearsay purpose, to establish credibility. In other words, the State  
9 is permitted to prove that McCarty is not credible.<sup>1</sup> Thus, should the Court not admit the  
10 Erion Robinson call as redacted as substantive evidence, the Court should admit the call as a  
11 statement inconsistent with what McCarty told Detective Collins.

12 Finally, Defendant Malone's questioning implicates the doctrine discussed in various  
13 cases wherein a party leaves a false impression with a jury. "The rule of 'opening the door,'  
14 or 'curative admissibility,' gives the trial court discretion to permit a party to introduce  
15 otherwise inadmissible evidence on an issue (a) when the opposing party has introduced  
16 inadmissible evidence on the same issue, and (b) when it is needed to rebut a false  
17 impression that may have resulted from the opposing party's evidence." See *United States v.*  
18 *Rosa*, 11 F.3d 315, 335 (2d Cir.1993). While the fact that Detective Collins provided a  
19 "story" to Donny Herb about the crime may have been admissible, the fact that McCarty  
20 provided that statement offered no legitimate purpose other to inform the jury that McCarty

---

21  
22  
23 <sup>1</sup> There are two possible scenarios. Either, McCarty's statements about Donny Herb being  
24 guilty were true, so Donny Herb lied to avoid being arrested for the crimes (Defendant  
25 Malone's implication from the questioning.) Or, McCarty's statements were false and Donny  
26 Herb decided to cooperate so as not to be falsely arrested for the crime. Thus, Donny Herb's  
27 credibility/bias rests upon the credibility McCarty. Therefore, the credibility of the person  
28 who provided that story is relevant whether or not the statement was offered for a hearsay or  
non-hearsay purpose, as the effect upon the listener can only be determined by the credibility  
of the person making the statement. Thus, evidence that McCarty has acknowledged the  
statement is false is relevant for a non-hearsay purpose, to prove what the actual effect upon  
Donny's state of mind by hearing Detective Collins providing the McCarty statements.

1 accused Donny Herb of the crime.<sup>2</sup> This fact is highlighted by the fact that Defendant  
2 Malone suggests that he could have asked about Defendant Malone possibly making the  
3 statement. However, the fact that McCarty provided evidence against Donny Herb did not  
4 create a motive for Donny Herb to make a statement implicating Defendant Malone. In fact,  
5 Defendant Malone never asked those series of questions of Mr. Herb. Defendant Malone  
6 only indicated through his questions that McCarty made the statements. As such, the only  
7 purpose for asking the questions was to indicate to the jury that McCarty told the "story" to  
8 accuse Donny Herb of the crime. The fact that McCarty has now indicated that such a  
9 statement was false, is independently admissible to cure the unduly prejudicial impact of  
10 accusing a witness through the use of an out of court declarant. Defendant Malone seeks to  
11 attack the credibility of Mr. Herb through the use of McCarty's statements while preventing  
12 the State from establishing that the statement was in fact false. Thus, the unfair impact of  
13 the inadmissibility of the fact that it was McCarty which made the accusation, can be cured  
14 by the admission of the fact that McCarty later indicated that such a statement was false.

15 DATED this 27<sup>th</sup> day of January, 2012.

16 Respectfully submitted,

17 MARY-ANNE MILLER  
18 Clark County District Attorney  
Nevada Bar #001419

19  
20  
21 BY

  
22 MARC DIGIACOMO  
23 Chief Deputy District Attorney  
24 Nevada Bar #006955

25  
26 <sup>2</sup> Defendant Malone may assert that the fact that McCarty gave the story may be relevant to Mr.  
27 Herb implicating McCarty, thus establishing his bias against McCarty. However, McCarty is not on  
28 trial. The fact that Mr. Herb had a motive to implicate McCarty does not provide a motive for him  
to implicate Defendant Malone. Thus, if that is the asserted basis, it was irrelevant. Therefore, it  
was inadmissible. Since it was inadmissible, the State now has the right to cure the prejudicial  
effect by establishing that McCarty has acknowledged the statement was false.

1 CERTIFICATE OF FACSIMILE TRANSMISSION

2  
3 I hereby certify that service of State's Reply to Defendant's Opposition to the  
4 Introduction of the Non-Testifying Co-Defendant's Recorded Telephone Call, was made this  
5 27<sup>th</sup> day of January, 2012, by facsimile transmission to:

6 RANDALL PIKE, SPD  
7 CHARLES CANO, SPD  
8 FAX #455-6273

9   
10 Secretary for the District Attorney's Office  
11  
12  
13  
14  
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16  
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28 06FH0742A: MD/sam-MVU

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

JAN 30 2012

BY, \_\_\_\_\_  
CAROL DONAHOO, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

THE STATE OF NEVADA,	.	CASE NO. C-224572
	.	
Plaintiff,	.	DEPT. NO. XVII
	.	
vs.	.	
	.	
DOMONIC RONALDO MALONE,	.	<b>TRANSCRIPT OF</b>
	.	<b>PROCEEDINGS</b>
	.	
Defendant.	.	
. . . . .	.	

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 13**

FRIDAY, JANUARY 27, 2012

APPEARANCES:

FOR THE PLAINTIFF:                      MARC DIGIACOMO, ESQ.  
   CHRISTOPHER LALLI, ESQ.  
   *Chief Deputy District Attorneys*

FOR THE DEFENDANT:                      RANDALL H. PIKE, ESQ.  
   CHARLES A. CANO, ESQ.  
   *Assistant Special Public*  
   *Defenders*

COURT RECORDER:

MICHELLE RAMSEY  
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC  
Englewood, CO 80110

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

1        LAS VEGAS, NEVADA, FRIDAY, JANUARY 27, 2012, 9:42 A.M.

2                    (Court was called to order)

3                    (Outside the presence of the jury)

4                THE COURT:    Okay we had a -- there's a new matter to  
5 be resolved outside the presence of the jury panel?

6                MR. PIKE:    That's correct, Your Honor.    The State  
7 had brought a motion to admit a redacted portion of a recorded  
8 telephone conversation from the Clark County Detention Center  
9 by Jason McCarty to an Erion Robinson.    And we opposed that.

10               The Court heard oral argument yesterday and was --  
11 and took it under advisement.    I took the opportunity without  
12 the Court's advance permission, but I didn't think Your Honor  
13 would mind, filing some Point and Authorities in reference to  
14 that.    And the State filed an -- or a Response to that.

15               MR. DiGIACOMO:    That's correct.    It's the one I  
16 e-mailed your law clerk, Judge.

17               THE COURT:    We got two.    Is this the same?    This one  
18 was just on the e-mail version.

19               MR. DiGIACOMO:    Yeah, it was just formatted  
20 differently because I couldn't format it at home.

21               THE COURT:    But yeah, I did get -- this one I guess  
22 we can just throw away.    Yes, I do have it.

23               Go ahead, Mr. Pike.    I'm sorry.    Or were you done?

24               MR. PIKE:    And it was our position -- well the State  
25 had argued last that we somehow had made this admissible

1 through arguments about a story, or in reference to the  
2 interrogation technique that was used by the detective. So I  
3 included or attached the transcript of that, indicating that  
4 that -- the detective did, in fact, say that repeatedly. You  
5 know, saying, Well, did Herb turn on you? You know, or excuse  
6 me, did D-Roc turn on you, not just McCarty? There were  
7 references to that.

8           And I think contrary to the State's recollection as  
9 I go through our -- during the examination by Mr. Cano that  
10 the Court routinely and -- denied our -- or sustained the  
11 Court's -- or sustained the State's objections to the attempts  
12 at -- at going into this area. So there really is nothing to  
13 rebut, because the objections were sustained throughout page  
14 -- as reflected on page 99, through pages 109.

15           So it's -- I understand the Court -- or excuse me, I  
16 can understand the argument from the State. I've dealt with  
17 this issue with Mr. DiGiacomo for -- actually for probably  
18 eight years now on other cases, and Judgments of Conviction,  
19 and impeaching hearsay statements. And I just -- that statute  
20 I believe really applies more to things that are concrete such  
21 as Judgments of Conviction. And not a hearsay -- a hearsay  
22 statement from a declarant that is completely unavailable that  
23 has every motive to lie.

24           And, in fact, is going in and saying, leave the  
25 White Boy alone. It's not, he's trying up loose ends, or

1 trying to destroy evidence or anything else.

