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Electronically Filed
Mar 28 2016 09:45 a.m.
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Case No. 68710

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1 A No.

2 Q Never spoke to Security Officer Ian Wagner?

3 A No.

4 Q Okay. Just a few more questions with regard to what

5 Robert's dad told you, and if you want to follow along, this is

6 on page 13 of his interview. He was asked if he had seen

7 Lorenzo before, right?

8 A Correct.

9 Q This is on the bottom, and his response that he had

10 seen him about five times, right?

11 A Yes.

12 Q He never told you in that interview that he had known

13 Lorenzo for nine months, right?

14 A I'd have to go through the entire report. I don't

15 remember him saying that, no.

16 Q Okay. Well, if you'd like to, you could, but you

17 don't remember him saying that?

18 A No, I don't.

19 Q Okay. There was also some testimony at trial from

20 his father that when Lorenzo was walking toward Boulder

21 Highway --

22 MR. BATEMAN: This violates the -- this violates the

23 exclusionary rule, Your Honor. State would object to the --

24 MR. SLIFE: Well --

25 THE COURT: All right. Well, approach so I can hear

1 what the foundational question is.

2 (Conference at the bench not recorded.)

3 MR. SLIFE: Thank you, Your Honor.

4 BY MR. SLIFE:

5 Q All right. Detective, in that interview, Robert
6 Holland the second, the decedent's father, never told you that
7 the shooter in the case had, As he was walking towards Boulder
8 Highway he had fired a few more times in the air, right? He
9 never told that to you in that interview?

10 A It's a very long question, but I don't recall that.
11 I would have to read the entire statement, but I do not recall
12 that, no.

13 Q If you'd like to look through it, you can. If you
14 don't recall it, that's fine as well.

15 A To be able to testify that something wasn't said, I'd
16 have to read all 19 pages.

17 Q I didn't see it in there. If you'd like to look, be
18 my guest.

19 A I don't recall him saying that.

20 Q Okay. And to your knowledge, no additional bullet
21 casings were found at the scene, right?

22 A Just the one cartridge case.

23 Q Okay. Let me talk to you about a few other
24 interviews. You also interviewed Amanda Lowe?

25 A Yes, I did.

1 Q And that was at about 1:40 on the same day, right?
2 A Correct.
3 Q The same day as the shooting, right?
4 A Yes.
5 Q A few hours later, yes?
6 A Quite a few hours later.
7 Q Okay. She told you --
8 MR. BATEMAN: I'm going to object as to hearsay.
9 THE COURT: Sustained.
10 MR. SLIFE: Well, and, Judge, for the record, this
11 would just go to his investigation.
12 THE COURT: It's sustained though.
13 BY MR. SLIFE:
14 Q Okay. Based on your interview -- well, let me ask
15 you this about the interview with Amanda. I believe your
16 testimony was that it wasn't recorded. The reason that it
17 wasn't recorded wasn't her fault. It was because you and your
18 partner -- it was your fault it wasn't recorded, right?
19 A Combination of both.
20 Q Well --
21 A I can explain.
22 Q Well, I mean, it -- well, the recorder wasn't on,
23 right?
24 A When we interview people, we normally say, Can we
25 record the conversation. We put our tape recorder out where

1 all can see, and we get permission to do so. If she wouldn't
2 have been hostile, we would have done that.

3 Q Okay. But you -- but you -- I mean, I think your
4 testimony was that sometimes you or your partner keep your --
5 the recording device in your pocket and turn it on, and you had
6 each thought you had done it, right?

7 A That's correct.

8 Q And because of that reason it wasn't recorded?

9 A Yes, both reasons.

10 Q Okay. Now, based on your interview with her though,
11 you had learned two other names in the interview with her, Tim
12 Hildebrand and Shannon Salazar, right?

13 A Correct.

14 Q If not for -- if not for speaking to Amanda, you
15 would have never known those names, right?

16 A No, that's not true. We could have got those names
17 from other sources.

18 Q Okay. Maybe you could have, but in this case you got
19 it from her?

20 A Yes, we did.

21 Q You didn't speak to either of them until January
22 2nd, 2014, right?

23 A That is correct.

24 Q 10 or 11 days later?

25 A Yes.

1 Q They didn't come to you, right?
2 A Not initially, no.
3 Q You had to go look for them?
4 A That's correct.
5 Q I'm just curious. What did you have to do to find
6 Tim Hildebrand and Shannon Salazar?
7 A Went to the addresses where we were told they lived,
8 and we put business cards in their -- in their doors.
9 Q That's it?
10 A That's it.
11 Q They never called you though, right?
12 A I believe they did.
13 Q Okay. So 11 days after, you were finally able to
14 talk to them?
15 A Yes.
16 Q Let me ask you a little bit about firearms. In your
17 26 years you obviously have experience with firearms, right?
18 A That's correct, yes.
19 Q And you know about various ways to carry a firearm
20 concealed on your person, right?
21 A Yes.
22 Q And in general, if you put a firearm in your front
23 waistband, is that commonly referred to as an appendix carry?
24 A Never heard that.
25 Q You've never heard that, okay. We won't call it an

1 appendix carry, but people can obviously carry a weapon in the
2 front of their waistband concealed, right?

