

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS PIMENTEL,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

No. 68710

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1 THE COURT: You may proceed..

2 MS. DIGIACOMO: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MS. DIGIACOMO:

5 Q Sir, how are you employed?

6 A I'm a crime scene supervisor with the Seaside  
7 section at the Las Vegas Metropolitan Police Department.

8 Q How long have you been with Metro?

9 A Almost 16 years.

10 Q And you said you were a crime scene supervisor?

11 A Yes.

12 Q Can you explain what your duties are?

13 A My duties are in general to lead and direct  
14 activities of the squad of crime scene analysts. To complete  
15 my role is to respond to major incidents, usually where a  
16 death has occurred, and oversee the activities of the scene  
17 investigation. Also review case work, provide training,  
18 evaluate the work and I also respond to crime scenes myself  
19 and do the duties of a crime scene analyst which in general is  
20 responding to a scene, obtain case information, photographing  
21 the scene for documentation, recovering evidence, preparing  
22 reports and then providing court testimony.

23 Q So how long have you been a crime scene supervisor?

24 A Approximately seven years.

25 Q And before that, were you a crime scene analyst the



1 remainder of the time with Metro?

2 A Yes.

3 Q And you still do those duties as well.

4 A I do.

5 Q Can you explain to the jury your education,  
6 training, background, experience that allows you to be a crime  
7 scene analyst?

8 A I have received approximately in excess of 3,000  
9 hours of training from the FBI in Quantico, as well as the  
10 field offices in Los Angeles and Riverside. The Sheriff's  
11 Academy in San Bernardino as well as Las Vegas Metro and other  
12 training seminars and institutes in the areas of crime scene  
13 investigation, forensic photography, latent processing, blood  
14 scene pattern interpretation and other investigative  
15 techniques, as well as supervisory and leadership training.

16 Prior to my employment with Las Vegas Metro I was a  
17 forensic specialist with the San Bernardino County Sheriff's  
18 Department for roughly 11 and one-half, 12 years.

19 Q Thank you. Directing your attention to December  
20 22nd, 2013 in the early morning hours, were you so employed  
21 and working?

22 A Yes.

23 Q Were you dispatched or called out to the Siegel  
24 Suites regarding a shooting and a possible homicide?

25 A Yes.

1 Q Did you respond alone?

2 A I responded there myself and I had additional crime  
3 scene investigators loading up our major crime scene vehicle  
4 to respond to the scene to assist with the investigation.

5 Q So as a supervisor, do you actually assign who's  
6 going to do what?

7 A Yes.

8 Q All right. So on this incident, did you assign  
9 other crime scene analysts, Tucker and Vaandering, to also  
10 respond?

11 A I did.

12 Q Was it just the three of you that responded?

13 A Yes.

14 Q All right. Were you the first to arrive?

15 A I was.

16 Q All right. When you arrived at the scene, you  
17 didn't come in the crime scene investigation truck?

18 A No, I did not.

19 Q So when you get there, what do you do first?

20 A I make contact with the officers that are there and  
21 get briefed about the information of the case up to that  
22 point.

23 Q What were you briefed initially when you got there?

24 A That there was a shooting, a subject had been  
25 injured and that a potential person of interest was -- had got

1 onto a bus and the bus was stopped at Fremont and Bruce and a  
2 person was being detained.

3 Q Do you recall approximately how long after the call  
4 went out that you arrived at the scene?

5 A I would estimate under a half hour.

6 Q All right. So it was fairly quick.

7 A Yes.

8 Q All right. So when you get there and you find out  
9 that there's possibly another scene as well?

10 A Yes.

11 Q And what do you decide to do?

12 A Well, since I got there early before the other crime  
13 scene investigators and before the investigative team that was  
14 responding, I decided to respond to the traffic stop involving  
15 the bus at Bruce and Fremont.

16 Q So you drive down there?

17 A I do.

18 Q And what happens when you get to that scene? What  
19 do you see first?

20 A There's a number of marked patrol units, there's a  
21 bus that's stopped and there is a person in the back of one of  
22 the patrol cars.

23 Q Now the patrol cars, you said that there's a lot of  
24 units there. Do they have their lights on?

25 A Yes. It was in conjunction with the traffic stop of

1 the bus.

2 Q All right. So you said that there was one person in  
3 the back of the vehicle.

4 A Yes.

5 Q So what do you do first when you get there?

6 A I make contact with the officers, get a quick  
7 synopsis of what happened there and then I went there with the  
8 intentions of photographing and making observations to the  
9 person that they had detained.

10 Q What observations and what were you trying to  
11 document?

12 A His general appearance, his facial identification,  
13 what he was wearing and any possible injuries that he may  
14 have.

15 Q Did you do that first or did you look at the bus and  
16 document that first?

17 A I did the person that was detained first.

18 MS. DIGIACOMO: May I approach, Your Honor?

19 THE COURT: You may.

20 MS. DIGIACOMO: Court's indulgence. We're missing  
21 some photographs. Your Honor, we're missing some photographs.  
22 Maybe we should take a lunch break now and then come back  
23 [indiscernible]. I apologize.

24 THE COURT: All right. So we're going to take a  
25 lunch break until 1:30, ladies and gentlemen. Please return

1 from that lunch break promptly so we can get started again.

2 During this recess, as always, it is your duty not  
3 to converse among yourselves or with anyone else on any  
4 subject connected with the trial or to read, watch or listen  
5 to any report of or commentary on the trial or by any person  
6 connected with the trial or by any medium of information  
7 including, without limitation, newspaper, television, radio or  
8 Internet, and you are not to form or express an opinion on any  
9 subject connected with this case until it's finally submitted  
10 to you.

11 We'll be in recess until 1:30.

12 (Jury recessed at 12:31 p.m.)

13 THE COURT: The record will reflect the jury has  
14 departed the courtroom. Are there any matters outside the  
15 presence before we recess for lunch?

16 MR. BATEMAN: No, Your Honor.

17 THE COURT: All right. Thank you.

18 (Court recessed at 12:33 p.m. until 1:34 p.m.)

19 (In the presence of the jury.)

20 THE COURT: Thank you. Please be seated. The  
21 record will reflect the presence of the defendant with his  
22 counsel, the Deputies District Attorney prosecuting the case,  
23 all officers of the Court, all 12 members of the jury, as well  
24 as the three alternates. Will counsel so stipulate?

25 MS. DIGIACOMO: Yes, Your Honor.

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1 MS. LEMCKE: Yes, Your Honor.

2 THE COURT: Thank you. We will resume with direct  
3 examination. You're still under oath, sir.

4 MS. DIGIACOMO: Thank you, Your Honor.

5 BY MS. DIGIACOMO:

6 Q When we had left off you had talked about how you  
7 were there to document how the suspect appeared as well as  
8 whether or not there were any injuries on him.

9 A Yes.

10 Q Did you take photographs?

11 A Yes.

12 Q And when you did, what was -- how was the defendant?  
13 Was he compliant?

14 A He was.

15 Q Have any issue there?

16 A No.

17 Q Did you notice any injuries on him that appeared to  
18 be fresh?

19 A Yes.

20 Q Where was that?

21 A His left cheek.

22 Q All right. Did you notice any others?

23 A I saw a, what I believed to be a healing injury  
24 to --

25 MS. LEMCKE: Your Honor, I object. Can we approach?

1 THE COURT: Okay.

2 (Off-record bench conference)

3 THE COURT: All right. What's your objection for  
4 the record?

5 MS. LEMCKE: Your Honor, foundation and the  
6 witness's qualification just to opine as to the recentness of  
7 whatever injury they were going to get into.

8 THE COURT: Okay. I believe that it's overruled. I  
9 believe a lay witness can testify to the limited expectation  
10 regarding the offer of proof that was made at the bench. I'll  
11 allow it.

12 MS. DIGIACOMO: Thank you, Your Honor. May I  
13 approach?

14 THE COURT: Yes.

15 BY MS. DIGIACOMO:

16 Q Sir, I'm going to show you what's been marked for  
17 identification as State's Proposed Exhibit 60 through 79. If  
18 you could flip through these photographs, keep them in order,  
19 and then let me know when you're finished, please. Thank you.  
20 Sir, do you recognize what's been marked as Proposed Exhibits  
21 60 through 79?

22 A Yes.

23 Q And what are these?

24 A Those are photographs I took that evening at Fremont  
25 and Bruce of the defendant and the bus.

1 Q All right. Do these fairly and accurately depict  
2 the way the defendant looked when you were there at that scene  
3 in those early morning hours of December 22nd, 2013?

4 A Yes.

5 MS. DIGIACOMO: Your Honor, I move for admission of  
6 State's Proposed Exhibits 60 through 79.

7 MS. LEMCKE: No objection, Your Honor.

8 THE COURT: They will be admitted.

9 (State's Exhibit 60 through 79 admitted.)

10 MS. DIGIACOMO: I move to publish.

11 THE COURT: Granted.

12 MS. DIGIACOMO: Thank you.

13 BY MS. DIGIACOMO:

14 Q First of all, this has already previously been  
15 admitted as State's Exhibit Number 59. You said that you took  
16 this photograph of the defendant at the scene where the bus  
17 was?

18 A Yes.

19 Q Do you see the person that you were documenting in  
20 these photographs that we've noted from 59 to 79 in the  
21 courtroom here today?

22 A Yes.

23 Q This is the same person that you photographed that  
24 night.

25 A Yes.



1 Q Where is this person seated in the courtroom? If  
2 you could please point and then describe the clothing that  
3 he's wearing currently.

4 A He is seated in the middle seat of the defense table  
5 and he's wearing a gray jacket.

6 MS. DIGIACOMO: Your Honor, would the record reflect  
7 the identification of the defendant?

8 THE COURT: It will.

9 MS. DIGIACOMO: Thank you.

10 BY MS. DIGIACOMO:

11 Q So when you are taking this photograph, what are you  
12 trying to document here?

13 A His general appearance, how he looked that night,  
14 what he was wearing. Just his overall condition and  
15 appearance.

16 Q All right. And then, do you go on to document the  
17 side of him that we see here in State's 60?

18 A Yes.

19 Q Do you document the back as well and his other side?

20 A Yes.

21 Q I'm showing you State's Exhibit Number 63. What  
22 were you documenting here?

23 A The location I was at on Fremont.

24 Q Showing you State's Exhibit Number 64. What were  
25 you documenting in this photograph?

1 A Overall view of the bus that was involved.  
2 Q The outside of the bus?  
3 A Yes.  
4 Q All right. And then, did you go inside and take  
5 pictures of the inside of the bus?  
6 A I took photographs and searched.  
7 Q Showing you State's Exhibit Number 65. Is that  
8 documenting the inside of the bus?  
9 A Yes.  
10 Q And you took more pictures than what I'm showing  
11 you?  
12 A I did.  
13 Q Showing you State's Exhibit Number 66. What are you  
14 documenting here?  
15 A The rear portion of the bus, specifically to record  
16 the bus number and license plate that was issued and placed on  
17 the bus.  
18 Q All right. You said that you documented the bus,  
19 you took photographs. You said you also did a search of the  
20 bus?  
21 A Yes.  
22 Q And what were you looking for as you went through  
23 the bus?  
24 A Any apparent evidence or obvious evidence. In this  
25 case it was any apparent blood or firearms evidence.

UNCERTIFIED ROUGH DRAFT

1 Q Did you find any apparent blood?

2 A No.

3 Q Did you find any weapons on the bus?

4 A No.

5 Q And other officers had already searched before you?

6 A That was my understanding, yes.

7 Q You said that you noted an injury to the defendant's

8 I think left cheek area?

9 A Yes.

10 Q Why did you make a certain notation about that  
11 particular injury? What did it appear?

12 A To me it appeared to be swollen, which to me is an  
13 indication it happened recent, and additional information  
14 which I had obtained prior to getting there.

15 Q All right. When you said that there was swelling,  
16 was there redness as well?

17 A Very slight, more of puffiness.

18 Q All right. But no bruising.

19 A No.

20 Q I'm showing you State's Exhibit Number 67. What are  
21 you documenting in this photograph?

22 A Just a view of how his face looked with his eyes  
23 shut. I was trying to center his left cheek in the  
24 photograph.

25 Q All right. Can you circle on the screen exactly

1 where you saw the puffiness?

2 A Yes. Right in the middle of the screen was a --  
3 below his eye, between his nose and ear.

4 Q Now when you have -- when you're documenting someone  
5 at the scene and you have what you believe to be a fresh  
6 injury, do you also document it with scales?

7 A Yes.

8 Q Can you explain to the jury what that is?

9 A A scale is a ruler or a measuring device and it's  
10 primarily used to show the size of the injury.

11 Q Showing you State's Exhibit 71. What were you doing  
12 in this picture?

13 A I took a series of photographs with the scale to  
14 show the size of the injury from him looking at me and off to  
15 the side and from the side of his head. It was just a series  
16 of photographs to show the size of the swollen area that I saw  
17 on his cheek that night.

18 Q Showing you State's Exhibit Number 72. Is this the  
19 scale, just a different viewpoint?

20 A Yes.

21 Q And State's Exhibit 73. Is this the side showing  
22 the scale?

23 A Yes.

24 Q And State's Exhibit 74.

25 A Yes, another photograph showing a scale photograph.

1 Q So you're just trying to document the size and  
2 location of the fresh injury you saw.

3 A Yes.

4 Q And you took the same photographs that we saw in  
5 State's Exhibits 75 through 77 and through 79 without the  
6 scale.

7 A As I recall, yes.

8 Q So you documented both ways.

9 A Yes.

10 Q You said you also saw -- the only other injury you  
11 noted on the defendant was to one of his hands.

12 A Yes.

13 Q I'm going to show you State's Exhibit Number 68. Is  
14 this what you were -- is this the hand that you were talking  
15 about that had an injury notated?

16 A Yes, his right hand.

17 Q Now, what did you notice about this injury?

18 A I saw what I believed to be a healing injury on his  
19 right hand next to his knuckle.

20 Q Why did you believe -- it looks as if this is some  
21 sort of cut or abrasion to the skin?

22 A Yes.

23 Q And why did you believe when you were looking at  
24 this with your naked eye that it appeared to be healing?

25 A There wasn't redness by it. It wasn't actively

1 bleeding. The knuckle beside it wasn't swollen, so I believed  
2 it to be in some stage of the healing process. I didn't  
3 believe it to be active because there wasn't -- as I stated,  
4 any blood present, any blood residue or a trail going down his  
5 hand. I didn't believe it was from a half hour prior to  
6 meeting there.

7 Q Did it appear that it was scabbing over as well?

8 A Yes.

9 Q Now, you said that when you're looking for a fresh  
10 injury you look for redness?

11 A That's one of the things I look for, yes.

12 Q Is that based on your training and experience?

13 A Yes.

14 Q So normally fresh injuries have redness to them?

15 A Yes.

16 Q Now showing you State's Exhibit Number 70. What  
17 were you documenting in this photograph?

18 A Just an overall view of his left hand.

19 Q And you noted no injuries on that hand.

20 A No.

21 Q Did you do anything else with regard to the injury  
22 that you saw to the defendant's left cheek?

23 A Yes.

24 Q What did you do?

25 A I recovered a wet and dry swab from his cheek and I

1 was attempting to recover any type of touch DNA which may be  
2 present.

3 Q Can you explain how would -- what did you call it, a  
4 dry wet swab?

5 A There's protocols which we use to recover evidence.  
6 Typically, with the current policy, recovering DNA from skin  
7 it requires a swab that has moist [indiscernible] water and we  
8 just wipe it on the area where we believe there's evidence to  
9 process. Then we use a dry swab after that to recover any  
10 kind of moisture which might have been left behind from the  
11 wet swab just to ensure we recovered everything that was  
12 there.

13 So in this case I was trying to recover touch DNA,  
14 more specifically, DNA from the person that punched him in  
15 case that ever became an issue.

16 Q Is it typical when you have an injury like this and  
17 you try and swab for touch DNA that you're going to find DNA,  
18 based on your training and experience?

19 A It's possible, so it's recovered just for that  
20 chance, in case it's determined to be probative.

21 Q All right. Did you do anything else at this scene?

22 A I don't believe so, no.

23 Q All right. So when you were done documenting the  
24 bus and doing your search and documenting the defendant, the  
25 way he looked that night, did you leave that scene?

1 A I did.

2 Q And where did you go?

3 A I returned back to the primary crime scene on  
4 Boulder Highway.

5 Q Did you have a role in the documentation of that  
6 scene where the shooting was?

7 A I oversaw the work that the other crime scene  
8 analysts did by directing the work and overseeing the work  
9 that they did.

10 Q Did you take part in a search of the area trying to  
11 find a bullet or any spent cartridge cases?

12 A Yes, I was a part of that.

13 Q Was any found?

14 A I know a firearm was located and I did not review  
15 that portion of the investigation for this testimony.

16 Q Okay. But if testimony had been that there was only  
17 the one cartridge casing found, you did take part in the  
18 search and had you found something you would have directed one  
19 of your CSAs to document it?

20 A Correct.

21 MS. DIGIACOMO: I have nothing further.

22 THE COURT: Cross.

23 MS. LEMCKE: Court's indulgence. I'm not sure I  
24 have any cross. We have no cross for this witness, Your  
25 Honor.



1 THE COURT: All right. May this witness be excused?

2 MR. BATEMAN: Yes, Your Honor.

3 THE COURT: Thank you for your testimony.

4 THE WITNESS: Thank you.

5 THE COURT: Call your next witness.

6 MR. BATEMAN: State calls Tina Archangel. May I  
7 approach your clerk, Your Honor?

8 THE COURT: Yes.

9 TINA ARCHANGEL, STATE'S WITNESS, SWORN

10 THE CLERK: Please state your first and last name,  
11 spelling your first and last name for the record.

12 THE WITNESS: Tina, T-i-n-a, Archangel,  
13 A-r-c-h-a-n-g-e-l.

14 MR. BATEMAN: May I proceed, Your Honor?

15 THE COURT: Yes, you may.

16 DIRECT EXAMINATION

17 BY MR. BATEMAN:

18 Q How are you?

19 A I'm good. How are you?

20 Q Good. What do you do for a living?

21 A I drive public transit.

22 Q For which company?

23 A Keolis.

24 Q Can you spell that? Do you know how to spell that,  
25 Keolis?

1 A It's K-e-o-i-s-i-l-s.

2 Q Do they run the local public bus system?

3 A Yes.

4 Q And you're a driver?

5 A Yes.

6 Q How long have you been driving?

7 A In July it will be nine years.

8 Q I'm going to direct your attention back to December  
9 of 2013. Do you remember that period of time?

10 A A little bit.

11 Q Specifically, December 22nd of 2013. Do you  
12 remember that day?

13 A Yes.

14 Q Do you remember working in the early morning hours  
15 on December 22, 2013?

16 A Yes.

17 Q Were you driving a bus?

18 A Yes.

19 Q Where were you driving at?

20 A I was driving it on Boulder Highway.

21 Q What's that route called?

22 A It is called the BHX which is Boulder Highway  
23 Express. As for number wise, it would be the 502.

24 Q Do you remember when your shift started that day?

25 A Somewhere around 12:30, one o'clock. At that time I

1 was on graveyard.

2 Q Oh, 12:30, one o'clock a.m.?

3 A Yes.

4 Q And then what time do you normally get off?

5 A Probably, roughly nine, ten o'clock. I normally  
6 have 10, 11-hour days.

7 Q At that time were you pretty familiar with that bus  
8 route?

9 A Yes.

10 Q Had you been driving it quite often?

11 A Yes.

12 Q Did it go on Boulder Highway north and south?

13 A Yes.

14 Q How far north does it go and how far south on  
15 Boulder Highway does it go, do you remember?

16 A South, it starts from the BTC, [indiscernible]  
17 Bonneville Casino Center and it will end on Horizon and  
18 College in Henderson.

19 Q So from the BTC at Bonneville, do you go down  
20 Fremont -- essentially down Fremont which turns into Boulder  
21 Highway?

22 A Yes. From Bonneville to Sahara is Fremont, and once  
23 I cross Sahara it's called Boulder Highway.

24 Q So you take that all the way down to Henderson at  
25 Horizon and College and you turn back around and go back up

1 Boulder Highway; is that right?

2 A Yes.

3 Q And you just kind of go back and forth?

4 A Yes.

5 Q Are there a lot of stops along Boulder Highway?

6 A Yes.

7 Q So you got pretty familiar with all the stops and  
8 the locations; is that right?

9 A Yes.

10 Q Have you driven that particular route recently or  
11 did you at some point stop?

12 A I work a lot of overtime, so I recently drove it  
13 about two weeks ago.

14 Q These buses, do they have any sort of video on them?

15 A Yes.

16 Q So when you leave in the morning, is the video  
17 supposed to be working?

18 A Yes.

19 Q Is there somebody, to your knowledge, that's always  
20 checking the video before you take it out?

21 A Yes.

22 Q So is that a requirement that someone checks it to  
23 make sure it's working before you're allowed to take it out?

24 A As to my knowledge, yes.

25 Q Where are the video -- are there like video cameras

1 on the bus?

2 A Yes.

3 Q What angles?

4 A There's one at the front door, there's one at the  
5 back door, the rear door, and then we have one directly in  
6 front of the mirror which we call is a dashcam because it's  
7 right there on the dash.

8 Q So can you see -- does it take video of what's  
9 coming in front of the bus?

10 A Yes.

11 Q And it takes video of kind of where people get on on  
12 the front door closest to you?

13 A Yes.

14 Q Is there a second door on the bus that's farther  
15 back that people can come in and out of?

16 A They can go out of. They're not supposed to come in  
17 the rear door.

18 Q There's no place to pay in the rear door?

19 A No.

20 Q And does the bus have a video camera that goes  
21 towards the back of the bus?

22 A Yes.

23 Q And it has a video camera on the sides of the bus,  
24 on the outside of the sides?

25 A Yes.

1 Q So you're familiar with all the surveillance, right?

2 A Yes.

3 Q Okay. Do you remember on December 22nd, 2013, your  
4 coach being stopped by the police?

5 A Yes.

6 Q Do you remember approximately where you were?

7 A Fremont, I was going north on Fremont and Bruce,  
8 just after Bruce.

9 Q And had something earlier, closer to the Siegel  
10 Suites, caught your attention in that route?

11 A Called my attention as for someone's running for the  
12 bus?

13 Q Yeah. Do you remember that?

14 A Yes.

15 Q Okay. Was that closer down by the Siegel Suites?

16 A Yes, just a little bit before the Siegel Suites.

17 Q And have you had a chance to review the video in  
18 this particular case of the period of time between the person  
19 running and when the bus was stopped at Fremont?

20 A Yes.

21 Q Okay.

22 MR. BATEMAN: May I approach, Your Honor?

23 THE COURT: Yes.

24 BY MR. BATEMAN:

25 Q I'm showing you what's been marked as State's 15.

1 Do you recognize that CD?

2 A Yes.

3 Q How do you recognize it?

4 A Because it has my initials on it.

5 Q And you watched what was on the CD?

6 A Yes.

7 Q And was it the video from the morning hours of  
8 December 22nd, 2013?

9 A Yes.

10 Q A fair and accurate depiction of what was happening  
11 while you were driving?

12 A Yes.

13 Q Okay.

14 MR. BATEMAN: I'll move full admission of 15 with  
15 all the video.

16 MR. SLIFE: No objection, Your Honor.

17 THE COURT: It will be admitted.

18 MR. BATEMAN: May I publish briefly?

19 THE COURT: Yes.

20 MR. BATEMAN: Thank you.

21 (Video played)

22 BY MR. BATEMAN:

23 Q I'm going to go through some of the various angles  
24 with you. Okay?

25 A Okay.

1 MR. BATEMAN: Do you mind if I sit down, Your Honor?  
2 It's just a little easier.

3 THE COURT: Yeah, it might.

4 BY MR. BATEMAN:

5 Q Which angle is this?

6 A That would be the camera that's right above me, just  
7 over the window, the driver's side window.

8 Q All right. Is this currently at a stop?

9 A Yes.

10 Q I'm going to fast forward it to about two minutes.

11 Is this you driving?

12 A Yes.

13 Q Again, you're driving northbound; is that right?

14 A Yes.

15 Q Is that security on the right, standing?

16 A Yes.

17 Q Does he normally stand there?

18 A Yes.

19 Q This person you see right here, is this someone that  
20 caught your attention?

21 A As far as the person running for the bus?

22 Q Did you see this person running to get on the bus?

23 A Yes.

24 Q Okay. When he got there, did you have any sort of  
25 interaction with him?



1           A     I just told him that I was going to leave him.  
2           Q     Did he say anything to you, like I almost missed the  
3 bus?  
4           A     Yes.  
5           Q     And it seemed like he had been running or was out of  
6 breath?  
7           A     Yes.  
8           Q     Did it appear he was anxious to get on the bus?  
9           A     He was running pretty fast to get me. He didn't  
10 seem like he wanted to miss it. It seemed like he wanted the  
11 bus.  
12          Q     All right. So at this point, what's he doing?  
13          A     Looking for money to pay.  
14          Q     Is this standard procedure?  
15          A     Yes.  
16          Q     Did he ask you if you had change or anything like  
17 that?  
18          A     No.  
19          Q     I'm going to fast forward it a bit to about -- you  
20 take off down the road northbound? Before I follow up. At  
21 that particular stop where the person came running and got on  
22 the bus, was he the last person to get on the bus before it --  
23          A     Yes.  
24          Q     Do you have to -- when people are getting on the  
25 bus, do you have to wait until everybody is seated before you

UNCERTIFIED ROUGH DRAFT

1 can take off?

2 A No.

3 Q You don't have to, you can keep going?

4 A Yes.

5 Q Did you watch him as he got on the bus or where he  
6 went?

7 A No.

8 Q Would the video show where he went in the bus?

9 A Yes.

10 Q I'm going to fast forward to about 11 minutes. Is  
11 the bus stopped and some people are getting on at about 11:46  
12 on the video; is that right?

13 A Yes.

14 Q What do we see here? Are people getting back off  
15 the bus?

16 A Yes.

17 Q Is this about when the police have stopped your bus?

18 A Yes.

19 Q Did you see -- tell me this. You're stopped here.

20 Did you pull over, did you see the police at some point?

21 A Yes.

22 Q And when did you see them?

23 A I seen them just before I got to Bruce.

24 Q And did you pull -- were you pulling over to get to  
25 a bus stop already or did you pull over because of the police?

1           A     I was pulling over to do the bus stop. I thought  
2 they were going past me, so I was getting ready to pull over  
3 anyways before.

4           Q     Did they have lights and sirens?

5           A     They had lights, I don't remember sirens.

6           Q     Okay. So when you pulled over you thought they were  
7 going to pass you?

8           A     Yes.

9           Q     And they didn't pass you?

10          A     No.

11          Q     Where did they stop?

12          A     Behind me and on the side of me.

13          Q     And when you stop at a bus stop, do the doors  
14 automatically open?

15          A     Yes. I automatically open all doors.

16          Q     So before police could do anything, did you have  
17 some people there that were getting on the bus?

18          A     Yes.

19          Q     And then at some point the people immediately turned  
20 around and exited the bus; is that right?

21          A     Yes.

22          Q     Did the police have them exit, do you know?

23          A     No. They didn't come up to the bus at that time.

24 The security that rides the bus got off the bus and spoke to  
25 one of the officers and then that's when he came back and said

1 they want everyone off the bus.

2 Q So he helped everybody get off the bus at that  
3 point?

4 A Yes.

5 Q And is it this security guard with the snow cap?

6 A No. It's the larger one that's standing in the  
7 front as I was driving.

8 Q Okay. I'm going to switch to a different angle.  
9 Okay?

10 A Okay.

11 Q Okay. Which view is this?

12 A That would be our dashcam. It's right in the  
13 window.

14 Q And this security guard was the one you said got off  
15 and got back on and told everybody to get off?

16 A Yes.

17 Q Okay. This is from the camera that's near where  
18 you're sitting?

19 A It's directly in the front windshield.

20 Q And it goes all the way to the back of the bus?

21 A Yes. It shows the back, the interior of the bus as  
22 well as the front of the bus.

23 Q Okay. I'm going to fast forward it just a hair.

24 Fast forward it to about 1:45. Is that the person there

25 walking back that you saw running up to the bus? Hard to tell

UNCERTIFIED ROUGH DRAFT

1 from behind?

2 A Yes.

3 Q Okay. As we're watching this video, you see that  
4 person sit to the -- is that the passenger side that we were  
5 just talking about?

6 A Yes.

7 Q Is that just past the second door of the back door?

8 A Yes.

9 Q Fast forward it briefly to -- it's about 11:30. Do  
10 you see the police flashing in the background? Is that what I  
11 see?

12 A Yes.

13 Q Is this security asking everyone to get back off the  
14 bus?

15 A Yes.

16 Q I'm going to switch to a different angle. Okay?

17 A Okay.

18 Q Which angle are we looking at here?

19 A This is the camera that's in the rear of the coach.

20 Q On the left right there where that gentleman's  
21 sitting, is that where the back door is?

22 A Yes.

23 Q I'm going to fast forward it a hair. This is about  
24 2:45 on the video starting. The person that just sat down, is  
25 that the person you saw running?

UNCERTIFIED ROUGH DRAFT

1           A     Yes.

2           Q     Okay. Can I ask you a question? About how long did  
3 it take between picking this individual up near the Siegel  
4 Suites, how much time elapsed to get to the Bruce and Fremont  
5 stop? Do you know how many minutes?

6           A     Probably about 20 minutes.

7           Q     You don't know for sure?

8           A     I'm not for sure. I know that that time of the  
9 morning our paddle, which is the time we have to be at a  
10 certain stop, is so tight and then there's not so many people  
11 at the stop, so it doesn't take that long to get to one stop  
12 to the next at that time of the morning.

13          Q     Okay. You watched this video before, correct?

14          A     Yes.

15          Q     This individual that got on that you see talking on  
16 his phone right here, the person that got on, he did not get  
17 off until you got stopped by the police, correct?

18          A     Yes.

19          Q     So you've watched this video. This individual sits  
20 here, occasionally talking on his phone and then eventually  
21 gets off; is that right?

22          A     Yes.

23          Q     I'm going to just fast forward it again to about 11  
24 minutes. So he got on the bus in this video at about 2:30  
25 into the video; is that right? Do you remember?

1 A On the screen?

2 Q On the screen.

3 A Yes.

4 Q Okay. And just for the record, this isn't the  
5 actual time. That's just how much time's elapsed on the  
6 video; is that right? There's no timestamp on this video  
7 where you see the actual a.m., what time it is?

8 A No.

9 Q We start seeing the flashing lights over there to  
10 the right.

11 A Yes.

12 Q Is this when the security asks everyone to get off?

13 A Yes.

14 Q I'm going to fast forward a hair. Is this where  
15 police are ultimately end up on the bus?

16 A Yes.

17 Q Did you get off the bus or did you stay on the bus?

18 A I stayed on the bus.

19 Q They let you stay on the bus?

20 A Yes.

21 Q You stayed right where you drive?

22 A Yes.

23 Q Just a couple more views. Is this the side door,  
24 the back side door?

25 A Yes, the rear door.

UNCERTIFIED ROUGH DRAFT

1 Q This is where the individual we saw who was running  
2 and sat there, he ended up exiting this door; is that right?

3 A Yes.

4 Q Okay. Is this the front of the bus looking forward  
5 to the street?

6 A Yes.

7 Q Okay. Where do you think you're passing right now?  
8 I fast forwarded it to about 1:18 in on the video. Do you  
9 know?

10 A Boulder Station. I just passed the stop at Boulder  
11 Station.

12 Q On your right up here a little ways, is that where  
13 the Siegel Suites is?

14 A Yes.

15 Q You're pulling up where? Right now we're at about  
16 2:06.

17 A At the stop just before Delhart [phonetic].

18 Q Is that near the Siegel Suites?

19 A Yes.

20 Q Is this the person that caught your eye running?

21 A Yes.

22 Q You said earlier at night you have a short time in  
23 between stops. What does that mean?

24 A We have time points. The majority of them are at  
25 major intersections, like Sahara, Eastern will be one. We



1 usually, at that time, will have probably seven minutes to get  
2 from one to the next. We're allowed to arrive early, but we  
3 can't leave early. You know?