2 And the other -- and the other position that we take  
3 is that the conspiracy has collapsed well before the time of  
4 this. They are all in custody. They are -- they -- prior to  
5 this time have -- have started turning on each other's like --  
6 you know, like the lobsters in the tank over at Red Lobster.  
7 It just -- the conspiracy has ended.

8 MR. DiGIACOMO: Judge, just briefly in response.  
9 Mr. Pike actually cited Crew [phonetic] to the Court for -- on  
10 the conspiracy one. And I know the Court was, you know, less  
11 likely to grant it on the conspiracy, but I want to make sure  
12 I make the record as it relates to that.

13 Crew actually says the conspiracy extends beyond the  
14 arrests. I mean, that's the whole basis of Crew, is that the  
15 conspiracy can be ongoing. And there's a whole lot of case  
16 law that says, you know, the in furtherance portion of the --  
17 of the section is to be construed broadly. He's an  
18 individual, Mr. McCarty, who's speaking to another individual  
19 who has contact with both other co-conspirators in this case,  
20 Mr. Malone and Mr. McCarty, during the relevant time periods  
21 of the killings.

22 He's uncooperative with police during his interview,  
23 all of which tends to indicate he has knowledge of the crime,  
24 and the first thing he says to them is, Don't mess with the  
25 White Boy anymore, because he snitched on me, which is

1 obviously an effort to extricate and keep the relationship  
2 between Mr. Herb and Mr. Robinson, and to separate the two of  
3 them so that they no longer have a relationship between the  
4 two of them, which I take as in furtherance of conspiracy,  
5 hey, this guy has ratted on us, and so don't talk to him,  
6 because that's going to be bad for us if you continue to do  
7 so.

8           As to the other issue, you know, I recognize that,  
9 you know, they've made a very hypertechnical argument. I  
10 disagree with Mr. Pike. The one statement that most concerns  
11 us is the one that the Court did allow in, which is, that  
12 Donny and Malone were at the South Cove, and they took the  
13 girls out to the desert and killed them. And that statement  
14 was allowed in by the Court. That question and answer was  
15 allowed in by the Court.

16           Thereafter -- and while I would recognize if it --  
17 that was the only thing that Detective Collins had said, then  
18 the rest of this wouldn't have really been an issue as it  
19 relates to this particular phone call, because who the speaker  
20 was, wouldn't have been mentioned.

21           But now the jury has heard that the speaker was Mr.  
22 McCarty, the jury has heard evidence that Mr. McCarty has  
23 knowledge of the crime and the only piece of evidence  
24 implicating Donny Herb in the crime is a statement by Mr.  
25 McCarty that he's the guilty person.



1           And so the question for the Court is, is there's a  
2 subsequent statement from Mr. McCarty that says, Donny Herb  
3 didn't take him from the South Cove, which is how I take that  
4 one small portion of the Erion Robinson phone call, is that is  
5 inconsistent with the statement that they offered. And their  
6 explanation for how -- what was offered for not a hearsay  
7 purpose and they cite, Well, go and look at all the cases that  
8 cite Wollock [phonetic]. You can go to each and every one of  
9 those.

10           And, for example, there's Webber [phonetic], and  
11 they said, well, the jury's going to have to accept as true,  
12 though, that the victim had told this unavailable witness  
13 that, and as such, that exception doesn't really apply.

14           Or you go to Roland [phonetic] when they say, well,  
15 hypertechnically, it wasn't offered for the truth of the  
16 matter asserted, but the jury is going to be left with the  
17 prejudicial impact of it. And as such, we're going to treat  
18 it like its hearsay and it shouldn't have been admitted.

19           And so at the end of the day is, you know, I respect  
20 the Court's decision to allow the admission of the testimony.  
21 But then they took it further. They went with, not only did  
22 you get accused of the crime, but you got accused by Mr.  
23 McCarty. And if you -- and you believed -- and I even think  
24 he used that term -- you believed that Mr. McCarty has accused  
25 you of this crime, clearly, a question asserting the truth of

1 the matter asserted. Clearly, that -- it calls for and then  
2 proves up what they told you before they weren't trying to  
3 prove, which is McCarty accused them of the crime.

4 And so now we're left with the position is, look,  
5 Mr. Pike might be right. There might be other ways to attack  
6 Mr. McCarty's credibility. We've done it in the least  
7 prejudicial way, which is, we want to just dispute that one  
8 statement, because the statement is inconsistent with a  
9 subsequent statement of that witness.

10 Right. His Judgments of the Convictions are  
11 probably admissible at this point, meaning, his conviction for  
12 the murder in this particular case is probably admissible to  
13 attack Mr. McCarty's credibility. We're not offering that.  
14 But to suggest that jury is allowed to have a false impression  
15 as to Mr. McCarty and his credibility, and that is clearly an  
16 issue. Because what's true? One, McCarty said it, and Mr.  
17 Pike's right. You know, they suggest during the statement  
18 that Malone said it too. But those questions weren't asked of  
19 him.

20 It was just, McCarty said it. So what -- so what's  
21 the relevance of that? Well, they're saying it goes to the  
22 state of mind of Donny Herb. Well, okay. Well, what's  
23 relevant about that? Well, if Mr. McCarty said it and, in  
24 fact, Donny Herb was guilty, then he has a reason to lie and  
25 tell the police a story that's not true.

1           But what's the opposite? If that statement is not  
2 true, what is the relevance, if Mr. McCarty lied to the police  
3 when he said Donny Herb did it? Well, Donny Herb would've  
4 known that McCarty lied about the statement. And so Donny  
5 Herb would've said, hey, McCarty's no longer my friend so now  
6 I'm going to tell the truth.

7           So the only way to address Donny Herb's credibility,  
8 his state of mind, the relevance of what was said here, was to  
9 determine, is the credibility of the statement made by Mr.  
10 McCarty. And that's what the rules are there for.

11           And so I would suggest to the Court that while they  
12 initially offered it for a non-hearsay purpose, eventually by  
13 the end of Mr. Cano's -- it was rank hearsay. And so either  
14 51.069 allows us to attack it, or the curative -- the open the  
15 door policy that I cited to the Court. Either way you can't  
16 leave a jury with a false impression that Mr. McCarty's claim  
17 is that Donny Herb did it.

18           And so I would submit it to the Court that we have  
19 been as limited in attacking that credibility, because we have  
20 a direct statement in contradiction to a statement that is in  
21 front of the jury. And I'll submit it.

22           THE COURT: Specifically, when you were talking  
23 about taking the girls to the South Cove, are you talking  
24 about page 101? Because I want to follow along the specific  
25 question and answer. I've read through the 10 or 11 pages you

1 cited to me -- or both parties cited to me.

2 MR. DiGIACOMO: I can -- let me pull it up, Judge.  
3 I didn't pull it up on my computer.

4 THE COURT: I have something about South Cove on  
5 page 101, line 4 -- 4 and 5. Is that what you're referring  
6 to?

7 MR. DiGIACOMO: Let me get to page 98. He  
8 specifically said -- well, I don't want you to go to page 98.  
9 I've got to start there so I can see where -- exactly where  
10 we're at.

11 (Pause in the proceedings)

12 MR. DiGIACOMO: I don't have South Cove on page 98.

13 MR. PIKE: Here, I've got -- right here.

14 MR. DiGIACOMO: Oh, 101, I'm sorry. You said 101.

15 THE COURT: Yeah, as far as that. Okay.

16 MR. DiGIACOMO: "Okay. And it came to the point  
17 when you taking the girls from the South Cove with Domonic."  
18 "Okay, I remember that." "And you told them, no, no, no,  
19 that's not what happened?" "Yes." "So you didn't like that  
20 story?" "No." "Because if the girls are from the South Cove  
21 that would've meant you were involved in the murders?" "I  
22 guess so."

23 So, clearly that was the questioning. Eventually,  
24 the first time we object to, You were telling them that Romeo  
25 flipped on them. Objection, hearsay. And you sustained that.

1 And then there's another question by Mr. Cano that says, "Your  
2 impression was that your best friend or one of your close  
3 friends, Romeo, had told the police you were involved in this  
4 case" "Objection, hearsay."