3 A Yes.

4 Q And they can do so with a holster, yes?

5 A Yes, they could.

6 Q They can do so without a holster?

7 A Presumably, yes.

8 Q Would you agree that without a -- without a holster
9 it makes it a little more difficult -- I mean, it could be kind
10 of -- it could be a little more loose in your belt?

11 A Yes.

12 Q A holster gives it a little more stability?

13 A Yes.

14 Q Now, would you agree that if you carry a weapon in
15 your -- in your waist it can be uncomfortable if you sit down?

16 A Presumably so.

17 Q Especially, I mean, if it's a derringer, it might not
18 be as uncomfortable obviously, right?

19 A Sure, if you say so.

20 Q Okay. So you don't know if you have a
21 nine-millimeter that can carry 17 rounds if you put it in your
22 waistband and you sit in a car that it could potentially press
23 into your leg and be uncomfortable?

24 A Potentially, but also it can tilt. I've carried a
25 weapon that way many times. If it tilts, it's not

1 uncomfortable at all.

2 Q Okay.

3 A I'm not sure why we're -- but it could go either way.

4 Q Okay. You would agree though that one of the rules

5 of carrying concealed is that you don't anyone -- you don't

6 want anyone to know you have a gun, right?

7 A I didn't know there were rules on that, but I guess

8 that would be a -- a desire.

9 Q It's kind of an obvious thing, right?

10 A Yes.

11 Q And you don't want someone to be able to see the

12 outline of a gun, right? I mean, you're concealing, true?

13 A I guess that would be different with whoever is

14 carrying the gun.

15 Q Okay. If -- if -- obviously -- maybe these are just

16 so commonsense. If you have a T-shirt on, and you're carrying

17 a gun in your waistband and you want to hide it, you probably

18 wouldn't want to raise your arms like this and have your shirt

19 come up, right?

20 A Okay. I'm not --

21 Q Is that too commonsense?

22 A No, I just don't -- I'm not clear on what you're

23 trying to get me to answer, and I'm not sure what you want.

24 Q Okay. We'll move on. One more question about this

25 interview with Mr. Pimentel. You would agree -- and we've

1 heard it -- at some point in that interview he made it very
2 clear that he did not want an attorney, yes?

3 A He wanted an attorney or did not want an attorney?

4 Q That he wanted an attorney, excuse me.

5 A Yes, he did want an attorney. Yes.

6 Q That he wanted an attorney present, right?

7 A Yes.

8 Q And specifically, Are you saying now that you don't
9 want to talk to us, that you'd rather speak to an attorney?

10 Yes.

11 Well, if you're asking to talk to a lawyer before any
12 questioning continues, go ahead, but I'm -- but I'm going to
13 talk to you for a little bit. Is that okay?

14 And then you went on to tell him, You shot and killed
15 a man, and before he died he told those around him exactly who
16 did it; is that right?

17 A Yes, that's what I said.

18 Q Now, as we sit here today, there's no evidence that
19 before Robert Holland died he told everyone around him exactly
20 who did it, is there?

21 A Nope.

22 Q Okay. So what you told him was a lie?

23 A Misrepresented the facts, yes, I did.

24 Q A lie?

25 A You can call it that.

1 Q And then you also told him, There were several people
2 there that watched you do it. That was a lie also at that
3 point?

4 A No, it was not.

5 Q You had not spoken to Timothy Hildebrand on the
6 morning you questioned Mr. Pimentel. You didn't speak to him
7 until 11 days later, right?

8 A That's true, but we knew he was there from other
9 witnesses.

10 Q Okay. So he asked for an attorney, and you lied to
11 him to try to get him to talk?

12 A No.

13 MR. SLIFE: Okay. May I have the Court's indulgence,
14 Your Honor?

15 THE COURT: Yes.

16 MR. SLIFE: I'll pass the witness, Your Honor.
17 Thank you, sir.

18 THE COURT: Redirect.

19 MR. BATEMAN: Thank you. Very briefly.

20 REDIRECT EXAMINATION

21 BY MR. BATEMAN:

22 Q Detective, you were asked some questions about DNA
23 testing. Do you remember those questions?

24 A Yes, I do.

25 Q All right. Do you just randomly do DNA testing, or

1 do you normally try to do DNA testing -- is there a point
2 behind it?

3 A Yes, if it's an identity case, then we do a lot of
4 DNA testing, but if it's not, we're backlogged so far and so
5 many months and sometimes years that the lab will actually send
6 us a report saying, Look, if this isn't absolutely necessary,
7 we're going to have to ask you not to submit these cases --
8 submit these requests.

9 Q What -- what can DNA -- what can it tell you? What
10 what's the whole point of a DNA analysis on let's say an item
11 of evidence?