4 Q You're supposed to stay --

5 A Stay on paddle. Like if I'm due to be there at like  
6 10:15, I can't leave until 10:15. But I can arrive at 10:13  
7 before then, but I can't leave before that time I'm supposed  
8 to be there.

9 Q Are there certain stops when you're trying to get in  
10 and out of there quickly or is it more that you've got to wait  
11 until that time hits and then you can go?

12 A At the time points I can't leave early. The times  
13 are so tight so if I need to -- if I have to be there at 10:15  
14 and I'm there at 10:15, I'm taking off at 10:15 because I  
15 probably have like six minutes to get to the next stop on  
16 time.

17 Q So is this stop here that we just saw the person  
18 running up to, is that one of your major spots that you have  
19 to be timed?

20 A No.

21 Q So on these stops that are in between the major  
22 stops, you're trying to move pretty quick, right?

23 A Yes.

24 Q You were going to get going on this one except he  
25 was running; is that right?

1 A Yes.

2 Q Okay. Just real quick, the last two. Is this the  
3 side view outside the passenger side?

4 A Yes.

5 Q So this would show where all your passengers got out  
6 when you got stopped by the police; is that right?

7 A Yes.

8 Q Just fast forward real quick to 1:47 into the video.  
9 Is this again that one right before Siegel Suites?

10 A Yes.

11 Q You can see the gentleman running.

12 A Yes.

13 Q All right. Then the last one is just for reference.  
14 That's the driver's side looking back; is that right?

15 A Yes.

16 Q Okay. That's where out of your rearview mirror or  
17 the left mirror you saw the police?

18 A Yes.

19 (End of video)

20 MR. BATEMAN: I'll pass the witness, Judge.

21 THE COURT: Cross.

22 CROSS-EXAMINATION

23 BY MR. SLIFE:

24 Q Hello, ma'am.

25 A Hello.

UNCERTIFIED ROUGH DRAFT

1 Q You would agree that the gentleman that we focused  
2 in, that Mr. Bateman was focusing in on in that video, he had  
3 dark hair?

4 A Yes.

5 Q And you described his build to police when they  
6 interviewed you as having a thin build; is that right?

7 A Yes.

8 MR. SLIFE: That's all I have, Your Honor. Thank  
9 you.

10 THE COURT: Redirect.

11 MR. BATEMAN: Nothing else, Judge.

12 THE COURT: Thank you. May this witness be excused?

13 MR. BATEMAN: Yes, Your Honor.

14 THE COURT: Thank you very much for your testimony.

15 THE WITNESS: Thank you.

16 THE COURT: Call your next witness.

17 MR. BATEMAN: Let me check out in the hallway  
18 briefly, Your Honor.

19 THE COURT: Sure.

20 MR. BATEMAN: The State calls Alan Petersen, Your  
21 Honor.

22 ALAN PETERSEN, STATE'S WITNESS, SWORN

23 THE CLERK: Please state and spell your first and  
24 last name for the record.

25 THE WITNESS: First name is Alan, A-l-a-n, last name

1 Petersen, P-e-t-e-r-s-e-n.

2 THE COURT: You may proceed.

3 MR. BATEMAN: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. BATEMAN:

6 Q Sir, what do you do for a living?

7 A Crime Scene Analyst with Las Vegas Metropolitan  
8 Police Department.

9 Q And how long have you worked for Metro?

10 A Going on seven years now.

11 Q Crime scene analyst, generally your job duties are  
12 to process scenes and collect evidence?

13 A Yes, in a nutshell.

14 Q You have -- you work with other individuals in the  
15 crime scene unit; is that right?

16 A Yes.

17 Q You know crime scene analyst Smink?

18 A Yes.

19 Q And crime scene analyst Brenda Vaandering?

20 A Yes.

21 Q You do similar type of work to them; is that right?

22 A Yes.

23 Q You have training and experience that allows you to  
24 do your job?

25 A Yes.

UNCERTIFIED ROUGH DRAFT

1 Q Did you have occasion to be involved in processing  
2 or had some aspect of the investigation in a shooting that  
3 occurred at the Siegel Suites on December 22, 2013?

4 A I didn't work that scene, but I worked --

5 Q The case?

6 A -- follow-up work on it.

7 Q And follow-up work did you do?

8 A I was requested to report to headquarters, interview  
9 room number 10, to photograph an individual and to collect  
10 some clothing.

11 Q When you say headquarters, what are you talking  
12 about?

13 A Building A interview room where the detectives  
14 interview suspects.

15 Q And is that the homicide offices?

16 A It's the interview rooms on the bottom floor in  
17 Building A. It's the south building.

18 Q And who calls you to go do something like that?

19 A Detectives generally will put in a request to  
20 communications and requesting a crime scene analyst to respond  
21 to their location. Dispatch will contact the supervisor and  
22 the supervisor will give out the next assignment to the next  
23 available crime scene analyst in the rotation.

24 Q All right. So have you gone to the headquarters  
25 before to document suspects and their clothing, whatever it is

1 they have with them?

2 A Yes.

3 Q Is that oftentimes before they're interviewed or  
4 after?

5 A Either before or after.

6 Q And that's what you did in this particular case?

7 A Yes.

8 Q All right. So do you know approximately when you  
9 arrived at headquarters?

10 A No, I don't. I'd have to take a look at my report.

11 Q Do you have the report with you?

12 A I have a copy of it.

13 MR. BATEMAN: If I might approach, Your Honor?

14 THE COURT: All right.

15 BY MR. BATEMAN:

16 Q Let's see if this will refresh your recollection.

17 MR. BATEMAN: Court's indulgence.

18 A Yes. Ten o'clock in the morning.

19 BY MR. BATEMAN:

20 Q Ten o'clock in the morning?

21 A Uh-huh.

22 Q All right. Thank you. And your sole duties were  
23 what, specifically?

24 A Upon arriving to headquarters I was -- the detective  
25 wanted me to take some photographs of a suspect in interview

1 room number 10 and to collect his clothing.

2 Q Okay. And is that what you ultimately did?

3 A Yes.

4 Q Is that all you did was take photos of the person  
5 and then collect their clothing?

6 A Yes.

7 MR. BATEMAN: May I approach the witness, Your  
8 Honor?

9 THE COURT: Yes.

10 MR. BATEMAN: I'm showing counsel what's been marked  
11 as State's Exhibits 100 through 112.

12 BY MR. BATEMAN:

13 Q Can you just flip through those photos and tell me  
14 if you recognize them.

15 A Yes, I do.

16 Q Okay. And is that the photos you took that  
17 particular morning?

18 A Those are the photos I took that particular morning  
19 of the suspect and the clothing were taken at a later date.

20 Q Okay. When you say a later date on the clothing,  
21 what are you referring to?

22 A I think maybe the next day or two days afterwards,  
23 after the date I took the clothing.

24 Q And where did you take the photos of the clothing a  
25 day or two later?

1 A The clothing were taken back at the crime scene lab.

2 Q Okay. And why do you do that?

3 A Well, in order for me to properly photograph the  
4 clothing I would have to spread them out, prevent  
5 cross-contamination. It's much more of a controlled  
6 environment.

7 Q So you're just looking to see if there's any items  
8 of evidence on them.

9 A Yes.

10 MR. BATEMAN: I'd move admission, Your Honor, of 100  
11 through 112.

12 THE COURT: Any objection?

13 MS. LEMCKE: No, Judge.

14 THE COURT: Those will be admitted.

15 (State's Exhibit 100 through 112 admitted.)

16 BY MR. BATEMAN:

17 Q Let me show you briefly --

18 MR. BATEMAN: May I publish, Your Honor?

19 THE COURT: Yes, you may.

20 MR. BATEMAN: Thank you.

21 BY MR. BATEMAN:

22 Q 100 again is -- this is the suspect at the office;  
23 is that right?

24 A Correct.

25 Q A full-length view.



1 A Yes.

2 Q You did a view of 101 there, a closer up view; is  
3 that right?

4 A Yes.

5 Q And you were -- obviously, we see an injury to the  
6 left eye in that particular photograph; is that right?

7 A Yes.

8 Q Now the clothing that you ultimately later took, I'm  
9 going to show you pictures of that. All right?

10 A Uh-huh.

11 Q Exhibit 102. What are those?

12 A A pair of shoes that were property of the suspect  
13 that I collected at headquarters.

14 Q When you collect the -- do you collect the clothing  
15 at headquarters and then take it with you to the lab?

16 A Yes.

17 Q Or your office?

18 A Yes.

19 Q All right. Do you collect it in evidence bags?

20 A Yes.

21 Q You maintained chain of custody, you always have it  
22 until you finishing processing it?

23 A Correct.

24 Q Did you notice anything with regard to the shoes?

25 A I noticed there was some apparent bloodstains on the

1 shoe.

2 Q And you documented that in a report?

3 A Yes, I did.

4 Q Exhibit Number 103. Is that just the bottom of  
5 those same shoes?

6 A Yes.

7 Q No bloodstain toward the bottom of the shoes or  
8 anything on the bottom that you're aware of?

9 A No.

10 Q Exhibit 104. What is that?

11 A It's a shirt that I collected from the suspect.

12 Q All right. Exhibit 105. I'll move it down a little  
13 bit. Maybe I'll zoom in a little bit. Does this appear to be  
14 his pants?

15 A Yes.

16 Q And 106. Is that a little bit higher view? Do you  
17 see a belt on those pants?

18 A Yes, I do.

19 Q I'm showing you Exhibit 110. What do we see in 110?

20 A In Exhibit 110 I noted some apparent bloodstains on  
21 the front of the pants adjacent to the right front pocket.

22 Q And then there's one a little bit lower; is that  
23 correct?

24 A Yes.

25 Q And you just noticed that or you documented that

1 with these arrows.

2 A Correct.

3 Q You didn't do any further testing on that, you just  
4 noticed it as apparent blood.

5 A Well, I tested to make sure that they were -- I did  
6 a preliminary test on the stains to determine whether or not  
7 they were actually blood.

8 Q Exhibit Number 109. It's just a little bit farther  
9 out; is that right?

10 A Yes.

11 Q Showing you Exhibit 112. Do you recognize that?

12 A A hooded sweater or jacket.

13 Q Any blood or apparent blood that you found on the  
14 hooded jacket?

15 A No.

16 Q So the only blood you found was on the top of the  
17 shoes?

18 A Yes.

19 Q And the -- a portion of the pants; is that right?

20 A That's correct.

21 Q Okay. Did you separate the belt or do you leave the  
22 belt on the pants?

23 A I left the belt on the pants.

24 MR. BATEMAN: Court's indulgence.

25 BY MR. BATEMAN:

UNCERTIFIED ROUGH DRAFT

1           Q     You said on the shoes that you had -- shoes in  
2 Exhibit 112. You show -- touch the screen and show where you  
3 found that blood.

4           A     Right here.

5           Q     You say presumptive. What does that mean?

6           A     Presumptive test is just, it's a preliminary test to  
7 determine whether or not the substance that I identified as  
8 blood actually is blood. It's basically a color change test.

9           Q     So the result was that it was blood?

10          A     Yes.

11          Q     Okay. And you did that with the shoe and with the  
12 pants as well; is that right?

13          A     Yes.

14          Q     Did you document in your, do you know, any  
15 photographs, any further photographs of the suspect's hands,  
16 do you know?

17          A     No, I didn't.

18          Q     You don't remember taking any photographs of his  
19 hands?

20          A     I don't remember taking any photographs of his  
21 hands.

22          Q     If there were any either fresh or older injuries of  
23 his hands, would you have taken photographs?

24          A     Yes.

25          Q     You did take a photograph obviously of his face and

1 saw the injury there as well, correct?

2 A Yes.

3 MR. BATEMAN: Court's indulgence.

4 BY MR. BATEMAN:

5 Q Did you presumptively test blood just on the pants  
6 or on the pants and the shoes?

7 A I think I just tested the blood on the pants, just  
8 on the pants.

9 Q Okay. Let me clarify. The blood on the pants, you  
10 did a presumptive test for blood; is that right?

11 A Correct.

12 Q And did you get a result?

13 A Yes.

14 Q That it was in fact blood?

15 A Yes, a positive result.

16 Q What about the shoes?

17 A No, I didn't, because from my experience in looking  
18 at the shoes, to me it looked like blood so I didn't proceed  
19 any further with it. Whereas with the jeans, I just wanted to  
20 make a definite confirmation that they were blood because of  
21 the fact that blood tends to change colors. That's why I did  
22 a presumptive test on the jeans.

23 Q Is it harder to see on the jeans?

24 A It's very hard to see on the jeans because they tend  
25 to take the color of the jeans per se.

1 Q Okay. So that's why you looked at the shoes, it  
2 appeared to you to be blood.

3 A Right.

4 Q And you didn't quite go as far as you did with the  
5 pants where it was harder to see what was on the stain.

6 A Right.

7 MR. BATEMAN: Pass the witness, Judge.

8 THE COURT: Cross.

9 MS. LEMCKE: Court's indulgence. We have no  
10 questions, Your Honor.

11 THE COURT: All right. Thank you. May this witness  
12 be excused?

13 MR. BATEMAN: Yes.

14 THE COURT: Thank you very much for your testimony,  
15 sir. You may call your next witness.

16 MR. BATEMAN: States calls Joe Szukiewicz.

17 JOSEPH SZUKIEWICZ, STATE'S WITNESS, SWORN

18 THE CLERK: Please state and spell your first and  
19 last name for the record.

20 THE WITNESS: Joseph Szukiewicz, J-o-s-e-p-h,  
21 S-z-u-k-i-e-w-i-c-z.

22 DIRECT EXAMINATION

23 BY MR. BATEMAN:

24 Q Good afternoon, sir.

25 A Good afternoon.

UNCERTIFIED ROUGH DRAFT

1 Q You work for the Las Vegas Metropolitan Police  
2 Department.

3 A I do.

4 Q And what do you do?

5 A I'm a Senior Crime Scene Analyst.

6 Q We've had some crime scene analysts testify. Are  
7 you familiar with Mr. Smink?

8 A I am. He's my supervisor.

9 Q Okay. Ms. Vaandering?

10 A Yes.

11 Q The person who just left, Mr. Petersen?

12 A Yes.

13 Q You guys do similar work.

14 A Yes, we do.

15 Q How long have you been working with the Las Vegas  
16 Metropolitan Police Department?

17 A For 18 years.

18 Q All right. Did you have occasion to be involved in  
19 the -- any sort of processing of any scenes or individuals as  
20 it relates to a shooting at the Siegel Suites occurring on  
21 December 22nd, 2013?

22 A Yes, I did.

23 Q What was your involvement?

24 A My duties were to attend the autopsy.

25 Q And the autopsy of whom?

1 A Of a Robert Holland.

2 Q And is that the extent of -- the autopsy is where  
3 you focus; is that right?

4 A Yes.

5 Q And tell me what processing an autopsy includes.

6 A For the autopsy we photograph the victim for  
7 identification, overall condition, injuries, wounds and we'll  
8 recover evidence from the victim's body as well as clothing  
9 and any related items.

10 Q Where does this processing take place?

11 A It takes place at the Clark County Coroner's Office.

12 Q So when Mr. Holland comes to the Clark County  
13 Coroner's Office, in what method does that happen, do you  
14 know?

15 A What will happen is the body will be transported  
16 from the scene and they'll be taken by mortuary to the  
17 coroner's office and then the body will be stored there until  
18 the morning when we respond to do the autopsy.

19 Q In this case, you don't know necessarily where Mr.  
20 Holland came from specifically?

21 A That's correct.

22 Q Okay. You get to the coroner's office and Mr.  
23 Holland's remains are there at the coroner's office; is that  
24 correct?

25 A Yes.



1 Q Before -- are there medical examiners at the Clark  
2 County Coroner's Office?

3 A Yeah. There are medical examiners as well as  
4 technicians that are there.

5 Q And you -- when you get there, do you do anything  
6 with Mr. Holland before the medical examiner does?

7 A Before we get there we have to process the body. So  
8 I'll be in the autopsy room with a technician and we'll break  
9 the seal on the bag and that will be photographed. I'll do  
10 notes and do a little bit of a report on what my observations  
11 are. We'll remove the clothing. That will be all  
12 photographed. And then we'll search any, for any injuries  
13 sustained to the body as well as recover a buccal swab kit.  
14 In this case his hands were bagged so his hands were  
15 photographed and fingernail clippings were taken as well.  
16 Those are the processes that are taken in this case.

17 Q We've heard of crime scene analysts, I mean, you're  
18 processing either a scene or in this case a dead body. You're  
19 looking for items that you can recover that may have some  
20 evidentiary value?

21 A Yes.

22 Q Are you also recovering any personal items that may  
23 still be with the body when it gets to the coroner's office?

24 A Yeah. Anything that's of evidentiary value for the  
25 case. If it's something that's not necessarily related, that

1 will go to the coroner's office and they'll keep that for the  
2 family. That's how that works.

3 Q What's the first -- when you get there, is Mr.  
4 Holland in some sort of like a body bag?

5 A Yes, he's in a sealed body bag.

6 Q And what do you do when you get to that body bag?

7 A I'll photograph the body bag and then there's a seal  
8 that -- the seal's in place at the scene, so the coroner  
9 investigator will lock the seal down. Then when we get there  
10 I'll take a photograph of the seal to show that it's still  
11 intact and that nothing was tampered with from the time that  
12 he left the scene until the time he got to the coroner's  
13 office.

14 Q And is that what you do in this particular case?

15 A Yes.

16 Q When you found Mr. Holland you undid the seal. What  
17 is it you found at that time?

18 A He's wrapped in a sheet inside the body bag and our  
19 next task is to remove him from the body bag and remove him  
20 from the sheeting and start photographing his clothing and his  
21 injuries.

22 Q Did he have any clothing on him when you removed him  
23 from the bag?

24 A Yeah. He had on some sweatpants, his underwear and  
25 then a pair of shoes and socks.

1 Q And were there items in his sweatpants as well?

2 A Yes.

3 Q Did he have an ID as well?

4 A I don't recall. I don't think he did.

5 Q Would that be, with the identification if there was  
6 one, be in your report, do you know?

7 A It may or may not be. If it was something that was  
8 there I would have photographed it, but it probably would have  
9 been a release to the coroner's office.

10 Q If it was there you would have photographed it.

11 A Yeah.

12 MR. BATEMAN: May I approach the witness with some  
13 photographs?

14 THE COURT: You may.

15 BY MR. BATEMAN:

16 Q I'm going to show you what's been marked as State's  
17 Proposed 80 through 99. Just have you flip through these  
18 photographs. When you're done flipping through them tell me  
19 and let me know.

20 A Okay. These are the photographs I took at the  
21 coroner's office.

22 Q You recognize those to be all the photographs you  
23 took at the coroner's office?

24 A Yes.

25 MR. BATEMAN: Move admission of 80 through 99.

1 MS. LEMCKE: No objection. Could I just see 80  
2 through 99 one more time?

3 THE COURT: You still have no objections?

4 MS. LEMCKE: I'm sorry. I meant to say that.

5 THE COURT: You said that. Just wanted to make sure  
6 you weren't reserving until you looked. All right. So those  
7 are admitted.

8 (State's Exhibit 80 through 99 admitted.)

9 BY MR. BATEMAN:

10 Q Anything you would have taken in terms of taking  
11 possession of after your photographing, you'd also document  
12 that in an evidence impound report; is that right?

13 A That's correct.

14 Q I'm going to show you real brief Exhibit 80. You  
15 don't remember, but does this appear to be something you would  
16 have taken possession of?

17 A I would have taken a photograph of it. I don't  
18 recall. I don't think I impounded that, though.

19 Q But this is a photograph that you would have taken  
20 of it.

21 A Yes.

22 Q All right. Does this appear to be the  
23 identification of Mr. Holland?

24 A It does.

25 Q Showing you the bottom half, I believe. Is that a

1 picture of the bottom half of Mr. Holland?

2 A It is.

3 Q And what are we seeing in that photograph?

4 A That's him after the process of unsealing the body  
5 bag and removing the sheet that's in there with him. You can  
6 see the hand bags. You see his lower clothing that he's  
7 wearing.

8 Q What is that lower clothing?

9 A It's a pair of sweatpants, underwear underneath and  
10 you can see his shoes, but his socks are I think below the  
11 shoes or ankle socks I believe.

12 Q Like a drawstring or is it like an elastic, do you  
13 remember?

14 A I don't remember.

15 Q One of the two?

16 A Yes.

17 Q Because they're sweatpants.

18 A Yes.

19 Q Showing you 82. Did you notice any defects in the  
20 sweatpants?

21 A Yeah. In the upper back area by the band you can  
22 see what appears to be a bullet hole.

23 Q On the left-hand side?

24 A Yes.

25 Q Obviously, that's some blood as well; is that right?

1           A     Yes.

2           Q     Showing you Exhibit 83. Does this appear to be the  
3 same shorts after you took them off?

4           A     Yes, it is.

5           Q     And what's this photograph? What have you done  
6 here?

7           A     When we removed the clothing we'll go through the  
8 pockets and see what's inside the pockets. What I will  
9 normally do is I'll open them up and I'll kind of put them in  
10 place to where I can see where each item is located within the  
11 pockets. So you can kind of see a few items there.

12          Q     So Mr. Holland comes to the coroner's office from  
13 wherever it is he came before that and he still had items in  
14 his pockets; is that right?

15          A     Yes.

16          Q     And that's where you're putting them out after  
17 you've taken the pants off of him and then it's kind of  
18 showing some of the items in the pockets.

19          A     That's correct.

20          Q     It looks to me like -- I'm going to show you what  
21 appears to be the right pocket, 84. What do we see there?

22          A     In his pocket it's a flashlight and he had some  
23 coins and I can't tell what the orange thing is. But it's a  
24 plastic cup and there's items within that plastic cup.

25          Q     I think I spoke incorrectly. I said the right

UNCERTIFIED ROUGH DRAFT

1 pocket, but is that the left pocket?

2 A That's the left pocket.

3 Q And you pull these items out and photo them  
4 secondarily, right?

5 A Yes.

6 Q Showing you Exhibit 85. Does that appear to be the  
7 right pocket?

8 A Yeah. In the right pocket it's a set of keys and a  
9 glass pipe.

10 Q And in this particular photograph, does it appear  
11 the glass pipe was broke or does it appear to be intact?

12 A It's intact.

13 Q Showing you then Exhibit 86. Is that the cup with  
14 -- that you took out of the left pocket?

15 A Yes, it is.

16 Q Is that how all the items in the cup were when you  
17 took it out?

18 A Yes. They were all contained within the cup.

19 Q Is that somewhat surprising since he's been moved or  
20 was it -- how did it stay all together?

21 A I have no idea how it stayed all together.

22 Q Exhibit 87. Did you start pulling the items out of  
23 the cup?

24 A Yes, I did.

25 Q So what do we have in this photograph?

1           A     Some Orajel, there was a lighter, a cash voucher and  
2 then the flashlight.

3           Q     Eighty-eight. Is that a little bit farther out view  
4 of the items plus the coins in the cup?

5           A     Yes, it is.

6           Q     Did you -- show 89, everything laid out in terms of  
7 all of the coins.

8           A     Yeah. We photographed everything laid out because  
9 we have to account for how much value is there with the coins.

10          Q     What do you see with all those coins?

11          A     It's just broken down into the denominations of the  
12 nickels, dimes and pennies and quarters.

13          Q     Did you write down what the total amount was?

14          A     I have it in my notes I believe.

15          Q     Could you take a look?

16          A     Eighteen dollars and 93 cents I believe.

17          Q     Almost 19 dollars in change in that cup?

18          A     Yes.

19          Q     Was it relatively heavy, that cup, with all that  
20 change in it?

21          A     Relatively, I guess you could say.

22          Q     Exhibit 90. Is that the -- what is that?

23          A     It's the glass pipe and the keyring.

24          Q     I'm not sure how to orientate this photograph. That  
25 was in the right pocket; is that right?



1           A     Yes, it was.

2           Q     And again, it appears that the glass pipe's intact;  
3 is that right?

4           A     Yeah, it is at this point.

5           Q     Ninety-one. At some point does that appear to be  
6 broken?

7           A     Yeah. I think I broke it when I was stepping back  
8 on it, if I believe correctly at the time.

9           Q     And then this baggie up here to the right. Was  
10 that --

11          A     I think that was within the same area.

12          Q     You took all these items and impounded them; is that  
13 right?

14          A     Yes, I did.

15          Q     Did you also do some additional review of the pants  
16 themselves, the hole, the defect in the back left?

17          A     Yes. I looked at the hole and photographed it as  
18 well.

19          Q     Showing you 92. Does that appear to be your P  
20 number down at the bottom left?

21          A     It is.

22          Q     And what do we see there?

23          A     It's a scale photo of the pants with the hole.

24          Q     Let me back up. One real quick question on the  
25 previous exhibit. That little baggie, does that appear to be

1 like a little Ziploc baggie?

2 A It is.

3 Q Ziploc, just meaning it locks at the top?

4 A Yes.

5 Q You can put things in it.

6 A Yes.

7 Q That again was from what angle, from outside?

8 A That's the exterior of the clothing, yes.

9 Q Ninety-three.

10 A Same photo, just a different view of it.

11 Q Is it the same for 94?

12 A Yes.

13 Q You're using the scale to kind of show what it --

14 the size?

15 A Yes.

16 Q Does that appear consistent, this hole appear

17 consistent with anything to you?

18 A It's consistent with the location of his wound that

19 he had on the left buttock, so yeah. It's consistent where

20 the gunshot wound was.

21 Q Ninety-five. What is that?

22 A That's the -- I flipped the clothing inside out. So

23 that's the opposite view of the sweatpants, the inside.

24 Q You again also said you attended the autopsy. Did

25 you attend the autopsy or do you just take photographs of the

1 deceased body before the autopsy?

2 A I do -- you can do both. In this case I probably  
3 wasn't in the room when they were actually performing the  
4 autopsy. I was probably doing the work that I needed to do in  
5 the area where we do the initial part of it or the start, the  
6 processing room.

7 Q You actually identify wounds when you're in the  
8 autopsy; is that right?

9 A Yes.

10 MR. BATEMAN: May I approach, Your Honor?

11 THE COURT: Yes.

12 BY MR. BATEMAN:

13 Q Let me show you real briefly Exhibit 32, 34. We're  
14 skipping 33. Thirty-five through 45. Just look through those  
15 for me briefly, if you could. In preparing today, did you go  
16 back and review your photographs that you took at autopsy?

17 A Yes.

18 Q Do those appear to be consistent with the  
19 photographs you took at the autopsy of Mr. Holland?

20 A Yes, they do.

21 MR. BATEMAN: Move admission of 32, minus 33, Your  
22 Honor, and then 34 through 45.

23 THE COURT: Any objection?

24 MS. LEMCKE: No objection.

25 THE COURT: They will be admitted.

1 (State's Exhibit 32, 34 through 45 admitted.)

2 BY MR. BATEMAN:

3 Q Now during the autopsy, did you take possession of  
4 any items of evidence that came from Mr. Holland's body?

5 A Yes, I did.

6 Q What was that?

7 A The bullet.

8 Q And do you know where that came from?

9 A I recovered it from Dr. Gavin. I believe it came  
10 from the victim's upper torso somewhere.

11 Q So if a bullet is still lodged in someone's body, is  
12 it usually Dr. Gavin -- is that the medical examiner?

13 A Yes. The medical examiner will remove it and  
14 they'll do some measurements and do what they need to do with  
15 it and then they'll put it in a vial for me to recover it from  
16 the autopsy room.

17 Q And did you -- so you take it from her hands?

18 A Yes.

19 Q And what do you do with it?

20 A I take it back, over to the processing room that I'm  
21 in and then I'll photograph it and then it will go to our  
22 crime lab and all that evidence will be impounded at that  
23 point.

24 Q And that's what happened in this case?

25 A Yes.

1 Q First, I'm going to show you what's been admitted as  
2 State's 96. Do you recognize what's in that photograph?

3 A Yes. It's the bullet that I recovered.

4 Q Did you notice anything unusual about that bullet?

5 A It was in fairly good condition but the nose of it  
6 had a flat mark to it.

7 Q Like it had struck something?

8 A It appears to, yes.

9 Q And 97, again, just another angle.

10 A Yes.

11 Q I'll jump to 99. That doesn't show the flat side on  
12 the point; is that right?

13 A That's correct.

14 Q But there appear to be ridges going along the main  
15 part of the bullet. Do you know what that is?

16 A That's just a rifling. When a bullet travels down a  
17 barrel there will be lands and grooves. The lands and grooves  
18 from the barrel of the weapon will, the impression will go  
19 onto that actual bullet and that's what that is.

20 Q Those lands and grooves, is that what is tested  
21 against firearms to determine whether a particular firearm  
22 might have fired a bullet?

23 A Yeah. They can -- they use that as well, yes.

24 Q It's not what you do as part of a crime scene  
25 analyst.

1 A No.

2 Q That would be a forensic scientist later?

3 A Yes. A firearms examiner would have to do that.

4 Q All right. Did you bring that bullet to court today  
5 with you?

6 A Yes, I did.

7 MR. BATEMAN: May I approach, Your Honor?

8 THE COURT: Yes, you may.

9 MR. BATEMAN: I'd like to have it marked.

10 THE COURT: Yes.

11 MR. BATEMAN: May I approach the witness?

12 THE COURT: Yes.

13 BY MR. BATEMAN:

14 Q I'm showing you what's been marked as State's  
15 Proposed 113, what you just handed me. What is that?

16 A It's my evidence impound that contains the bullet.

17 Q How do you know it's yours?

18 A It's mine. I can tell by the event number, it has  
19 my initials and P number and my signature.

20 Q So when it went from medical examiner, went to your  
21 hands, you took it back to your office and put it in an  
22 evidence bag?

23 A Exactly.

24 Q And ultimately, it ends up in the evidence vault; is  
25 that right?

1           A     Yeah. We have a temporary storage facility and the  
2 evidence vault personnel will come take it from us and then it  
3 will be stored in their vault.

4           Q     And you seal it with that red tape?

5           A     Yes. It will be this tape right here.

6           Q     And the blue tape on there, what is that?

7           A     The blue tape is from the forensic lab. So somebody  
8 from the forensic lab checked the package out and then they  
9 reseal it with the blue tape.

10          Q     Forensic lab meaning they test the items in  
11 evidence?

12          A     Yeah. In this case the firearms examiner.

13          Q     There's also a label on the front of it called  
14 biohazard. What does that mean?

15          A     The bullet came from inside a person's body which is  
16 considered a biohazard so I label it so the other examiners  
17 will know there's a biohazard inside the package, potential.

18               MR. BATEMAN: Move admission of 113, Your Honor.

19               THE COURT: Any objection?

20               MS. LEMCKE: No objection.

21               THE COURT: It will be admitted.

22                       (State's Exhibit 113 admitted.)

23 BY MR. BATEMAN:

24          Q     And then I just wanted to refer you, if I could, to  
25 your evidence impound report. Do you have that with you?

1 A Yes, I do.

2 Q All of the items that you ultimately took possession  
3 of in this particular case includes a buccal swab kit?

4 A Yes.

5 Q And what was that from?

6 A The buccal swab kit is -- it's basically they're  
7 Q-tips, it's actually a cotton swab, and we apply them to the  
8 inside cheeks to get cheek cells and that's pretty much what  
9 the kit is. It's for DNA purposes.

10 Q And you impounded that and that had the DNA profile  
11 of Mr. Holland?

12 A Yes.

13 Q And then, the hand preservation bags. What were  
14 those?

15 A Those are the bags that -- whenever, if we're at a  
16 scene and we think that somebody's been in an altercation and  
17 we want to preserve any potential evidence on the hands, we'll  
18 use hand preservation bags at the scene and put them over the  
19 victim's hands before transporting them.

20 Q And then you said you took some fingernail clippings  
21 from the hands.

22 A That's correct.

23 Q And then package three, I think you noted you had --  
24 was that sweatpants?

25 A Yeah, that was the clothing, the sweatpants, the



1 underwear, shoes and socks.