5 And so Mr. Cano keeps going on. We keep objecting.  
6 And eventually he gets to the point where --

7 MR. CANO: Sustained. You've got to add that. That  
8 that objection was sustained.

9 MR. DiGIACOMO: No, but -- yeah, they were  
10 repeatedly being sustained, because we kept saying it was  
11 hearsay.

12 MR. PIKE: Your Honor, that was a line -- we'd  
13 already argued and are presenting through --

14 MR. DiGIACOMO: Well, I haven't finished yet.

15 MR. PIKE: Oh.

16 THE COURT: All right. Go ahead.

17 MR. DiGIACOMO: And if you keep going now, after we  
18 sustained -- after all those objections to the hearsay  
19 objections were sustained, if you go down to 103, he goes into  
20 his relationship with Mr. McCarty. And then you keep going.  
21 Because he goes back to that. "And because of that broken  
22 trust between you and him, fair to say the police suspected  
23 you were deeply involved in this case?"

24 MR. PIKE: That's 106, Your Honor.

25 MR. DiGIACOMO: Bottom of 106, top of 107. "I

1 assume that's fair to say." Lalli objects. You say -- Mr.  
2 Cano says, "I'll rephrase." "Fair to say that after that" --

3 MR. CANO: The Court says, "I'm going to sustain the  
4 objection."

5 MR. DiGIACOMO: Yeah. And then it says, "Fair to  
6 say that after that broken trust is when you started talking  
7 to the police about your involvement in the case?" "Yes,  
8 that's correct."

9 So clearly indicating Mr. McCarty told a story  
10 indicating Donald Herb was involved in the murders and the  
11 reason that he changed his story is because McCarty -- because  
12 he was friends with McCarty. He had this broken trust.  
13 Clearly, hearsay. The Court sustained it over, and over, and  
14 over again. And eventually, Mr. Cano got an answer he was  
15 looking for.

16 But clearly, the intent of all of that questioning  
17 that goes over 12 pages, is McCarty said Donny's guilty. That  
18 is the entire thrust of that examination, Judge.

19 MR. PIKE: Well --

20 MR. DiGIACOMO: And now to suggest that we can't  
21 rebut that McCarty doesn't claim it, doesn't appear to be  
22 appropriate.

23 MR. PIKE: Your Honor, it's fair to say that the  
24 detectives will often interrogate, that they will give them  
25 false information, that they will provide a story. And that's

1 the reason I gave you that transcript, because in that he's  
2 saying, Let me tell you a story. D-Roc turned on you. And  
3 McCarty turned on you. They all turned on you.

4 And so as Mr. Cano is going through and attempting  
5 to start that line of examination saying, you're being given  
6 information, you're being given information, and they're  
7 saying, you're guilty, they're saying you're guilty, not --  
8 and not being able to go to the next step, which would be to  
9 bring in the fact that they're saying, D-Roc turned on you,  
10 they're saying everybody's turned on you.

11 They -- it leaves a false impression, if there is  
12 any false impression at all, that the detectives were  
13 interrogating him, interrogating him hard. And he at some  
14 point in time says, I'm done. Here, I'm going to tell you --  
15 I'm going to match your story, or I'm going to tell you a  
16 story, or I'm testifying now. I want to be a witness. I want  
17 to be a witness. I want to be an accessory after the fact.

18 And the fact that the Court was sustaining objection  
19 after objection, and after objection, there is nothing --  
20 there is no impression, false impression that would have been  
21 left with the jury that this was done.

22 By sustaining the objection, we have a curative  
23 instruction that says, if you sustain an objection, the  
24 question itself, without the answer, is meaningless. There  
25 was never an answer that was permitted that would've brought

1 in any sort of a hearsay statement. And it's not being used  
2 for a hearsay purpose.

3 So it's -- and of course those questions about Mr.  
4 -- about the allegations of the story that Mr. Malone had  
5 turned on him was never asked, because it didn't get anywhere.  
6 The Court was sustaining the objections. And so that line of  
7 questioning was abandoned and we moved on in reference to  
8 that.

9 The conspiracy extending out to the point where they  
10 may be in jail, maybe trying to tie up loose ends, maybe  
11 trying to eliminate a witness, maybe doing something to stop  
12 that, stopping -- Mr. McCarty warning him not to have any  
13 contact with him because he's a snitch, is not the same as  
14 trying to get rid of him, or trying to --

15 THE COURT: I'm not concerned about that one.

16 MR. PIKE: -- extend that. Okay.

17 MR. DiGIACOMO: Judge --

18 MR. PIKE: So I'll --

19 MR. DiGIACOMO: I apologize.

20 MR. PIKE: Oh, okay. And so in reference to that I  
21 think the State was vigilant in making the objections. The  
22 Court was vigilant in ruling on them and sustaining and  
23 sustaining. And although there were a number of attempts to  
24 try to get to where -- where that non-hearsay use of those  
25 statements was trying to be used, that that was an



1 impossibility. And the interrogation of the witness went on  
2 further.

3           It's highly prejudicial. It is not probative,  
4 because, you know, Mr. Malone is not mentioned by name,  
5 although in that recording it says, "we" -- it creates a false  
6 impression that that telephone call may have been initiated as  
7 part of an agreement, or an arrangement between Mr. Malone and  
8 Mr. McCarty.

9           So its prejudicial value exceeds its probative  
10 value, just insofar as impeachment is concerned, or -- and for  
11 all of those reasons we'd request that Your Honor not allowed  
12 the redacted statement.

13           THE COURT: And is there anyplace where the  
14 detective -- I mean, where the question is elicited where it's  
15 a very specific statement as being attributed to McCarty?

16           MR. DiGIACOMO: It says, quote --

17           THE COURT: Which page?

18           MR. DiGIACOMO: Well, I'm going to to go the last  
19 question for -- because there's only two specific statements  
20 that are being offered. There is never a suggestion that  
21 anybody other than Mr. McCarty has spoken to Detective Collins  
22 in the entire transcript. And there are two specific  
23 statements offered by Mr. Cano. And Mr. Cano says, and here's  
24 why it can't possibly be asserted that it's to Mr. Malone.

25           He says -- he's telling you, that you, Donny, and

1 Malone took these girls from the South Cove, and he's telling  
2 -- and you don't like that, because if that's true, you're  
3 guilty of murder. So why on earth would Domonic Malone be  
4 saying that? But the last statement is, after you sustain  
5 every single objection that we say is hearsay, because it's  
6 not offered for the truth of the matter asserted, it was what  
7 their response was, what does Mr. Cano say?

8 Quote, "Fair to say" --

9 THE COURT: Which pag? Which page?

10 MR. DiGIACOMO: This is the question that was asked  
11 and answered on 107, Judge.

12 THE COURT: Okay.

13 MR. DiGIACOMO: Quote --

14 THE COURT: No, I just want to make sure I'm  
15 following along.

16 MR. DiGIACOMO: -- "Fair to say after that broken  
17 trust." That is the truth of the matter asserted. That is  
18 the truth of the statement. Mr. McCarty has broken your trust  
19 and told the police you committed this crime. That is the  
20 truth of the matter asserted.

21 For them to claim, that's not the truth of the  
22 matter, that is. That's not the effect on Mr. Herb. Mr. Herb  
23 is -- it isn't his state of mind. It's saying, Mr. McCarty  
24 broke your trust. And so, how is that not hearsay at this  
25 point? How are they not proving the truth of the matter

1 asserted?

2           And in an analogous situation, Judge, imagine if it  
3 was a defendant being interviewed by a cop, and the cop said,  
4 Hey, Witness A told me you did the crime. And then sometime  
5 later, Witness A said, oh, I lied to the police, but now  
6 they're unavailable for trial.

7           Are you telling me that, one, either the portion  
8 where the cop said, Witness A said you committed the crime,  
9 wouldn't have been redacted and not allowed into evidence.  
10 Or, if it was allowed into evidence, what court on earth  
11 wouldn't have allowed in that subsequently the witness  
12 recanted what they told that detective?

13           I mean, it's the exact same analysis here. What  
14 they're saying is, the false impression gets to be left with  
15 the jury, that McCarty is claiming that Donny did the crime.  
16 And we've limited it, and I know Mr. Pike said it implicates  
17 Mr. Malone. We offered to take the portion out that says, and  
18 the other "n" word, so it's just on the transcript, page 2,  
19 lines 7 and 8, it just said, "He flipped the script and  
20 testified against me, period." And then to go on and stop it  
21 at, "He went and showed them something they didn't have,  
22 homie, period." "Uh-huh." On top of page three, "He took  
23 them right to it, right to it, and gave it to them."  
24 "Uh-huh." And then cut it off there.