12 A The identity of an individual that had it.

13 Q So if someone had touched something, that would mean
14 they had touched something, correct?

15 A Yes.

16 Q If they'd left DNA in a particular location, that
17 would mean they were there?

18 A Correct.

19 Q It doesn't mean that they weren't there if you don't
20 find DNA?

21 A That's correct.

22 Q So it's limited in that it can confirm somebody touch
23 something or was there, for instance like blood?

24 A That's correct.

25 Q All right. Now, you were asked some questions about

1 evidence that may or may not have been in the victim Bobby
2 Holland's house, and you were asked -- you didn't get a search
3 warrant for his house; is that correct?

4 A That's correct.

5 Q Can you just get a search warrant? Is there a
6 requirement for probable cause?

7 A There is definitely a requirement for probable cause.

8 Q Do you have any probable cause to believe that there
9 was anything in Bobby's house that you needed to go search for
10 at the time?

11 A None whatsoever.

12 Q And that was based upon the totality of your
13 investigation?

14 A Yes.

15 Q There was no -- let me ask you this. Was there
16 any -- you were asked questions about items related to firearms
17 that were not in the defendant's apartment. Do you remember
18 those questions?

19 A Yes.

20 Q Based upon your investigation of Bobby in this case,
21 was there any items on Bobby's person that would've suggested
22 he was in possession of anything related to a firearm?

23 A None whatsoever.

24 Q You were asked questions about how meth --
25 methamphetamine affects the way people behave; is that -- do

1 you remember those questions?

2 A Yes.

3 Q Okay. And you've been a detective and interviewed
4 defendants, witnesses, victims for a long time; is that right?

5 A Yes.

6 Q Okay. Does methamphetamine or any illegal drug or
7 prescription drugs for that matter affect people differently?

8 A Yes, it does.

9 Q There are a lot of factors on how it might affect the
10 way someone behaves?

11 A There are a lot. It just depends on how much you've
12 used in the past, how much you metabolize, how big you are, how
13 small you are. There's a lot of factors.

14 Q You were asked some questions again -- I think we
15 covered this about Tim and Shannon and when they contacted you.
16 Do you remember whether they contacted you the same day that
17 you left those cards?

18 A I don't recall if they contacted us the same day.
19 Detective Jensen is the one who had contact with them, and I
20 don't recall how soon they called.

21 Q Was it relatively soon, or was it, like, two weeks
22 later?

23 A It was relatively soon.

24 Q Okay. Within a day?

25 A Yes.

1 Q And again they agreed to go on tape; is that right?
2 A Yes, they did.
3 Q They weren't hostile with you?
4 A No, they were not.
5 Q You were asked some questions about how you might
6 carry a gun in your pants, and you talked about a holster --
7 the holster. Why might someone use a holster with their pants
8 to carry concealed?
9 A It's more secure. It won't fall down their pant leg.
10 Q Okay. In order to carry -- can you carry a gun in
11 pants without a holster?
12 A Yes, you can.
13 Q Can you carry in the waistband without a holster?
14 A Yes.
15 Q What is it you have to do to secure the gun in your
16 waistband without a holster?
17 A I can only explain what I've personally done, and
18 that's just tuck it where it's snug against the waistband,
19 where it's against a hip or somewhere where it's not going to
20 slip down.
21 Q For instance, would a belt be helpful so that you can
22 tighten your pants around a firearm?
23 A Yes, that would be very helpful.
24 Q Would it be easier to carry a gun in your pants with
25 a belt versus let's say an elastic-band sweat pant?

1 A Absolutely.

2 Q You were asked some questions about why you told --
3 you misrepresented the facts to the defendant at the end of
4 the -- at that point when you were just talking to him. Do you
5 remember those questions?

6 A Yes.

7 Q And in particular, why did you tell him that people
8 had -- that Bobby had said he did it and that other people had
9 seen him do it?

10 A We knew that he would be going to jail, and we knew
11 that he would be making jail phone calls, and we commonly will
12 stimulate a conversation on that, and we knew that if we said
13 something of that nature that he may talk openly on the phones.

14 Q And jail phone calls -- when you go to jail for
15 something like this -- where was the defendant taken?

16 A Clark County Detention Center.

17 Q And what is the phone system at the Clark County
18 Detention Center?

19 A They have recorded phone lines, and we regularly
20 monitor those calls on suspects who are taken into custody.

21 Q Does the phone call have a recording that alerts the
22 suspect that their phone call is going to be recorded?

23 A Yes, it does.

24 MS. LEMCKE: Your Honor, I'm going to object, and can
25 we approach very briefly?

1 THE COURT: Yes.

2 (Conference at the bench not recorded.)

3 MR. BATEMAN: I don't believe I have any additional
4 questions.

5 RECROSS-EXAMINATION

6 BY MR. SLIFE:

7 Q So when he didn't say what you wanted, you said
8 something to rile him up that could potentially be used against
9 him in the future in jail phone calls?