2 Q You recovered that, impounded it.

3 A Yes.

4 Q That would go to the evidence vault.

5 A That's correct.

6 Q How about anything from the pockets? What did you  
7 keep? What did you release?

8 A I kept the glass pipe as well as the baggie that was  
9 with the pants.

10 Q The items, the change and the medicine and things  
11 like that, where did that go, do you know?

12 A That was all released to the coroner's office.

13 Q You didn't keep that.

14 A No.

15 Q Just photographed it.

16 A Yes.

17 Q And finally, with the bullet we talked about, you  
18 took possession of that and impounded it for later use.

19 A Yes.

20 Q Okay. Anything else you did with regard to this  
21 case?

22 A No.

23 MR. BATEMAN: I'll pass the witness, Your Honor.

24 THE COURT: Cross.

25 CROSS-EXAMINATION

UNCERTIFIED ROUGH DRAFT

1 BY MS. LEMCKE:

2 Q You kept the pipe because it was a pipe that's  
3 commonly used to smoke methamphetamine?

4 A I kept the pipe because it's narcotics related, so  
5 homicide wanted me to keep that.

6 Q Same with the baggie?

7 A Yes.

8 Q Narcotics related?

9 A Yes.

10 MS. LEMCKE: Court's indulgence.

11 BY MS. LEMCKE:

12 Q We just heard testimony from one of your colleagues  
13 that oftentimes when you guys are called to a scene to  
14 document evidence, particularly evidence pertaining to people,  
15 that you oftentimes photograph what you believe to be recent  
16 injuries. Is that fair?

17 A Yes.

18 Q And if you identify injuries that appear to be  
19 fairly recent you oftentimes put the ruler up next to them to  
20 kind of measure and document the dimensions of them.

21 A Yes.

22 MS. LEMCKE: Your Honor, I'm going to approach. If  
23 I may approach, Your Honor?

24 THE COURT: Do you want to tell me like numbers or  
25 letters?

1 MS. LEMCKE: Yeah, I'm going to do that right now.

2 THE COURT: You may approach.

3 MS. LEMCKE: I've shown counsel what's been marked  
4 for identification as Defense Exhibits CC, DD, EE, FF, GG, HH  
5 and II. If I may approach the witness?

6 THE COURT: You may.

7 BY MS. LEMCKE:

8 Q I ask you to just take a look at those and see if  
9 those collectively fairly and accurately depict the various  
10 parts of Mr. Holland that you photographed at the time of  
11 autopsy.

12 A These are the photos that I took of him as well.

13 Q Okay.

14 MS. LEMCKE: At this time, Your Honor, I'd move  
15 admission collectively of those photographs.

16 THE COURT: Any objection?

17 MR. BATEMAN: No objection.

18 THE COURT: Any objection to CC through II?

19 MR. BATEMAN: No, Your Honor.

20 THE COURT: They'll be admitted. Thank you.

21 (Defendant's Exhibit CC through II admitted.)

22 MS. LEMCKE: Court's indulgence. Nothing further,  
23 Your Honor.

24 THE COURT: May this witness be excused or do you  
25 have --

1 MR. BATEMAN: Yes, Your Honor.

2 THE COURT: Thank you very much for your testimony.

3 Ladies and gentlemen, we're going to take an  
4 afternoon break to use the restroom facilities, et cetera. So  
5 15 minutes, so until 10 after three. During this recess it is  
6 your duty not to converse among yourselves or with anyone else  
7 on any subject connected with the trial or read, watch or  
8 listen to any report of or commentary on the trial by any  
9 person connected with the trial or by any medium of  
10 information including, without limitation, newspaper,  
11 television, radio or Internet and you're not to form or  
12 express an opinion on any subject connected with this case  
13 until it's finally submitted to you. We'll be in recess until  
14 10 after three.

15 (Jury recessed at 2:56 p.m.)

16 THE COURT: The record will reflect the jury has  
17 departed the courtroom. Are there any matters outside the  
18 presence before our recess?

19 MR. BATEMAN: No, Your Honor.

20 MS. LEMCKE: No, Your Honor.

21 THE COURT: All right. We're in recess.

22 (Court recessed at 2:57 p.m. until 3:11 p.m.)

23 (In the presence of the jury.)

24 THE COURT: Thank you. Please be seated. The  
25 record will reflect we are back within the presence of all 12

1 members of the jury, as well as the three alternates, the  
2 defendant's present with his counsel and the Deputies District  
3 Attorney prosecuting the case are present as are all officers  
4 of the Court. Will counsel so stipulate?

5 MS. DIGIACOMO: Yes.

6 MS. LEMCKE: Yes, Your Honor.

7 THE COURT: Thank you. You may call your next  
8 witness.

9 MS. DIGIACOMO: Thank you. The State calls Heather  
10 Gouldthorpe.

11 HEATHER GOULDTHORPE, STATE'S WITNESS, SWORN

12 THE CLERK: Please state and spell your first and  
13 last name for the record.

14 THE WITNESS: My name is Heather Gouldthorpe.  
15 Heather, H-e-a-t-h-e-r and Gouldthorpe, G-o-u-l-d-t-h-o-r-p-e.

16 THE COURT: You may proceed.

17 MS. DIGIACOMO: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. DIGIACOMO:

20 Q How are you employed?

21 A I'm a forensic scientist at the Las Vegas  
22 Metropolitan Police Department Forensic Lab in the latent  
23 print unit.

24 Q How long have you been in the latent print unit?

25 A I've been at the latent print unit for approximately

1 seven years now or eight years.

2 Q Is that the entire length you've been with Metro or  
3 were you in another position before?

4 A I was in another position before. I was a last law  
5 enforcement technician for Metro two years prior to becoming  
6 -- being at the forensic lab.

7 Q Can you explain to the jury briefly your education,  
8 training and experience that allows you to be [indiscernible]?

9 A I have my bachelor's degree in sociology and my  
10 master's degree in forensic science. I started at the  
11 laboratory as a forensic laboratory technologist which meant  
12 at the latent print unit I started doing processing evidence  
13 to recover latent prints and entering prints into our AFIS  
14 system which is our Automatic Fingerprint Identification  
15 System. And there I gained the basic knowledge of how  
16 fingerprints are compared and how to recover fingerprints.

17 I then became a forensic scientist trainee after  
18 three and a half years of doing the technologist work. As a  
19 trainee I spent one year studying more in depth how to make  
20 more complex comparisons and how to testify and write reports.  
21 Then after a year I became a forensic scientist, which I've  
22 been a forensic scientist for three years now.

23 In addition to that, I've attended many workshops,  
24 conferences, as well as I attained my latent print examination  
25 certification through IAI, which is the International

1 Association for Forensic Scientists. I became latent print  
2 certified through that.

3 Q So do you have to do anything to maintain your  
4 latent print certification?

5 A I do every five years we have to recertify, which I  
6 just -- I'm in the process of doing right now. In order to be  
7 recertified you have to have so many credit hours of  
8 continuing education as well.

9 Q What does it take to get certified? Is there  
10 testing?

11 A Yes. It's an eight-hour test and you have to --  
12 there's various -- there's multiple choice questions, there's  
13 comparison exercises. It's a three-step process test.

14 Q Directing your attention to the case at hand, were  
15 you asked to look at any latent prints that were recovered  
16 regarding a shooting that occurred December 22nd, 2013 at the  
17 Siegel Suites?

18 A Yes. I was asked to look at a latent print packet  
19 that was submitted by CSA Vaandering.

20 Q You said that you work in the latent print  
21 examination area of the forensic lab.

22 A Correct.

23 Q What exactly are your duties? What do you do? What  
24 do you do for the lab?

25 A It depends on what I'm requested to do. There's

1 sometimes that we're requested to process evidence to recover  
2 latent prints. Some of our packets go through automatic AFIS  
3 screening, which is the Automated Fingerprint Identification  
4 System. So they're incoming packets, they automatically get  
5 screened without a request coming in. And then sometimes  
6 we're requested to do comparisons on latent prints.

7 Q So you pretty much are just asked to either find a  
8 latent print or to compare a latent print to a known exemplar  
9 print.

10 A That's correct.

11 Q Can you just briefly explain to the jury what the  
12 difference is between a latent print and an exemplar?

13 A Yes. A latent print, if you look at the palms of  
14 your hands, you'll see that the skin's textured differently.  
15 This is called friction ridge skin. And when you have  
16 residue, such as sweat, oils or anything that coats the skin,  
17 when you touch a surface you can potentially leave behind a  
18 replication of that friction ridge skin. That needs to be  
19 either powder enhanced or chemically enhanced to be visually  
20 seen.

21 A known print is when you're getting a work card or  
22 if you're arrested you go through a process where you have to  
23 get either -- they used to do ink prints or now it's more  
24 computer based, where they take your known impressions and you  
25 have a known identity associated with those impressions.



1 Q All right. So a lot of times if you're given a  
2 latent print that you're asked to compare it to something, are  
3 you given the identifiers of who you're being asked to compare  
4 a latent print to?

5 A Yes. We're given that ID number generally. I pull  
6 the prints from the ID number.

7 Q All right. So you can pull anyone who's ever  
8 applied for a work card here?

9 A As long as they're in our system, yes.

10 Q All right. Other than that, if you don't have it in  
11 your system, the prints would have to be provided to you?

12 A That's correct, or we can -- I mean, there's other  
13 ways to obtain it. So we have contacts in Henderson and North  
14 Las Vegas that we can obtain their prints from and then from  
15 Washoe County and all that.

16 Q So you work with other agencies.

17 A That's correct.

18 Q Okay. So in this case, were you asked to do a  
19 comparison of a print?

20 A I believe I was, yes.

21 Q Do you recall specifically what you were asked to do  
22 here?

23 A I was submitted a latent print packet and with that  
24 packet was a request to compare a person.

25 MS. DIGIACOMO: Your Honor, may I approach?

1 THE COURT: Yes.

2 BY MS. DIGIACOMO:

3 Q I'm going to show you what's been previously marked  
4 and admitted as State's 58. It is an envelope and contents.  
5 Do you recognize this envelope?

6 A Yes, I do.

7 Q How do you recognize it?

8 A On the bottom of the envelope over here you see the  
9 lab number, my item number and my identification markings with  
10 my initials next to it.

11 Q So you have opened that enveloped?

12 A That is correct.

13 Q And then after you opened it, did you seal it back  
14 up?

15 A I did.

16 Q Can you show how you sealed it back up?

17 A Yes. In the forensic lab we use blue tape to  
18 distinguish us from crime scene or any other officers that  
19 submit evidence.

20 Q So officers and crime scene people use red?

21 A Yes. And we use the blue tape to seal it and we put  
22 our initials, P number and the date that we seal it on the  
23 bottom.

24 Q Does everyone who works for Metro use the same  
25 method of identifying themselves with their initials and P

1 number?

2 A Yes.

3 Q And how is that done?

4 A You use your first initial, your P number and then  
5 your last initial.

6 Q All right. And just for the record, what is a P  
7 number? Like a personnel number?

8 A It's your personnel number, yes.

9 Q Is it unique to every employee of Metro?

10 A It is, yes.

11 Q All right. So with regard to State's 58, you were  
12 asked to compare a print that was located in photographs  
13 inside this envelope?

14 A That's correct.

15 Q Were you aware of where that print came from?

16 A I believe -- every lift card or photograph that is  
17 submitted is labeled by the crime scene analyst or officer who  
18 took the print. So it's labeled with where the print came  
19 from, the location of the print.

20 Q So in this case was it a print that was found and  
21 chemically enhanced on a magazine for a gun?

22 A From my recollection, yes.

23 Q Now, were you able to do any -- let me strike that.  
24 Were you asked to compare it to certain people?

25 A I believe I was, yes.

UNCERTIFIED ROUGH DRAFT

1 Q Do you recall specifically who that was?

2 A No, I don't.

3 Q If you were to look at your report, would that  
4 refresh your recollection?

5 A I don't believe it's written on my report due to the  
6 nature I didn't find -- it was not a suitable report.

7 Q Do you have it in anything else that would refresh  
8 your recollection?

9 A It's not in my notes either. Sorry.

10 Q Okay. So you don't recall specifically who you were  
11 asked to compare it to.

12 A No.

13 Q All right. But in this case, you don't recall that  
14 and you didn't really note it in your report because you said  
15 you weren't able to do any sort of comparison with the print  
16 that was photographed in State's Exhibit 58.

17 A Correct.

18 Q So explain to the jury why this print that was  
19 detected was not suitable for comparison.

20 A In order for everything to be comparable, we have to  
21 have enough information in the ridge details. So having a few  
22 ridges a lot of times you can't do anything about that. So  
23 you need enough quality and quantity of features. So, for  
24 instance, a ridge, it's not a straight line up and down. It  
25 goes up, sometimes it will stop, sometimes it will diverge

1 into two. Sometimes one ridge merges into two or three  
2 different types of formations. Those ridges and those  
3 formations are what we look at and we need to have enough  
4 information in those to make a determination.

5 This is established by our technical manual. We  
6 have guidelines in there to help us determine whether -- how  
7 many of those formations that we need in order to make a print  
8 suitable. And there's different determinations, whether it's  
9 a finger, part of the phalanges or part of the palm. And  
10 there's different suitability criteria for all those.

11 Q So in this case, when you pulled out the print  
12 that's located in 58 and looked at it, you were able to see  
13 that it didn't meet the guidelines. There wasn't sufficient  
14 ridge detail to even do a comparison.

15 A That's correct.

16 Q All right. So it's not like you were trying to  
17 compare it to another known fingerprint and you just couldn't  
18 make a match because there wasn't enough information.

19 A I didn't even compare it to any known.

20 Q So you never even got to that second step.

21 A No.

22 MS. DIGIACOMO: I'll pass the witness.

23 THE COURT: Cross.

24 CROSS-EXAMINATION

25 BY MR. SLIFE:

1 Q So in essence, you weren't able to tie this print to  
2 any individual.

3 A No. I wasn't even able to even effect hat  
4 comparison process.

5 MR. SLIFE: Nothing further. Thank you, ma'am.

6 THE COURT: Anything else? No? May this witness be  
7 excused?

8 MR. BATEMAN: Yes.

9 THE COURT: Thank you very much for your testimony.

10 MR. BATEMAN: State calls Angel Moses.

11 DINNAH ANGEL MOSES, STATE'S WITNESS, SWORN

12 THE CLERK: Please state and spell your first and  
13 last name for the record.

14 THE WITNESS: Dinnah, D-i-n-n-a-h, Angel, A-n-g-e-l,  
15 Moses, M-o-s-e-s.

16 THE COURT: You may proceed.

17 MR. BATEMAN: Thank you.

18 DIRECT EXAMINATION

19 BY MR. BATEMAN:

20 Q How are you currently employed?

21 A I'm employed with the Las Vegas Metropolitan Police  
22 Department in the forensic lab assigned to the firearms  
23 identification unit.

24 Q How long have you been employed in that capacity?

25 A For 12 years now.

UNCERTIFIED ROUGH DRAFT

1 Q What kind of training and experience do you have  
2 that allows you to do this particular discipline?

3 A I earned my bachelor's of science degree from the  
4 University of Illinois. I completed a two-year training  
5 course that included extensive microscopic examinations of  
6 fired ammunition components and functions of firearms  
7 analysis. I've gone on several tours of firearms and  
8 ammunition plants which gives me a better understanding of how  
9 individual characteristics are created and imparted on certain  
10 areas of a firearm.

11 Q So what generally -- what types of processing do you  
12 do with regard to firearms?

13 A So I actually examine any type of ammunition  
14 components, such as bullets, cartridge cases and shot shells  
15 and look for characteristics that are imparted by a firearm  
16 and determine if they've been fired from a particular firearm.

17 Q Okay. Now in this particular case, did you actually  
18 -- were you the person that originally did any analysis?

19 A I am not the primary analyst for this case.

20 Q Within your unit, do you have people who do some  
21 sort of reviewing of technical reviewing of other forensic  
22 scientist's results and testing?

23 A That's correct. For every case there's different  
24 levels of review process after the initial analyst completes  
25 their work. There's what's called a verification. So if an

1 identification or a class elimination is reached as far as  
2 their conclusions, another examiner will actually take the  
3 pieces of evidence and test fires and do an independent  
4 microscopic examination of those items to verify that the  
5 conclusion is based off of good detail and enough information  
6 and not just one person's opinion.

7           There's also a technical review in which another  
8 analyst, and maybe the same that does the verification or a  
9 different one, will go through the whole case file and make  
10 sure that the notes are complete, all the analysis has been --  
11 that was asked of that person to be done was completed and  
12 that everything is following procedures of the forensic lab.

13           Then there's also a last review which is called the  
14 administrative review. That is usually done by a manager.  
15 What they do is they look at the reports, make sure that  
16 there's concise wording in there, all the event numbers and  
17 numbers are matching and all the pages and items such as that.

18           Q     With regard to the case that you're here to testify  
19 about, did you have any part in the processing of some  
20 evidence?

21           A     I did. I actually did the verification. So I did  
22 the second opinion of independent microscopic work on this  
23 case.

24           Q     Who was the primary person doing the work?

25           A     Jonathan Fried.



1 Q F-r-i-e-d?

2 A Yes.

3 Q And does he still work for the Las Vegas  
4 Metropolitan Police Department today?

5 A No, he does not.

6 Q Do you know where he's moved?

7 A He moved over to a Washington State lab or  
8 Washington, D.C. lab, I'm sorry.

9 Q So he's across the country.

10 A Yes, he is.

11 Q Are you aware -- as part of your procedures -- well,  
12 do you have a specific procedure that every forensic scientist  
13 in your department needs to follow when you are analyzing  
14 firearms and then comparing them to either cartridge cases or  
15 spent bullets?

16 A Yes, we do. We have a technical procedure manual  
17 that we, all of the analysts will actually follow and use as  
18 guidelines when they're working their cases.

19 Q And with regard to this case, do you have any reason  
20 to believe that Mr. Fried did not follow that procedure?

21 A No, I do not.

22 Q Okay. Now pursuant to subpoena, did you become  
23 aware that you were going to testify in place of Mr. Fried for  
24 this particular purpose?

25 A Yes, I was.

1 Q All right. And did you go back and review his work  
2 and what you did on this particular case?

3 A Yes, I did.

4 Q Okay. And you said again, you were the -- what was  
5 your --

6 A I was the verifying examiner, so I actually looked  
7 at the evidence that he looked at, as well as the test fires,  
8 and did independent microscopic work.

9 Q Okay. What specific -- before we go specifically to  
10 the difference, what specifically was asked to be done in  
11 terms of forensic analysis in this case?

12 A He was asked to look at the firearm and do a  
13 function analysis as well as compare the test bullets -- I'm  
14 sorry, the bullets and cartridge cases that were confiscated  
15 as evidence and compare them to test fires that he would have  
16 obtained from the firearm.

17 Q Okay. So check and see if the gun is working; is  
18 that right?

19 A Yes.

20 Q And you did some other analysis with regard to the  
21 gun; is that right, like trigger pull?

22 A That's correct. He does an overall, like a  
23 description of the gun, make sure that it's functioning.  
24 He'll take measurements as well as trigger pulls.

25 Q What does trigger pull mean?

1           A     The trigger pull is kind of an approximately amount  
2 of force that's necessary to pull the trigger back and actuate  
3 the gun.

4           Q     And in this particular case -- did he create a  
5 report with regard to the work he did?

6           A     Yes, he did.

7           Q     And do you have that in front of you?

8           A     Yes, I do.

9           Q     Did he make any conclusions about the trigger pull  
10 in this particular case?

11          A     For the Ruger firearm that he examined, he  
12 determined that the trigger pull was five and one-quarter to  
13 five and one-half pounds.

14          Q     What does that mean?

15          A     That means -- we use a deadweight system to actually  
16 measure this. This is a common measuring technique that's in  
17 the firearms industry, not in just forensics, but all of the  
18 firearms industry. A deadweight system means that you  
19 actually just hold the gun with the barrel perpendicular up  
20 and you put -- it's got a hook that goes into the trigger and  
21 you just keep adding weights to this until the trigger  
22 actually pulls back and you hear the click of the gun. So for  
23 this particular one it took -- it actually would go between  
24 five and one-quarter and five and one-half. It held five and  
25 one-quarter, but definitely went at five and one-half. So

1 it's somewhere within there. We don't go anymore than a  
2 quarter pound. So that's about how much pressure or how much  
3 weight it took to actually pull this trigger.

4 The force is a little bit different because when  
5 you're gripping it you're actually using two different types  
6 of mechanism in your hand, but that's what is commonly used  
7 across the board in firearms to kind of measure and compare  
8 different guns.

9 Q With regard to the five and one-quarter to five and  
10 one-half, where is that in the spectrum?

11 A It's within what I would consider normal for a  
12 single-action firearm such as this.

13 Q Not particularly hard, but not particularly easy to  
14 pull the trigger.

15 A No. I see guns in this fashion for single action  
16 anywhere from four to seven, eight and a half, that's in the  
17 normal range. It gets to be a little bit heavier when it gets  
18 more than eight pounds.

19 Q When you say single action, what are you referring  
20 to?

21 A Single action means that the firearm is already  
22 cocked and ready to be fired and that the trigger pull is just  
23 a single pull of it. There's no moving of the hammer that  
24 needs to be done for it to fall and shoot. It tends to be  
25 lighter than what's called a double action. Double action is

1 where in the gun the hammer's down and when you pull the  
2 trigger it does pull the hammer back and forward. So it takes  
3 a little bit more work and poundage to actually do a double  
4 action versus a single action.

5 MR. BATEMAN: May I approach your clerk, Your Honor?

6 THE COURT: You may.

7 MR. BATEMAN: I'm just alerting your Marshal I'm  
8 going to get the firearm and hand it to her. I think it's  
9 already been secured.

10 BY MR. BATEMAN:

11 Q Showing you what's already admitted into evidence as  
12 State's 55. Do you recognize this outer evidence box?

13 A Well, I would not --

14 Q You wouldn't recognize it --

15 A -- but it does have Jonathan Fried's initials and P  
16 number on there to indicate he did examine this particular  
17 item.

18 Q And this blue forensic tape, what is that?

19 A That's the tape that is used by the forensic lab and  
20 is placed on there after analysis is completed by anyone in  
21 the forensic lab.

22 Q And this also has an event number on this box; is  
23 that right?

24 A Yes.

25 Q And is that event number, that's specific to this

1 case.

2 A Yes.

3 Q And does it relate to or is it the same as the event  
4 number on his report?

5 A Yes, it is.

6 Q Okay. So if I open up the box, in the box we have a  
7 variety of items of evidence. One is the firearm, one was a  
8 magazine and one was some actual cartridges. Does that appear  
9 correct?

10 A Yes.

11 Q Okay. You can hold this up for the jury. When  
12 you're talking about single action versus double action, can  
13 you --

14 A Well, for this particular firearm, when the slide is  
15 pulled forward it has a very sleek depiction of this.  
16 Actually, he does have a picture that I do have if that would  
17 be more accurate since this is held back, if you'd like to use  
18 it.

19 MR. BATEMAN: May I approach, Your Honor?

20 THE COURT: Yes.

21 BY MR. BATEMAN:

22 Q This photograph?

23 A Uh-huh.

24 MR. BATEMAN: May I mark it?

25 THE COURT: Yes.

1           A     This pistol, the slide is actually in the forward  
2 action. It does not have an exposed hammer, it's all an  
3 internal mechanism. So there is no hammer to pull back or to  
4 have it move backwards and forwards. So this is only a  
5 single-action only firearm.

6           MR. BATEMAN: May I approach?

7           THE COURT: Yes.

8 BY MR. BATEMAN:

9           Q     You showed me a photograph. I've marked it as  
10 State's Proposed Exhibit 114. Is that what you handed me?

11          A     Yes, it is.

12          Q     And what's this photograph of?

13          A     This is a photograph that Jonathan Fried took of the  
14 evidence of the pistol on either side, as well as the magazine  
15 and took close-up photos of the serial number and other items  
16 of interest on the pistol itself.

17          Q     It's a Ruger SR9 pistol?

18          A     That's correct.

19          Q     And what caliber?

20          A     Nine millimeter.

21               MR. BATEMAN: Move admission of this exhibit and ask  
22 to publish, Your Honor.

23               MR. SLIFE: No objection, Your Honor.

24               THE COURT: It will be admitted.

25                       (State's Exhibit 114 admitted.)

1 BY MR. BATEMAN:

2 Q Okay. So the box you have the firearm; is that  
3 correct?

4 A Yes.

5 Q And the slide, you're talking about the slide. Can  
6 you identify what the slide is for the ladies and gentlemen of  
7 the jury?

8 A So the slide, which is this silver portion here and  
9 on this photograph you can see it as this top portion. And as  
10 you can see in that picture, it's actually in its -- its  
11 configuration where it's actually forward, whereas in here  
12 it's locked back. So it's a little bit easier to see how the  
13 gun would be in its normal configuration on the photograph.

14 Q Maybe you can just briefly describe the difference  
15 between a revolver and a semi-automatic to start with.

16 A Well, a revolver looks significantly different  
17 because there is what's called a cylinder that rotates around  
18 an axis. And a semi-automatic does not have a cylinder. It  
19 actually has a magazine well, which is right here, in which  
20 the magazine is placed into there and locks into place. So  
21 the magazine will actually hold the live ammunition or the  
22 cartridges, whereas a revolver, the cylinder opens up in some  
23 fashion and can be loaded with cartridges and only has a set  
24 number of spaces, which is usually anywhere from six to nine,  
25 depending on the caliber and make of the revolver.



1           For a semi-automatic it can be anywhere, depending  
2 on the make and the caliber, from about eight cartridges to  
3 this one I believe is a 17. So they have higher capacities on  
4 the magazines typically on semi-automatics than with  
5 revolvers.

6           Q     Okay. And you're referring to a hammer. Where  
7 would you normally see the hammer?

8           A     Normally, the hammer is at the rear, which is --  
9 kind of sticks out like that. That can either be cocked back  
10 manually by the thumb or by the action of the slide. Some  
11 semi-automatics do have an exposed hammer. This particular  
12 gun was not manufactured to have an external hammer. It only  
13 has internal parts and still has a firing pin in there, but  
14 does not have a hammer that transfers the energy to the firing  
15 pin.

16          Q     And the hammer, you're saying you have usually a  
17 higher trigger pull with a hammer?

18          A     If it's actuated by a double action, because usually  
19 with semi-automatics it can either be double action or single  
20 action if it has an exposed hammer. So there will actually be  
21 two trigger pulls for that. This particular one, like I said,  
22 is single action so it only has one trigger pull.

23          Q     Now, in order to -- your cartridges, your unspent  
24 bullets, they go in the magazine; is that correct?

25          A     That's correct.

1 MR. BATEMAN: May I approach the witness?

2 THE COURT: Yes.

3 BY MR. BATEMAN:

4 Q I'm showing you what's been marked as State's  
5 Exhibit 55C. Is this the magazine? And you can identify it  
6 and circle it on the photo on 114.

7 A Yes, it is. And the magazine is actually these two  
8 here. There's a profile picture of the different sides that  
9 Jonathan took and this is actually this magazine that's in  
10 evidence as State Exhibit 55C.

11 Q You said that particular magazine can hold up to 17  
12 rounds; is that right?

13 A That's correct.

14 Q Okay. Now once you've put -- can you manually put a  
15 round into -- pull that slide back like it is currently on the  
16 gun and put a round in or do you only get a round in the  
17 chamber by having the magazine in and then pulling back the  
18 slide and insert it that way?

19 A It can actually be loaded either fashion. So you  
20 can -- typically, what most people will do is load the  
21 magazine by pushing them into here and it has a -- it's almost  
22 like a Pez dispenser. So you push it down and it holds, like  
23 I said, 17 cartridges. Or this gun can actually fire without  
24 the magazine and you can manually place one by dropping it  
25 into an open slide, just in this configuration here, and just

1 putting it in here and letting it drop forward and releasing  
2 the slide and closing. And it can be fired without a magazine  
3 in that configuration.

4 Q If you put -- if you don't manually put it into the  
5 chamber but you fill the magazine with however many cartridges  
6 and you put the magazine into the firearm, how do you get the  
7 -- I think you may have testified to it -- how do you get the  
8 cartridges into the chamber?

9 A By dropping it from the slide, the port here which  
10 is [indiscernible] ejection port and just dropping it into  
11 here. You see where my finger is is actually the chamber. So  
12 by placing the cartridge and tilting it into there and letting  
13 it drop into the chamber, usually by holding it downwards and  
14 putting it in it will slide into there. The slide -- sorry --  
15 the cartridge will go into the chamber. The slide can then be  
16 released and dropped in and it will be ready to fire.

17 Q If you -- maybe I was confusing on my question. If  
18 I don't manually put one into --

19 A I'm sorry.

20 Q -- the chamber -- that's all right -- and I just  
21 have the magazine full of cartridges and I put it into the  
22 bottom of the handle, how do I get a cartridge into the  
23 chamber?

24 A Once the magazine has ammunition in there and placed  
25 into the magazine well, if the firearm is in a closed

1 configuration such as in the photograph here, the slide would  
2 actually have to be pulled backwards and then released and it  
3 will go forward. That will then strip a cartridge from the  
4 top of the magazine which will kind of be right around here  
5 and there will be a cartridge that will be on the top, and as  
6 the slide moves forward will strip one from there, because  
7 remember, it's like a Pez dispenser, and it will take one from  
8 there and place it into the chamber.

9 If the firearm is locked back open, such as this,  
10 the magazine can still be inserted. But now all you have to  
11 do is pull it slightly back so it releases from the slide lock  
12 and go forward and it will also close, picking up a round from  
13 the top of the magazine and place it into the chamber.

14 Q So if I don't put one in the chamber directly, I put  
15 the magazine in, in order to get the chamber round I've got to  
16 pull the slide back and let it release and that will pick up  
17 one of the cartridges and put it in the chamber, correct?

18 A That's correct.

19 Q Okay. If I, again, put the cartridge -- the  
20 magazine in, didn't put a cartridge in the actual chamber and  
21 I just pulled the trigger, nothing would happen; is that  
22 right?

23 A That's correct. Depending -- either if the hammer's  
24 already cocked back or sorry -- if the slide has been moved  
25 back in any way and its mechanism is ready to fire, even if

1 you pull the trigger you may hear a click. But since there is  
2 no round in the chamber, it won't actually fire. You'll just  
3 hear an audible click. Now, if the firearm was closed with  
4 the last click on there and wasn't reset to be cocked back,  
5 then you won't hear anything because the firing pin is in the  
6 correct place and there will be no click.

7 Q Is there some slang for how you slide? Do you know  
8 what I'm talking about?

9 A When you pull the slide back and you're actually  
10 cocking the mechanism.

11 Q In this particular case, what additional testing did  
12 Mr. Fried do in order to compare -- was there any comparisons  
13 that were requested to be done?

14 A Yes, there was. Once he determined that the firearm  
15 was in working condition, he would have actually obtained a  
16 test fire from that. And so what he would have done was taken  
17 ammunition from our collection of just standard ammunition and  
18 placed it into the gun, go into our firing range and actually  
19 shoot the firearm itself. The bullets and cartridge cases he  
20 would have collected after the shooting would have been  
21 considered his test of bullets and cartridge cases that he  
22 would compare to the evidence.

23 Q So he would take those, take possession of -- do you  
24 know in this case how many, normally how many shots you would  
25 fire so you would have those test samples?

1           A     I can look in his notes if that's okay.

2           Q     Is there a standard?

3           A     Usually we do at least three that's into the water  
4 tank, collecting three bullets and three cartridge cases.  
5 Sometimes you'll do three into a target that's down range and  
6 only collect the cartridge cases for that one.

7           Q     In this particular case, what did you have to  
8 compare the samples to?

9           A     I would have looked at his bullets and cartridge  
10 cases and that's notated specifically in what I -- and  
11 recorded into our system as to what I looked at.

12           MR. BATEMAN: May I approach the witness, Your  
13 Honor?

14           THE COURT: You may.

15           BY MR. BATEMAN:

16           Q     I'm going to show you what's been marked and  
17 admitted as Exhibit Number 113 and 56, 56 being a cartridge  
18 case from a nine millimeter Luger headstamp and 113 being a  
19 bullet. Can you take a look at those two bags and tell me  
20 based upon what's on them that those are the items that you  
21 reviewed after forensic scientist Fried did his analysis?

22           A     Yes, they are.

23           Q     And so these particular items, what did you do with  
24 the bullet from the scene and the cartridge case from the  
25 scene?

1           A     So what I would have done is once he did his  
2 examinations he would have actually done what we call  
3 indexing. So he looked at the bullets, the test bullets and  
4 cartridge cases, gotten familiar with them using a comparison  
5 microscope. A comparison microscope is a compound microscope  
6 that has two stages so that you can put two different objects  
7 on them and view them side by side in a binocular eyepiece.  
8 This allows you to look at the surface of the bullets or  
9 cartridge cases, looking for marks transferred from the  
10 firearm and see if they're reproducing from one item to  
11 another.