25           And so the whole part about, we -- we would've all

1 gotten out of it, all that other stuff, we don't even need to  
2 offer that. The part that is in direct rebuttal is, "Then the  
3 cold part about it is, he didn't have no parts of it, bro. No  
4 parts of it, period, except for the ass end of it, the very  
5 ass end of it, trying to help me do something. That's it.  
6 But he put more on it than what it -- I mean, he put that in  
7 there, but that was enough, because without that they -- he  
8 went and showed them something they didn't have, homie,  
9 period." "Um-hum." "He took them right to it, right to it,  
10 and gave it to them."

11 And so that statement by Mr. McCarty is in direct  
12 contradiction to the statement that they're claiming caused  
13 Mr. Herb to change his mind. And the real question is, is  
14 Donny Herb changing his mind, because he committed the crime  
15 and he wants to implicate somebody else, or is he changing his  
16 mind because Mr. McCarty has, you know, implicated him when  
17 he's not guilty.

18 And so that's the real question. And so that goes  
19 directly to it. It is a statement. It's limited in nature  
20 and clearly admissible to rebut the implication from the  
21 questioning by Mr. Cano.

22 THE COURT: All right. On the -- I reviewed this  
23 all night and looked at this.

24 On the issue of the continuation of the conspiracy,  
25 I don't find that the statements in question fall into

1 concealment of the crime, of the conspiracy. So on those  
2 grounds I'm not going to allow it in.

3 On the second one, under 51.069, I just don't think  
4 that the statements are specific enough. I'm just concerned  
5 about them. There was times when they weren't objected to.  
6 They were objected to on certain occasions. But I just don't  
7 think it's a specific enough statement for me to allow it in  
8 under 51.069.

9 So I'm going to -- I don't know if there was a  
10 motion on it, or it was just more of an advisory question to  
11 the Court, but I'm not going to allow that -- the transcript  
12 to come in from the phone call.

13 MR. DiGIACOMO: Will you allow me, Judge, to ask the  
14 detective if subsequently he received information that Mr.  
15 McCarty recanted his claim of Donald Herb? Without going into  
16 the specifics, but his claim that Donald Herb took them from  
17 the South Cove? I mean, I at least should be able to ask that  
18 question to cure any prejudice to me, without getting into the  
19 specific statements.

20 Just that subsequently, you received a statement of  
21 Mr. McCarty that recanted his claim that Donny Herb took the  
22 girls from the South Cove. I mean, there has to be some cure  
23 to the prejudicial impact of what the defense did.

24 I recognize the Court, you know, doesn't want Mr.  
25 McCarty's statements coming in here. But certainly the --

1 asking the detective, you know, detective you, you know, you  
2 did tell this story to Donny Herb? Yes. And that was, you  
3 know, subsequently Mr. McCarty made a statement which recanted  
4 his claim that Donny Herb took them from the South Cove?  
5 Because that's the specific claim -- that's the specific claim  
6 that's in the statement.

7 THE COURT: Isn't that hearsay? I mean --

8 MR. PIKE: The Court's already ruled.

9 THE COURT: -- you're asking him to relay a  
10 statement he heard.

11 MR. DiGIACOMO: But he -- they --

12 MR. PIKE: Not even --

13 MR. DiGIACOMO: -- he's already related the  
14 statement he heard.

15 MR. PIKE: We haven't. The trust is broken. Your  
16 Honor's ruled that the hearsay is not coming in. They're just  
17 trying to rephrase it and say, well, we're just going to say  
18 what he said, and not actually give you the true hearsay  
19 statement. It's an adaptation, interpretation of a hearsay  
20 statement.

21 THE COURT: Well, so far the defense has -- for  
22 every witness has, I mean, has laid the groundwork that  
23 they're all lying. So, I mean, it's nothing new. You know, I  
24 mean, it's -- Mr. Cano, you've done a good job, I mean, trying  
25 to present that as, everyone was too high on drugs to know

1 what they were talking about and everyone's lying.

2 You know, so I'm not going to -- that's it. You can  
3 ask the question. We'll see, you know, it sounds right now  
4 that I'm going to sustain it, because it's calling for  
5 hearsay.

6 MR. PIKE: Thank you.

7 THE COURT: Do you want to speak to me, Mr. Malone?  
8 You're raising your hand.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Well, why don't you talk to Mr. Cano and  
11 Mr. Pike first.

12 (Pause in the proceedings)

13 MR. CANO: Oh. He's just cold, Your Honor. He was  
14 wondering if we could raise the temperature a little bit.

15 MR. DiGIACOMO: We're all cold in here.

16 THE DEFENDANT: No, that's it.

17 THE COURT: If I could control the temperature in  
18 this courtroom or in my office, I would be a happy person.

19 THE DEFENDANT: Okay.

20 THE COURT: Unfortunately, my understanding is that  
21 we only can control so much and it's floor-wide.

22 MR. CANO: Okay.

23 THE DEFENDANT: Okay.

24 MR. CANO: Thank you, Your Honor.

25 THE COURT: We've got a case where people were in

1 blankets and other times they're sweating.

2 THE MARSHAL: Are we ready to go?

3 THE COURT: Yes.

4 (Pause in the proceedings)

5 THE COURT: Our schedule, witness-wise, are we going  
6 to --

7 MR. LALLI: We're going to call one out of order  
8 right now, Your Honor.

9 THE COURT: Okay. And then, I mean, are you looking  
10 at that we're going to adjourn at 3:00, 4:00 o'clock? I mean,  
11 I can stay as -- I can stay all day. It doesn't matter to me.  
12 But for your scheduling purposes.

13 MR. LALLI: I don't think that we'll have enough  
14 evidence to go that long.

15 MR. DiGIACOMO: Yeah, I think we might finish before  
16 that.

17 MR. PIKE: Yeah.

18 THE COURT: Okay.

19 MR. PIKE: The detective is the last witness that we  
20 have today. And then I think that --

21 MR. DiGIACOMO: He's the last witness for the State.

22 MR. PIKE: He's the last witness for the State.

23 THE COURT: Would an hour and a half lunch, would  
24 that screw up your schedule?

25 MR. PIKE: No, no, not at all.



1 THE COURT: I'm asking the State. I mean, that's --

2 MR. PIKE: It wouldn't screw up theirs. I'll talk  
3 for them.

4 MR. DiGIACOMO: What?

5 THE COURT: An hour and a half lunch, will that  
6 screw up your schedule?

7 MR. DiGIACOMO: No.

8 THE COURT: Okay. All right.

9 (Pause in the proceedings)

10 (Jury reconvened at 10:10 a.m.)

11 (In the presence of the jury)

12 THE MARSHAL: All right. You may be seated, ladies  
13 and gentlemen. Let's make sure our cell phones are turned  
14 off, please.

15 THE COURT: All right. State, your next witness?

16 MR. LALLI: Your Honor, we are going to be calling a  
17 witness out of order to accommodate this gentleman's schedule.  
18 It is Erin Reat.

19 THE COURT: All right.

20 MR. PIKE: That's correct, Your Honor. We have no  
21 objection to that.

22 THE COURT: Thank you.

23 THE MARSHAL: Raise your right hand and face the  
24 Clerk, please.

25 ERIN REAT, STATE'S WITNESS, SWORN

1 THE MARSHAL: If you would have a seat and slide up  
2 to the microphone. If you would, sir, please state and spell  
3 your name for the record.

4 THE WITNESS: Sure. My name is Erin, E-R-I-N, Reat,  
5 R-E-A-T.

6 THE COURT: Go ahead, Counsel.

7 MR. LALLI: Thank you.

8 DIRECT EXAMINATION

9 BY MR. LALLI:

10 Q Sir, can you tell us where you work?

11 A Sure. I work for the Bexar County Crime Lab, that's  
12 B-E-X-A-R, County Crime Lab in San Antonio, Texas.

13 Q What do you do there?

14 A I'm employed as the quality assurance manager of the  
15 laboratory.

16 Q What sort of work does your laboratory do?

17 A We are a fee for service laboratory that has four  
18 main sections for criminal investigation. We analyze,  
19 obviously, drug evidence, trace evidence, firearms and tool  
20 mark evidence, and then serology and DNA.