10 MR. BATEMAN: Judge, they -- we've already covered
11 the fact that he invoked. So I think it's been asked and
12 answered, and he's invoked. So I don't know the point of the
13 question at this point. My objection is relevance.

14 THE COURT: All right. Well, I'll allow it.

15 But you need to repeat the question I think.

16 BY MR. SLIFE:

17 Q You know what, let me just ask a different question.
18 You said that you didn't get a search warrant. You don't have
19 to have a search warrant to go into somebody's house though.
20 You can get consent from the people that live there, right?

21 A Yes.

22 Q So you could have gotten consent from his father or
23 mother or whoever lived at his residence, and you could've done
24 a search that way as well, right?

25 A Well, I couldn't get consent from the victim

1 obviously, and I'm not sure I can get into an individual's
2 bedroom without -- they can't provide consent to an adult
3 child. So the answer would be no to that.
4 Q Okay. You didn't try though?
5 A No, again there would be no purpose for that. We
6 don't do search warrants or searches on our victims.
7 Q No purpose in your mind?
8 A That's period.
9 MR. SLIFE: Okay.
10 MR. BATEMAN: Nothing else, Your Honor.
11 MR. SLIFE: Nothing further, Your Honor. Thank you.
12 THE COURT: May this witness be excused?
13 MR. BATEMAN: For the day.
14 THE COURT: For the day. All right.
15 So you remain under subpoena, and they'll call you if
16 they need you. Thank you very much for your testimony.
17 Call your next witness.
18 MR. BATEMAN: State calls Juan Knight.
19 May I approach your clerk?
20 THE COURT: You may.
21 (State's witness, Juan Knight, sworn.)
22 THE CLERK: Thank you. Please be seated, and please
23 state and spell your first and last name for the record.
24 THE WITNESS: It's Juan Knight. J-u-a-n,
25 K-n-i-g-h-t.

1 THE CLERK: Thank you.

2 THE COURT: You may proceed.

3 MR. BATEMAN: Thank you.

4 DIRECT EXAMINATION

5 BY MR. BATEMAN:

6 Q Sir, do you work for Arizona Charlie's?

7 A Yes, sir.

8 Q And in what capacity?

9 Q I'm a security bike officer.

10 Q Security bike officer?

11 A Yes, sir.

12 Q Okay. What do you do -- what are your duties as a
13 security bike officer?

14 A Patrol outside basically.

15 Q Patrol the outside?

16 A Right.

17 Q And just try to -- what types of things -- when you
18 say patrol, what you talking about?

19 A We -- we patrol the hotel, basically make sure
20 there's nothing going on, and RV park where we doing basically
21 the same thing, making sure there's nothing going on outside.

22 MR. BATEMAN: May I approach your clerk briefly?

23 THE COURT: You may.

24 BY MR. BATEMAN:

25 Q I'm going to show you what's in evidence as 121. Do

1 you see what appears to be an overhead photograph of the
2 Arizona Charlie's on Boulder Highway?

3 A Yes, sir.

4 Q Okay. And is that where you work?

5 A I do.

6 Q Do you recognize that?

7 A Yep.

8 Q Okay. Is that yes?

9 A Yes, sir.

10 Q How long have you been working as a security officer?

11 A Since 2008, so about seven years, almost eight years.

12 Q Always Arizona Charlie's?

13 A Correct.

14 Q And has that all been at this particular location?

15 A It's been at this one. I went from inside to
16 outside.

17 Q Inside to outside?

18 A Right.

19 Q And you said there's an Arizona Charlie's RV park.
20 Is that just to the north?

21 A Right, it's on the north side of the property.

22 Q So you patrol all that. You patrol all the rooms,
23 everywhere the rooms are?

24 A We gotta patrol everything. So we walk -- we go from
25 the hotel. We over there for an hour. Then we go RV park for

1 an hour, garage for an hour. We just alternate.
2 Q Anything that's outside that you can ride to, right?
3 A Right.
4 Q Were you working that night with any other bike
5 patrol -- well, excuse me. I'm going to direct your attention
6 to December 22nd, the early morning hours of 2013. Were you
7 working graves?
8 A Yes, sir.
9 Q Are you still working graves?
10 A I am.
11 Q Okay. You've got to go in tonight?
12 A I do.
13 Q Were you working that night with any other outside
14 bike patrol officers?
15 A Yes, sir.
16 Q Who was that?
17 A Javon Howard.
18 Q Is that all?
19 A It was one other, but he was doing dispatch at the
20 time.
21 Q Is that Richard Anderson?
22 A Right.
23 Q What does dispatch mean?
24 A They send out all the calls out telling us what's
25 going on. They call, like -- well, that's what they call --

1 I'm tired. So.
2 Q It's okay.
3 A They -- they basically send all the calls. Whatever
4 they call, we respond to.
5 Q So you're in communication with dispatch?
6 A Right.
7 Q Right. Are there other elements of security at
8 Arizona Charlie's, like security guards inside the actual
9 casino area?
10 A Yes, sir.
11 Q And so you said there is a dispatch. Is there --
12 dispatch means there's somebody calling to all the security
13 guards?
14 A Right.
15 Q Do you have radio equipment on you?
16 A We do.
17 Q That's how you hear from dispatch?
18 A Right.
19 Q Are there other folks who work in surveillance?
20 A There are.
21 Q And so are their cameras both inside and outside of
22 Arizona Charlie's?
23 A Yes, sir.
24 Q Are you familiar with kind of the surveillance
25 system?