12               Once he realizes that they are actually reproducing  
13 from test fire to test fire, he will replace one of the test  
14 fires with an evidence and now compare test to evidence and  
15 see if those same markings are also on the evidence. That  
16 allows him to make a determination if it had been fired from  
17 the same particular firearm.

18               In this particular case, since he did say that they  
19 were ID'd, I then looked at it and did the same thing, looking  
20 at what he would have marked as saying well, these are the two  
21 lands that I'm going to mark as A and then I can rotate them  
22 in a spatial relationship looking for the same marks or  
23 actually looking at the marks under the microscope and making  
24 my own determination whether there was sufficient agreement to  
25 say that they had been fired from the same gun. So I would

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1 have done that with the bullets as well as the cartridge  
2 cases.

3 In this particular one I did look at these items  
4 which was the -- I'm sorry.

5 MR. BATEMAN: May I approach, Your Honor?

6 THE COURT: Yes.

7 A So I would have looked at these two items and  
8 compared them to the test that he indicated from these Rugers.  
9 It would have been the cartridge case, which is State Exhibit  
10 56 that I looked at microscopically to the test fires, as well  
11 as the bullet which is State Exhibit 113 and looked at it to  
12 the bullet test fires from the Ruger. And I came up with the  
13 same conclusion that they had been fired by the same firearm.  
14 BY MR. BATEMAN:

15 Q Okay. So just to clarify, this bullet and then this  
16 cartridge case you concluded by looking at the test firings  
17 from this firearm that these two -- that this bullet and this  
18 cartridge case was fired by this gun.

19 A Yes.

20 Q And also as a part of this, when you -- when he does  
21 his test firing, does he use the magazine that's in 55C?

22 A Yes.

23 Q So he can tell that this magazine worked in this  
24 particular firearm; is that right?

25 A That's correct.



1 Q Did you have occasion to look at the collected  
2 unspent cartridges from the scene?

3 A No, I did not.

4 Q Okay. If they had come from this particular  
5 magazine, is it likely that they would have worked in this  
6 particular firearm?

7 A Let me check and see -- he indicates that there are  
8 four Federal FC headstamps with nine millimeter Luger, which  
9 is the same caliber as this firearm. So it would be able to  
10 fit into this magazine and be fired from this gun.

11 Q I'm going to show you out of 55 -- it came from 55B,  
12 there's an unspent cartridge and a cylinder; is that right?

13 A In a vial, yes.

14 Q In a vial. And that's the cartridge that was found  
15 actually in the chamber.

16 A Yes.

17 Q Going back to the questions I was asking you about  
18 pulling the slide in order to insert a cartridge into the  
19 chamber, once you fire and a bullet is expelled, the cartridge  
20 case is expelled, does the magazine automatically then put an  
21 additional cartridge back into the chamber so you don't have  
22 to keep sliding it every time you fire?

23 A So what the firing cycle for this firearm is is once  
24 there's one in the chamber and the trigger is pulled, which  
25 will actuate the gun, and you'll have a bullet that comes out

1 of the muzzle of the gun here, what will happen is it will  
2 take -- what actually happens is the firing pin hits the back  
3 of the cartridge called the primer. This actuates the  
4 gunpowder inside and actually burns it. The burning of the  
5 gunpowder creates pressure which drives the bullet down the  
6 barrel or muzzle of the gun and some of that pressure is also  
7 transferred to the slide and the slide will then move back.

8           Once it moves back, the spent cartridge case will  
9 actually hit the extractor and ejector and will come out of  
10 the gun out of the side so it clears the chamber. And if you  
11 remember that the slide is moving backwards now. It's the  
12 same action that you would do into loading the firearm is  
13 being done by the firing cycle of the gun. So the slide will  
14 move back and now that the chamber is empty, as it moves  
15 forward it's going to pick a round up from the magazine if it  
16 still has ammunition in there and place it into the chamber  
17 and then the gun is ready to be fired again with another pull  
18 of the trigger.

19           Q     And then also in 55B was some additional unspent  
20 cartridges that came from the magazine in 55C; is that  
21 correct?

22           A     Yes.

23           Q     Also the same size and would have been fired from  
24 that -- would have been able to be fired from that firearm.

25           A     Yes.

1           Q     This particular firearm coupled with the magazine  
2     and let's say --- you're familiar with this particular  
3     ammunition; is that correct?

4           A     Yes.

5           Q     So four plus the one that was in the chamber, do you  
6     have any opinion as to the overall weight of the firearm at  
7     that point?

8           A     Oh, that's a good question. I couldn't give you an  
9     exact weight. We don't weigh the gun fully loaded and  
10    unloaded. It's just not something we do.

11          Q     If you --- the only thing that's in this box is the  
12    firearm, right?

13          A     That's correct.

14          Q     So pretty much the weight of this box is going to be  
15    the weight of that firearm?

16          A     That's correct.

17          Q     All right. You don't have any approximation as to  
18    how much a firearm like this might weigh?

19          A     No.

20          Q     And then it would actually become heavier with the  
21    magazine and with whatever ammunition is in this particular  
22    bag if it was altogether in the firearm; is that right?

23          A     It would become slightly heavier, but not a lot  
24    where it's going to add poundage to it. It's just going to  
25    probably add a half a pound or so because it doesn't --- nine

1 millimeter ammunition is not that heavy.

2 Q The gun itself is where the bulk of the weight comes  
3 from.

4 A That's correct.

5 MR. BATEMAN: Court's indulgence. I'll pass the  
6 witness. Thank you, Your Honor.

7 THE COURT: Cross.

8 MR. SLIFE: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. SLIFE:

11 Q Ma'am, this specific gun that you were referring to  
12 was test fired, right?

13 A By Jonathan Fried, yes.

14 Q To your knowledge, you didn't do it, but the gun was  
15 found to be operational?

16 A That's correct. According to his report he said it  
17 was operational with no noted malfunctions.

18 Q Okay. That was going to be my next question. No  
19 noted malfunctions.

20 A That's correct.

21 Q Okay. And just one real commonsense questions.  
22 This is State's Exhibit 29. Is this the same gun, ma'am?

23 A Yes, it is.

24 Q Just one commonsense for any members of the jury  
25 that don't deal with firearms, and I think you spoke about

1 this, but when you have a semi-automatic handgun and you load  
2 the bullets in and you do that by hand, right, one bullet at a  
3 time?

4 A You place the cartridges or the ammunition into the  
5 magazine one at a time, that's correct.

6 Q Forgive me. I said load the cartridge. But you  
7 place it -- so you take a bullet cartridge, put it in the  
8 magazine and another one and so on.

9 A That's correct.

10 Q So any unspent cartridges that were found in the  
11 magazine, you would expect those to have been touched by  
12 someone to put it in there.

13 A That's correct, yes.

14 Q Thank you, ma'am.

15 MR. SLIFE: Nothing further, Your Honor.

16 THE COURT: Any redirect?

17 MR. BATEMAN: No, Your Honor.

18 THE COURT: I just have one question. There was  
19 some previous testimony and there was a terminology or  
20 something, the person said something about racked back. Have  
21 you ever heard of that?

22 THE WITNESS: That's another terminology for pulling  
23 the slide backwards and cocking the firearm to be ready to  
24 fire. So they call it racking it back. So it's because  
25 you're just kind of holding it. I don't know where the term

1 rack is, but that's what they're referring to is the movement  
2 of the slide backwards to pull one, to let it go forward and  
3 take a cartridge from the magazine. That's racking it back.

4 THE COURT: Any questions as a result of my  
5 question?

6 MR. BATEMAN: No, Your Honor.

7 MR. SLIFE: No, Your Honor.

8 THE COURT: May this witness be excused?

9 MR. BATEMAN: Yes, Judge.

10 THE COURT: Thank you very much for your testimony.

11 MR. BATEMAN: We have one more, Your Honor. State  
12 calls Dr. Lisa Gavin.

13 May I approach your clerk?

14 MS. LEMCKE: Can we all approach too?

15 THE COURT: Yes.

16 (Off-record bench conference.)

17 LISA GAVIN, STATE'S WITNESS, SWORN

18 THE CLERK: State your first and last name, spelling  
19 your first and last name for the record, please.

20 THE WITNESS: Certainly. Good afternoon. I'm Dr.  
21 Lisa Gavin, L-i-s-a, G-a-v-i-n.

22 MR. BATEMAN: May I proceed, Your Honor?

23 THE COURT: Yes, you may.

24 MR. BATEMAN: Thank you.

25 DIRECT EXAMINATION

UNCERTIFIED ROUGH DRAFT

1 BY MR. BATEMAN:

2 Q Ma'am, are you a medical examiner?

3 A I am.

4 Q Who do you work for?

5 A I work here in the Clark County Coroner's Office.

6 Q What does a medical examiner do?

7 A We determine the cause and manner of death in sudden  
8 and unexpected deaths.

9 Q And what kind of training and education do you have  
10 to have in order to do that job?

11 A I went to medical school at the University of  
12 Connecticut School of Medicine. I did a pathology residency  
13 program in Hartford Hospital in Connecticut. I did a surgical  
14 pathology fellowship in Hartford Hospital in Connecticut.  
15 Then I went on to do a forensic pathology fellowship in New  
16 Mexico. And then I came here to Las Vegas to be employed here  
17 at Clark County and I currently have a medical license to  
18 practice here in the State of Nevada.

19 Q Okay. And how long have you been working with the  
20 medical examiners -- Clark County Coroner's Office?

21 A A little over five and a half years now.

22 Q Is that your first job as a medical examiner was at  
23 the Clark County Coroner's Office?

24 A That's correct.

25 Q Okay. And in that time, how many autopsies do you

1 think you've performed?

2 A Over 2,000, probably close to 2,500.

3 Q All of those for the purpose of determining cause  
4 and manner of death?

5 A That's correct.

6 Q And have you testified here in the Eighth Judicial  
7 District Court?

8 A Yes.

9 Q How many times, approximately?

10 A Over 60.

11 Q And did you have occasion to on December 23rd, 2013,  
12 to perform an autopsy on a Robert Holland the III?

13 A Yes.

14 Q Okay. And are you statutorily obligated to in these  
15 cases determine cause and manner of death and document your  
16 findings in an autopsy report?

17 A Yes.

18 Q And do you have the number -- did you do that in  
19 this case?

20 A Yes, I did.

21 Q And do you have the case number associated with that  
22 autopsy report handy?

23 A Yes, I do.

24 Q And is it 1311851?

25 A Yes.



1           Q     Okay. Tell me when a -- a deceased person comes  
2 into the coroner's office, what's the first thing that  
3 generally happens?

4           A     When a body is identified at the scene the  
5 investigator from our office will go out to the scene,  
6 photograph the body and photograph that scene and then place  
7 that body into a body bag. And we seal that body bag by  
8 basically placing a plastic disc between the two zipper  
9 eyelets to keep it closed so that it maintains the evidence  
10 that is the body until it's brought into our office. And once  
11 the body in the body bag is brought into our office that seal  
12 on the zippers is broken and then we begin the process of  
13 processing the body.

14          Q     The -- the coroner's investigator, they work for the  
15 coroner's office.

16          A     That is correct.

17          Q     So they go to the location where the -- the body  
18 last is before it comes to the coroner's office; is that  
19 right, where the deceased person is?

20          A     That's correct. It could be a hospital or it could  
21 be a home or it could be the event where something occurred,  
22 wherever that body is located.

23          Q     Okay. In this case do you have documentation as to  
24 where that came from?

25          A     I don't have it in front of me. I could look it up.

1           Q     That's all right. Ultimately, it ends up coming to  
2 the coroner's office in the body bag as you said and you  
3 opened the body bag. Not you specifically but your staff?

4           A     That is correct.

5           Q     Okay. And initially, is there usually a crime --  
6 well, in the cases of a potential crime, is there usually a  
7 crime scene analyst that comes and does some initial  
8 documentation?

9           A     What happens in the office is once the seal is  
10 broken we have our forensic technician who generally works in  
11 tandem with a crime scene analyst and they will take  
12 photographs of the body and they'll essentially do it in  
13 layers where the person will be initially wrapped in a sheet  
14 at the scene where the body is retrieved. And then they'll  
15 take a picture of that. Then the person as they are, if  
16 they're clothed for example, then the clothing will be removed  
17 and they'll take a picture of them in that manner.

18                     And then they'll take a picture of them cleaned up  
19 and they'll rinse off the body. And then they'll take  
20 pictures of any kind of identifying marks or scars or any kind  
21 of injuries that may be present on the body. And all of that  
22 usually is done in tandem, those photographs, with our  
23 forensic technicians as well as either a CSA or CSI that's  
24 present at the time.

25           Q     Okay. So the photographs tend to be somewhat

1 similar between what you guys have as your -- from the  
2 coroner's office and would end up with the Metro file with the  
3 crime scene analyst; is that right? Because you're taking the  
4 same photos of the same body?

5 A That's correct. The slight difference might be is  
6 that we always in our picture have a little -- a placard or a  
7 little ruler that's in there that will have the case number  
8 that's assigned to this particular body, hence this particular  
9 case. So we will at least always have that in one of the  
10 shots. For example, if you're doing a wide angle shot you'll  
11 have the placard in -- in the presence of the picture, but if  
12 you get in closer up the camera will only focus on that  
13 placard. So sometimes we remove the placard to get a shot of  
14 whatever we're trying to identify in that photograph.

15 Q Okay. And you -- this was the standard procedures  
16 for this particular autopsy of Mr. Holland; is that right?

17 A That's correct.

18 Q Okay. And so eventually you -- you become involved  
19 after some of this processing is done and then what is it that  
20 your involvement -- well, what do -- what do you do once  
21 you're involved?

22 A Once -- once the body is finished going through that  
23 processing I will examine the body and then I will make  
24 certain that if there's any injuries or anything that I see on  
25 the body that needs to be photographed, I'll make sure that

1 that has been photographed. And if there's anything  
2 additional that I want photographed I will tell them to  
3 photograph it at that time. In addition, I will document  
4 anything that I see that's present on the body, whether it's  
5 injury or identifying marks or scars or perhaps medical  
6 intervention. And then I will begin the autopsy process of  
7 eviscerating the body. And that's also done in conjunction  
8 with a forensic technician.

9 Q Okay. And in this particular case, are you aware  
10 that there was some medical intervention?

11 A Yes.

12 Q Okay. And what generally was that, do you know?

13 A Usually -- an oral tracheal tube and intravenous  
14 lines, EKG pads.

15 Q Okay. And do you make some assessment as to the  
16 nature of the overall body in terms of weight, length and  
17 potential age?

18 A Yes.

19 Q And in this particular case, did you document that  
20 as well?

21 A Yes.

22 Q And approximately what was the weight and height, do  
23 you know?

24 A Yes. He was about 292 pounds and about 75 inches  
25 long, so about six foot three.

1 Q Okay. And you also as a part of your report make a  
2 pathologic diagnosis; is that correct?

3 A That's correct.

4 Q What does that mean?

5 A Part of the way I create my autopsy report is in  
6 addition to doing a descriptive portion I will also do  
7 something called the pathological diagnosis. And that will  
8 bullet point or outline the different things that I've  
9 identified in my examination. And that was designated under  
10 the pathological diagnosis.

11 Q The things you thought were important.

12 A Correct.

13 Q Important to your decision regarding cause and  
14 manner to some extent?

15 A To some extent cause and manner. Some of the things  
16 may be related to underlying diseases that may or may not have  
17 contributed to death.

18 Q All right. In this particular case your first  
19 pathological diagnosis that you identified was a gunshot wound  
20 of the right chest; is that right?

21 A That's correct.

22 Q Okay. And I think you called it an intermediate  
23 range. What does that mean?

24 A I believe it's indeterminate.

25 Q I'm sorry, indeterminate range.

1           A     That's correct. An indeterminate range, when we  
2 look at range of fire we can look at different qualities on  
3 the body itself to help us determine that. If something is in  
4 contact we can generally find soot present on the body from  
5 the discharge of the missile into the body. If something is  
6 at a close or an intermediate range we can find something  
7 called stippling present on the body. Stippling occurs from  
8 unburned gunpowder particles. So as the missile is projecting  
9 towards the target there's gunpowder that will burn off. And  
10 if it doesn't have enough time to burn off as it's traveling,  
11 it will actually burn into the skin and create what we call  
12 stippling on the skin. So that will give us an idea that  
13 there's a close to intermediate range of fire involved.

14               If we have no soot, we have no stippling present on  
15 a body, we're talking about an indeterminate range. That  
16 means we've gone further back and there's been time enough for  
17 the gunpowder to burn off after it's come out of the -- the  
18 muzzle of the gun and hit the body or hit the target.

19           Q     The soot or stippling, is that affected by whether  
20 they're wearing clothes?

21           A     It can be affected by intermediary objects. It  
22 could be affected if somebody was shot through a door or a  
23 window. But of course it can be affected by something that's  
24 present on the body as well, it might be clothing for example.

25           Q     Does clothing necessarily preclude stippling or soot

1 from appearing in your analysis if it's a close range gunshot?

2 A No. I've seen stippling present and I've seen soot  
3 present on bodies that have been beneath clothing or with  
4 clothing on them.

5 Q In this particular case with regard to the gunshot  
6 wound of the right chest, now you said indeterminate range  
7 meaning I assume that there was no soot or stippling?

8 A That is correct.

9 Q Okay. I'm going to put what's already actually in  
10 evidence as Exhibit 34. Is this a picture -- and you've  
11 reviewed your photos before you came here today, I'm assuming,  
12 right?

13 A Yes, I did.

14 Q Okay. The -- is that a photo of the upper right  
15 gunshot wound that you were talking about?

16 A Yes, it is.

17 Q Okay. And what can you tell us about that? How do  
18 you determine that it's an entrance wound versus for instance  
19 an exit wound?

20 A As you can see that this is his front, his chest,  
21 and it's just above the nipple on the right upper chest that  
22 there's an entrance gunshot wound right at the end of the line  
23 that I've just drawn. One of the qualities that makes an  
24 entrance gunshot wound an entrance is that it has an abraded  
25 edge to the surface. As the bullet enters into the body or

1 the missile would enter into the body, it will abrade, it will  
2 scrape along the skin as it pushes into the body and that  
3 causes an abrasion. As a bullet travels through the body it  
4 will actually tear out of the other side and cause a  
5 laceration as it exits. So the quality of this wound has the  
6 qualities of the entrance wound, which is the abraded edges  
7 around this defect that's in the center.

8 Q Thank you. In this picture we're taking here is  
9 after the body has been cleaned I'm assuming; is that correct?

10 A Yes. This is cleaned and we also -- if someone has  
11 a lot of hair on their chest we will try to shave that area to  
12 demonstrate all the qualities we can of the entrance area as  
13 well.

14 Q And with this particular gunshot wound, was there  
15 essentially associated injury internally?

16 A Yes, there was.

17 Q And what was that?

18 A This gunshot wound perforated into his chest, went  
19 through his right upper lung, went through the heart at the  
20 level of the aorta and the aorta is the major vessel that  
21 comes off of the heart that pumps all the blood into the rest  
22 of your body. So the missile went -- the bullet went through  
23 that, went through his left lower lung and then it went out  
24 the left mid back.

25 Q Okay. So you -- you determine the interior injury,



1 the aorta that's -- you said the heart's pumping blood through  
2 your aorta; is that correct?

3 A That's correct.

4 Q And -- and so perforating the aorta, what is the  
5 result of that?

6 A Consequently, he had over 2,000 milliliters, so a  
7 big two liter bottle, of blood -- more than that, present in  
8 his chest cavity.

9 Q Would that also, based upon the injuries you saw,  
10 allow for blood to come out of those injuries externally?

11 A You can see blood come out of the wounds that are  
12 created. They're essentially an easy pathway because it's  
13 opened and opened to the outside of the body and the  
14 environment.

15 Q And I'm assuming by your description that this is a  
16 large amount of blood.

17 A Yes. You have approximately 5,000 milliliters of  
18 blood within your body and he had a little over 2,000  
19 milliliters within his chest cavity.

20 Q Okay. So that doesn't account for what escaped  
21 through the exterior of those injuries; is that right?

22 A Correct.

23 Q Okay. When -- what is your opinion as to the effect  
24 -- if someone was let's say standing up and they receive that  
25 type of a gunshot wound through their aorta, what is the

1 likely effect of that gunshot wound in terms of immediacy?

2 A He would collapse pretty immediately and you may see  
3 -- hear -- see or hear a little bit of gurgling but he would  
4 die very quickly. Even if he was in an emergency situation  
5 it's unlikely with this literally tearing through the aorta  
6 that he would be savable.

7 Q Okay. Now you said also that the -- were you able  
8 to recover the bullet that would have caused this gunshot  
9 wound?

10 A Not from this particular wound, no.

11 Q And why is that?

12 A It exited out the left back, left mid aspect of the  
13 back.

14 Q I'm showing you 37. Can you see the exit wound in  
15 that photograph?

16 A Yes.

17 Q And that had the tearing on it that you talked about  
18 from the laceration exiting?

19 A Yes. And if you look towards the top edge of this  
20 particular wound you can actually see a little skin tag that's  
21 hanging off of there and that's an example of a laceration  
22 where it tears out of the body.

23 Q Okay. And so were you able to determine a  
24 trajectory of the bullet that went from the right shoulder to  
25 -- is it the left back?

1           A     Yes.

2           Q     Okay. And so is that -- what did you determine the  
3 trajectory was?

4           A     It went from front to back from left to right and  
5 downward.

6           Q     Downward meaning from -- if you're standing up,  
7 downward.

8           A     Correct.

9           Q     Okay. You also determined through your pathologic  
10 diagnosis that there was a second gunshot wound?

11          A     Correct.

12          Q     Okay. And where was that?

13          A     That was in the buttock, the left buttock.

14          Q     And we talked before about stippling soot so you  
15 could determine the range of the shot. Did you make a  
16 determination at least with what you received as to the range?

17          A     It's indeterminate.

18          Q     Meaning no stippling, no soot.

19          A     Correct.

20          Q     Okay. I'm going to show you Exhibit 39. What do we  
21 see in 39?

22          A     This is an entrance gunshot wound of the left  
23 buttock. Again, you can see the qualities I described earlier  
24 that has an abraded edge, like it's scraped as it -- the skin  
25 as it went in -- inward. It has a circular abrasion that's

1 around the defect. And this is an entrance gunshot wound of  
2 the left buttock.

3 Q And also, were you able to determine a trajectory?

4 A Yes.

5 Q And is that as a result again of any internally  
6 associated injuries?

7 A Correct.

8 Q And what were the internal associated injuries?

9 A This gunshot wound went through the left buttock,  
10 into the pelvic region, through the intestines and then out  
11 towards the abdomen and almost exited just to the right side  
12 of his belly button through -- by the umbilicus.

13 Q So your determination as to trajectory then would be  
14 what?

15 A It was going from left to right, back to front, and  
16 upward.

17 Q Okay. Now you talked about almost exiting. Can you  
18 describe that for me?

19 A In this case there's a near exit in that there's a  
20 slight laceration to the wound at the abdomen and then beneath  
21 that I found the missile present in that location.

22 Q So I'm going to go back to Exhibit 34. Is that the  
23 near exit wound that you're referring to?

24 A Yes. Just for some perspective, the belly button is  
25 towards the bottom and then his right nipple is towards the

1 top of this -- of this picture. And then this area that has a  
2 slight green discoloration to it is the exit wound or the near  
3 exit wound.

4 Q Now, you're saying near exit wound. What -- the  
5 bullet almost got out but didn't?

6 A Correct.

7 Q Okay. So you actually found the bullet inside the  
8 stomach; is that correct?

9 A It's in the soft tissues just beneath this wound  
10 that you see here on the photograph.

11 Q You also, I'm assuming, looked at the actual bullet  
12 itself?

13 A Yes.

14 Q Okay. And did you have -- between the fact that  
15 there's this near exit wound and looking at -- well, can you  
16 describe the bullet that you found and any uniqueness to the  
17 bullet that you found?

18 A Yes. It was a copper jacketed, mildly deformed  
19 missile that had a flattened edge to the tip of it.

20 Q Okay. And between the flattened edge and this near  
21 exit wound, can you make any opinions as to -- I mean, what's  
22 your opinion as to how that bullet remained in the tissue?

23 A In my opinion it probably occurred that his abdomen  
24 was against a flat surface that didn't allow the bullet to  
25 exit out of the abdomen, it only nearly exited, created this

1 laceration but couldn't get all the way out and ended up  
2 staying right there in the soft tissues just beneath this  
3 wound that we see.

4 Q Okay. This particular gunshot wound, let's assume  
5 he didn't have the first gunshot wound, is it in itself fatal?

6 A This wouldn't be instantaneously fatal but because  
7 it perforated so many of the bowel loops, the contents of  
8 those loops of bowel, in other words your intestinal contents,  
9 were out inside of the body. In addition, there wasn't a lot  
10 of blood present in my opinion. The wound that was to the  
11 chest that emptied the aorta blood into the chest cavity,  
12 provided -- released a lot of that blood into his upper chest  
13 area and there wasn't that much blood present through the  
14 vessels that were transected by the one that went from the  
15 buttock through his intestinal area.

16 Q Based upon these two gunshot wounds, can you make an  
17 opinion as to which would come first and which would come  
18 second?

19 A In -- in my opinion the chest wound is first.

20 Q And that's because of its immediate damage?

21 A Immediate damage and it's consistent also with the  
22 other wound of him having collapsed and most likely being face  
23 down such that that missile couldn't exit his body.

24 Q You also made some pathologic diagnosis referring to  
25 blunt force injuries; is that correct?

1 A That's correct.

2 Q Okay. And the first one you noticed was a contusion  
3 of the left upper eyelid; is that right?

4 A That's correct.

5 Q I'm showing you 43. Is that a photograph of what  
6 you're referring to?

7 A Yes.

8 Q Okay. And what is -- when you refer to a -- well,  
9 let's talk about blunt force first. When you use the term  
10 blunt force, what are you referring to?

11 A There's different types of injuries. We've been  
12 discussing gunshot wounds. There are also sharp force  
13 injuries but then there's blunt force. Something that occurs  
14 by either the body hitting some type of object or some type of  
15 -- most likely stationary thing or some other stationary item,  
16 if you will, or some other thing hitting that individual that  
17 creates injuries that are contextually called blunt force  
18 injuries. Those injuries can include a contusion, which we  
19 see here, which is also called a bruise. It can be a  
20 laceration, which would be a tear of the skin. And it can  
21 cause an abrasion, which would be a scraping of the skin.

22 Q In this case you're referring to a contusion. This  
23 is a contusion?

24 A That's correct.

25 Q Like a bruise?

1 A Correct.

2 Q Okay. So it'd be difficult for you to opine as to  
3 how this might have occurred?

4 A That's correct.

5 Q Okay. If someone -- like you talked about the  
6 initial gunshot wound causes someone to fall down relatively  
7 immediately, is it possible that something like hitting your  
8 head on the ground would cause this type of a contusion?

9 A It's possible.

10 Q Additionally, in your pathologic diagnosis you  
11 talked about blunt force injuries of the extremities; is that  
12 correct?

13 A Correct.

14 Q Okay. And you talked about abrasions of the  
15 knuckles; is that right?

16 A That's correct.

17 Q I'll show you what appears to be the right hand, 41;  
18 is that right?

19 A That's correct.

20 Q Okay. And when you say abrasions, again, you're  
21 referring to what?

22 A Abrasions are scrapes.

23 Q Okay. What's the difference between I guess a  
24 scrape and a contusion? You probably already kind of  
25 described it.



1       A     A scrape is where you've kind of taken off the  
2     superficial layer of the skin and exposed the underlying  
3     layers. And a contusion is where you remain -- the skin layer  
4     on top remains intact but you've injured the blood vessels  
5     just beneath that and they've caused that bruise, that -- that  
6     discoloration.

7       Q     Let me look at -- well it's actually right hand.  
8     How about Exhibit Number 42, have you seen that?

9       A     Yes.

10      Q     Okay. And what is that?

11      A     The left hand.

12      Q     Okay. And what damage -- or what were your findings  
13     with regard to the left hand?

14      A     There are abrasions on the knuckles and there are  
15     contusion present on the finger.

16      Q     Which finger had the contusion?

17      A     It's the left index.

18      Q     Meaning the pointer finger?

19      A     Correct.

20      Q     So one's from -- is -- there's no breaking of the  
21     skin, the other one the abrasion there is. Is that fair to  
22     say?

23      A     Correct.

24      Q     Okay. Again, is it possible that these type of  
25     injuries could be caused from the falling down onto the

1 ground?

2 A It's possible.

3 Q We talked about -- I don't know that I -- contusions  
4 of the calf; is that right?

5 A Correct.

6 Q Okay. And a contusion is a bruise?

7 A Correct.

8 Q Okay. And did that appear to be a recent bruise?

9 A Yes.

10 Q When you talk about recency of a contusion, what are  
11 you referring to?

12 A Contusions are difficult to date specifically, but  
13 there's a general change in the color of a contusion as it  
14 progresses to healing. Some people heal faster than other  
15 people. Some people bruise easier than other people. And I'm  
16 sure all of you have had that. The bruise that starts  
17 initially tends to be more of a purple blue in color. As it  
18 progresses and the body heals that area, it will progress into  
19 being more of a brown yellow color.

20 These bruises that I see here, some of them do have  
21 a -- a pinker quality to them. But that can happen with the  
22 -- the fresh ones. They don't always have to be that bright  
23 purple blue that a lot of you may be more familiar with. The  
24 -- these bruises that are present here, these contusions, are  
25 recent in that they have those colors that are consistent with

1 a fresh injury. They don't have those changes that you see of  
2 the brown yellow after a period of healing.

3 Q Okay. When you say recent, can you describe what --  
4 kind of what recent means?

5 A Most of these are consistent with being at or around  
6 the time of death.

7 MR. BATEMAN: May I approach your clerk? I have one  
8 additional exhibit [indiscernible].

9 THE COURT: Yes.

10 MR. BATEMAN: Thank you. I thought I had it in  
11 there. May I approach briefly?

12 THE COURT: Yes.

13 BY MR. BATEMAN:

14 Q Showing you what's been marked as State's Proposed  
15 115. Is that what you're referring to?

16 A Yes.

17 Q In the bruise. Okay.

18 MR. BATEMAN: Move for admission of 115.

19 MS. LEMCKE: No objection.

20 THE COURT: It will be admitted.

21 (State's Exhibit 115 admitted.)

22 MR. BATEMAN: May I publish?

23 THE COURT: Yes.

24 BY MR. BATEMAN:

25 Q When you say -- so this would have been you thought

1 within 20 -- what, 24 to 48 hours of your autopsy or did you  
2 even give that kind of a time frame?

3 A Not within the autopsy, we're talking at the time of  
4 death.

5 Q Okay. And so how do you determine that it's  
6 approximately would have been about the same time of death?  
7 Just by the coloring?

8 A Part of that's the -- the color changes.

9 Q And how long -- how long -- how much time transpired  
10 between the time of death, to your knowledge, and when you're  
11 taking these photographs?

12 A I don't recall.

13 Q Okay. You also talked about an abrasion of the  
14 right knee; is that correct?

15 A Correct.

16 Q Exhibit 44. Is that what we're looking at there?

17 A Ready?

18 Q Sorry, moving it on you.

19 A That's the abrasion near the right knee.

20 Q Okay. Again, that's the scraping of the skin rather  
21 than the skin not breaking and having a bruise behind it?

22 A That's correct.

23 Q Okay. And again, that -- could that be consistent  
24 with falling down onto one's knee on a sidewalk for instance?

25 A Correct.

1 Q Okay. I just -- before I continue, back to the  
2 bullet that you were -- we talked about being unusual because  
3 it had that flattened edge. Is that abnormal for you to see?

4 A I can see that from time to time. It depends on  
5 whether or not a bullet or missile has hit something else  
6 during its trajectory or if something on the -- on the way out  
7 of the body and hasn't quite exited the body. It does happen.