21 Q You mentioned that you were the quality assurance  
22 manager. Over what section are your responsibilities?

23 A I oversee what's called the quality system of the  
24 entire laboratory. The State of Texas is -- they have a state  
25 law that laboratories must be accredited to be able to present

1 evidence in a court of law. So it's my job to make sure that  
2 we maintain our accreditation so that we can still perform the  
3 work that we do.

4 Q Before you were the quality assurance manager, what  
5 were your responsibilities at the lab?

6 A Before I was promoted to a quality assurance manager  
7 I was a forensic scientist in the serology DNA section.

8 Q What are some of the things that you did as a -- as  
9 an analyst in the serology DNA section?

10 A In serology DNA we screen evidence for the possible  
11 presence of biological material, whether it may be blood,  
12 semen, saliva or some other bodily material. If bodily fluids  
13 or material is identified, the DNA analyses can then be  
14 performed on, we then can also perform DNA analysis on those  
15 to try to include or exclude an individual as a potential  
16 source.

17 Q Okay. Can you explain for the jury, if you would,  
18 your formal education and professional experience that qualify  
19 you to do that job?

20 A Yes, sir. I hold a Bachelor of Science Degree in  
21 Biology from Texas Tech University. I also hold a Master of  
22 Science Degree in Wildlife Science from Purdue University. I  
23 was hired at the laboratory in 1998. I started actually as a  
24 forensic technician. And then I was subsequently promoted  
25 after a few months to that -- to the level of a forensic

1 scientist. I was a forensic scientist until December of 2007,  
2 when I was promoted to the quality assurance manager position,  
3 but I still also perform the duties of forensic scientist in  
4 the serology DNA section when I have the ability.

5 Most of my training has been either on-the-job  
6 training, or through attending symposia conferences, training  
7 sessions through external agencies.

8 Q I want to talk to you about some of your activity  
9 outside of the lab. Do you teach?

10 A I do.

11 Q What do you teach?

12 A I teach an introduction to forensic science class at  
13 the University of Texas at San Antonio.

14 Q How long have you done that?

15 A I can't recall the exact -- I think I started  
16 teaching at UTSA in 2006. I can't recall the exact year.

17 Q And do you still do that?

18 A I do.

19 Q In fact, I think you had a class yesterday?

20 A I had a night class last night, so I'm running on  
21 fumes right now.

22 Q All right. Are you involved in any professional  
23 organizations in the area of serology or DNA analysis?

24 A Yes, I am. I am a member of the -- sorry, the  
25 Southwestern Association of Forensic --

1 Q Are these the fumes that you were talking about?

2 A I'm sorry. Southwestern Association of Forensic  
3 Scientist. I am also a member of the Association of Forensic  
4 Quality Assurance Managers, as well as I am the -- I am now  
5 the chair of the Association of Forensic DNA Analysts and  
6 Administrators.

7 Q You mentioned that quality assurance is a different  
8 job than actually being a forensic analyst. How much of your  
9 time at this point is devoted to the analyst side versus the  
10 quality assurance side?

11 A It varies from month to month. Most of the time,  
12 maybe 25 percent of my time can be devoted, spending time on  
13 the bench, or working -- working case work. There may be  
14 other months where my duties in quality assurance are less  
15 time consuming, so maybe upwards of 50 percent. But generally  
16 between 25 and 50 percent a month.

17 Q Have you ever testified in a court of law as an  
18 expert in the area of serology or DNA analysis?

19 A Yes, I have.

20 Q On approximately how many occasions?

21 A In excess of 50 times. I don't know the exact  
22 number.

23 MR. LALLI: Your Honor, at this point, I would ask  
24 that Mr. Reat be allowed to testify as to his opinions in the  
25 area of DNA analysis and serology.

1 MR. PIKE: No objection, Your Honor.

2 THE COURT: A proper foundation has been laid. Go  
3 ahead.

4 MR. LALLI: Thank you.

5 BY MR. LALLI:

6 Q Mr. Reat, can you explain to our jury what DNA is?

7 A Sure. DNA, it's an acronym. It stands for  
8 deoxyribonucleic, so it's easier just to say DNA. It's  
9 essentially the blueprint, it's a genetic blueprint that makes  
10 us who we are. We get half of our DNA from our mother, and  
11 half of it from our father at the moment of conception. And  
12 that DNA that you were given at that point in time stays with  
13 you up until the point of your death.

14 It basically is the blueprint that your body follows  
15 to make you who you are. Essentially, what it does is it  
16 tells your body how to produce certain proteins, and those  
17 proteins can then mean that you're going to be male or female.  
18 It may be that you're going to have blue eyes, or brown eyes,  
19 or any of these other genetic traits that are encoded on our  
20 genetic genome.

21 Q How do we use DNA in criminal investigations?

22 A What we do in a criminal investigation is we -- we  
23 don't look at genes that code for anything for a criminal  
24 investigation. What we look for are genetic markers that are  
25 variable in the population. There's a lot of differences in

1 the population.

2           So what we do is we analyze a sample that we term a  
3 forensic unknown, a sample that we don't know where it  
4 originated from. We may have an idea, but we don't know  
5 conclusively where this sample came from. Let's say it was  
6 blood on a sidewalk. We then develop a genetic profile from  
7 that blood on the sidewalk. And then we compare that to --  
8 independently to a known profile from an individual. It was a  
9 sample that was taken directly from someone.

10           So we know that they are the donor of the DNA on the  
11 known sample, and we compare those genetic profiles. If those  
12 profiles are different we know that that known donor was not  
13 the donor of the unknown material. He's excluded as the  
14 donor. If the profiles match, we would then state that the  
15 individual was not excluded. We attempted to exclude, but we  
16 were not able to exclude.

17           In that instance, if we were not able to exclude we  
18 would then supply statistics on how rare or how common that  
19 profile may be.

20           Q     You talked about everyone having different DNA.  
21 What about identical twins?

22           A     Identical twins do have the exact same DNA. They  
23 are essentially clones. What occurs with an identical twin is  
24 you have one sperm fusing with one egg, to create one embryo,  
25 essentially, and that mass of cells then splits. So they all

1 started from the same moment of conception.

2 So in terms of DNA they are clones, they have the  
3 exact same compliment of DNA.

4 Q Barring the identical twins situation, is  
5 everybody's DNA different?

6 A Yes, sir. Barring identical twins, each person's  
7 genetic material, each person's genome is unique to that  
8 person.

9 Q The last area that I would like to cover just in  
10 terms of the science, and if you could kind of give us a  
11 thumbnail approach here so I don't get confused. What do you  
12 do once you receive an item of evidence that is to be analyzed  
13 for DNA? Can you kind of walk us through the process that you  
14 utilize?

15 A Yes, sir. The first thing that we do is, we  
16 obviously -- we need to do a visual examination of an item.  
17 And so we basically just do a visual screening, as well as  
18 obviously taking notes on the material as to what we see. If  
19 we're screening something for biological material, either we  
20 need to know why something was taken, let's say if it was a  
21 sexual assault kit, and we understand that the swabs were  
22 taken to look for the presence of semen or sperm, we would  
23 then test that material to look for the possible presence of  
24 semen.

25 If it's some other type of object, essentially we



1 would need -- we may need to see something that visually what  
2 we think it may be. Okay? So if we're screening something  
3 for the presence of blood, say, we would look for a  
4 reddish-brown soiling that would be consistent with what you  
5 would see with blood. If you do see a reddish-brown soiling  
6 we can then do what's called a presumptive test. It's a very  
7 quick test, but it's not conclusive for blood.

8 But if it gives us an indication that it could be  
9 blood we would then take it the next step forward, and if DNA  
10 analysis is requested we can then perform DNA on that  
11 material.

12 Q All right. In -- well at some point were you  
13 contacted by Detective Gerry Collins from the Henderson Police  
14 Department here in Nevada and requested to analyze certain  
15 evidence related to a double homicide that occurred in May of  
16 2006?

17 A I'm not familiar with the date, but yes, Detective  
18 Collins did submit evidence to the laboratory for analysis.

19 Q And you're kind of looking down at something.

20 A Yes, sir.

21 Q What are you looking down at?

22 A I'm sorry, I'm -- this is my first time to testify  
23 on a digital format, but our laboratory has moved to archive  
24 our files digitally of five years or older. And so I'm  
25 looking at a tablet, so.