1 A I am.
2 Q Are you familiar with where there are cameras in
3 the -- in the property?
4 A Yes, sir.
5 Q Now, did you have occasion in the early morning hours
6 to be dispatched by -- you were dispatched to a particular area
7 of Arizona Charlie's?
8 A We were.
9 Q Okay. Where was that area?
10 A It was on the south side by -- well, he was over in
11 this area.
12 Q You can actually -- if you touch your screen --
13 A Oh, okay.
14 Q Okay.
15 A We were called for -- it was a verbal -- domestic
16 verbal.
17 Q And you kind of mark the building close to what
18 appears to be the larger Arizona Charlie's building; is that
19 right?
20 A Yeah, looks like it. It was actually, like, in this
21 area right here.
22 Q Okay. So you're making some marks that are actually
23 farther south; is that right?
24 A Right. It's in between these two buildings here.
25 Q Kind of buildings where they -- where they kind of go

1 to a corner?

2 A Right.

3 Q On the south side of Arizona Charlie's?

4 A Yep.

5 Q What are those buildings?

6 A One is housekeeping. The other one is Building 1,
7 and just to the right of it is Building 8.

8 Q Okay. So Building 1 and then there's housekeeping
9 and Building 8?

10 A Right.

11 Q All right. Which building were you sent to?

12 A We were near building 1.

13 Q And did you see any individuals when you got to that
14 particular area?

15 A Yes, sir.

16 Q Okay. Can you describe who, if anybody, you saw?

17 A We had -- we were watching the WMA -- well, white
18 male adult because he was -- he was involved in a verbal
19 earlier in the shift. So they had us escort him off property.

20 Q Now, when you say white -- WMA means a white male
21 adult?

22 A Right.

23 Q Can you describe that person, like what they look
24 like?

25 A I can't really remember.

1 Q Okay. Big guy? Little guy?

2 A He was a big guy.

3 Q Okay. So the information you got was this guy needs
4 to kind of -- you need to keep an eye on this guy. He's
5 been --

6 A Right. They asked us to watch him to keep him off
7 property.

8 Q Where is it that you first came into contact with
9 this person?

10 A When we first seen him, I was coming around -- it was
11 this area here.

12 Q Let's do this. Let's start over.

13 A Okay. When we come around, he was around this area
14 here.

15 Q All right. That's kind of in the middle building?

16 A It's closer to the marquee, the biggest marquee sign.

17 Q Marquee is what, the sign out on Boulder?

18 A Right, the sign with the casino name on it.

19 Q Okay. And he was basically off -- he was going
20 toward the sidewalk, and he was yelling -- he was yelling.

21 Q Do you know who -- could you see anyone he was
22 yelling at?

23 A We seen -- it was a female and another female showed
24 up. I don't know where she came from, just know that she
25 showed up.

1 Q Were they near building 1?
2 A They were near -- going around towards building 1, in
3 between, like, housekeeping and building 1.
4 Q So they were heading from housekeeping to building 1?
5 A Right. They were coming from that area.
6 Q Can you spot -- let me see if I can zoom in a little
7 bit. Okay. Now can you tell me where building 1 is and where
8 the housekeeping is.
9 A Okay. This area right here is building 1.
10 Q Okay.
11 A Housekeeping is, like, right here.
12 Q So those are the buildings farther south; is that
13 right?
14 A Right.
15 Q So building 1, are there rooms in building 1?
16 A There are.
17 Q And how many floors, do you know?
18 A There's three floors.
19 Q So there's first-floor rooms, second-floor rooms,
20 third-floor rooms?
21 A Right.
22 Q Okay. And what's housekeeping? What are you
23 referring to?
24 A Housekeeping is where the -- the ones that make the
25 rooms up, that's where their offices.

1 Q You saw one girl by building 1, and you saw the
2 second girl come from somewhere near --
3 A Well, she -- the female I saw originally, she went
4 back and got her, and they start headed back towards the room.
5 Q And so you saw one individual girl, and she walks
6 towards housekeeping where the other girl was?
7 A Well, I didn't see the other female. I seen her
8 after the fact. So she went back somewhere. She got her, and
9 they both came out.
10 Q Okay. And where was the white male?
11 A He was, like -- he was borderline in between, like,
12 where the grass is and the sidewalk.
13 Q You're almost here, closer to maybe, like,
14 housekeeping and in the street?
15 A Right. He was coming across the grass. He was still
16 just moving.
17 Q I'm going to move this up. Is there a 711 anywhere
18 around here?
19 A The 7-Eleven, it would be, okay, in this area here.
20 Q Right on the corner, adjacent?
21 A Right.
22 Q To the southeast?
23 A Southeast.
24 Q All right. Are you familiar with the Sinclair in
25 this area?