8 Q It does happen. Requires the body to be up against  
9 a hard surface?

10 A Yes, generally.

11 Q Okay. You -- you made some mention of -- in your  
12 pathological diagnosis of obesity; is that correct?

13 A Correct.

14 Q And what -- what are you referring to?

15 A The size of the -- the height of the individual  
16 relative to the weight of the individual.

17 Q And so what was your determination in this case?

18 A That he's obese.

19 Q He's overweight?

20 A More than overweight. There's a normal, overweight  
21 and then obese and he's in the obese category.

22 Q So like when you're talking -- I think you mentioned  
23 something around 290 pounds; is that right, as what you  
24 determined?

25 A Correct.

1           Q     But that 290 can be somebody that's really fit and  
2     has all muscle; is that right, and they're not obese?

3           A     Correct.

4           Q     Okay. Someone's not as fit and maybe a little bit  
5     chunkier they could be considered -- once you hit some level  
6     of obesity; is that right?

7           A     That's correct.

8           Q     Okay. Lastly, we talked -- you mentioned in here  
9     some methamphetamine intoxication. How did you determine --  
10    make that determination?

11          A     Whenever we do an autopsy we gather specimens and  
12    some of those specimens might include peripheral blood for  
13    example. And that would be similar to if you went to give  
14    blood in the doctor's office to get some bloodwork done. We  
15    will take that blood from the femoral inguinal area, down in  
16    the groin area, and we'll use that blood to test for any  
17    common drugs of abuse or any alcohol that's present within the  
18    system. And that's what we did in this case. And in this  
19    case I believe actually we used chest blood in this case. I  
20    would have to check for certain in the report. And the blood  
21    that we tested identified methamphetamine and amphetamine in  
22    his system.

23          Q     So what's the difference?

24          A     Amphetamine you can find as part of a metabolite of  
25    pills that are sometimes given for people who have attention

1 deficit disorder. But it's also seen as a metabolite of  
2 methamphetamine.

3 Q What's a metabolite?

4 A Methamphetamine, like any other drug, once it's  
5 taken into the system it's broken down by your liver into its  
6 breakdown products and those are what are called metabolite.

7 Q And so in this particular case you made a  
8 determination of methamphetamine intoxication. Was it a -- at  
9 least as the toxicology report came back to you, it identified  
10 a large level of methamphetamine.

11 A Yes, it did. He had a level that would be  
12 considered toxic lethal.

13 Q When you say toxic lethal, what are you referring  
14 to?

15 A For someone who might be a naïve user, for example,  
16 the amount that was in his system would kill that person. But  
17 as somebody who's taken methamphetamine regularly or is a  
18 chronic user, they can tolerate much higher levels of  
19 methamphetamine and therefore have high levels within their  
20 system that don't necessarily cause their death.

21 Q Is -- are you otherwise saying you build up a  
22 tolerance?

23 A Yes.

24 Q That's similar to maybe an alcoholic, for instance?

25 A Correct.

1 Q Or any other illicit drug user?

2 A Either illicit or prescription.

3 Q Or prescription, okay. So the more you take it the  
4 more you need additional of the same to get to the same high,  
5 if you will?

6 A Yes.

7 Q Now, do you have training with regard to -- with  
8 regard to illegal narcotics, legal narcotics and their  
9 effects? What type of training do you specifically have?

10 A That's part of your forensic pathology training to  
11 understand what these drugs are and what they do to an  
12 individual, whether it be causing their death or alter -- or  
13 altering their behavior in some way.

14 Q And why do you need to know for altering the  
15 behavior?

16 A There are different things that can happen to an  
17 individual. One of the things that we talk about is excited  
18 delirium and whether or not someone, as a result of taking  
19 these stimulant medications, can develop a psychosis or  
20 hallucinations to the point that they've lost touch with  
21 reality and have evidence of having super human strength or  
22 something of that nature. Sometimes their temperature can  
23 actually rise significantly and even cause further damage  
24 based on the increase of their temperature.

25 Q And how does that relate ultimately to your decision



1 regarding cause and manner of death, for instance?

2 A In situations where you have someone that's been  
3 shot or someone that's hanged themselves, those types of  
4 things trump any kind of medication that they may have in  
5 their system. The gunshot wound is going to overrule the  
6 drugs that are in the system in terms of the cause of death.  
7 It's -- they died because they got shot, in this particular  
8 case through the aorta and through the -- the intestines.  
9 They die as a result of that, it's secondary, and it just  
10 happens to be that they have drugs onboard.

11 Q All right. And you -- you talked about that you  
12 need to know a little bit of its effects on the body to  
13 determine things like excited delirium. When do you see --  
14 let's take the excited delirium. When do you see that occur  
15 and relate it to a cause and manner of death situation?

16 A Often I've seen that when you've had law enforcement  
17 trying to detain someone who appears to be high, for example,  
18 and they become detained and during that process of detaining  
19 them they may die. And that's a lot of times that we see the  
20 context of excited delirium. Other situations in which you  
21 can see excited delirium sometimes occur within psychiatric  
22 facilities, for example. And some people have psychotic  
23 events that may not necessarily be related specifically to  
24 drugs but you can have that delirium that leads them into the  
25 psychoses and these evidence of having super human strength

1 and then they may die during the process where they're trying  
2 to be restrained in those situations.

3 Q In this particular case the methamphetamine didn't  
4 cause the death.

5 A That's correct.

6 Q And as we talked about, if you're a more chronic  
7 user the effects of methamphetamine may be different for a  
8 more chronic user than someone that just took it for the first  
9 time.

10 A That's correct.

11 Q And you talked about this individual being obese,  
12 390 pounds. Typically, do you need to take the larger size --  
13 does the size of the person have some effect of -- on how the  
14 amount of drug affects them?

15 A It can. It depends on the volume of distribution of  
16 that particular drug.

17 Q So is it fair to say it's a little bit different for  
18 everyone if you don't know what their history of usage is and  
19 kind of it can be different for different people in terms of  
20 the effect?

21 A Yeah, the effect can be different for different  
22 individuals.

23 Q I just want to -- before I ask the last couple  
24 questions I want to go back to the -- the contusion on the  
25 left knee. Is it possible that that contusion could have

1 occurred say 24 hours prior to the time of death?

2 A It's an abrasion that's on the left knee, not a  
3 contusion.

4 Q I'm sorry, the contusion, the bruise.

5 A Are you referring to the contusion that's on the  
6 calf or are you--

7 Q The calf, excuse me. The calf --

8 A -- referring to the -- okay. The contusion that's  
9 on the calf, it's possible that occurred within a 24-hour  
10 period prior to death.

11 Q Okay. And then finally, you make again pursuant to  
12 requirements, you make a determination as to cause and manner  
13 of death pursuant to statute; is that correct?

14 A That's correct.

15 Q Okay. And when you're talking about cause, what are  
16 you referring to?

17 A The cause of death is the root cause that resulted  
18 in this person dying.

19 Q And the root cause in terms -- in your medical  
20 professional opinion is what?

21 A Gunshot wounds of torso.

22 Q Okay. And then you also have manner of death. Can  
23 you identify the various manners of death?

24 A Manners of death include natural, for example,  
25 someone dies of a heart attack or atherosclerotic

1 cardiovascular disease. It can be suicide, somebody's gunshot  
2 wound to the head. Accident, like a motor vehicle collision  
3 or taking too much of some drug. Or homicide. The other  
4 category that we also use is called undetermined. If there's  
5 conflicting manners of death or, for example, you find a  
6 skeleton out in the desert and you don't really have  
7 information about that, that would be undetermined.

8 Q In this particular case, your ruling -- or your  
9 opinion, your medical opinion as to manner of death was what?

10 A Homicide.

11 MR. BATEMAN: I will pass the witness, Your Honor.

12 THE COURT: Cross.

13 CROSS-EXAMINATION

14 BY MS. LEMCKE:

15 Q And homicide's not a legal term, is it?

16 A Homicide is not a legal term, that's a forensic  
17 term.

18 Q It's a forensic term that is -- that doesn't have  
19 any regard to what -- well, let me ask you this. It's a  
20 forensic term that means death at the hands of another, fair?

21 A That's correct in the most basic sense.

22 Q And when you say the most basic sense you mean it's  
23 not taking into account whether or not it's death at the hands  
24 of another. It's murder versus manslaughter or say in  
25 self-defense, it doesn't account for any one of those.

UNCERTIFIED ROUGH DRAFT

1 A That is correct.

2 Q And it doesn't reflect any one of those in  
3 particular.

4 A That is correct.

5 Q Okay. So in talking about the death in this  
6 particular case, okay, so if I understand you then, the -- the  
7 gunshot wound that entered just above the right nipple and  
8 exited out the mid left side back, that was the one that you  
9 determined to be fatal.

10 A That's correct.

11 Q And almost instantaneously fatal.

12 A Correct.

13 Q Within a few seconds, give or take a little bit here  
14 or there, death would have been occasioned.

15 A Death would have been within seconds. I don't think  
16 it would have been minutes.

17 Q Okay. And now let's talk about that particular  
18 injury for just a minute. You indicated that -- well, let me  
19 ask you this. When you actually do the measurements in terms  
20 of where a wound -- whether there's a defect in a body that  
21 you're performing an autopsy on, oftentimes you'll measure  
22 from the top of the head down to get relative measurements; is  
23 that fair?

24 A Correct. One of the ways that we look at the body  
25 and the only way that we're able to is our individuals

1 obviously are not standing up for us, they're laying on a  
2 table. And they're often in the anatomical position where  
3 they're laying flat and they're generally facing forward if  
4 we're looking at the front of the body. And the hands would  
5 be down at the sides and the -- often the palms may or may not  
6 be turned forward. That's what we call the anatomical  
7 position. And we use that particular position when we talk  
8 about where wounds are located and what the trajectory might  
9 be in terms of how a missile might have traveled through the  
10 body. And that kind of gives the -- a scientific connection  
11 between case to case, if you will, by looking at the bodies in  
12 that way.

13 Q And with this you can take kind of more precise  
14 measurements on actually where a wound say enters and exits  
15 relative to one another.

16 A That's correct.

17 Q And so in this particular case, with respect to the  
18 gunshot wound that entered the upper right chest, you  
19 determined that that one was about 13 and a half inches from  
20 the top of the head?

21 A Yes, approximately.

22 Q And the exit to the mid lower back area was about 21  
23 and a half inches from the top of the head?

24 A Yes, approximately.

25 Q So we're talking about a downward trajectory of at

1 least about seven inches. Is that fair to say?

2 A That's fair to say.

3 Q Okay. And again, it entered on the right side of  
4 the chest?

5 A Correct.

6 Q Above the right nipple.

7 A Correct.

8 Q And it -- and it exited on the left side of the mid  
9 back.

10 A That's correct.

11 Q Okay. And that's where you got the right to left  
12 and downward trajectory.

13 A That's correct.

14 Q And when we talk about the trajectories, we're  
15 talking essentially about the missile kind of traveling in  
16 almost a straight line; is that fair?

17 A That's fair.

18 Q And that's because even though it's going through  
19 the body, it's not like, to use my way of referencing this,  
20 it's not like a -- a ball going through a ping pong machine,  
21 it actually travels in a more linear fashion; is that fair?

22 A Correct.

23 Q Even though it's going through the body, entering  
24 one side and exiting the other.

25 A That's correct.

1 Q And so in this case when you looked at that -- that  
2 bullet wound that entered above the right nipple you could  
3 actually determine that linear path that it traveled as it  
4 went through the body and then exited.

5 A That's correct.

6 Q And that's that linear path that you described as  
7 going right to left and downward.

8 A That's correct.

9 Q So to the extent that that particular wound went  
10 right to left and -- and downward, that particular shot did  
11 not go straight in the upper right chest area and exit  
12 straight out the upper right back.

13 A That's correct.

14 Q So that particular shot would not be consistent with  
15 somebody -- now we know that the decedent in this case was six  
16 foot three, somebody of say around six foot or maybe an inch  
17 or so less, standing straight on and shooting this gentleman  
18 with his arms straight up -- straight face to face.

19 A That's not consistent with that.

20 Q Okay. In fact, it would be more consistent because  
21 of the downward trajectory that that bullet traveled, it would  
22 be more consistent, again, if the assailant at that height was  
23 standing face to face with the decedent in this case, it would  
24 be more consistent with the decedent having bent over.

25 A It's quite possible he could be bent over.



1 Q Now, the wound to the left buttock, you indicated  
2 may have been fatal; is that right?

3 A That's correct.

4 Q But it -- this is a wound that possibly could have  
5 been treated.

6 A It's possible.

7 Q And with treatment the decedent could have maybe  
8 survived this.

9 A For the wound that occurred that went through the  
10 loops of bowel, that's possible.

11 Q Okay. Now, of course, there is obviously, you know,  
12 to the extent that there's disruption in that bowel area, the  
13 risk of infection even if there was surgical intervention; is  
14 that fair?

15 A That's fair.

16 Q And that infection could ultimately be fatal.

17 A That's correct.

18 Q But in terms of the wound itself causing immediate  
19 death, this one would not necessarily have occasioned death  
20 right away.

21 A That's correct.

22 Q And there -- with some treatment, again, had there  
23 been some relatively immediate treatment this wound could have  
24 been survivable.

25 A It's possible.

1 Q Okay. Now, let's talk about -- I just want to -- I  
2 want to go back to the -- Mr. Holland's hands. I want to make  
3 sure I have these. Okay. I'm going to show you what's been  
4 marked for identification -- or actually been admitted as  
5 Defense FF. And that is a picture of Mr. Holland's left hand.

6 A Correct.

7 Q Does that look right? I'm sorry. I'm asking you,  
8 is that a picture of his left hand? Sorry.

9 A Yes.

10 Q Okay. And I think Mr. Bateman showed you some  
11 photos of the hand already but I just kind of want to go  
12 through them in detail if I might. Okay?

13 A Yes.

14 Q You indicated that on the top of the hand here you  
15 noted a couple of contusions; is that right?

16 A No, those are abrasions.

17 Q Or abrasions, forgive me. Okay. And again, the  
18 difference between a contusion and an abrasion, just so the  
19 jury's clear, I know you mentioned this a little bit but so  
20 they understand, a contusion is like a bruise, right?

21 A Correct.

22 Q An abrasion is like a scrape or a scratch.

23 A Correct.

24 Q Okay. So when we look at these two abrasions they  
25 appear to be fairly recent.

1 A Yes.

2 Q In fact, recent relative to the time of death, so  
3 just before time of death.

4 A Yes, that's fair.

5 Q And these are consistent with -- well, they're --  
6 they're the result of some blunt force trauma.

7 A Correct.

8 Q And they are consistent with trauma that may have  
9 been -- that may have occurred during -- if somebody went to  
10 blows with fisticuffs to maybe use your word.

11 A Yes, this can occur with fisticuffs.

12 Q Okay. And fisticuffs again, meaning like fist  
13 fighting.

14 A Correct.

15 Q Where somebody takes their hand, balls it up in a  
16 fist and punches someone.

17 A It's possible that this resulted from something like  
18 that.

19 Q Okay. In fact, you've seen things like that before.

20 A I have.

21 Q Okay. And then I just want to show you what's been  
22 marked and admitted as Defense GG. And again, that's -- is  
23 that just a close-up of that same abrasion to that left hand?

24 A Yes. The abrasions on the left hand are pictured  
25 here.

1 Q Okay. And then moving on to Defense Exhibit HH.  
2 That one also again on the left hand. Now is this the knuckle  
3 area of the fingers?

4 A Yes. This is -- demonstrates the contusion that we  
5 saw on the index finger. This area that's closer to the ruler  
6 in this particular picture is some dried blood.

7 Q Okay. And again, these injuries appear to be recent  
8 relative to the time of death?

9 A Yes.

10 Q And again, these injuries also the result of some  
11 blunt force trauma?

12 A Correct.

13 Q Trauma that could have been occasioned in fisticuffs  
14 or during fist fighting.

15 A That's correct.

16 Q Again, where the hand is balled up and strikes  
17 something else.

18 A Yes.

19 Q And then let's do the same for the right hand.  
20 Doctor Gavin, I'm going to show you -- let's start with -- I'm  
21 going to put up Defense Exhibit DD. And does that appear to  
22 be Mr. Holland's right hand?

23 A Yes.

24 Q And again, looking at some of the injuries, let's go  
25 through them. There is like a linear abrasion at the top over

1 the forefinger; is that right?

2 A That's correct.

3 Q I'm sorry.

4 A That's correct.

5 Q Okay. And again, this appears to be a recent  
6 injury.

7 A Correct.

8 Q Consistent with some type of blunt force trauma.

9 A Correct.

10 Q And trauma that could have been inflicted during a  
11 fist fight.

12 A That's correct.

13 Q Again, with the hand balled up and striking  
14 something.

15 A Yes, could be.

16 Q And then moving on to the middle finger. Again, now  
17 we see another abrasion at that point?

18 A Correct.

19 Q And again, a recent injury.

20 A Correct.

21 Q That is recent relative to the time of death.

22 A Correct.

23 Q And the result of some blunt force trauma.

24 A Yes.

25 Q And trauma that would be consistent with a hand

1 being balled up and striking something.

2 A That's correct.

3 Q And same thing for the injury on the fourth finger,  
4 third finger at the knuckle and the joint area, again you see  
5 an abrasion?

6 A Correct.

7 Q And that again, the result of some blunt force  
8 trauma.

9 A Correct.

10 Q Trauma that would be consistent with the hand being  
11 balled up and striking something.

12 A Yes.

13 Q Okay. And then, just so that the jury is clear, I'm  
14 sure they will be but just so they know, I just want to show  
15 you Defense Exhibit CC. And that's just another photograph of  
16 that right hand; is it not? This one?

17 A Yes, that's correct.

18 Q Okay. And again, it shows those same injuries that  
19 I just described with you but just from a different  
20 perspective.

21 A That's correct.

22 Q Okay. And then again, showing you what's been  
23 marked and admitted as Defense EE. Again, that's that same  
24 right hand; is that fair?

25 A Correct, yes, that's fair.

1 Q And -- and that shows kind of a closer-up photo of  
2 that linear abrasion just above the first finger.

3 A Correct.

4 Q Now every once in a while you see what are called  
5 defensive wounds?

6 A Correct.

7 Q And this is something that you see sometimes when an  
8 individual is trying to defend themselves against an assailant  
9 who is trying to assault them?

10 A Yes.

11 Q And sometimes in shooting cases you'll actually see  
12 situations where an individual puts their hands up to -- I  
13 know it sounds almost -- well, I mean a hand wouldn't  
14 necessarily stop a -- a bullet that's traveling at it, would  
15 it not?

16 A That's correct.

17 Q But sometimes people, as a reaction to someone  
18 pointing a gun at them, might put their hand up in kind of a  
19 defensive posture this way.

20 A Yes.

21 Q And try to actually block the missile that would be  
22 discharged from the gun.

23 A Yes.

24 Q And sometimes when that happens you'll actually see  
25 some injury to one or more of the hand -- one or both hands

1 that is occasioned by the bullet actually hitting it.

2 A Yes.

3 Q You didn't see anything like that in this case.

4 A No.

5 Q And now, Mr. Bateman asked you some questions about  
6 the toxicology that was done and I had -- oh, there it is.  
7 Now, you indicated that as -- as a matter of course you do  
8 toxicology screens when you perform an autopsy; is that right?

9 A That's correct.

10 Q And that's where again you take blood and you send  
11 it off to a lab to be analyzed to see if there's any kind of  
12 substances, illegal or otherwise, in somebody's system.

13 A That's correct.

14 Q And you do that as a matter of course.

15 A Correct.

16 Q And you rely on these.

17 A Correct.

18 Q It's part of what factors into your autopsy report?

19 A Yes.

20 Q And your ultimate conclusions regarding cause and  
21 manner of death.

22 A Yes, it can.

23 Q And you did that in this particular case.

24 A Yes.

25 MS. LEMCKE: Your Honor, I am going to at this time



1 show the -- show the witness what's been marked for  
2 identification as Defense KK. Your Honor, I'm going to ask to  
3 approach the witness with KK.

4 THE COURT: Okay.

5 BY MS. LEMCKE:

6 Q I'm going to ask you to take a look at this. Is  
7 this the toxicology screen that was done in this particular  
8 case?

9 A This is one piece of the screen that we get.  
10 There's a report that's generated that's sent to our office  
11 and this is one page of that report.

12 Q What about on the second page?

13 A The same again. This is another page of that  
14 report. There's three pages in this particular report, these  
15 are only two of them.

16 Q Okay. So there's a third page that's missing?

17 A From this particular packet, yes.

18 Q Okay.

19 MS. LEMCKE: Court's indulgence.

20 BY MS. LEMCKE:

21 Q What would page one be?

22 A The drugs that were positive in the system as well  
23 as the specimens that were obtained.

24 Q Okay. I've got it. Forgive me. The copy that I  
25 have marked didn't have page one. All right.

1 MS. LEMCKE: I'm going to ask you to mark this one.

2 THE COURT: How are you marking it?

3 THE CLERK: I'm just going to do a KK.

4 THE COURT: The missing page is now part of KK.

5 THE CLERK: Correct.

6 MS. LEMCKE: Well, that's a whole entire -- well --

7 THE COURT: No, she's -- that's what I just said,  
8 she's marking it.

9 MS. LEMCKE: Okay. Now it's complete.

10 THE COURT: Yes.

11 MS. LEMCKE: All right. May I approach again? I'm  
12 glad you caught that.

13 BY MS. LEMCKE:

14 Q All right. Doctor Gavin, let me show you again  
15 what's been marked as Defense KK and ask you to take a look at  
16 that.

17 A Okay.

18 Q And that is the toxicology screen that was done in  
19 this particular case?

20 A Yes.

21 Q And that's the complete report now?

22 A Yes.

23 Q All three pages?

24 A Yes.

25 Q Okay. And the -- one of the things that the

1 toxicology -- oh, actually, and again, this is -- this is the  
2 report that you rely on in making your determinations  
3 regarding cause and manner of death?

4 A Yes, it can be if it's relative to the case as we  
5 spoke about earlier. If you have gunshot wounds those are  
6 going to trump that information. If you have hangings, the  
7 hangings or the gunshot wounds would trump the information if  
8 there's substances in there that would normally be toxic or  
9 lethal or something to that nature.

10 Q But you generate these as a matter of course. I  
11 mean, this is something that you do routinely when you do your  
12 autopsies.

13 A Yes.

14 Q And you rely on them in putting your conclusions  
15 together as to what happened in a particular case.

16 A That is correct.

17 MS. LEMCKE: Your Honor, at this point I would move  
18 the admission of Defense KK.

19 MR. BATEMAN: I'm going to object as to the -- at  
20 least a portion of it having hearsay unrelated to what her  
21 analysis would be on cause and manner.

22 THE COURT: Okay. Approach.

23 (Off-record bench conference.)

24 THE COURT: So the objection is sustained.

25 BY MS. LEMCKE:

1 Q Okay. Let me ask you some questions about then  
2 what's actually in the toxicology report. Again, one of the  
3 things that it screens for is methamphetamine.

4 A That's correct.

5 Q And methamphetamine is Schedule II stimulant as  
6 listed by the Drug Enforcement Administration?

7 A Yes.

8 Q It is a stimulant -- well, let me ask you this. The  
9 report itself, not only does this report, the toxicology  
10 report that you generate or that you request be generated, it  
11 will actually screen for substances, but there's a description  
12 of the effects of the substances in the report; is that fair?

13 A They will generate some basic information to provide  
14 to their clients about what that drug is and what that drug  
15 might do in terms of the effects on the body, whether it be  
16 through behavior or whether it be through lethality.

17 Q Okay. And you have, as you indicated on direct  
18 examination, you have some training with respect to narcotics  
19 and the effect that they have on the system.

20 A Yes.

21 Q So you're familiar with some of the information  
22 that's generated pursuant to this report.

23 A Yes.

24 Q All right. So when we talk about methamphetamine  
25 again, it is, as the report indicates, an abused substance

1 because of its stimulative effects?

2 A Yes.

3 Q And it's addictive.

4 A Yes.

5 Q It can cause violent behavior.

6 MR. BATEMAN: I'm going to object as it relates to  
7 cause and manner and her opinion in this case, relevance. I'm  
8 sorry. I apologize, Your Honor. It's a relevancy objection  
9 in its relationship to her ultimate determination in this case  
10 which is cause and manner. As counsel noted, there's no  
11 self-defense manner, it's at the hands of someone else. This  
12 information as to what it would cause or how it would cause a  
13 person to act I'm going to object as to relevance.

14 THE COURT: Well, I guess I'm -- self-defense isn't  
15 a manner of death, so I'm not --

16 MR. BATEMAN: Exactly. That's my point. So if  
17 you're talking about what might cause an individual, how they  
18 would act, I don't think it's relevant to cause and manner,  
19 the person, the decedent.

20 THE COURT: Would you like to be heard?

21 MS. LEMCKE: Well, number one, Mr. Bateman asked  
22 extensively about the amount of methamphetamine that was -- or  
23 the fact that there was methamphetamine found in the system  
24 and whether or not it would have any effect on this particular  
25 individual given his size, his weight and whether or not there

1 was chronic use versus non chronic use. He also asked about  
2 some of the hallucinogenic type, delirium type side effects  
3 that can result from this and I'm now going to point out a lot  
4 of the other effects that methamphetamine use can have on the  
5 system to the extent that they are relevant to explain why  
6 this particular decedent acted as violently and aggressively  
7 as he did over the course of this evening.

8 THE COURT: All right. So --

9 MR. BATEMAN: If I might, Your Honor. The  
10 methamphetamine use would relate to if that's what caused his  
11 death, that's the whole point of the questioning.

12 THE COURT: So I'm going to sustain the objection  
13 that it's not relevant. Additionally, it's beyond the scope  
14 of direct as to cause and manner of death.

15 BY MS. LEMCKE:

16 Q Okay. Then let me ask you about the amounts that  
17 were found in Mr. Holland's system. The toxicology report, in  
18 the report it will identify how much of the narcotic is found  
19 in an individual's system; is that right?

20 A Correct.

21 Q And then the report itself will also give you kind  
22 of a schedule of what you would expect how much it would take  
23 to induce certain side effects; is that fair?

24 A That's fair.

25 Q And at this particular report, what the toxicology

1 lab tells us is that blood levels of 200 to 600 nanograms per  
2 milliliter can induce the side effects that methamphetamine  
3 can produce; is that fair?

4 A That's fair.

5 Q And again, some of those side effects would be --

6 MR. BATEMAN: Objection as to whether the side  
7 effects have anything to do with cause and manner of death.  
8 That would be a relevance objection. I'm sorry, Your Honor.

9 THE COURT: Sustained as to relevance.

10 BY MS. LEMCKE:

11 Q Again, knowing that we had that 200 to 600 nanograms  
12 per milliliter threshold, in Mr. Holland's system the report  
13 determined that he had 6,400 nanograms per milliliter in his  
14 system; is that correct?

15 A That's correct.

16 Q And as to amphetamines, now my -- again, the  
17 toxicology screen screens not just for methamphetamine but for  
18 amphetamines also; is that fair?

19 A That's fair.

20 Q And amphetamines, if I understand you correctly, can  
21 be a metabolite of methamphetamine.

22 A That's correct.

23 Q Meaning that the body is basically breaking down the  
24 methamphetamine.

25 A Yes.

1 Q But it can also be a separate drug in and of itself.

2 A That's correct.

3 Q And if I understood you correctly -- oh, wait. Let  
4 me ask you this too. Mr. Bateman asked you a few questions  
5 about chronic abuse. Chronic abuse obviously can have an  
6 effect on somebody's tolerance for the narcotic; is that fair?

7 A That's fair.

8 Q And it can also have an effect on their mentition?

9 A Yes.

10 Q And by mentition I mean -- that's a word that you  
11 used with me -- by mentition you mean thinking.

12 A Yes.

13 Q So chronic meth use can impair an individual's  
14 ability to think.

15 A Yes.

16 Q And where the amphetamines are concerned, to the  
17 extent that the toxicology analysis determines that there's  
18 amphetamines in the system, there are -- amphetamines are  
19 sometimes given therapeutically; is that correct?

20 A That's correct.

21 Q In other words, they are -- they can be part of  
22 prescription medications that are given to treat certain  
23 illnesses or problems that people have.

24 A That's correct.

25 Q Such as like ADHD.



1 A Correct.

2 Q And in the toxicology report it notes kind of what  
3 the therapeutic ranges would be for an individual, an adult,  
4 who's been prescribed an amphetamine, and that therapeutic  
5 range, as noted in the toxicology report, would be somewhere  
6 in the area of 100 nanograms per milliliter in the blood; is  
7 that fair?

8 A That's fair.

9 Q And Mr. Holland's level of amphetamine found to be  
10 in his system was 410 nanograms per milliliter?

11 A That's correct.

12 MS. LEMCKE: Court's indulgence. Nothing further,  
13 Your Honor.

14 THE COURT: Redirect.

15 MR. BATEMAN: Very briefly.

16 REDIRECT EXAMINATION

17 BY MR. BATEMAN:

18 Q You were asked some questions about how quickly  
19 death would be occasioned from that first gunshot wound to the  
20 aorta; is that correct?

21 A Yes.

22 Q And that would cause -- would that cause relatively  
23 quickly someone to stop breathing?

24 A Yes. He's also shot through the lungs as well as  
25 the aorta.

1           Q     That's when CPR would normally be done?  CPR is  
2 normally done when someone stops breathing?

3           A     Yes.

4           Q     There was some questions about the injuries to the  
5 hands.  You again said that might be occasioned in a matter of  
6 seconds.  Would that be so quick as to cause someone to  
7 essentially lose consciousness when they're falling down to  
8 the ground?

9           A     Yes.

10          Q     And if they've lost consciousness that might be  
11 consistent with not being able to put their hands out to stop  
12 themselves?

13          A     Yes.

14          Q     You were asked some questions about the trajectory  
15 of that gunshot wound to the aorta being downward and right to  
16 left?

17          A     Yes.

18          Q     And I think that the position that Ms.  Lemcke put  
19 herself in was a gunshot wound -- I'm doing kind of what would  
20 normally be like a normal gunshot wound with the thumb up,  
21 straightaway towards someone else who's standing perfectly  
22 erect; is that right?

23          A     You mean a gunshot firing?

24          Q     A gunshot firing, correct.

25          A     Yes.

1           Q     So it would not -- if someone was -- if two people  
2 were standing next to each other looking at each other  
3 straight up and someone was pointing the gun perfectly  
4 parallel to the ground, then that would not be consistent  
5 because the gunshot wound was essentially not parallel through  
6 the body if the body was standing straight up.

7           A     That's correct.

8           Q     If the gun was moved upward, for instance, from  
9 where -- not straight out but perhaps in an upward fashion  
10 where it was pointing downward, would that cause a downward  
11 projector?

12          A     Yes.

13          Q     And that trajectory, would that have -- the  
14 trajectory in the body, would that have some relationship to  
15 the position that the, in this particular case, Robert Holland  
16 would have been in when he was shot?

17          A     Yes. Again, we determine our trajectory by the body  
18 laying in the anatomic position. In the moment that the event  
19 is occurring, the decedent themselves are moving, the gun is  
20 moving and the assailant, the person holding the gun is  
21 moving. So you have a lot of factors in terms of the  
22 environment around. So when we talk about trajectory in the  
23 forensic pathology environment in generating our reports, we  
24 talk about the anatomical position of the body and the  
25 trajectory of the missile through the body.

1 Q So if you're talking about them moving around, under  
2 Ms. Lemcke's suggestion that it was straightaway from the  
3 chest parallel to the ground almost, if the taller body was  
4 leaning down like in this fashion where I'm leaning forward,  
5 that might cause a trajectory downward; is that correct?

6 A That's correct.

7 Q You were asked some questions about defensive  
8 wounds. Is it in your experience of the autopsies you've  
9 done, do defensive wounds tend to appear more in gunshot cases  
10 or in stabbing type cases?

11 A They're more common in stabbing cases.

12 Q Less common in gunshot wound cases?

13 A Correct.

14 Q And defensive wounds, is it generally the case that  
15 you're referring to arms or legs and hands and feet?

16 A Yes.

17 Q Finally, you were asked some questions about the  
18 gunshot wound to the buttocks and the damage that would be  
19 done and that there could be medical treatment that might have  
20 saved the person if that had been the only gunshot wound.

21 A Yes, if that was the only wound.

22 Q The damage internally that was done, however, would  
23 that have -- would that be easily fixed such that a person who  
24 was still alive wouldn't have lasting effects from that  
25 gunshot wound?