1 Q And your notes and records related to this case are  
2 on your tablet?

3 A Yes, sir.

4 Q Okay.

5 A So please bear with -- please bear -- give me  
6 patience.

7 Q Okay.

8 MR. PIKE: For the record, Your Honor, we were  
9 advised of that prior to the court proceeding today and we  
10 have already had hard copies of it, so we have no objection to  
11 him reviewing that and we'll -- to refresh his recollection.

12 THE COURT: Thank you.

13 BY MR. LALLI:

14 Q Mr. Reat, you indicated that what you do is you  
15 compare known DNA profiles to unknown DNA profiles. So I want  
16 to talk to you about some of the known profiles that you were  
17 supplied with in this case. Were you -- or did you receive a  
18 known DNA profile of a Donald Herb, your Item No. 8?

19 A I did receive what are called buccal swabs.

20 Q Explain -- go ahead and explain that to the jury.  
21 What's a buccal swab?

22 A A buccal swab is the swabbing of the inner cheek  
23 lining. Okay? So I did receive buccal swabs that were  
24 identified as originating from Donald Herb.

25 Q So you take this -- what do you actually get when

1 you receive a buccal swab?

2 A It -- well the packaging may vary, but essentially  
3 they're going to be in some of tape-sealed package. And then  
4 a buccal swab is essentially then just a long Q-tip  
5 essentially that's used to swab the inner cheek lining.

6 Q And then you perform your DNA analysis on that, and  
7 from that you obtain a DNA profile for Mr. Herb?

8 A Yes, sir. A cutting from the cotton material would  
9 be removed and then it would undergo the process of DNA  
10 analysis. It's a multi-step process to get to the point of  
11 when we can develop a genetic profile.

12 Q Did you receive a buccal swab for an individual  
13 identified as Jason McCarty, your Item No. 9?

14 A Yes, sir, I did.

15 Q Did you also receive a buccal swab for an individual  
16 identified as Domonic Malone, your Item No. 10?

17 A Yes, sir, I did.

18 Q Do you know Domonic Malone?

19 A No, sir, I do not.

20 Q You wouldn't be able to identify him in this  
21 courtroom?

22 A No, sir, I would not.

23 Q Did you receive a buccal swab identified as having  
24 come from a Melissa Estores, your Item No. 13?

25 A Yes, sir, I did.

1           Q     I want to talk to you about your Item 2(d). Did you  
2 receive a buccal swab that was identified to you as 1370-8-8?

3           A     Yes, sir, I did.

4           Q     And there has been testimony that this item of  
5 evidence was a buccal swab obtained from Victoria Magee during  
6 the course of her autopsy. So when we talk about that  
7 profile, if you could, I'd like you to testify in terms of  
8 Victoria Magee's genetic profile. Okay?

9                     Did you also receive a buccal swab identified to you  
10 as 1369-4-4?

11          A     I did.

12          Q     Similarly, there's been testimony that that is the  
13 buccal swab obtained from Charlotte Fountain Combado, and so  
14 in your testimony we'll talk in terms of Ms. Combado for that  
15 genetic profile, okay?

16                     So those were your knowns --

17          A     Yes, sir.

18          Q     -- correct? What I'd like to do now is talk to you  
19 about some of the unknowns, some of the biological evidence  
20 that was obtained from the various crime scenes in this case.  
21 And the first thing I'd like to talk to you about -- and by  
22 way of introduction I'm going to show the jury State's Exhibit  
23 No. 38, which is a condom that was found some distance away  
24 from the actual crime scene in this case.

25                     Mr. Reat, I would like to direct you to your Item

1 No. 14. What was that item that you analyzed?

2 A I did analyze a condom. It's also marked as  
3 1173-10-11.

4 Q What did you do when you received this condom?

5 A The first thing I did was obviously take notes on  
6 the packaging material and then expose the condom itself.

7 Q Let me just interrupt you for a second. You  
8 mentioned the packaging material. So I take it when you  
9 receive it, it's packaged -- the condom is packaged a certain  
10 way?

11 A Yes, sir, it was.

12 Q In your expert opinion, I take it you've done a lot  
13 of work involving condoms in DNA analysis?

14 A I have, yes, sir.

15 Q Do you believe that the condom was packaged  
16 correctly when you received it?

17 A I received it in a tape-sealed manilla envelope.  
18 And that's how we request all biological evidence be  
19 collected, is in a paper envelope essentially tape-sealed, or  
20 a cardboard container, which allows the material -- the  
21 biological material to dry. It acts as a preservative for  
22 that material.

23 Q So let's assume that we're out at a crime scene and  
24 there's a condom on the ground. And I'm the Crime Scene  
25 Analyst who's going to impound that item. What would your

1 instructions to me be in terms of the right way to impound  
2 that item?

3 A I would request that they would put it in some form  
4 of paper envelope and tape-seal it.

5 Q What does having it in a paper envelope do?

6 A Paper will still allow the material to breath  
7 essentially. It will allow the -- any liquid to dry. By  
8 allowing a biological fluid to dry it acts as a preservative.  
9 It's the reason why beef jerky stays fresh. It's because  
10 you've removed all of the moisture. And so it keeps it as a  
11 natural preservative.

12 So for any biological sample, it's better to let it  
13 -- let it dry which will help preserve DNA from degrading.

14 Q Now, let's go back and talk about this condom. Can  
15 you explain to our jury what you did in terms of analyzing it?

16 A When I opened the package the condom had begun to  
17 disintegrate. It was in multiple fragments. I was not able  
18 to determine which was the interior or the exterior based on  
19 the condition of the condom. So what I did is I swabbed just  
20 multiple fragments of the condom that I could and screened it  
21 for the presence of sperm.

22 Q Let me ask you this. With respect to the condom  
23 kind of disintegrating as you've described it, in your  
24 opinion, was that a product of some faulty mechanism of  
25 packaging it?

1           A     I wouldn't say that it was a product of the  
2 packaging. Latex over time dries out and it can start to  
3 disintegrate, as well as how long something may have been  
4 exposed to the environment may have also contributed to its  
5 breakdown. But in terms of packaging, I wouldn't say that it  
6 had any contribution.

7           Q     Okay. You said that you analyzed the condom for the  
8 presence of spermatozoa.

9           A     Yes, sir.

10          Q     Was any found?

11          A     Yes, there were.

12          Q     Explain to the jury what you found.

13          A     I did find some sperm on the evidence. I did note  
14 that the sperm did appear to be deformed based on my, you  
15 know, expertise in looking at sperm. And so then -- but I did  
16 retain it for possible DNA analysis.

17          Q     When you say that it -- the sperm that you observed  
18 was deformed, is that somebody who would have deformed sperm,  
19 or is that a result of something else?

20          A     More than likely it's -- when we see deformities  
21 such as that, it's because it's been -- it's been exposed to a  
22 lot of pressures in the environment. It's been -- a lot of  
23 bacterial growth. There may be a lot of ultraviolet radiation  
24 that is starting to break the material down. But generally  
25 when we see this material it's basically -- it's started to

1 degrade.

2 Q Have you ever lived in Las Vegas?

3 A No, sir, I have not.

4 Q I can tell you that in May, it starts to get pretty  
5 warm out here. Does heat contribute to the deterioration of  
6 DNA in that manner?

7 A It can. Heat, especially if something is still in  
8 somewhat a moist environment, can help speed up the metabolism  
9 of bacteria so they can work faster, essentially.

10 Q Okay. So let's go back and talk about the sperm  
11 that you observed. Did you do any -- any analysis or  
12 extraction of DNA on that sperm?

13 A Yes, sir, I did.

14 Q Can you explain what you did, to the jury?

15 A Sure. Especially with -- with semen containing  
16 sperm, we use an extraction technique that's called a  
17 differential extraction where we can separate the sperm from  
18 what are called epithelial cells, or just skin cells, to try  
19 to be able to develop genetic profiles specifically from the  
20 sperm, as well as that from the epithelial cells.

21 So the first step is basically causing the material  
22 to break open, releasing the DNA into a solution. And when it  
23 does, the cells also release other material; proteins, salts,  
24 fats, that also get released into the solution. So the first  
25 step in a DNA analysis is purification. We would like to



1 clean it up, try to purify only DNA and discard the rest of  
2 the material.