1 A Right. It's across from the Wells Fargo. So.
2 Q Okay. Go ahead. Can you see the Crystal Palace on
3 there at the bottom?
4 A I can see the Crystal Palace. I can -- I can't see
5 it on here.
6 Q Is there a Sinclair that's near --
7 A There's a Sinclair right across from the Wells Fargo.
8 Q Okay. And is that near Arizona Charlie's?
9 A Right. It's just on the opposite side of the street.
10 Q Now, did you have contact with the females?
11 A I did.
12 Q Did you ever get very close to them?
13 A I was mainly focused on the WMA.
14 Q Okay. So you didn't talk -- you didn't speak with
15 the females?
16 A Right.
17 Q So when you saw the females, you saw the white male,
18 and then you said you focused on the white male?
19 A Right.
20 Q All right. Did there come a point in time in which
21 the white male did something aggressively?
22 A He charged at the female, and he threw -- I think it
23 was a car charger or a phone charger.
24 Q What, if anything, did you do about that?
25 A We had jumped off the bikes and ran toward -- got in

1 front of him basically.

2 Q I'm sorry. I can't hear what you said.

3 A We got off our bikes and got in front of him, making
4 sure he didn't get to her.

5 Q Okay. So at this time, did you see any other males
6 out there?

7 A I seen a Asian -- well, a Hispanic male, and there
8 was one other male. I think it was another white male.

9 Q Now, did you hear any specific threats going on at
10 this time?

11 A I didn't hear any threats.

12 Q Now, you said -- you talked about a Hispanic male.
13 Where if anywhere did you see the Hispanic male come from?

14 A He was about -- over by building 1. I don't even see
15 the property on here right now. All right. He was over in
16 this area.

17 Q Did he come out of the room?

18 A He did. He came out of a room.

19 Q And what, if anything, did that Hispanic male say?

20 A He asked -- it was something, like, What's wrong with
21 you, or, What's your problem, or something like that.

22 Q And did the white male say anything in response?

23 A He did. He told him -- I think he said it was not --
24 he had nothing to do with it basically, something like, It
25 don't have nothing to do with you.

1 Q The white male adult said to the Hispanic male --
2 A Right.
3 Q -- It doesn't have anything to do with you?
4 A Right.
5 Q Did there come a point in time in which these two
6 individuals started at least arguing or saying things back and
7 forth?
8 A They did.
9 Q Were you listening to what they were saying very
10 carefully?
11 A I heard bits and pieces.
12 Q Okay. Any threats to kill anyone?
13 A No.
14 Q Was there some discussion about fighting?
15 A I heard -- okay. I'm not sure what the -- the bigger
16 male said, but he said something to him, and it led up to him
17 saying, Well, you know where I'm at, or, You know where I stay.
18 Q Okay. So you said the bigger male. Which one was
19 that?
20 A The WM -- white male adult.
21 Q Okay. And you said he said something to the Hispanic
22 male; is that right?
23 A Right. And he responded by saying, Well, you know
24 where I am, or, You know where I at, or something like that.
25 Q You know where I am, or, You know where I'm at?

1 A Right.

2 Q The white male adult, at this point you're trying to

3 get him off property; is that right?

4 A Right.

5 Q And was that you and someone else?

6 A Right. Me and Javon Howard.

7 Q Javon Howard?

8 A Right. The other bike.

9 Q Did you stay out there and make sure that this person

10 left the property?

11 A We did.

12 Q Which direction did he go if he left?

13 A He headed north back toward the 7-Eleven.

14 Q He headed toward the 7-Eleven?

15 A Right. So he walked back in this direction here.

16 Q Is that actually south?

17 A Yes, south. I'm sorry.

18 Q Did he -- eventually did he leave?

19 A He did leave eventually.

20 Q Okay. Did you at any time trespass the Hispanic

21 male?

22 A We didn't.

23 Q Okay. Now, did you have occasion to watch some

24 surveillance video in this particular case?

25 A I've seen a little bit of it.

1 MR. BATEMAN: And just for the record, Your Honor, I
2 believe defense counsel and I have a stipulation to play some
3 portion, if not all of the four camera angles that are on
4 State's Proposed Exhibit 16, which are from the Arizona
5 Charlie's surveillance.

6 THE COURT: And are you admitting -- moving to
7 admit --

8 MR. BATEMAN: And I'm moving to admit Exhibit 16.

9 MS. LEMCKE: No objection, and that is absolutely
10 correct.

11 THE CLERK: I think it's already admitted, isn't it?

12 MS. LEMCKE: We stipulated to admit it. So.

13 THE COURT: Right. I don't think we had put it on
14 that record yet. So just in case, it's admitted.

15 (State's Exhibit No. 16 admitted.)