1           A     No.

2           Q     What other type of injuries, if that person had  
3 survived as that being the only wound, what type of injuries  
4 would they have?

5           A     You can certainly end up with peritonitis which is  
6 an inflammation and in infection of the abdominal cavity that  
7 holds all of our insides inside us. Once that gets inflamed  
8 you risk the development of bacteria going into your  
9 bloodstream and developing something called sepsis. You can  
10 die as a result of having those stomach contents spill into  
11 the abdomen, develop peritonitis and develop sepsis and die  
12 from that.

13                If you manage to repair all of the damage that's  
14 been done to the different loops of bowel and tie them all  
15 back together surgically, you'll generate a lot of adhesions  
16 and people can often have bowel obstructions where the stuff  
17 isn't traveling through the tube the way it used to and people  
18 can get obstructions because of that and they can get  
19 subsequent perforations where things get stuck and they  
20 balloon out because they're all back pressured. And then  
21 again, they can develop peritonitis and die from that.

22                So even if had survived that wound, he may develop  
23 complications as a result of the surgeries necessary to  
24 survive that wound and he may die of those future  
25 complications. Because he dies of all of those complications,

1 the manner of death in that situation still becomes a homicide  
2 because it resulted from the injury that occurred with the  
3 bullet going through those loops of bowel.

4 MR. BATEMAN: Thank you.

5 THE COURT: Recross.

6 MS. LEMCKE: I have one quick question.

7 RECROSS--EXAMINATION

8 BY MS. LEMCKE:

9 Q You indicated that as to the gunshot wounds they  
10 were fired from what we call -- what you called an  
11 indeterminate range?

12 A That's correct.

13 Q And again, that just means that it is fired from at  
14 least a particular distance and then anything beyond that you  
15 can't really say.

16 A That's correct.

17 Q And that minimal distance at which an indeterminate  
18 range kind of speaks to would be about 12 inches, 18 inches,  
19 somewhere?

20 A It's around 18 inches to two feet.

21 Q So the only thing you can say with an indeterminate  
22 range is that the gun, the barrel of the gun was somewhere 18  
23 inches or more away from the person who receives the missile  
24 into their body.

25 A That's correct.

UNCERTIFIED ROUGH DRAFT

1 MS. LEMCKE: Court's indulgence. Nothing further.

2 MR. BATEMAN: Nothing further.

3 THE COURT: May this witness be excused?

4 MR. BATEMAN: Yes, Your Honor.

5 THE COURT: Thank you very much for your testimony.

6 Ladies and gentlemen, it is five after five and  
7 we're excusing you until Monday at 1:30. During this recess  
8 over the weekend it is your duty again not to converse amongst  
9 yourselves or with anyone else on any subject connected with  
10 the case or to read, watch or listen to any report of or  
11 commentary on the trial by any medium of information or  
12 through any person including, without limitation, newspaper,  
13 television, radio or Internet and you are not to form or  
14 express an opinion on any subject connected with this case  
15 until it's finally submitted to you. I'll once again remind  
16 you, particularly since we're over the weekend recess, you're  
17 not to do any research. So no research about guns, about  
18 autopsies, any of these things. What you hear in court is the  
19 information you need to rely on, no independent research.  
20 Just a reminder. And I'll see you at 1:30 on Monday.

21 (Jury recessed at 5:07 p.m.)

22 THE COURT: The record will reflect that the jury  
23 has departed the courtroom. There are a couple matters we  
24 need to put on the record concerning bench conferences.

25 Ms. Lemcke, I'll leave it to you as to which you

1 want to address first.

2 MS. LEMCKE: The first is I just want to make a  
3 record on the fact that I wanted to introduce the toxicology  
4 screen that was done in this case. It was part of the  
5 autopsy, it was part of -- she testified, Dr. Gavin did, that  
6 she reasonably relied upon it in making her ultimate  
7 conclusions regarding cause and manner of death. I understand  
8 that she said that drug intoxication here didn't actually  
9 occasion death, but it was still part and parcel of her  
10 evaluation and autopsy in this particular matter. So to that  
11 end it could be admitted.

12 Even if it were a hearsay document, which I'm not  
13 necessarily conceding that, but even if it were an expert can  
14 rely on hearsay in making their determination. Meaning that  
15 you can ask them and cross-examine them and admit hearsay  
16 information to the extent that it forms the basis of their  
17 opinion or even plays a part in their opinion. And this  
18 report, because it was generated as part of the autopsy that  
19 was done, whether it related to cause and manner of death or  
20 not, ultimately, she looked at it and relied on it and used it  
21 to make her evaluation and analyses in this particular matter.

22 So to that end, it was compelling and it was  
23 relevant and I would -- and that's why I ask that it be  
24 admitted.

25 THE COURT: Okay. State.

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1 MR. BATEMAN: I to some extent agree, to the extent  
2 that they can rely on the information to form their opinion, I  
3 think it still needs to be relevant to the ultimate issue. In  
4 this particular case, what I objected to for the most part was  
5 on page two. I think we probably should make a Court exhibit  
6 of it.

7 MS. LEMCKE: I think it will go because it's already  
8 been marked as a defense exhibit.

9 MR. BATEMAN: There's reference comments.

10 THE COURT: Don't forget that the objection was only  
11 to the reference comments, the rest was admitted into  
12 evidence.

13 MR. BATEMAN: I don't think you moved admission of  
14 the whole thing, did you?

15 THE COURT: That was my understanding. Because you  
16 at the bench said you had an objection only to the comment,  
17 the hearsay comments at the end, not the other part of the  
18 report. That's what your objection was --

19 MR. BATEMAN: Correct.

20 THE COURT: -- at the bench, right?

21 MR. BATEMAN: That's fine, Your Honor.

22 THE COURT: That's what I sustained.

23 MR. BATEMAN: So if she wants to put in -- I don't  
24 know how you -- because a portion of page two has the findings  
25 but they're essentially the same as on page one. So if you

1 just took out page two, I don't care.

2 THE COURT: Two and three.

3 MR. BATEMAN: Yeah, three was an analysis --

4 THE COURT: Let me see the document again. It was  
5 these reference comments that you were objecting to, which was  
6 page two.

7 MR. BATEMAN: Correct.

8 THE COURT: And that was the only objection that was  
9 made.

10 MR. BATEMAN: I apologize. And I didn't -- I'm  
11 objecting as to page two.

12 THE COURT: And it was clear to me that obviously  
13 she made -- she relied on in part in forming her opinions  
14 today because she testified pretty extensively about the  
15 toxicity level of the methamphetamine in his system that would  
16 be, I think her word was lethal, but that it was not the cause  
17 of death in her opinion. So clearly, she -- and through the  
18 foundational questions as well that you asked, that she relied  
19 on the findings.

20 But as far as the reference comments that just, as  
21 she indicated, just describe the drugs that are found in  
22 general terms, there was no foundation laid that she was  
23 relying on those reference comments in forming her opinion.  
24 Or even if one can rely on hearsay in forming an opinion, that  
25 doesn't necessarily mean that all of the hearsay comes in.

1           And finally, of course, it needs to be relevant. So  
2 for a number of -- for all of those reasons I sustained the  
3 objection. As to, there being no other objection, whether or  
4 not the actual lab report should have come in, you didn't make  
5 an objection to that. So as to page two, which only has the  
6 reference comments on it, then she -- there wasn't proper  
7 foundation laid to show that those that she relied on in any  
8 respect on those reference comments. They're not relevant to  
9 cause and manner of death and they're hearsay that can't come  
10 in independently. So that was why I sustained the objection.

11           But as far as I'm concerned, it is admitted,  
12 Defendant's Proposed Exhibit KK, page one and three, which was  
13 -- because only two, page two thereof, was objected to. So  
14 one and three, there being no objection with it.

15           What was your other?

16           MS. LEMCKE: The other one, I just want to make a  
17 record there was a bench conference regarding Mr. Smink's  
18 testimony. He at one point, at the point where I made the  
19 objection, he was about to opine as to the recency of a  
20 particular injury that he observed on Mr. Pimentel's hand and  
21 I objected stating that the State had failed to qualify him as  
22 a medical expert of sorts in terms of gauging the recency of a  
23 particular injury. So that end, I interposed an objection  
24 which was overruled at the bench and I just wanted to make a  
25 record of that.

1 THE COURT: Okay. And the objection was based on  
2 that he was not qualified to give --

3 MS. LEMCKE: Uh-huh.

4 THE COURT: And the State's response?

5 MS. DIGIACOMO: Your Honor, at the bench I stated  
6 that, first of all, this is his job, this is what he does. I  
7 needed to establish that to distinguish between why the photos  
8 of the face had then the scale attached to him where he just  
9 documented the injury to the hand. That was because in his  
10 opinion it had already started scabbing and it looked like it  
11 was healing. Certainly, anyone, just a lay person can tell  
12 whether or not it's a new wound in that sense. If they're  
13 scabbing, then it indicates that it's an older wound. And  
14 that's all I was doing. I wasn't asking him an expert opinion  
15 about when the injury occurred, et cetera. It's just regular  
16 opinion that anyone I think can testify to.

17 THE COURT: Basically, that was the reason I  
18 overruled the objection. Had the question been more specific  
19 as to do you have an opinion as to whether exactly when or how  
20 many minutes or hours, then I would have sustained that  
21 because I don't think he would be qualified. But in general,  
22 to say yes, I saw a scab basically, so that was why I thought  
23 it wasn't recent and I didn't photograph it. That was why I  
24 overruled the objection because I thought that was proper  
25 given the limited opinion that he was giving amounted to a lay

1 opinion, essentially. All right.

2 MS. LEMCKE: I have one other issue, Your Honor.  
3 With respect to the Court questioning a couple of the  
4 witnesses, I was very concerned after the initial questioning  
5 by the Court this morning, and I understand the Court is  
6 allowed to ask questions of the witnesses, but I was concerned  
7 initially because the questions that the Court asked were of a  
8 witness who, for the first time, the jury was hearing some  
9 information that was starting to put together our defense.  
10 And our defense again being that Mr. Holland was the initial  
11 and primary aggressor throughout this evening and up until and  
12 including the time of the actual shooting.

13 Mr. Tabele, in cross-examination, was going to be  
14 one of the first witnesses to kind of start to lay that  
15 foundation as we conclude the State's case and move into the  
16 defense case. I noted that the Court asked, began asking  
17 questions of Mr. Tabele that could have been interpreted by  
18 the jury as questions that were kind of questioning what --  
19 the information that we were eliciting, for example, about the  
20 gentleman having dark hair that he saw that was trying to calm  
21 things down.

22 I understand that the Court indicated at the bench  
23 that you felt like I was not being effective in taking the  
24 questions one step further. Let me make the record clear,  
25 that I had pretrialed this witness not once but twice and to

1 that end I felt like I had a pretty good grasp on what he was  
2 going to say, not perfectly and not certainly everything, not  
3 everything shook out exactly as I anticipated. But by and  
4 large, I make strategic decisions based on the questions that  
5 I'm going to ask -- as to the questions I'm going to ask based  
6 on information that I may have from previous interviews.

7 And to that end, I felt as though the inquiry that I  
8 made of him was helpful in moving forward our defense theory.  
9 I was very concerned when the Court asked questions that I  
10 thought could be perceived by the jury as kind of questioning  
11 some of the information that was ultimately favorable to our  
12 theory.

13 And then, again, when we got to the firearms expert,  
14 Your Honor then asked a question of the firearms expert about  
15 racking a bullet in the chamber or what was the term -- yeah,  
16 racking. And my concern with that immediately was that that  
17 question was designed to give some credence to Mr.  
18 Hildebrand's testimony that he observed Mr. Pimentel to be  
19 racking a bullet as he chased -- at least according to Mr.  
20 Hildebrand, as he chased Mr. Holland in this particular case.

21 So given those two incidents occurring kind of on  
22 the heels of one another, it was to the point where I felt  
23 like I at least needed to make a record of it at this point to  
24 the extent that the jury could apprehend either a bias on the  
25 part of the Court or some suggestion from the Court because of

1 the position that the Court occupies in the minds and eyes of  
2 the jury, that there was some deference given to the State's  
3 theory as opposed to ours.

4 I felt like I needed to make a record of the fact  
5 that we objected to that and this point would move for a  
6 mistrial.

7 THE COURT: And the State's response.

8 MR. BATEMAN: As to the first questions, I thought,  
9 as you were doing it, you were simply clarifying. I actually  
10 thought you were clarifying the point that she's saying she  
11 wanted made, which is -- that's how I took it. So I don't  
12 think it was detrimental. If anything, I thought it actually  
13 helped them a little bit.

14 As to the racking, I thought it was another way of  
15 saying what she had already said, which was click or sliding.  
16 So I think you have the right to ask the questions. I think  
17 they're relatively de minimis. I don't think they helped or  
18 hurt to the extent any -- I think it just helped get to the  
19 truth in the case.

20 THE COURT: All right. Well, of course, the  
21 statutes NRS 50.145 gives the Court the ability and expects  
22 the Court to, in fact, call and interrogate. I could even  
23 call witnesses if I wished to, call and interrogate witnesses.  
24 Subsection two, Judge may interrogate witnesses whether called  
25 by the Judge or by a party. Parties may object to questions

1 so asked and to evidence thus adduced any time prior to the  
2 submission of the cause.

3 Now there was not any objection contemporaneous with  
4 the questions, which I would expect you to make. And there  
5 haven't been any objections expressed at this point in time  
6 either. In other words, an objection to the question that  
7 it's irrelevant, that -- when the Court asks questions it's  
8 for the purpose of bringing out matters that I think should be  
9 brought out so that the questions that are in my mind, I  
10 assume are probably in the minds of the jury as well.

11 I think, first of all, as to Mr. Tabele, who was the  
12 witness with the apartment window overlooking the crime scene  
13 essentially. If I find it somewhat disingenuous that you're  
14 saying today that you pretrialed him so well that you knew  
15 exactly what he was going to say, given the fact that you  
16 indicated yesterday that you could not proceed with your  
17 cross-examination because he testified on direct differently  
18 than how you had interviewed him. And that was why you needed  
19 instead -- because I wanted to go through and finish him up  
20 yesterday so he didn't have to come back. But you said no  
21 because you really needed to go over because even though he  
22 had talked to you, he'd said things on the stand you had never  
23 heard before. So to tell me today that you had a complete  
24 handle on it, you know, I'm skeptical of that.

25 But nonetheless, again, this was -- the question I



1 asked -- first of all, he was giving pretty confusing  
2 testimony and genuinely, I was confused as to what he was  
3 saying. Particularly in the context of the overall trial and  
4 what evidence has come in, it was I think very important to  
5 ask him further about the description of this person,  
6 especially given the -- now I'm not sure who asked the  
7 question because to me it doesn't really matter who asked the  
8 question.

9 I think it was you, Ms. Lemcke, but you could  
10 correct me if I'm wrong. Somebody asked Mr. Hildebrand who  
11 was, the record will reflect, a bald man except for, he has  
12 male pattern baldness and it appears that he saves the rest of  
13 his hair off. A question was posed by someone earlier that  
14 his hairstyle was the same today as it was then. Well, given  
15 his descriptions earlier in the trial of where he was standing  
16 in relation to the others, that would seem to contradict Mr.  
17 Tabele's testimony that it was a dark-haired individual would  
18 tend to discredit Mr. Hildebrand's testimony perhaps, but it  
19 needed to be clarified.

20 So a question as to how long was the hair, because I  
21 don't know what color Mr. Hildebrand's hair is when it might  
22 be grown out, whether it's dark or whether it's a lighter  
23 color because you couldn't tell observing him on the stand.  
24 So to ask a question about whether or not he could observe the  
25 length of the hair was, I thought, relevant to whether in fact

1 it was Mr., perhaps Mr. Hildebrand or perhaps your client that  
2 was obviously a dark-haired man. So I thought it was very  
3 relevant, in fact, to the defense.

4 But I don't choose sides and I told the jury that in  
5 the preinstructions. I take extra time with that because I  
6 routinely ask questions when I think things are confusing and  
7 need clarifying. When I have questions in my mind I ask them.  
8 The purpose of clarifying and seeking the truth, which is the  
9 purpose of the trial. That's why I take extra time when I  
10 preinstruct the jury as to say, to tell them if I ask a  
11 question it is not to show that I have any opinion, because I  
12 do not. I have absolutely no opinion. It is up to them. If  
13 I bring something out, I question a witness, it is merely to  
14 clarify something and only for that reason. That was the  
15 purpose of that question.

16 I certainly do not think that there has been  
17 prejudice to the defendant in any way to rise to the level of  
18 a mistrial. So the motion is denied.

19 How are we doing on scheduling?

20 MR. BATEMAN: I think we'll be able, Your Honor, to  
21 rest on Monday. I'm hoping.

22 THE COURT: So great. Will you be able to email me  
23 so I'll have them on Monday your instructions so I can start  
24 working?. Even if it's only your stocks because I've found  
25 over the course of I don't know how many trials now I've done,

1 60, that there are a lot of typos in these.

2 MS. DIGIACOMO: I can let the Court know I have my  
3 own stocks where I've gone through and fixed all those typos,  
4 so I always use those every time.

5 THE COURT: Okay. Great. Thank you. But I'd just  
6 like to get them so that I really have the time to also go  
7 through them so that when we do settle instructions I've read  
8 them all and feel like they're all appropriate and worded  
9 correctly so I can discuss that with you when we settle the  
10 instructions. So the sooner I can see them, the more helpful.  
11 Of course, I know that your specials always are determined by  
12 how the trial progresses, and so that there will be, you know,  
13 last minute instructions. Of course, I understand that. I  
14 just want to get -- be prepared as possible for you when we do  
15 go to settle those.

16 MR. BATEMAN: Yes, Your Honor. We'll have them  
17 Monday.

18 THE COURT: And defense, you think you'll have --

19 MS. LEMCKE: Yeah, I'll have them -- I would have  
20 them today but I have a car problem and I've got to get my car  
21 to the shop as soon as I leave.

22 THE COURT: Obviously, before we do settle, I want  
23 you to talk to each other so that when we come to finally  
24 settle the instructions, and by that I don't mean put the  
25 final things on the record, but when we're discussing them,

1 which we can do in the courtroom so it's on the record, you've  
2 already discussed them so we know which ones you agree upon.  
3 If I know which ones you agree upon I'd still like to read  
4 those to make sure there's no typos, there's nothing glaring  
5 that I think oh, there's a problem with this. Okay? All  
6 right. Thank you very much.

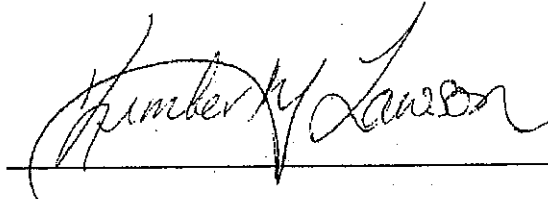
7 MR. BATEMAN: Thank you.

8 THE COURT: We'll see you at 1:30 Monday.

9 (Court recessed for the evening at 5:29 p.m.)  
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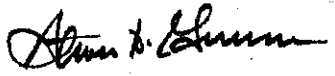
ACKNOWLEDGMENT:

Pursuant to Rule 3C(d) of Nevada Rules of Appellate Procedure, this is a rough draft transcript expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.

A handwritten signature in cursive script, reading "Kimberly Lawson", is written over a horizontal line.

KIMBERLY LAWSON  
TRANSCRIBER

UNCERTIFIED ROUGH DRAFT

  
CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

THE STATE OF NEVADA,  
Plaintiff,

vs.

LUIS PIMENTEL, AKA,  
LUIS GODOFREDO PIMENTEL, III  
Defendant.

CASE NO. C296234  
DEPT NO. V

**TRANSCRIPT OF  
PROCEEDINGS**

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 6**

MONDAY, MAY 18, 2015

**APPEARANCES:**

For the State:

SANDRA K. DIGIACOMO, ESQ.  
SAMUEL G. BATEMAN, ESQ.  
Chief Deputy District Attorneys

For the Defendant:

NANCY L. LEMCKE, ESQ.  
CONOR M. SLIFE, ESQ.  
Deputy Public Defenders

RECORDED BY: LARA CORCORAN, COURT RECORDER  
TRANSCRIBED BY: KARR Reporting, Inc.

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KARR Reporting, Inc.

## **I N D E X**

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1 LAS VEGAS, CLARK COUNTY, NEVADA, MAY 18, 2015, 1:32 P.M.

2 \* \* \* \* \*

3 (Outside the presence of the jury.)

4 THE COURT: Case No. C296234, State of Nevada versus  
5 Luis Pimentel. The record will reflect the presence of the  
6 defendant with his counsel. The deputies district attorneys  
7 prosecuting the case are present, as are all officers of the  
8 court.

9 Will counsel so stipulate?

10 MS. DIGIACOMO: Yes, Your Honor.

11 MS. LEMCKE: Yes, Your Honor.

12 THE COURT: And we are of course outside the presence  
13 of the jury.

14 Is there a matter outside?

15 MS. DIGIACOMO: Yes, Your Honor. One of -- our next  
16 witness is a crime scene analyst who went to the hospital, and  
17 she photographed two things that came out of the defendant's  
18 pocket. One was his driver's license, which we've already  
19 seen, and the other was a cellular phone, and it was later  
20 learned that that cellular phone was actually stolen from Darcy  
21 Smith at Dottie's, and that's what's put in impound, and so the  
22 State just wanted to do this now before it's brought up in  
23 front of the jury because we'd have an objection if the defense  
24 tried to bring that out. I don't know if they are planning to,  
25 but we would object. It's not relevant, and more so, it's



1 hearsay.

2 THE COURT: Okay. It was taken out of the  
3 defendant's pocket?

4 MS. DIGIACOMO: No, I'm sorry, the victim.

5 THE COURT: Oh, okay.

6 MS. DIGIACOMO: The victim at the hospital. If I  
7 said defendant, I apologize.

8 THE COURT: Yes.

9 MS. DIGIACOMO: Yes, it was taken out of the victim's  
10 pocket at the hospital. It was turned over to homicide  
11 detectives. They impounded it, later learned that it was  
12 stolen from somebody named Darcy Smith, don't know who stole it  
13 or how it got to the victim's pocket, but I just want to make  
14 sure the defense did not plan to bring that up in front of the  
15 jury so that then we'd have to object when that comes out, just  
16 like we had to object when they brought up the victim's  
17 awaiting sentencing for an attempt forgery.

18 THE COURT: Okay. And what is the defense's  
19 response?

20 MR. SLIFE: Judge, I don't think we intended to get  
21 into that. Judge, may I have a moment.

22 Judge, I guess the defense's official position is we  
23 understand your ruling previously with regard to at least his  
24 father's knowledge of the pending sentencing, and part of our  
25 rationale for getting into that is to show, you know, how he

1 acted based on the fact that he still had a prior sentencing,  
2 and I think our official position with this would be the same  
3 in that it just paints a complete picture of who this  
4 individual is. With that, I'd submit it to the Court.

5 THE COURT: Okay. Well, that is completely  
6 irrelevant. It's -- it doesn't paint a picture. Even if it  
7 does paint a picture, which we don't know it doesn't, we don't  
8 know how he came into possession of the cell phone. So we  
9 don't know what it says about him, if anything, but even if it  
10 did, that he took somebody's cell phone is completely  
11 irrelevant as to the defense's theory of the case. It's  
12 just -- the only purpose of it would be to try and muddy up the  
13 victim and nothing else. I mean, it's completely collateral  
14 and irrelevant. So it will not be -- you may not ask about it  
15 on cross-examination.

16 All right. Anything else?

17 MR. BATEMAN: No, Your Honor.

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

19 (Jury entering 1:37 p.m.)

20 THE COURT: Thank you. Please be seated.

21 And the record will reflect that we have now been  
22 rejoined by all 12 members of the jury, as well as the three  
23 alternates.

24 And how was everybody's weekend, good?

25 THE JURY: Good.

1 THE COURT: All right. The State may call its next  
2 witness.

3 MS. DIGIACOMO: Thank you.  
4 The State calls Noreen Charlton.

5 (State's witness, Noreen Charlton, sworn.)

6 THE CLERK: Please state and spell your first and  
7 last name.

8 THE WITNESS: Noreen Charlton. N-o-r-e-e-n,  
9 C-h-a-r-l-t-o-n.

10 THE COURT: You may proceed.

11 MS. DIGIACOMO: Thank you, Your Honor. May I  
12 approach the clerk?

13 THE COURT: Yes.

14 MS. DIGIACOMO: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MS. DIGIACOMO:

17 Q Ma'am, how are you employed?

18 A I am a Senior Crime Scene Analyst at the Las Vegas  
19 Metropolitan Police Department.

20 Q And how long have you been so employed?

21 A Six and a half years.

22 Q Can you describe for the jury briefly your education,  
23 training and background that allows you to be a crime scene  
24 analyst.

25 A I have my Bachelor's of Science in Biology from John

1 Carroll University in Cleveland, Ohio. Shortly after  
2 graduating I was hired with the Las Vegas Metropolitan Police  
3 Department as a crime scene analyst. I completed a 10-week  
4 academy, followed by 12 weeks in the field training and  
5 evaluation program, and over the past six and a half years I've  
6 completed approximately a thousand hours of training.

7 Q Now, with regard to your duties, we've had several  
8 CSAs come in and testify, Jeff Smink, Josie Kavitch, Vandering.  
9 Are you familiar with them?

10 A Yes.

11 Q All right. Do you have the same duties that all of  
12 them do?

13 A Yes, I do.

14 Q All right. Directing your attention to December  
15 22nd, 2013, in the early morning hours were you dispatched to  
16 Sunrise Hospital?

17 A Yes, I was.

18 Q All right. And did you get there a little after  
19 5 a.m.?

20 A Correct.

21 Q All right. When you arrived, were you -- I guess  
22 what was the purpose of you going there?

23 A The purpose of responding to Sunrise Hospital was to  
24 photograph the decedent.

25 Q Is that Robert Holland, the third?

1           A     Yes.  
2           Q     Okay. When you arrived, did you find the decedent?  
3           A     Yes, I did.  
4           Q     Was he alive, or had he already been pronounced dead?  
5           A     He'd already been pronounced.  
6           Q     Now, was that by the coroner investigator or a  
7 doctor?  
8           A     He was pronounced by an ER physician at Sunrise.  
9           Q     All right. When you saw him, where was he?  
10          A     He was lying on a gurney, and he was still in a  
11 trauma bay.  
12          Q     Okay. Did he eventually get moved?  
13          A     Yes, he did.  
14          Q     And where did he get moved to?  
15          A     He was moved to a room that they call at Sunrise the  
16 quiet room. It's essentially a locked room where they can put  
17 decedents.  
18          Q     All right. Was he the only decedent in there?  
19          A     Yes, he was.  
20          Q     All right. Did you take some overall photographs of  
21 him?  
22          A     Yes, I did.  
23                MS. DIGIACOMO: All right. May I approach, Your  
24 Honor?  
25                THE COURT: Yes, you may.

1 BY MS. DIGIACOMO:

2 Q Did you also -- well --

3 MS. DIGIACOMO: May I approach?

4 THE COURT: Yes.

5 BY MS. DIGIACOMO:

6 Q All right. I'm going to show you what's been marked  
7 for identification as 117 and 118. Do you recognize those?

8 A Yes.

9 Q And what are those?

10 A These are photographs of the decedent.

11 Q All right. Does it show the chest and leg area as  
12 well as the medical intervention?

13 A Yes, they do.

14 Q Fairly and accurately depict the way the decedent  
15 Robert Holland looked when you arrived at Sunrise on December  
16 22nd, 2013, a little after 5 in the morning?

17 A Yes.

18 MS. DIGIACOMO: Your Honor, I'd move for admission of  
19 State's Proposed Exhibits 117 and 118.

20 MS. LEMCKE: No objection.

21 THE COURT: They'll be admitted.

22 (State's Exhibit Nos. 117 and 118 admitted.)

23 MS. DIGIACOMO: Thank you. And just putting it on  
24 the -- may I publish, Your Honor?

25 THE COURT: You may.

1 MS. DIGIACOMO: Thank you.

2 BY MS. DIGIACOMO:

3 Q Showing you 117, that is -- what is depicted in this  
4 photograph?

5 A This is the -- appears to be the left side of the  
6 abdomen of the decedent.

7 Q All right. Now, the picture appears to be a little  
8 dark. Is -- is that consistent with the photograph you took?  
9 Was the lighting bad in there?

10 A No, the photographs I took were much brighter, and  
11 this must just be printing quality.

12 Q All right. Showing you State's Exhibit No. 118,  
13 what's depicted here?

14 A This is a photograph of the pants that he was  
15 wearing.

16 Q All right. Now, do you do anything other than  
17 photograph the overalls of the body when you first get there?

18 A No.

19 Q What were you waiting for?

20 A I was waiting for the coroner investigator.

21 Q All right. And what's the purpose of waiting for the  
22 coroner investigator?

23 A Essentially the -- the body belongs to the coroner  
24 investigator. So she or he is the one who does the cursory  
25 exam and looks at all the injuries on the decedent.

1           Q     All right.  So is it fair to say you do not touch the  
2 body until the corner investigator gets there?  
3           A     Correct.  
4           Q     And then when the coroner investigator gets there, do  
5 you then take photographs of things that the investigator has  
6 notated on the body?  
7           A     Yes.  
8           Q     All right.  Now, do you recall whether or not the  
9 corner investigator took anything from the front right pocket  
10 of the pants that we see in State's Exhibit 118?  
11          A     Yes, he did.  
12          Q     What did she take out?  
13          A     She removed the decedent's driver's license and a  
14 cellular phone.  
15                MS. DIGIACOMO:  All right.  Now, may I approach  
16 again, Your Honor?  
17                THE COURT:  You may.  
18                BY MS. DIGIACOMO:  
19          Q     All right.  Now, I'm going to show you what's been  
20 marked for identification as State's Proposed Exhibit 119 and  
21 120, if you could take a look at those photographs.  Do you  
22 recognize what's depicted in these photographs?  
23          A     Yes.  
24          Q     And what's depicted here?  
25          A     This is the Cricket cellular phone that was removed



1 from the decedent's pants pocket.

2 Q All right. And is 119 a view of the screen or the  
3 top side of the phone?

4 A Correct.

5 Q And 120 would be the backside of the phone?

6 A Correct.

7 Q But they fairly and accurately depict the phone that  
8 was taken out of the pocket of Mr. Holland by the corner  
9 investigator?

10 A Yes.

11 MS. DIGIACOMO: Your Honor, I'd move for admission of  
12 State's Proposed Exhibits 119 and 120.

13 THE COURT: Any objection?

14 MS. LEMCKE: No, Your Honor.

15 THE COURT: They'll be admitted.

16 (State's Exhibit Nos. 119 and 120 admitted.)

17 MS. DIGIACOMO: Thank you, Your Honor. And just for  
18 the record, may I publish?

19 THE COURT: You may.

20 BY MS. DIGIACOMO:

21 Q All right. Showing you State's Exhibit 119. Now,  
22 you have a scale on there. Do you recall approximately how big  
23 this phone was?

24 A I don't recall, no.

25 Q All right. But the scale was in -- is it in

1 centimeters?

2 A Yeah, there's millimeters and centimeters on there.

3 Q Okay. And showing you State's Exhibit 120, that's  
4 the backside of the phone?

5 A Correct.

6 Q Now, when the coroner investigator was done with its  
7 preliminary view of the body, did you do something to preserve  
8 the hands?

9 A Yes, I did. I placed hand preservation bags on both  
10 the right and left hands.

11 Q Is that customarily done in cases like this?

12 A Yes.

13 Q All right. And then what happens with the body after  
14 you put the preservation bags on each hand?

15 A The body is then wrapped in a clean sheet that I  
16 provide to the mortuary, and then they place the body in a body  
17 bag, and then the bag is sealed with the coroner's seal number.