3           Once we have purified our DNA, we then need to find  
4 out how much human DNA is there. There's going to be other  
5 forms of DNA. Like I said, there's bacterial that grow, it  
6 can -- fungi that can grow. We're not interested in that for  
7 what our purposes are. We're interested in how much human DNA  
8 is there so we perform what's called a quantitation to find  
9 out how much human DNA was present.

10           Once that's performed, then we can then finally get  
11 into the actual DNA analysis whereby we develop a genetic  
12 profile using a technique called the polymerase chain  
13 reaction. And we look at regions that are called short tandem  
14 repeats. And as I mentioned earlier in my testimony, these  
15 are regions that do not code for anything, hair color or eye  
16 color. They just are quite variable in the population.

17           Q     So when you did that, or you subjected this sperm to  
18 that process, what happened?

19           A     I did identify human DNA on the condom, but it was  
20 not to a level that I could use for an analysis essentially.  
21 It was inconclusive.

22           Q     How does that happen?

23           A     Again, it depends on the quantity and quality of the  
24 DNA that's there. But if a sample is highly degraded, that  
25 the DNA can no longer -- we can no longer develop a genetic

1 profile that could be used for an inclusion or an exclusion.

2 Q So you attempted to get a genetic profile of the  
3 sperm that was found associated with this condom, but you just  
4 weren't able to find one sufficient to use for identification  
5 purposes?

6 A Correct.

7 Q Okay. I want to talk to you about the victims in  
8 this case. There was testimony from Crime Scene Analyst Joy  
9 Smith [sic] with respect to the autopsy of Victoria Magee.  
10 And she explained to the jury about the collection of a sexual  
11 assault kit, which you analyzed as your Item No. 2. So I'd  
12 like to talk to you about that.

13 A Okay.

14 Q And again, we're talking about Victoria Magee.

15 A Okay.

16 Q First of all, you had talked about the knowns that  
17 you had. Was -- and you had also talked to us a little bit  
18 about buccal swabs. Was it from your Item 2, or the sexual  
19 assault kit collected from Victoria's autopsy that you  
20 obtained her DNA profile?

21 A Yes, sir. The buccal swabs for Victoria Magee were  
22 packaged with -- inside a sexual assault evidence collection  
23 kit.

24 Q Were there swabs from Victoria's vaginal and  
25 cervical area?

1 A Yes, sir, there were.

2 Q Did you analyze those swabs?

3 A Yes, sir, I did.

4 Q What, if anything, did you find?

5 A On the vaginal and cervical swabs we -- I screened  
6 it for the presence of semen and it was negative.

7 Q Were there rectal swabs that you analyzed, your Item  
8 2(b)?

9 A Yes, sir.

10 Q What, if anything, did you find with respect to the  
11 rectal swabs?

12 A Again, I screened the rectal swabs for the possible  
13 presence of semen and they were negative.

14 Q Your Item 2(c), were they fingernail clippings?

15 A Yes, sir.

16 Q Were there fingernail clippings of the right hand  
17 and the left hand?

18 A Yes, sir, there were.

19 Q With respect to your Item 2(c)(2), fingernail  
20 clippings of the right hand from Victoria Magee, did you  
21 analyze those items?

22 A Yes, sir. The right hand was Item 2(c)(1). And  
23 yes, sir, I did analyze it.

24 Q Can you explain to the jury what you did and what,  
25 if anything, you found?

1           A     I examined the fingernail clippings of the right  
2 hand and it tested positive for the possible presence of  
3 blood.

4           Q     And then what happened?

5           A     I retained that sample for future DNA analysis.

6           Q     Did you analyze it and compare it against other  
7 known profiles?

8           A     Subsequently, I did; yes, sir.

9           Q     And what were your results?

10          A     On the right hand fingernail clippings, Victoria  
11 Magee was not excluded as the donor of the genetic material  
12 identified on the fingernail -- right hand fingernail  
13 clippings.

14          Q     So you couldn't exclude Victoria Magee from that  
15 blood that was found on Victoria Magee's right hand clippings?

16          A     That's correct.

17          Q     Did you compare the known sample from Christine  
18 Combado?

19          A     To the right hand fingernail clippings?

20          Q     Yes, sir.

21          A     Yes, sir; I did.

22          Q     What were -- what did you find?

23          A     Christine Combado was excluded as a source of the  
24 DNA that was detected on the right hand fingernail clippings.

25          Q     What about Melissa Estores?

1           A     Melissa Estores was also excluded as a source of the  
2 human DNA identified on those right hand fingernail clippings.

3           Q     Let me ask you this, Mr. Reat. When you obtain a  
4 genetic profile, you talked about the information that's  
5 contained in that. Is one of the things that you can  
6 determine, whether the donor of that sample is male or female?

7           A     Yes, sir, I can.

8           Q     With respect to your 2(c)(1), was the donor of that  
9 profile male or female?

10          A     The donor was genetically female.

11          Q     So that would necessarily exclude the male known  
12 samples, for example, Mr. Herb, Mr. Malone, or Mr. McCarty,  
13 correct?

14          A     Yes, sir, that's correct.

15          Q     All right. Let's talk about the left hand. Did you  
16 obtain a genetic profile from the left hand, your 2(c)(2).

17          A     Yes, sir, I did.

18          Q     Did you compare that against Christine Combado,  
19 Victoria Magee and Melissa Estores?

20          A     Yes, sir.

21          Q     What, if anything, did you find?

22          A     Victoria Magee was also not excluded as a donor of  
23 the DNA that was identified on the left hand fingernail  
24 clippings.

25          Q     So on both hands you were unable to exclude Victoria

1 Magee as the donor of that blood?

2 A Yes, sir, that's correct.

3 Q All right. I'd like to switch gears now and talk  
4 about DNA evidence obtained by Crime Scene Analyst Jennie  
5 Ayers when she attended the autopsy of Christine Combado. Did  
6 you, as your Item 1, receive a sexual assault DNA collection  
7 kit from the autopsy of Christine Combado?

8 A Yes, sir; I did.

9 Q So, let's kind of go through the same thing. Did  
10 that kit contain vaginal and cervical swabs?

11 A Yes, sir, it did.

12 Q Did you analyze those?

13 A Yes, sir; I did.

14 Q What, if anything, did you find?

15 A No semen or spermatozoa were identified on the  
16 vaginal and cervical swabs, my Item 1(a), as well as the  
17 rectal swabs, Item 1(b).

18 Q What about the oral swabs, your Item 1(c)?

19 A Yes, sir.

20 Q Did you analyze that?

21 A Yes, sir. I analyzed it in two ways. I analyzed it  
22 for the possible presence of semen, which it was negative. It  
23 did test positive for the possible presence of blood.

24 Q If I were to tell you that Christine Combado  
25 suffered a number of blunt force trauma -- traumas to her head

1 and face which caused the bones in her face to actually break,  
2 would it surprise you that there was blood found on swabs of  
3 her mouth?

4 A No, sir, it would not.

5 Q Let's talk about fingernail clippings, your Item  
6 1(d). Did you analyze as Item 1(d)(1) fingernail clippings  
7 from the right hand of Christine Combado?

8 A Yes, sir; I did.

9 Q What, if anything, did you find when you analyzed  
10 that?

11 A I screened them for the presence of what are called  
12 nucleated epithelial cells. These are living -- or at least  
13 living at the time they were deposited cells, that have an  
14 active nucleus. But I could not find any nucleated epithelial  
15 cells on the item.

16 Q Was there any blood --

17 A It did --

18 Q -- on those items?

19 A It did not have any coloration that would appear for  
20 blood, so I didn't test it specifically for blood.

21 Q Just to back up a little bit. We talked about  
22 Victoria Magee's fingernail clippings, and you talked about  
23 blood there. So I would presume you did find blood on her  
24 fingernail clippings?

25 A On Victoria Magee?

1 Q Yes, sir.

2 A Yes, sir.

3 Q Okay. With respect -- let's go back and talk about  
4 Christina Combado. Did you analyze her left hand clippings,  
5 Item 1(d) (2)?

6 A I did analyze left hand fingernail clippings, yes.

7 Q What if -- what, if anything, did you find?

8 A Again, I screened it for the possible presence of  
9 nucleated epithelial cells, but they were negative.

10 Q I'd like to talk to -- or talk to you about what's  
11 going to be your Item 15. And by way of background, there was  
12 testimony -- I'm going to show the jury State's Exhibit No.  
13 52. There was testimony related to Apartment 222 at the South  
14 Cove. And there was testimony related to a table in the  
15 living room area, and more specifically a cigarette butt --  
16 now I'm showing the jury State's Exhibit 53 -- contained in an  
17 aluminum can on that table.