16 MR. BATEMAN: Can I publish, Your Honor?

17 THE COURT: Yes.

18 MR. BATEMAN: All right. And I apologize for sitting
19 down again, Your Honor, if I may.

20 (Playing video recording, State's Exhibit No. 16.)

21 BY MR. BATEMAN:

22 Q I'm going to show you what's on the -- it's channel
23 11, for the record. What are we seeing in channel 11?

24 A That's building 1, the outside of building 1.

25 Q Okay. And is that a camera? Is that up -- from the

1 ceiling?

2 A Right.

3 Q So downward to the walkway?

4 A Yes, sir.

5 Q And on the left, what are those?

6 A Those are rooms.

7 Q Rooms?

8 A Yes, sir.

9 Q Okay. And on the right, is that the parking lot?

10 A Right.

11 Q And down the way, is there a stairwell going up to

12 the second floor?

13 A There is.

14 Q And the timestamp on this particular video, is it

15 12/22/2013, at 3:54:07 a.m.?

16 A Right.

17 Q I'm going to play this for you. Where would you and

18 Javon be coming from?

19 A We'd be coming from the south.

20 MS. LEMCKE: Your Honor, before we go any further,

21 can we just approach really quickly?

22 (Conference at the bench begins.)

23 THE COURT: We have a matter outside the presence.

24 So it'll be about 10 minutes probably.

25 During this recess, it's your duty not to converse

1 amongst yourselves or with anybody else on any subject
2 connected with the trial or to read, watch, or listen to any
3 report of or commentary on the trial or by any person connected
4 with the trial or by any medium of information including
5 without limitation newspaper, television, radio or Internet,
6 and you are not to form or express an opinion on any subject
7 connected with this case until it is finally submitted to you.

8 In 10 minutes we'll call you.

9 (Jury recessed 4:06 p.m.)

10 THE COURT: All right. And the record will reflect
11 that the jury has departed the courtroom.

12 Shall we have the witness --

13 MR. BATEMAN: I think he can stay.

14 MS. LEMCKE: Yes, he can stay.

15 THE COURT: All right. So go ahead and play it.

16 MR. BATEMAN: Okay, thank you.

17 THE COURT: I'm going to stand up. So don't -- if
18 you want to sit down, it's fine.

19 MS. DIGIACOMO: I thought I hit pause, and then I
20 looked, and then I thought that he hit pause, but we didn't.
21 We kept playing it.

22 MS. LEMCKE: Is it playing -- oh, okay.

23 THE COURT: Are we on the record or off the record?
24 So we're off the record now.

25 (Pause in the proceedings.)

1 (In the presence of the panel of prospective jurors.)

2 THE COURT: Thank you. Please be seated.

3 All right. And the record will reflect that we are
4 back within the presence of all 12 members of the jury, as well
5 as the two alternates, and counsel is present for the
6 defendant, and he is present as well, and we are -- we've got
7 one deputy district attorney, all officers of the court.

8 And I'm sure Ms. DiGiacomo is going to be rejoining
9 us in a moment, so --

10 MR. BATEMAN: Yes, we can proceed.

11 THE COURT: You may proceed.

12 (Playing video recording, State's Exhibit No. 16.)

13 BY MR. BATEMAN:

14 Q All right. And I don't remember where we ended off,
15 but this -- this -- I think we were talking about this
16 particular video. Do you remember that, sir?

17 A Yes, sir.

18 Q Okay. And so you and Javon are over here on the
19 right where the parking lot is; is that correct?

20 A Right.

21 Q Okay. And to the right of the parking lot, is that
22 Boulder Highway?

23 A It is.

24 Q Okay. I'm just going to -- can you see on your --
25 the way this is playing, sir, I guess we can use the timestamp.

1 This is about 3:54:40, and it's running; is that correct?
2 A Right.
3 Q Okay.
4 Q Now, do you see the HMA that you were talking about
5 in this camera angle?
6 A I do.
7 Q Okay. Can you circle him on the screen real quick
8 for me.
9 A Okay. So that's -- you've circled somebody who's
10 closer to the staircase in the far background; is that right?
11 A Right.
12 Q Okay. This is the person you eventually see having
13 some sort of words with the white male adult; is that right?
14 A Right.
15 Q Okay. And you're not out there at this point, are
16 you?
17 A No, not yet.
18 Q And just for the record, this Hispanic male adult is
19 near a room; is that right?
20 A Right.
21 Q To your knowledge, was that the room that you
22 observed him in or knew him to be in?
23 A I believe it is.
24 Q Okay. And is there in this particular video at about
25 1:30 another white male with him?