18 Q And you actually take photographs of the seal so that  
19 it shows it's not broken when you leave?

20 A Correct.

21 MS. DIGIACOMO: I have nothing further, Your Honor.

22 THE COURT: Cross.

23 MR. SLIFE: May we have a moment, Your Honor?

24 THE COURT: Yes.

25 MR. SLIFE: Judge, I apologize. One more moment,

1 please.  
2 THE COURT: Okay.  
3 MR. SLIFE: Thank you, ma'am. I don't have any  
4 questions.  
5 Thank you, Your Honor.  
6 THE COURT: May this witness be excused?  
7 MS. DIGIACOMO: Yes, Your Honor -- well, actually  
8 excused for the day, not for the trial.  
9 THE COURT: So you remain under subpoena. We'll call  
10 you. Thank you.  
11 THE WITNESS: Thank you.  
12 THE COURT: Call your next witness.  
13 MR. BATEMAN: May we have the Court's indulgence?  
14 THE COURT: Yes.  
15 MS. DIGIACOMO: May I approach the clerk, Your Honor?  
16 THE COURT: Yes.  
17 MR. BATEMAN: State calls Tod Williams.  
18 THE COURT: All right. Mr. Williams.  
19 (State's witness, Tod Williams, sworn.)  
20 THE CLERK: Please be seated, and please state and  
21 spell your first and last name.  
22 THE WITNESS: Tod, T-o-d, Williams, W-i-l-l-i-a-m-s.  
23 THE COURT: You may proceed.  
24 MR. BATEMAN: Thank you, Your Honor.  
25 Sorry, checking in with witnesses.

DIRECT EXAMINATION

1  
2 BY MR. BATEMAN:

3 Q Sir, do you work for the Las Vegas Metropolitan  
4 Police Department?

5 A Yes, I do.

6 Q You sound a little ill. Is that --

7 A No.

8 Q Under the weather?

9 A Yes.

10 Q In what capacity do you work for the Las Vegas  
11 Metropolitan Police Department?

12 A I'm a homicide detective.

13 Q Do you have a partner?

14 A I do.

15 Q Who is that?

16 A Detective Barry Jensen.

17 Q How long have you been working with the Las Vegas  
18 Metropolitan Police Department?

19 A Approximately 26 years.

20 Q And how long have you been with the Las Vegas -- the  
21 homicide section?

22 A About 11 years.

23 Q Before that, were you a detective?

24 A Yes, I was.

25 Q In what section?

1           A     Narcotics.

2           Q     Did you and Detective Jensen at some point have  
3 occasion to be assigned to investigate a shooting at the Siegel  
4 Suites on December 22nd, 2013, in the early morning hours?

5           A     Yes, we did.

6           Q     And did you have occasion to go to that seen on  
7 Boulder Highway?

8           A     Yes, I did.

9           Q     And are you familiar with that Siegel Suites?

10          A     Yes.

11          Q     Is that here in Clark County?

12          A     Yes, it is.

13          Q     How long after -- well, do you know when  
14 approximately the call out for the incident was?

15          A     I believe it was 0425 hours in the morning.

16          Q     And when you -- do you know about how long after that  
17 call that you arrived at that particular scene?

18          A     We arrived about 0615 hours.

19          Q     And did that -- was that both you and Detective  
20 Jensen?

21          A     Yes. Approximately, yes.

22          Q     Now, are you the only two homicide detectives that  
23 would show or appear or be involved in this type of an  
24 incident?

25          A     No, we have several detectives on our squad that

1 would arrive, and we used other detectives that day from  
2 another squad.

3 Q And when you arrive, is there some assessment made  
4 between you and the rest of the detectives as to who will do  
5 what?

6 A Yes.

7 Q Who makes that decision?

8 A It's usually on a rotation basis. Detective Jensen  
9 and I were assigned the case because it was our turn to handle  
10 the case, and we make the assignments from that point on.

11 Q When you arrive out there, you tell the other  
12 detectives -- because it's your case you instruct them that  
13 you'd like them to do certain things?

14 A Yes.

15 Q And some of those things are what for instance?

16 A Documenting the crime scene, which Detective Bunn was  
17 assigned to do, canvassing the apartment complex or gathering  
18 any available witnesses, things of that nature.

19 Q And is that -- that's what was done in this  
20 particular case?

21 A Yes, it was.

22 Q Now, does -- the detectives that go out there, do  
23 they all remain at that scene, or do they go to other locations  
24 depending on circumstances?

25 A Yes, they would.

1 Q Other locations?

2 A Yes.

3 Q Okay. Is one location in this particular case for  
4 instance the hospital where the victim ended up going to?

5 A That would be one, yes.

6 Q Now, was there an event number assigned with this  
7 particular incident?

8 A Yes.

9 Q Was that 131220648?

10 A That is correct.

11 Q And what is the significance of an event number?

12 A That's the event every Metro response receives. It's  
13 obviously the date, the first numbers. And the last number's a  
14 numerical order of the calls as they come in to dispatch.

15 MR. BATEMAN: May I approach briefly, Your Honor?

16 THE COURT: Sure.

17 (Conference at the bench not recorded.)

18 BY MR. BATEMAN:

19 Q Now, when you arrived, can you just generally explain  
20 what it is you encountered at the Siegel Suites.

21 A Well, when we got there, we were told the suspect had  
22 been taken into custody a distance away, that he had gone on a  
23 bus, and the bus had been stopped, and he was being detained  
24 near Fremont and Bruce Street. We then assigned several  
25 detectives to respond to that location and to make contact with

1 the suspect.

2 Q When you arrive at the scene, do you determine or  
3 make sure that as many witnesses at the scene have been talk  
4 to, either by patrol officers or followed up with by  
5 detectives?

6 A Yes, and there were a number of witnesses that we  
7 took statements from.

8 Q When you say take statements, what does that mean?

9 A Either talk just orally or take a recorded statement,  
10 either one.

11 Q Some witnesses, are they given what's like a document  
12 for them to handwrite a statement?

13 A Yes, many -- it's called a voluntary witness  
14 statement, and some wrote those out, yes.

15 Q Okay. And then others that were followed up with,  
16 actually, you used a tape recorder and taped the statement; is  
17 that right?

18 A Yes.

19 Q Okay. And so that occurred initially by patrol  
20 officers and then later by detectives that were out there; is  
21 that right?

22 A That is correct.

23 Q When you arrived at the scene, the victim was  
24 already -- had been taken away for medical treatment; is that  
25 correct?



1 A The victim?  
2 Q Correct.  
3 A Yes, he was at Sunrise Hospital.  
4 Q And ultimately you determine that shortly before  
5 5 p.m. he's pronounced dead; is that correct?  
6 A That is correct.  
7 MR. BATEMAN: May I approach your clerk, Your Honor?  
8 THE COURT: Yes.  
9 MR. BATEMAN: May I approach the witness, Your Honor?  
10 THE COURT: You may.  
11 BY MR. BATEMAN:  
12 Q Are you, sir, familiar with this general area?  
13 A Yes, I am.  
14 Q As a homicide detective, do you end up all over Clark  
15 County?  
16 A Yes, I do.  
17 Q Okay. I'm going to show you what's first been marked  
18 as State's -- actually 121 and 122. See if you recognize those  
19 as overhead maps generally of the area.  
20 A Yes, this depicts Boulder Highway.  
21 Q That's 121?  
22 A Yes, that's 121 and 122 as well.  
23 MR. BATEMAN: All right. Move for admission of 121  
24 and 122. Request to publish.  
25 MR. SLIFE: No objection, Your Honor.

1 THE COURT: All right. Those will be admitted.

2 (State's Exhibit Nos. 121 and 122 admitted.)

3 BY MR. BATEMAN:

4 Q Now, this particular area, are you familiar with an  
5 Arizona Charlie's?

6 A Yes, I am.

7 Q Okay. I'm going to show you what's been marked and  
8 admitted as State's Proposed 22. I'm going to zoom it in. Can  
9 you see it on your screen, Detective?

10 A Yes.

11 Q Okay. Do you see Arizona Charlie's at the top?

12 A Yes, I do.

13 Q There's a little red flag down there at the bottom.  
14 Are you familiar with that location?

15 A Yes, I am.

16 Q And what is that?

17 A That is a Sinclair gas station.

18 Q Is that on Indios Avenue?

19 A Yes, the southwest corner.

20 Q Essentially across the street from Arizona Charlie's?

21 A Yes.

22 Q Now, did you in your investigation come to determine  
23 the address of the deceased victim Robert Holland?

24 A Yes.

25 Q Okay. And is that address 3822 Don Carlos Drive here

1 in Las Vegas, Clark County?

2 A Yes, it was.

3 Q Are you familiar with generally that location in  
4 town?

5 A Yes.

6 Q Showing you Exhibit 121, we see in 121 Arizona  
7 Charlie's again up in the upper right-hand corner of this  
8 particular map?

9 A Yes.

10 Q Again across the street is the Sinclair; is that  
11 right?

12 A Yes.

13 Q Now, over here on the left, do you see a little red  
14 dot on the left side of the map; is that right?

15 A Yes.

16 THE COURT: These are photos, right, not maps, just  
17 for the record?

18 MR. BATEMAN: I'm sorry. Thank you, Your Honor.

19 THE COURT: Aerial photos.

20 MR. BATEMAN: Aerial photograph.

21 THE COURT: Okay. Thank you.

22 BY MR. BATEMAN:

23 Q Aerial photographs, is that right, Detective?

24 A Yes.

25 Q And what is that location all the way on the left

1 with the red dot?

2 A That's the victim's home -- home address.

3 Q Is there a school next door?

4 A Yes, there is. I don't recall the name of the school

5 though.

6 Q And so that's just across the 95; is that right?

7 A Yes.

8 Q From Boulder Highway?

9 A Yes.

10 Q Relatively close?

11 A I would say so, yes.

12 Q Walking distance?

13 A Yes.

14 Q Now, as part of the investigation in this case, when

15 you first arrived, do you ask that crime scene analysts go to

16 various scenes that would be relevant to this particular case?

17 A Yes.

18 Q And are there crime scene analysts then that come out

19 to the actual scene at Siegel Suites?

20 A Yes, they did.

21 Q Were you out there when these crime scene analysts

22 were out there?

23 A Yes, I was.

24 Q Okay. And the purpose of obviously a crime scene

25 analyst to come to the scene is what?

1           A     To gather evidence and document the scene.  
2           Q     When the crime scene analysts come out there, you  
3 already spent some time gathering evidence and in your own mind  
4 documenting the scene?  
5           A     To some degree, yes, but we don't actually gather.  
6 We just document.  
7           Q     Do you talk to the crime scene analysts?  
8           A     Yes, we do.  
9           Q     Asked them -- point them in some direction as to what  
10 might be relevant?  
11          A     Yes, we do.  
12          Q     And that's based on the information you have at the  
13 time; is that right?  
14          A     Yes.  
15          Q     Your investigations don't stop on that particular  
16 day?  
17          A     No.  
18          Q     Did you have occasion to send a crime scene analyst  
19 to Sunrise Hospital?  
20          A     Yes, I did.  
21          Q     Okay. What was the purpose of that?  
22          A     To document the decedent's body and the condition of  
23 it.  
24          Q     Now, you said that there was another scene, a bus  
25 stop; is that correct?

1           A     Yes.

2           Q     And do you know approximately where that was?

3           A     It was at Fremont and Bruce.

4           Q     And it was your understanding -- you had received  
5 information that there was a potential suspect on the bus that  
6 had been stopped at that location?

7           A     Yes, that was the information received.

8           Q     How do you receive information like that? Like  
9 technically how does it come to you?

10          A     There's a briefing when we arrived there. Other  
11 detectives and patrol officers that are there that have  
12 gathered information will meet with us and tell us what they  
13 know, what they've learned at that point, and we -- we melt  
14 that down and move on from there.

15          Q     And did you, yourself -- well, you sent a crime scene  
16 analyst to this location?

17          A     Yes.

18          Q     And what was the point of doing that?

19          A     Document the condition of the suspect there.

20          Q     Okay. And did you, yourself, actually go to that  
21 particular location?

22          A     I believe I did.

23          Q     Did you come into contact with a suspect?

24          A     I remember seeing him, but I don't remember if I  
25 actually had any contact with him or spoke to him at all.

1 Q Do you see that person in the courtroom today?  
2 A I do.  
3 Q Okay. And can you point to that person and describe  
4 what they're wearing today?  
5 A He's the individual in the gray suit and the blue  
6 tie, white shirt.  
7 Q You pointed to a table to your right. Can you say  
8 where they're seated at that particular table.  
9 A Seated in the middle seat.  
10 MR. BATEMAN: May the record reflect the  
11 identification of the defendant.  
12 THE COURT: It will.  
13 BY MR. BATEMAN:  
14 Q He looks somewhat different today than he looked at  
15 that particular day that you saw him?  
16 A Much different.  
17 Q So you didn't have specific contact with the  
18 defendant at that particular scene?  
19 A Not that I recall.  
20 Q Gathered information that -- you learned whatever  
21 information you could at that particular scene; is that right?  
22 A Yes.  
23 Q All right. Did you send or ask for a crime scene  
24 analyst to come to Metro headquarters?  
25 A Yes, I did.

1 Q And what was the purpose of that?

2 A To recover the clothing from the suspect and document  
3 him further with photographs.

4 Q Okay. When you say document the defendant, what do  
5 you mean?

6 A Take pictures of the hands, take pictures of the  
7 overall body to note any injuries, if there are any, and just  
8 his condition.

9 Q Now, at this particular point, had you received some  
10 information about some portion of what transpired that morning?

11 A Yes, we had.

12 Q Okay. And had you received information that there  
13 was some sort of altercation?

14 A Yes.

15 Q All right. And is part of the reason you're  
16 documenting the defendant is to look for any injuries?

17 A Yes, that's correct.

18 Q And you also had his photographs -- I'm sorry -- his  
19 clothing photographed and taken as well; is that right?

20 A That is correct, yes.

21 Q You had an opportunity later to come into contact  
22 with the defendant in this particular case; is that right?

23 A Yes.

24 Q Can you describe any injuries that you observed when  
25 you came into contact with him on his person.



1           A     When I went to headquarters, I met the defendant and  
2 spoke with him then. He had a small bruise under his left eye,  
3 and if I'm not mistaken, he had some type of scuff on one of  
4 his knuckles.

5           Q     And that was -- did you look closely at that scuff?

6           A     Yes.

7           Q     Okay. And was that all before you spoke with him?

8           A     I believe it was after.

9           Q     And are you familiar with whether any of those  
10 injuries were photographed by crime scene analysts out at the  
11 bus stop?

12          A     Yes, they were; however, at the bus stop, you could  
13 not see the -- the black eye or the -- what was under his eye.  
14 You couldn't see any injuries at all at the bus stop.

15          Q     So by the time that he had come back to the office --  
16 you I assume were in an office with light, correct?

17          A     Yes.

18          Q     Okay. The -- you also later had an opportunity to  
19 attend an autopsy; is that right?

20          A     Yes, I did.

21          Q     That of Robert Holland?

22          A     Yes.

23          Q     So whatever injuries existed on -- on Mr. Holland as  
24 they were documented in the autopsy?

25          A     Yes, I did.

1 Q Now, you said you took some witness statements; is  
2 that correct, yourself?

3 A Yes.

4 Q Okay. And what's your general procedure for taking  
5 witness statements?

6 A I use my tape recorder and record the conversation.

7 Q How do you decide which witnesses you are going to  
8 talk to versus what other detectives have talked to?

9 A It usually depends on who's available and what --  
10 what the time frame is. If they're conducting one interview,  
11 and there's another one that pops up, then whoever's available  
12 will take that interview.

13 Q Did you have occasion to at some point gain  
14 information that there was an individual by the name of Amanda  
15 Lowe that had not been spoken to regarding -- and may have  
16 information regarding this case?

17 A Yes, we did.

18 Q Okay. Is it your understanding that Ms. Lowe did not  
19 stick around, may have been at the crime scene, but did not  
20 stick around?

21 MS. LEMCKE: I'd object to the extent it's based on  
22 hearsay.

23 MR. BATEMAN: I'm just asking as to why he ended up  
24 doing what he did, Your Honor.

25 THE COURT: So overruled at this point.

1 BY MR. BATEMAN:

2 Q Let me ask you this. Are you aware that there was no  
3 statement given by Amanda Lowe at the crime scene?

4 A Yes.

5 Q Is that one of the reasons you went and tried to  
6 track her down to speak with her?

7 A Yes, it is.

8 Q Were you ultimately able at some point to track her  
9 down?

10 A Yes, we found her staying with her -- at a family's  
11 home in Henderson.

12 Q And when did you find her?

13 A Later that day.

14 Q Did she contact you, or did you have to go find her?

15 A We found her.

16 Q And tell me about -- without telling me necessarily  
17 what she told you substantively, how -- how is it that you came  
18 into -- ultimately ended up coming into contact with her?

19 A My partner's the one who located the address, but  
20 once we found the address, we drove to that location. We  
21 knocked on the door, and she came outside.

22 Q Did she -- was she happy to talk to you?

23 A No, she was very hostile, as a matter of fact.

24 Q Initially did -- did she initially want to talk to  
25 you?

1           A     No, she did not.

2           Q     Okay. How is it that you ultimately obtained a  
3 statement from her?

4           A     We asked her if she would just come talk to us in the  
5 car with us just for a few minutes and ask -- answer a few  
6 questions.

7           Q     Did it take some time before she agreed to do that?

8           A     Yes, it did.

9           Q     Now, did -- were you able to tape record this  
10 particular statement?

11          A     No, I was not.

12          Q     And why is that?

13          A     My partner thought I had turned the recorder on, and  
14 I thought he had turned the recorder on. We didn't have time  
15 to actually -- we knew if we did it in the open that she would  
16 not talk to us --

17          MS. LEMCKE: I would object to that, Your Honor.  
18 It's speculation. I move to strike.

19          MR. BATEMAN: And it's why he --

20          THE COURT: Sustained. The jury will disregard the  
21 last comment.

22          MR. BATEMAN: If I can maybe follow up  
23 foundationally.

24          BY MR. BATEMAN:

25          Q     Based on the nature of your contact with her and what

1 I think you already testified to as her being somewhat hostile,  
2 did that have some affect on whether you got the recorder on or  
3 the confusion between you and the detective?

4 A Yes. Usually when somebody does not want to talk to  
5 us it makes it worse if we turn a tape recorder on. So we  
6 didn't turn one on openly, and either -- both of us thought the  
7 other one had turned one on covertly, and neither one of us  
8 did.

9 Q Sometimes you talk to witnesses who don't want to be  
10 on a recording, but you still record the conversation?

11 A That is correct.

12 Q Why do you do that?

13 A Just to document the accuracy of the statement.

14 Q It's your desire to document the accuracy?

15 A Yes.

16 Q Did there come a point in time in which later on you  
17 were able to ascertain a couple of names, Tim Hildebrand and  
18 Shannon Salazar?

19 A Yes, we were able to identify those two people.

20 Q Did you identify those two people as having  
21 information or potentially having information in this case?

22 A Well, we were given information that they were at the  
23 scene and possibly had witnessed the shooting.

24 Q And was that the night of, or was that sometime  
25 after?

1           A     It was approximately two weeks after the shooting  
2     that we were able to contact them.  
3           Q     And in fact did you reach out to try to track down  
4     Tim Hildebrand and Mr. Salazar -- or Ms. Salazar?  
5           A     Yes, we did.  
6           Q     And did you do that on January 2nd?  
7           A     Yes.  
8           Q     And did they actually contact you back on that same  
9     day?  
10          A     Yes, they did.  
11          Q     And where is it, if anywhere, did you meet them?  
12          A     I believe it was a Walmart parking lot off Boulder  
13     Highway.  
14          Q     And they provided you statements?  
15          A     Yes, they did.  
16          Q     Were they taped statements?  
17          A     Yes, they were.  
18          Q     And they agreed to speak on tape?  
19          A     Yes, they did.  
20          Q     A couple other things, questions I had about -- were  
21     you aware of whether what's called a buccal swab was taken from  
22     the victim at autopsy?  
23          A     Yes, it was.  
24          Q     Is that pretty standard procedure?  
25          A     Yes, it's done every autopsy.

1 Q Is that in order to be able to determine whether any  
2 of his DNA is in a particular location?

3 A Well, early on in an investigation, especially on the  
4 day after, we don't know what we're going to be up against  
5 later on. So that's the standard procedure.

6 Q You learn information after the first day of the  
7 event generally in a homicide investigation; is that right?

8 A Yes, we do.

9 Q Sometimes -- is it fair to say sometimes the DNA from  
10 the victim may be relevant and sometimes it may not?

11 A That is correct.

12 Q Are you aware of whether a buccal swab was taken from  
13 the defendant who you identified in the courtroom today?

14 A Yes, it was.

15 Q And do you know who took that?

16 A I don't recall who took that buccal swab.

17 Q Would it have been you or Detective Jensen?

18 A Yes.

19 Q I want to talk a little bit about some of the  
20 requests for forensic testing that you might have made. Did  
21 you in fact do some requests for forensic testing in this case?

22 A Yes, I did.

23 Q And if I can just maybe ask you a few questions.  
24 When you begin to ask for forensic testing, is it based upon  
25 your understanding or what you've developed in the course of

1 your investigation with being relevant to the case?

2 A Yes, it is.

3 Q Are you -- are you familiar with the term, like, an  
4 ID -- an ID case?

5 A Yes.

6 Q And what does that mean to you?

7 A An ID case is a case where the identity of a suspect  
8 is not known. Whodunit is what we commonly call that.

9 Q Things like fingerprints or DNA that might have been  
10 left behind, are those important issues or pieces of evidence  
11 in an ID case?

12 A Yes, it is.

13 Q Did you deem this to be one of the types of cases  
14 that you'd call an ID case?

15 A No, this was not a whodunit case.

16 Q What are some of the forensic tests that you  
17 requested as a result of your understanding in this particular  
18 case?

19 A We had the gun, the bullet that was recovered from  
20 the body and the cartridge case found at the scene all compared  
21 to one another to make sure the bullet match the gun and the  
22 cartridge case matched the gun.

23 Q Okay. So you requested -- well, let me ask you this.  
24 Are you aware what's typical procedure when a -- when a firearm  
25 in a shooting or a homicide is found from a CSA, what does the



1 CSA normally do with the gun in those types of -- what kinds of  
2 processing would a CSA normally do with a gun in those types of  
3 cases?

4 A They'll check for DNA. They'll check for  
5 fingerprints, which neither are a very common find off a gun,  
6 but it's still done anyway, and gather, like I said, any  
7 cartridge cases or bullets that can be matched to the gun  
8 forensically.

9 Q And you're aware that those swabs were taken of DNA  
10 on the gun in this particular case?

11 A Yes, they were.

12 Q And you're aware that there was some processing for  
13 prints on the weapon in this particular case?

14 A At least on the magazine.

15 Q As you say, At least on the magazine, is it fair to  
16 say that's where a potential print had been located?

17 A Yes. The CSAs will look at the gun, and if they  
18 can't see a print, they then don't go any further as far as  
19 trying to recover a latent fingerprint. They also look at the  
20 magazine because that's a flatter surface. It doesn't have  
21 much texture, and they look for fingerprints on there as well.

22 Q And again, before I jumped a little ahead, you're  
23 aware a gun was left at the scene; is that correct?

24 A That is correct.

25 Q And you're aware that one cartridge case was found;

1 is that right?

2 A Yes.

3 Q Are you aware of how many -- based on your attendance  
4 at the autopsy, are you aware of how many -- the minimum number  
5 of gunshots that have been fired in this particular case?

6 A Per the body, there was two, and our witnesses  
7 substantiated that.

8 Q And so when you got -- well, are you aware that to --  
9 well, let me ask you this. How many cartridge cases are you  
10 aware that were found at the scene?

11 A Just one.

12 Q And is that something that makes sense to you or  
13 doesn't make sense to you?

14 A It makes sense to me.

15 Q Why is that?

16 A It's very common for a cartridge case to get picked  
17 up on something. We've found them in tire treads. We've found  
18 them in fireman's boot tread. Many times police officers  
19 ourselves will qualify at the range and come home, and there'll  
20 be cartridge cases in our clothing. Many, many times a  
21 cartridge case will not be at the scene. You even have officer  
22 involved shootings where we know exactly how many shots are  
23 fired, and we're missing several cartridge cases. So it's very  
24 common for a cartridge case to disappear so to speak.

25 Q But as it related to the gun, did you ask for testing

1 with regard to whether the gun was functioning?

2 A Yes.

3 Q Okay. And you're aware that it was?

4 A It was functioning, yes.

5 Q And did you ask for testing with regard to whether  
6 the cartridge case and -- well, let me ask you this. Was a  
7 bullet ultimately recovered from Robert Holland's body?

8 A Yes, it was.

9 Q And between the gun and the cartridge case in the  
10 bullet, did you ask to have those items analyzed as they  
11 related to each other?

12 A Yes, I did.

13 Q Okay. And you -- did you receive information about  
14 the results of those tests?

15 A Yes, the bullet was fired from that gun, and the  
16 cartridge case was also fired from that gun.

17 Q And did you also ask for prints and DNA to be  
18 analyzed as it related to the firearm and the magazine that was  
19 found with the gun?

20 A Yes, we did.

21 Q Were there ultimately any positive results that would  
22 have helped your investigation in this case?

23 A No, the fingerprint the CSA thought they saw was not  
24 able to be compared. The lab returned back a report indicating  
25 it couldn't be compared to anything, and the DNA testing on the

1 gun came back inconclusive.

2 Q Are you aware that there was some presumptive blood  
3 testing found on the defendant's pants?

4 A Yes.

5 Q And did you ask to have that tested?

6 A No, we did not.

7 Q Why is that?

8 A Again, it was not an ID case. It wouldn't have -- it  
9 wouldn't have shown us any -- wouldn't have shown any more  
10 evidence towards who did this, who had done the shooting or  
11 not.

12 Q Who would have been there and been involved?

13 A Yes.

14 Q Are you aware of whether some -- CSA Smink took a  
15 swab of the defendant's left cheek where you saw that bruise?

16 A Yes.

17 Q Okay. And did you submit that for testing?

18 A I believe we did.

19 Q Are you sure?

20 A No, I'm not sure.

21 Q Okay. Do you want to take a look --

22 A Yes.

23 Q Do you have that here? And for the record, I'm  
24 assuming, Detective, you brought your case file with you today?

25 A Yes, I did.

1 Q And would it help refresh your recollection to look  
2 at your case file in regards to my question?

3 A No, on my request. I did not request that.

4 Q Again is that a situation where you already know if  
5 he had caused the injury to the defendant?

6 A I believe the fact that he was involved in an  
7 altercation was -- was established, and it didn't matter if he  
8 did or didn't. We figured he had.

9 Q At the autopsy or just prior, with the CSA, you had  
10 had go to Sunrise, and later on at Clark County coroner's  
11 office, it appeared that there was some preservation of  
12 evidence as it related to the victim, such as bagging the  
13 hands; are you familiar with that?

14 A Yes.

15 Q Can you explain that and what the reason would be for  
16 bagging a victim's -- a deceased victim's hand?

17 A In an ID case where were not sure who the suspect  
18 was, we would want to make sure we did scrapings or clippings  
19 from the fingernails or took DNA off the hands just in case the  
20 suspect left DNA or they were in some type of scrape. We would  
21 be able to identify the suspect in that case.

22 Q You didn't have those tested in this particular  
23 case --

24 A No, we did not.

25 Q -- for that reason?

1 A No, we do not.  
2 Q You knew who was involved in this particular case?  
3 A Yes, we did.  
4 MR. BATEMAN: Court's indulgence for one moment.  
5 BY MR. BATEMAN:  
6 Q Now, ultimately in this particular case, you said you  
7 had the defendant photographed -- well, photographed and  
8 documented at Metro headquarters; is that correct?  
9 A Yes.  
10 Q Now, is your office at Metro headquarters?  
11 A Yes, it is.  
12 Q Is homicide offices?  
13 A Yes, it is.  
14 Q And do they have interview rooms at the -- at your  
15 offices?  
16 A Yes, they do.  
17 Q And describe those offices for me..  
18 A The interview rooms?  
19 Q Correct. I'm sorry.  
20 A It's a large room with several rooms -- or a lot of  
21 rooms actually around the perimeter, and each room is audio and  
22 video taped. There's a table and chairs inside the room.  
23 Q Okay. And so there's audio and video if you need it?  
24 A Yes.  
25 Q All right. And do you also -- when you go interview

1 someone in that particular room, do you sometimes use your own  
2 handheld recorder?

3 A There's been problems with the room. So very often  
4 we would use our own recorders just to use a failsafe.

5 Q You say problems. Sometimes it works, sometimes it  
6 doesn't with technology?

7 A Yes, it's a computer program. So.

8 Q It's actually a computer-based video or audio that's  
9 actually built into the interview room?

10 A Yes, it is.

11 Q Did you have occasion to meet the defendant in an  
12 interview room in this particular case?

13 A Yes, I did.

14 Q Do you know exactly what time you began the interview  
15 with the defendant?

16 A Approximately 9 o'clock in the morning.

17 Q Okay. Now, you had said previously that you'd had  
18 some interaction with the defendant out at the bus stop; is  
19 that correct?

20 A Well, I went to the bus stop and I saw him. I don't  
21 recall speaking with him or having any interaction.

22 Q You observed him with other officers?

23 A Yes.

24 Q Was he outside of a police vehicle at that time?

25 A I'm not sure if he was outside a police vehicle or

1 the back of a patrol car at that time.

2 Q Now, and again the call out for the original incident  
3 in this case was -- I think you testified it was 4:25; is that  
4 right?

5 A That's when the call came into our 9-1-1 dispatcher.

6 Q And you interviewed him about four and a half hours  
7 later; is that right?

8 A Approximately, yes.

9 Q And I assume over time a bruise on the eye for  
10 instance would be more apparent?

11 A Yes.

12 Q The bruise would come in essentially?

13 A Yes.

14 Q When you sit down with the defendant, did you -- so  
15 you actually -- did you audiotape this particular interview?

16 A Yes, I did.

17 Q Provide him what's commonly referred to as Miranda  
18 warnings?

19 A Yes, I did.

20 Q And did you do that orally?

21 A Yes, I did.

22 Q And you do it another way?

23 A Yes, I read from a card.

24 Q You actually give the card to the defendant to sign?

25 A Yes, I did.



1 Q The card has the warnings on them?  
2 A Yes.  
3 Q Do you have those warnings memorized?  
4 A I do.  
5 Q What are they?  
6 A An individual has a right to remain silent. Anything  
7 he says can be used against him in a court of law. He has a  
8 right to an attorney, and if he doesn't have the -- the money  
9 for an attorney, one will be provided for him by the State.  
10 MR. BATEMAN: May I approach your clerk?  
11 THE COURT: Yes.  
12 MR. BATEMAN: May approach the clerk? I've shown  
13 counsel.  
14 THE COURT: Yes.  
15 BY MR. BATEMAN:  
16 Q Showing you what's been marked as State's Proposed  
17 123, does this appear to be something you recognize?  
18 A Yes, this is a Miranda card.  
19 Q What's a Miranda card?  
20 A It's a card that has the Miranda warning on it that I  
21 read to the individual I'm interrogating.  
22 Q And did you provide him a copy of that card?  
23 A Yes, I did.  
24 Q And what's the point in doing that?  
25 A To giving the card, so he can read if he chose.

1 Q And you actually have the person you're asking  
2 questions sign the card that he read it?

3 A Yes.

4 Q Did you have the defendant do that in this particular  
5 case?

6 A Yes, I did.

7 Q Have your -- and how do you know that this is your  
8 card that you showed the defendant?

9 A Because that's my name and my handwriting.

10 MR. BATEMAN: Okay. Move for admission of 123.

11 THE COURT: Any objection?

12 MR. SLIFE: None, Your Honor.

13 THE COURT: That'll be admitted.

14 (State's Exhibit No. 123 admitted.)

15 BY MR. BATEMAN:

16 Q After reading Miranda, did you ask questions of the  
17 defendant?

18 A Yes, I did.

19 Q Did he provide -- now, when you get -- at about  
20 9 a.m. -- to your offices, and you're doing the interview --  
21 what we talked about earlier, you not having the benefit of  
22 days and days and days of investigation -- do have some  
23 information so that you can question the defendant, you know,  
24 in an educated manner?

25 A Yes.

1 Q Okay. And how is it that you've obtained this  
2 information before you go actually talk to the defendant about  
3 what happened?

4 A We conducted as many interviews as we can. We've  
5 talked to other officers and detectives who have also conducted  
6 interviews so that we walk into the interview with as much  
7 knowledge as possible, and we did that in this case.