18 Jennie Ayers testified that that cigarette butt was  
19 impounded under 1173-16-18, which would be your Item No. 15.  
20 What was your Item No. 15?

21 A My Item No. 15 was a cigarette butt that was marked  
22 1173-16-18.

23 Q Did you perform DNA analysis on that cigarette butt?

24 A Yes, sir; I did.

25 Q What do you do when you get a cigarette butt?



1           A     Essentially, you take a cutting from the end of the  
2 filter that would've been in contact with the lips.

3           Q     Were you able to obtain a genetic profile of the  
4 cigarette butt?

5           A     Yes, sir, I did.

6           Q     Was it a complete profile?

7           A     Yes, sir; it was.

8           Q     Did you compare it -- well let me ask you this.  
9 Were you able to tell whether that was a male profile, or a  
10 female profile?

11          A     It was genetically a female profile.

12          Q     So that would, again, necessarily exclude Domonic  
13 Malone, Jason McCarty?

14          A     Yes, sir.

15          Q     Did you compare the cigarette butt to the genetic  
16 profiles of Christine Combado, Victoria Magee and Melissa  
17 Estores?

18          A     Yes, sir; I did.

19          Q     And what, if anything, did you find?

20          A     They were all excluded as a source of the genetic  
21 material on the cigarette butt.

22          Q     They were excluded?

23          A     Yes, sir; they were excluded.

24          Q     All right. Did you receive any known genetic  
25 profiles from the Henderson Police Department that matched to

1 the genetic profile of this cigarette butt?

2 A No, sir; I did not.

3 Q Mr. Reat, I'm going to show our jury State's Exhibit  
4 No. 65. There was testimony, again by Ms. Ayers, with respect  
5 to a cigarette butt that was found in the bedroom of that same  
6 apartment, which was impounded as No. 1173-17-19, which  
7 corresponds to your Item No. 16. Did you have an Item No. 16?

8 A Yes, sir; I did.

9 Q What was that?

10 A It was a cigarette butt that was marked 1173-17-19.

11 Q Did you analyze this cigarette butt for the presence  
12 of DNA?

13 A Yes, sir, I did.

14 Q What, if anything, did you find?

15 A I developed a genetic profile that was also female  
16 that was -- that matched the genetic profile of the previous  
17 cigarette butt, my Item 15.

18 Q So the cigarette butt that was found out in the  
19 living room in the little aluminum can, same profile on both  
20 of these cigarette butts?

21 A Yes, sir; that's correct.

22 Q And I take it that a comparison would exclude the  
23 same individuals?

24 A Yes, sir; that's correct.

25 Q There was also testimony in the case regarding a

1 cigarette butt that was found in the drawer of this  
2 nightstand. State's Exhibit No. 66 shows that nightstand  
3 open, and a cigarette butt and a package of Cool cigarettes.  
4 And I want to ask you whether you analyzed an Item No. 7, or  
5 if you received an Item No. 7.

6 A Yes, sir; I did.

7 Q What was your Item No. 7?

8 A My Item No. 7, I classified as miscellaneous items.

9 Q And what did they consist of?

10 A There was a cigarette butt and a package -- a  
11 cigarette package.

12 Q With respect to the cigarette package, did you do  
13 any analysis of that?

14 A No, sir, I did not, not of the cigarette package.

15 Q How about the cigarette butt?

16 A I did screen it for the nucleated epithelial cells,  
17 which it was positive. It did have nucleated epithelial  
18 cells.

19 Q Did you obtain a DNA profile?

20 A Yes, sir; I did.

21 Q And how did the profile of that cigarette butt  
22 relate to the other two cigarette butts that we've already  
23 talked about?

24 A The profile developed from the -- my Item 7(a)  
25 cigarette butt matched the genetic profiles of the previous

1 two cigarette butts.

2 Q So same genetic profile on all three cigarette butts  
3 from Apartment No. 222?

4 A Yes, sir; that's correct.

5 Q Not Victoria, Christine, or Melissa Estores?

6 A Correct.

7 Q Mr. Reat, we had testimony from Crime Scene Analyst  
8 Patrick Farrell regarding the processing of a green Alero that  
9 I'm now showing the jury in State's Exhibit No. 69. Mr.  
10 Farrell testified that he impounded a number of tape lifts  
11 from various areas in this vehicle of debris from the floor  
12 areas, and those were impounded in packages 8-8, 8-9, 8-10,  
13 8-11, 8-12, and 8-13. Did you receive an Item No. 11, or that  
14 you've identified as Item No. 11?

15 A Yes, sir, I did.

16 Q What's your Item 11?

17 A My Item 11 was identified as tape lifts.

18 Q When you receive a tape lift -- well, first of all,  
19 can you explain to the jury what is a tape lift and how do you  
20 go about analyzing it?

21 A Tape lifts are mainly used to collect trace  
22 evidence. It could be hairs, fibers, plant material, anything  
23 that's of a small nature. So if it's collected and it has  
24 hair, what they would -- what we're asked as a forensic  
25 serologist or DNA analyst is to look for what's called a

1 follicular tag. It's a hair that's been forcibly removed from  
2 the head and it still has the root end, essentially.

3 Q And then what do you do with the root end of that?

4 A If the root material was intact, we can try to  
5 develop a genetic profile from that root material.

6 Q Okay. Let's talk about your Item 11(a), which was a  
7 tape lift from the driver's seat of that vehicle. Did you  
8 analyze that?

9 A Yes, sir, I did.

10 Q What, if anything, did you find?

11 A I did not find any apparent hairs on that tape lift.

12 Q Did you analyze a lift from the front passenger side  
13 seat of vehicle -- of this vehicle, your Item 11(b)?

14 A Yes, sir, I did.

15 Q What, if anything, did you find there?

16 A Again, I saw no apparent hairs on the tape lift.

17 Q Did you analyze as your 11(c) a tape lift from the  
18 rear driver's-seat of the green Alero?

19 A Yes, sir, I did.

20 Q What, if anything, did you find there?

21 A My notes reflect that I found one apparent long  
22 brown hair.

23 Q One hair?

24 A On the tape lift, yes, sir.

25 Q And --

1 A On 11(c); is that correct?

2 Q Yes, sir.

3 A Yes, sir. One hair.

4 Q And when you find that hair, you told us about  
5 looking for a root.

6 A Yes, sir.

7 Q Did you do that? Did you look for a root on the  
8 hair?

9 A Yes, sir. I looked at it under what's called a  
10 stereo microscope and there was a root end observed.

11 Q So what did you do upon seeing the root hair?

12 A The root end was cut off of the hair and placed into  
13 a centrifuge tube to be able to perform DNA analysis.

14 Q Were you able to extract a genetic profile from the  
15 root hair in your Item 11(c)?

16 A Yes, sir, I was.

17 Q Was that root hair male or female?

18 A Just one second. The -- it was a female profile  
19 developed.

20 Q Did you compare it against the known samples taken  
21 from Victoria Magee, Christine Combado and Melissa Estores?

22 A Yes, sir, I did.

23 Q What, if anything, did you find when you attempted  
24 that comparison?

25 A Melissa Estores was not excluded as a source of the

1 human DNA detected on that hair. Charlotte Combado and  
2 Victoria Magee were excluded.

3 Q So you could not exclude Melissa Estores?

4 A I could not; that's correct.

5 Q I want to ask you -- let's move on and talk about  
6 another lift. Did you receive a tape lift, your Item 11(d),  
7 from the rear passenger seat of the green Alero?

8 A Yes, sir, I did.

9 Q What, if anything, did you find when you analyzed  
10 that lift?

11 A On 11(d)?

12 Q Yes, sir.

13 A I state that I found one apparent long reddish hair  
14 on the -- on the tape lift.

15 Q Did you analyze it for the presence of any root  
16 material?

17 A I did.

18 Q What did you find?

19 A Under the stereo microscope it did appear that it  
20 had a root end.

21 Q And what then did you do?

22 A I attempted to perform DNA analysis on that root  
23 end.

24 Q What happened when you did that?

25 A I was not able to develop any genetic profile, or