8 Q And so did you have information about where the  
9 defendant had been earlier in the evening?

10 A Yes, we did.

11 Q Okay. You're aware that he was at earlier in the  
12 evening Arizona Charlie's?

13 A That's what we were told, yes.

14 Q And he was with other individuals at the Arizona  
15 Charlie's; is that right?

16 A That is correct.

17 Q And did the defendant admit or deny anything  
18 consistently or inconsistently with what you knew and the  
19 questions you asked him?

20 A He denied most of what we knew was true.

21 Q And you asked him questions about what you had known,  
22 and he denied the facts that you knew to be true?

23 MS. LEMCKE: Well, I'd object to knew to be true. I  
24 mean, it depends on what witnesses he'd interviewed at that  
25 particular time and his -- he's making a supposition as to what

1 the truth is.

2 THE COURT: Well, okay. The objection is lacks  
3 foundation I think and speculation.

4 MS. LEMCKE: And just improper form of the question,  
5 too, but, yes, Your Honor. Yes, speculation, no foundation.

6 THE COURT: Right. I'm going to sustain because we  
7 don't know what --

8 MR. BATEMAN: I understand, Your Honor.

9 THE COURT: -- individual things you're talking  
10 about.

11 BY MR. BATEMAN:

12 Q What -- generally how do you start out with the  
13 defendant? What types of questions were you asking him?

14 A We asked the defendant where he'd been earlier in the  
15 day, who he'd been with, how we got to certain locations,  
16 things of that nature.

17 Q And was he forthcoming with the information?

18 A No, he was not.

19 Q Did you ask him whether he was with people or was  
20 alone when he went to the Arizona Charlie's?

21 A I believe he said he was alone.

22 Q You've seen video in this particular case?

23 A I have not, no.

24 Q Did you have reason to believe at the time that he  
25 was not alone at the Arizona Charlie's?

1           A     We were told that he was not.

2           Q     Can you recall how it is that he was getting from the  
3 Arizona Charlie's to other locations?

4           A     He indicated he took a bus to one location, but he  
5 could not remember, so he claimed, how he got to the others.

6           Q     Did you ask him if he knew anything about what had  
7 occurred at Siegel Suites at about 4:25 a.m.?

8           A     I did.

9           Q     And did he state that he knew anything about what had  
10 happened?

11          A     Denied knowing anything.

12          Q     Did he even know -- did he tell you where it is he  
13 got on the bus that he was ultimately taken off of at Fremont  
14 and Bruce?

15          A     He said he had gotten on the bus at Boulder Station.

16          Q     And based upon what you knew, did that appear to be  
17 accurate?

18          A     No, that was completely false.

19          Q     This interview, you ultimately again tape-recorded,  
20 correct?

21          A     Yes.

22               MR. BATEMAN: May I approach the witness, Your Honor?

23               THE COURT: You may.

24               BY MR. BATEMAN:

25          Q     Showing you what's been marked as State's Proposed

1 Exhibit 116. Do you recognize that CD?  
2 A Yes.  
3 Q All right. And how do you recognize it?  
4 A It's got my initials on it.  
5 Q And when did you -- have you reviewed the contents of  
6 that CD?  
7 A Yes.  
8 Q Okay. And does that appear -- what is on that CD to  
9 your knowledge?  
10 A The interview with Mr. Pimentel.  
11 Q Is it a relatively short interview?  
12 A Yes, it is.  
13 MR. BATEMAN: Okay. Move for admission of 116 and  
14 request to publish.  
15 THE COURT: Are you objecting to the admission?  
16 MS. LEMCKE: May we approach?  
17 THE COURT: Yes.  
18 (Conference at the bench not recorded.)  
19 THE COURT: It's admitted over defense prior  
20 objection.  
21 (State's Exhibit No. 116 admitted.)  
22 MR. BATEMAN: May I publish, Your Honor?  
23 THE COURT: You may.  
24 MR. BATEMAN: And may I sit down, Your Honor?  
25 THE COURT: Yes, please.

1 (Playing CD, audio recording, State's Exhibit No. 116.)

2 BY MR. BATEMAN:

3 Q Let me just ask a quick question. Who was that  
4 voice?

5 A That was my partner Detective Jensen.

6 MR. BATEMAN: Okay.

7 (Playing CD, audio recording, State's Exhibit No. 116.)

8 BY MR. BATEMAN:

9 Q Is that the end of the interview?

10 A Yes.

11 Q Okay. You were -- you seem to have -- you made  
12 mention multiple times of a change in demeanor. Can you  
13 explain that?

14 A I don't recall a lot of the conversation I had with  
15 him, but I do remember he was in the interview room, and I  
16 believe I took him to the bathroom and some other things, and  
17 when I saw him at the bus stop, he was not acting the way he  
18 was when we were doing the interview.

19 Q Okay. And so when you started asking him questions,  
20 it appeared to you that his demeanor changed when you -- during  
21 the course of the interview?

22 A Yes.

23 Q It was difficult to hear him, or what was he doing,  
24 since we can't see a video? I assume this came from your  
25 recorder; is that right?

1 A Yes.

2 Q Okay.

3 A He had his head down in his arm.

4 Q And you asked him some questions about whether he had  
5 been intoxicated or anything like that. Did you determine  
6 whether there was anything causing him to behave this way?

7 A No, we do not.

8 Q Okay. Did it appear to you that he was intoxicated  
9 or couldn't understand what -- the questions you were asking  
10 him?

11 A He did not appear intoxicated, no.

12 Q Okay. But there was definitely a change in demeanor  
13 from when you first saw him to when you turned the tape  
14 recorder on?

15 A Yes, there was.

16 MR. BATEMAN: Pass the witness, Judge.

17 THE COURT: Cross.

18 CROSS-EXAMINATION

19 BY MR. SLIFE:

20 Q Sir, his demeanor was almost such -- I mean, it could  
21 potentially be explained that he didn't necessarily trust you,  
22 right?

23 A I wouldn't agree to that, no.

24 Q You wouldn't agree to his demeanor could be based on  
25 the fact that he didn't necessarily think you were on his side



1 in this case?

2 A I'm not even clear what that would mean.

3 Q Okay. We'll get back to that. Let's start from the

4 beginning. Sir, you are the lead detective for this case?

5 A Not the lead detective, we share 50-50.

6 Q Okay. You and Detective Jensen 50-50 lead detectives

7 on the case?

8 A Yes.

9 Q Okay. And you wrote the officer's report in this

10 case?

11 A No, my partner Detective Jensen wrote most of it. I

12 contributed though.

13 Q Okay. So you guys -- you guys jointly contributed to

14 the officer's report?

15 A That, and other detectives, yes.

16 Q Okay. And that is -- that is an official report that

17 sort of summarizes the investigation in the case?

18 A Yes.

19 Q And you and Detective Jensen are ultimately

20 responsible for the investigation in the case?

21 A That is correct.

22 Q And you're generally aware of the investigation

23 obviously?

24 A Yes.

25 Q And you're aware of what may have been collected as

1 evidence?

2 A Yes.

3 Q You're aware of what may have been searched for  
4 evidence?

5 A Yes.

6 Q And just with regard to the DNA, I think you said  
7 with Mr. Bateman, It's common in a murder investigation to  
8 request DNA testing?

9 A Yes, it is.

10 Q And DNA testing was requested in this case?

11 A Yes, it was.

12 Q Specifically by you?

13 A Yes.

14 Q And you're aware that DNA testing was done?

15 A Yes, it was.

16 Q There was some DNA taken from the specific handgun  
17 that was recovered?

18 A Yes.

19 Q There was some DNA taken specifically from a magazine  
20 that was recovered off the handgun?

21 A I don't believe from the magazine, just from the  
22 handgun that I know of.

23 Q Okay. Well, let's stick with the handgun. You're  
24 aware that with regard to the handgun, the DNA results were a  
25 mixture profile?

1 A Correct.

2 Q Okay. Let's talk a little bit about the search of  
3 Mr. Pimentel's apartment, if I may.

4 Q Okay. You were aware that there was a search done on  
5 Mr. Pimental's apartment?

6 A Yes, there was.

7 Q And that was --

8 MR. BATEMAN: Can we approach just briefly?

9 THE COURT: Yes.

10 (Conference at the bench not recorded.)

11 BY MR. SLIFE:

12 Q All right. Sir, and that search was done pursuant to  
13 a search warrant?

14 A That's correct.

15 Q And one of the specific items that was actually  
16 written in pen on the search warrant that -- that people were  
17 looking for was nine-millimeter ammunition?

18 A That is correct.

19 Q And part of the reason for that is often times when  
20 someone has a gun they may also have other gun related items?

21 A Sometimes, yes.

22 Q And in this case, the handgun that was recovered was  
23 a Ruger nine-millimeter handgun; is that right?

24 A Yes.

25 Q So whoever owned this gun could conceivably have

1 other nine-millimeter ammunition, right?

2 A It's possible, yes.

3 Q And part of the rationale for searching the apartment

4 for nine-millimeter ammunition was to see if Luis had

5 nine-millimeter ammunition, correct?

6 A That is correct.

7 Q To see if -- to see if that could tie him to the gun

8 that was found, right?

9 A That is correct.

10 Q No nine-millimeter ammunition was ever found in that

11 search, correct?

12 A That is correct.

13 Q No ammunition other than nine-millimeter, for

14 instance 45 caliber, 22 caliber, none of that was found, right?

15 A No.

16 Q No guns were found in that search?

17 A No.

18 Q No extra magazines for ammunition were found?

19 A No.

20 Q No gun cleaning kits were found?

21 A No.

22 Q No gun holsters?

23 A No.

24 Q No gun cases?

25 A No.

1 Q Nothing to indicate gun -- gun ownership at all?  
2 A That is correct.  
3 Q No reading material, like an NRA magazine that would  
4 look into guns or anything like that, right?  
5 A That is correct.  
6 Q And nothing specifically related to the gun that was  
7 found, which again was a Ruger nine-millimeter handgun, right?  
8 A That is correct.  
9 Q And you're aware -- and we spoke to the officer that  
10 searched Luis on the bus, but you're aware that there was a  
11 search pursuant to arrest?  
12 A Yes.  
13 Q And -- and your understanding is that there was  
14 nothing gun related that -- of that list I went through with  
15 regard to the search incident to arrest?  
16 A Nothing was found, yes.  
17 Q Correct?  
18 A No, nothing was found.  
19 Q Okay. And same with the bus, you're understanding  
20 was there was a search of the bus, nothing gun related found on  
21 the bus?  
22 A No.  
23 Q I don't see from reading through any documentation  
24 that there was ever a search done of the deceased's residence  
25 in this case; is that right?

1           A     Yes, that's correct.  
2           Q     There was no search done of the decedent's residence?  
3           A     No.  
4           Q     Again no search for nine-millimeter ammunition at the  
5 decedent's residence?  
6           A     That is correct.  
7           Q     No search for any other guns at the decedent's  
8 residence, right?  
9           A     That's correct.  
10          Q     No search for any holsters?  
11                THE COURT: Asked and answered.  
12                There was no search at the decedent's residence; is  
13 that right?  
14                Did you just ask him if there was any search of the  
15 decedent's residence, and he said, No?  
16                MR. SLIFE: Correct, Your Honor, I was just going  
17 through some of the things that could --  
18                THE COURT: So --  
19                MR. SLIFE: -- have been searched for.  
20                THE COURT: Move on. He didn't search. So he could  
21 not have found anything.  
22                MR. SLIFE: Okay. Good point. Thank you, Your  
23 Honor.  
24                BY MR. SLIFE:  
25           Q     If you had found potentially additional

1 nine-millimeter ammunition at Robert's residence, that may have  
2 led you to believe that that gun was his though, right?

3 A I don't follow the question. We don't do search  
4 warrants on our victims, and the identity of who had the gun  
5 was clear. It wasn't a question.

6 Q If the deceased had nine-millimeter ammunition in his  
7 residence, that would have no -- that would have nothing to do  
8 with this case in your mind?

9 A It could potentially, yes.

10 Q Okay. And it could potentially because it could show  
11 that that nine-millimeter gun that was recovered in the parking  
12 lot could have been his potentially, right?

13 A I don't agree with that, but I see where you're  
14 going, but again there was no -- we don't do search warrants on  
15 our victims, and at the time, there was no question who's --  
16 who had possession of that gun.

17 Q Well, no question in your mind, right?

18 A The witnesses'.

19 Q Okay. We'll -- okay, we'll get to some of these  
20 witnesses. Let me ask you, in general, when you do an  
21 investigation, sometimes as part of your investigation you look  
22 into the people involved to see if they have a criminal record,  
23 right?

24 A Yes.

25 Q And part of that is you want to know what type of

1 person you're dealing with potentially, correct?

2 A Correct.

3 Q Whether someone could be on probation, right?

4 A Yes.

5 Q Or whether someone's on parole, right?

6 A Yes.

7 Q Or whether someone has a bench warrant?

8 A Yes.

9 MR. SLIFE: And, Your Honor, may I approach?

10 THE COURT: Yes.

11 (Conference at the bench not recorded.)

12 THE COURT: And we're going to take the afternoon  
13 recess for you to use the restroom and whatnot. You don't need  
14 to sit there while we're discussing something at the bench, and  
15 you can go out and have your break. So we're going to take --  
16 we'll take a 20-minute recess, so till quarter after 3.

17 Ladies and gentlemen, during this recess, it is your  
18 duty not to converse among yourselves or with anyone else on  
19 any subject connected with the trial or to read, watch or  
20 listen to any report of or commentary on the trial by any  
21 person connected with the trial or by any medium of  
22 information, including without limitation newspaper,  
23 television, radio or Internet, and you're not to form or  
24 express an opinion on any subject connected with this case  
25 until it's finally submitted to you.



1                   We will be in recess until 3:15.

2                   (Jury recessed 2:56 p.m.)

3                   THE COURT: Okay. The record will reflect that the  
4 jury has departed the courtroom, and counsel had approached.

5                   MR. SLIFE: Judge, I don't know if the witness should  
6 be here for this --

7                   THE COURT: Well, perhaps if you want to find out --  
8 if you want to ask him any of these questions outside the  
9 presence so we know what the answers are, we may as well do  
10 that.

11                  MR. SLIFE: Sure.

12                  Did you run the decedent's criminal record --

13                  THE COURT RECORDER: Mr. Slife, just move on over to  
14 the microphone.

15                  MR. SLIFE: Oh, sorry.

16                  Did you know that the decedent had a sentencing  
17 pending in District Court?

18                  THE WITNESS: I don't recall that specifically. I  
19 know he had a criminal background though, yes.

20                  MR. SLIFE: Okay. You don't -- you don't remember  
21 that he specifically had a pending sentencing date?

22                  THE WITNESS: No, not that specific detail. No.

23                  MR. SLIFE: Okay. I mean, our record essentially was  
24 to be able to ask that, Your Honor. I think I had laid the  
25 proper foundation as to whether he had done investigation with

1 regard to people's backgrounds, different things like that, and  
2 so I was going to ask him that specific question.

3 THE COURT: Okay. And the objection was?

4 MR. BATEMAN: Well, I guess he can talk about running  
5 backgrounds, but then it doesn't make sense unless the  
6 defense's follow-up question is, Well, did you run the  
7 background on Tim Hildebrand? Did you find out he has all this  
8 record. Does that make -- is that relevant to whether you  
9 believed him or not?

10 The problem I have with that is can you imagine every  
11 case that we're in here where the defendant's choosing not to  
12 testify and has a criminal history, but -- but talked to the  
13 detective, and I could say, you know, Detective, you sat down  
14 and talked to the defendant, and he gave you a story that  
15 doesn't quite make sense. Is one of the reasons you didn't  
16 find it credible that he has three prior felonies for armed  
17 robbery? We can't do that. I mean, that -- that's crazy.

18 There's no reason why they would be able to do it  
19 with either the victim in the case or the State's witnesses. I  
20 mean, we're going down a road of just opening everything up,  
21 and then --

22 THE COURT: Is that a long way to say your objection  
23 is relevance?

24 MR. BATEMAN: Yes, Your Honor.

25 MS. DIGIACOMO: It's --

1 MR. BATEMAN: Sorry.

2 MS. DIGIACOMO: It's relevance, hearsay, as well as  
3 improper impeachment. That's what we stated at the bench.

4 MR. BATEMAN: I'm sorry, Your Honor.

5 THE COURT: Right. Right. That's what I was --  
6 trying to say what you said at the bench.

7 MR. BATEMAN: Well, we didn't -- we didn't  
8 actually -- we didn't actually object. I think they came up  
9 and said what they were going to do.

10 THE COURT: Right. And then you said if they did  
11 that you would object on relevance --

12 MR. BATEMAN: Right.

13 THE COURT: -- and impeachment. Well, what --

14 MS. DIGIACOMO: And -- and hearsay. Because what he  
15 learned from the computer, that's hearsay.

16 THE COURT: Okay. So --

17 MR. SLIFE: Well, Judge, I think -- I think the  
18 answer was that he --

19 THE COURT: Just a minute.

20 MR. SLIFE: Oh, I apologize.

21 THE COURT: All right. So I don't, I mean, see that  
22 it's impeachment. I'm not following.

23 MS. DIGIACOMO: It's improper impeachment if they're  
24 trying to impeach our victim by showing he had a criminal  
25 record and then bolster the defendant by saying the defendant

1 didn't have a criminal record because it's not a felony  
2 conviction, I mean --

3 THE COURT: Well, the victim's dead. He's not going  
4 to testify. So he can't be impeached.

5 MS. DIGIACOMO: Well, his statements have come in.  
6 So technically you could use his prior criminal history to  
7 impeach his statement if he had prior convictions, but it's not  
8 here, and we couldn't just use on any witness, Oh, you've been  
9 arrested before.

10 THE COURT: Right. Well, mainly I don't see the  
11 relevance.

12 How is it relevant? You know, so your next question  
13 is, So did you run -- were you -- or you're going to lead him  
14 because you're leading him. So you're going to say, so did you  
15 run the victim and find out that he had a bench warrant for his  
16 arrest? Isn't that what you're next question was?

17 MR. SLIFE: No, just that he had a pending  
18 sentencing.

19 THE COURT: That he had a pending sentencing.

20 MR. SLIFE: It's just that --

21 THE COURT: How is it relevant though?

22 MR. SLIFE: It's relevant to show that this guy, he  
23 was so angry that he had a pending sentencing, which I know  
24 Your Honor told us, you know, how you do sentencings, but  
25 obviously if you get a new arrest for fighting or for anything

1 and you come into a sentencing -- this was a Wobbler stipulate  
2 to felony -- and you've had a new arrest -- I mean, this was a  
3 Wobbler stipulate to felony, no opposition to probation. If he  
4 were to pick up a new arrest, that could put him in jeopardy of  
5 going to prison, and I think it's just relevant to show that  
6 even though he has this existing sentencing, he's -- he's still  
7 mad enough to start trouble here.

8 THE COURT: Okay. There's -- there's no evidence  
9 whatsoever that the -- that the victim was mad concerning an  
10 upcoming sentencing. All the -- all the evidence that's come  
11 up seems to indicate that if he was angry about something it  
12 was because he wanted Amanda to talk to him and was upset that  
13 he wasn't being allowed to talk to Amanda, and perhaps the  
14 defendant was somehow involved with Amanda, but it -- there's  
15 just nothing --

16 MR. SLIFE: Understood, Your Honor.

17 THE COURT: -- nothing that connects it to this.

18 MR. SLIFE: Understood.

19 THE COURT: So I don't -- I'm going to sustain the  
20 objection as to relevance. Don't go there.

21 MR. SLIFE: I won't. And I just know that this has  
22 been an issue. So out of respect to the Court --

23 THE COURT: Thank you. I appreciate it.

24 MR. SLIFE: -- rather than saying it, I wanted to  
25 approach.

1 THE COURT: While we're outside the presence, is  
2 there anything else you were anticipating that you might want  
3 to bring up that you would need to ask this officer before we  
4 have him leave the courtroom on --

5 MR. BATEMAN: Or the State's likely to object --

6 MR. SLIFE: Nothing that I can anticipate right now.

7 THE COURT: All right. You -- you're excused for  
8 right now until 3:15.

9 THE WITNESS: Thank you.

10 THE COURT: So you may use the restroom. If you'd  
11 like to use the one in the back hall, our marshal's back here.

12 THE WITNESS: Can I leave this here?

13 THE COURT: Of course.

14 (Witness exiting.)

15 THE COURT: Okay. Anything else?

16 MR. BATEMAN: Just maybe it's worth putting on the  
17 record we played the defendant's statement. We had discussion  
18 about the defendant's statement before defense voir dired  
19 about, you know, his invocation. So that's all been -- that  
20 record's all been made.

21 I just will note that the defense sent an e-mail to  
22 me. They wanted a portion of the transcript -- I believe it  
23 was -- there was a portion on page 12 and 13 -- and I don't  
24 know whether we want to make it a court exhibit -- relating to  
25 questions about whether the defendant had ever been arrested,

1 and he kind of said some things that could suggest that perhaps  
2 he had. So I took those out, and you didn't hear that in  
3 the -- in the audio pursuant to the request of defense, and I  
4 think it's on page 12 into 13. So I just want to put that on  
5 the record.

6 MS. DIGIACOMO: Yes, and it starts with, Well, have  
7 you ever been arrested -- Well, have you ever been arrested --

8 MR. BATEMAN: What have you ever been arrested for?

9 MS. DIGIACOMO: And then it ends with, so you --  
10 where it says, Nah, on page 13.

11 THE COURT: Okay. And that's correct, you asked them  
12 to have that deleted from the audio?

13 MS. LEMCKE: Yes, we did.

14 THE COURT: All right. Very well. So that -- that's  
15 in the record.

16 Thank you. Anything else?

17 MS. LEMCKE: No, Your Honor.

18 THE COURT: All right. We'll be in recess until  
19 3:15.

20 (Proceedings recessed 3:03 p.m.)

21 (In the presence of the jury.)

22 THE COURT: All right. Thank you. Please be seated.

23 And the record will reflect that we are back within  
24 the presence of all 12 members of the jury as well as the three  
25 alternates. Defendant is present with his counsel. Deputies

1 district attorney prosecuting the case are present, as are all  
2 officers of the court.

3 And we are proceeding with cross-examination.

4 And you're still under oath.

5 You may proceed.

6 MR. SLIFE: Thank you, Your Honor.

7 BY MR. SLIFE:

8 Q All right. Sir, if I could talk to you a little bit  
9 about the interview you did with Mr. Pimentel, okay.

10 A Okay.

11 Q And that was -- that was at 9 a.m. in the morning?

12 A Approximately, yes.

13 Q And Mr. Pimentel was handcuffed?

14 A I believe he was, yes.

15 Q To the table?

16 A I believe so.

17 Q Your -- it was your understanding that he had been up  
18 all night?

19 A Yes, he was.

20 Q He was obviously tired?

21 A You could say that I guess.

22 Q Okay. You were tired, right?

23 A Yes.

24 Q You had gotten up a little earlier than you expected?

25 A That is correct.



1 Q All right. Now, you've been a detective for 26  
2 years?  
3 A No, I've been a detective for about 20 years.  
4 Q Okay. On Las Vegas Metropolitan Department a total  
5 of 26 years?  
6 A Yes.  
7 Q Detective for about 10 years?  
8 A In homicide, yes.  
9 Q In homicide. Prior to that, you were specifically in  
10 narcotics for about 10 years; is that right?  
11 A Yes.  
12 Q And during that time, you -- I mean, during all of  
13 your time you've obviously had training in recognizing signs of  
14 someone being under the influence, right?  
15 A Yes.  
16 Q Specifically under the influence of drugs?  
17 A Yes.  
18 Q Yes?  
19 A Yes.  
20 Q For alcohol?  
21 A Yes.  
22 Q For -- for a variety of drugs, right?  
23 A That is correct.  
24 Q And apart from training, I imagine you've also had a  
25 lot of experience coming into different various contact with

1 people that were under the influence, right?

2 A That is correct.

3 Q I mean, you've been in contact with suspects under  
4 the influence?

5 A Yes, I have.

6 Q With witnesses under the influence?

7 A Yes, I have.

8 Q Okay. Now, in your opinion, at the time you spoke to  
9 Mr. Pimentel that morning he was not under the influence of  
10 alcohol, right?

11 A That is correct.

12 Q He was not under the influence of any drugs, right?

13 A That is correct.

14 Q Now, you're specifically familiar with the drug  
15 crystal meth or methamphetamine, right?

16 A Yes, I am.

17 Q In your opinion, he was not under the influence of  
18 methamphetamine at that time, right?

19 A That is correct.

20 Q All right. Now, as lead detective, you were aware  
21 that the decedent was under the influence of methamphetamine at  
22 the time of the shooting?

23 A I know that he had methamphetamine in his system. I  
24 do not know if he was under the influence of methamphetamine.

25 Q Okay. But you're aware that the methamphetamine in

1 his system was lethal amounts?

2 A It could be called that sometimes, yes.

3 Q Okay. And that's because you spoke about this to

4 some extent with Dr. Gavin, the corner?

5 A Yes.

6 Q Over the course of your 26-year career, you've had

7 experience dealing with people on meth, right?

8 A Yes.

9 Q And based on your experience, would you agree that

10 meth can make someone violent?

11 A Yes, it can.

12 Q Okay. But again, no indication that Luis was under

13 the influence of anything when you spoke to him?

14 A That is correct.

15 Q Correct?

16 A That is correct.

17 Q All right. I'd like to talk to a little bit about

18 your interview with the decedent's father, and that was the

19 same name Robert Holland, the second, right?

20 A That's correct.

21 Q Let's see. He specifically told you that his son had

22 called him and asked him to come to Arizona Charlie's, right?

23 A Yes.

24 Q And that his son was having a fight with his

25 girlfriend, right?

1           A     Yes.

2           Q     And that if he didn't come over Robert was going to  
3 go to jail, right?

4           A     Yes, that's what he said.

5           Q     And then Robert -- and that to his knowledge Robert  
6 had slapped his girlfriend, right?

7           MR. BATEMAN: I'm going to object. I think this is  
8 all -- is hearsay at that point. I mean, I don't know what  
9 it's offered for.

10          MR. SLIFE: Well, Judge, two things if I may. Number  
11 one, it's not for the truth. It goes to his investigation, but  
12 also at this point, the father specifically said he did not  
13 remember the interview. So at this point it would come in as  
14 an inconsistent statement as well.

15          MR. BATEMAN: I don't know what statements -- if it's  
16 prior inconsistent, I don't know what statements he's referring  
17 to that the father didn't remember.

18          MR. SLIFE: Well, he didn't remember the entire  
19 interview with Detective Williams.

20          MR. BATEMAN: He --

21          THE COURT: I think that -- I recall that was his  
22 testimony, that he didn't recall -- he didn't know what he  
23 said, I think were his words.

24          MR. SLIFE: And if he doesn't -- may I approach with  
25 a case, Your Honor?

1 THE COURT: A case? I'm going to allow it. I  
2 don't --

3 MR. SLIFE: Oh, you're going to allow it?

4 THE COURT: Yes, you can show me a case, but I'm  
5 going to overrule the objection.

6 MR. SLIFE: I'll save that case for another day, Your  
7 Honor. Thank you.

8 BY MR. SLIFE:

9 Q Okay. Back to the interview with Robert -- Robert  
10 Holland the father, he told you that his son was going to start  
11 trouble over there, meaning Arizona Charlie's, right?

12 THE COURT: Wait a minute.

13 MR. BATEMAN: I'm sorry.

14 THE COURT: He's standing again.

15 MR. BATEMAN: My objection is the statement from the  
16 victim to his dad would technically be hearsay. The statement  
17 from the victim to his dad is technically hearsay. So the  
18 statement that he can perceive would then be offered for the  
19 truth, and he's offering the statement of the victim to the  
20 dad, and that would be hearsay.

21 THE COURT: Okay.

22 MR. SLIFE: Well --

23 THE COURT: All right. What was the last question?

24 MR. SLIFE: I think the State stood up. The question  
25 was that Robert had slapped his girlfriend.

1 THE COURT: All right. Okay.  
2 MR. SLIFE: This is what the father told the --  
3 THE COURT: Approach here.  
4 (Conference at the bench not recorded.)  
5 MR. SLIFE: Thank you, Your Honor.  
6 BY MR. SLIFE:  
7 Q All right. Sir, so we're doing your interview with  
8 the decedent's dad Robert Holland the second, okay. All right.  
9 He told you that his son had called him and asked him to come  
10 to Arizona Charlie's, right?  
11 A Yes.  
12 Q And that he was having a fight with his girlfriend,  
13 right?  
14 A Yes.  
15 Q And that if you didn't come over, that Robert was  
16 potentially going to go to jail, right?  
17 A Yes.  
18 Q And that Robert was going to start a trust -- was  
19 going to start trouble over there, right?  
20 A I don't remember that part.  
21 MR. SLIFE: Okay. May I have the Court's indulgence?  
22 THE COURT: Yes.  
23 MR. BATEMAN: And just if we could have an  
24 admonishment that that's not for the truth of the matter and  
25 that the jury is not to take that at this point as any sort of

1 fact.

2 THE COURT: Right. The jury is admonished that this  
3 is offered to prove the effect of the statements upon the  
4 listener, that being the father, what his -- how it affected  
5 his state of mind and not for any truth -- the truth of any of  
6 the statements that were made.

7 MS. LEMCKE: And the decedent's state of mind as  
8 well, Your Honor, to the extent that the statements from the  
9 decedent to his dad reflect his then existing state of mind,  
10 that is the decedent's as well.

11 THE COURT: All right. As well, but in other words,  
12 the statements themselves aren't proof for the truth of what is  
13 actually asserted in the statement.

14 MR. SLIFE: Thank you, Your Honor.

15 BY MR. SLIFE:

16 Q And, sir, I think you're ahead of me. I was going to  
17 ask you if you had his statement in your report. Go ahead  
18 and -- go ahead and feel free to refer to it. I'm on page 2 at  
19 the bottom. At the bottom, He told me that he was at Arizona  
20 Charlie's, to come over, and his girlfriend are arguing or  
21 having problems. He was going to go to jail if I didn't -- if  
22 I didn't get over there.

23 So Robert your son called you and said, Come over to  
24 Arizona Charlie's, I'm having a fight with my girlfriend, If  
25 you don't come over, I'm going to jail, that he was going to

1 start trouble over there?

2 Do you remember all that?

3 A Well, that's what the father said his interpretation  
4 was. That's not what he said his son told him.

5 Q Correct. This is the father's interpretation of what  
6 was said?

7 A Yes. I didn't understand that that's what you were  
8 trying to get at.

9 Q Okay. And it might be my bad. And then a little  
10 further down on page 3 now, He said that he had slapped his  
11 girlfriend, and the security was already involved over there I  
12 guess.

13 And what's his girlfriend's name?

14 It's Amanda.

15 All that -- all that is what the father told you?

16 A That is correct.

17 Q Okay. So it's your understanding that Robert had  
18 slapped his girlfriend and that his father gave him a ride so  
19 he could go back to the woman he had just been violent with?

20 MR. BATEMAN: I have a problem with that question --

21 THE COURT: Okay. There is an objection. Just a  
22 moment.

23 MR. BATEMAN: -- based on our conversation at the  
24 bench. Is it his understanding that that's what actually  
25 happened?



1 THE COURT: All right. Did you have an understanding  
2 as to what had happened?

3 THE WITNESS: That the victim had got into a physical  
4 confrontation with his girlfriend and wanted his dad to take  
5 him to talk to her again so he could talk to her. I don't --  
6 there's no indication he was going to be violent again, just  
7 that he wanted to talk to his girlfriend.

8 MR. SLIFE: All right. That's fine.

9 THE COURT: Go ahead.

10 BY MR. SLIFE:

11 Q I don't see any indication in any of the documents I  
12 have that you ever spoke to security at Arizona Charlie's; is  
13 that right?

14 A That's correct.

15 Q Never spoke to anyone to see what had happened over  
16 there before regarding this -- this incident, this potential  
17 slapping, right?

18 A That's correct.

19 Q Never spoke to Security Officer Juan Knight, right?

20 A I'm sorry. Say that last part again.

21 Q Juan Knight.

22 A Juan Knight?

23 Q Juan?

24 A No.

25 Q Never spoke to Security Officer Javon Howard?

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Respondent.

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### Counsel for Respondent

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ee, Clark County Public Defend

Employee, Clark County Public Defender's Office