1 A It is.
2 Q That's not the white -- the large white male that you
3 later see, is it?
4 A No.
5 Q Now, they just entered -- at about 1:52, they entered
6 that room; is that right?
7 A Right.
8 Q I'm going to fast-forward to -- and I'm using the
9 counter at the bottom. So you can see a timestamp, and then
10 you can see with the program where it says 2:08, 2:09; can you
11 see that?
12 A Okay. I see it.
13 Q Okay. So I'm going to move that -- for the record,
14 I'm going to use the bottom timer, okay. So that's the number
15 of minutes that's passed with the video rolling, okay.
16 A Okay.
17 Q I'm going to move this to about four minutes at about
18 4:12, do you see two females come into view?
19 A I do.
20 Q Were they walking from the direction of where the
21 housekeeping would be?
22 A Yes, sir.
23 Q Okay. These are the two females that you later see?
24 A Right.
25 Q And at about 4:19, does one of the females seem to be

1 walking backwards to where the housekeeping is?
2 A Yes.
3 Q Now, at about 4:22, do you see yourself -- see bike
4 patrol rolling in?
5 A I do.
6 Q I'm sorry?
7 A Yes.
8 Q Okay. So at about this time, is the white male adult
9 out in the parking lot?
10 A He is.
11 Q And is he directing his attention at these females?
12 A He was.
13 Q Now, do you recognize that person that's riding up at
14 about 4:28?
15 A Yes.
16 Q Who is that?
17 A That's Javon.
18 Q Okay. Is it spelled J-a-v-o-n?
19 A Yes.
20 Q Now, do you see your bike kind of below the tree?
21 A I do.
22 Q Is that you?
23 A Yes.
24 Q At about 4:40?
25 A Right.

1 Q At about 4:53, do you see those -- those two females
2 come walking back.
3 A Yes.
4 Q All right. And again, is -- is the white male adult
5 that you're referring to, that you ultimately ended up removing
6 off the property, is he still out with you guys?
7 A He is.
8 Q Is he agitated?
9 A He was.
10 Q Okay. And was he directing his -- where was he
11 directing his attention?
12 A I'm not sure which female, but it was at one of the
13 females.
14 Q Okay. Now, we see some ducking. Is that where you
15 said he threw something?
16 A Right. He threw a -- like I said, it was, like, a
17 phone charger I think.
18 Q Okay. Did you ever find the phone charger?
19 A We didn't, and I think one of the -- one of them
20 found it. They picked up something. I don't know.
21 Q Who's them?
22 A One of the guests that was in the room.
23 Q But you didn't actually see it?
24 A I didn't.
25 Q Do know where it came from?

1 A I'm not sure.

2 Q Okay. But he -- the white male adult threw it at the

3 two females; is that right?

4 A He did.

5 Q Okay. And when you say phone charger, what made you

6 think it was a phone charger?

7 A Because it looks like a little plastic -- it was a

8 black piece of plastic. It was about, like -- I don't know.

9 It looked like a charger to me.

10 Q Okay. And you're putting your hand up about what,

11 like 2, 2 and a half inches?

12 A Right.

13 Q Okay. Is this where he charges that -- these two

14 females?

15 A Right.

16 Q Okay. And you and Javon stop him; is that right?

17 A Right.

18 Q Now, do you remember anything he's saying at this

19 point?

20 A I don't.

21 Q Okay. And this is about five minutes or so into the

22 video, correct?

23 A Right.

24 Q You don't remember what he was saying?

25 A I don't remember what he was saying, no.

1 Q The two females, did you see what room they went
2 into?
3 A I do see it.
4 Q I'm sorry?
5 A I do.
6 Q And is it the same room as the Hispanic male?
7 A Right, it is.
8 Q Now, the white male adult, is that him out to the
9 right, still in the parking lot with you and Javon at about
10 5:12 on the video?
11 A Yes.
12 Q Okay. And then do you see someone else who you
13 previously identified as the Hispanic male adult coming out of
14 the room?
15 A I do.
16 Q Okay. What are we seeing here? Is this -- what can
17 you tell is going on?
18 A I think that's where he asked what was -- what was
19 his problem, something like what was his problem. I think
20 that's what he said.
21 Q Who's he?
22 A The -- he asked the white male that. The Hispanic
23 male asked the white male what was his problem.
24 Q And is this a point in time in which -- I think you
25 testified that the Hispanic male said, What's your problem, and

1 the white male adult said something along the lines, It doesn't
2 involve you?

3 A Right.

4 Q Okay. Is this when that's occurring?

5 A Right.

6 Q Okay. And that's at about 5:19. Do you see that at
7 the bottom left?

8 A Uh-huh. I do.

9 Q Is that yes?

10 A Yes.

11 Q Thank you. Now, we're seeing the Hispanic male with
12 his arms up; is that right?

13 A Right.

14 Q Are these two -- is this where the conversation is
15 going back and forth between the Hispanic male and the white
16 male?

17 A Yes.

18 Q Okay. And eventually it leads to the Hispanic male
19 saying, You know where I'm at, or, You know where I'll be, or
20 something like that?

21 A Right.

22 Q And you -- what are you and Javon doing? Is that you
23 in the background at 5:40 escorting the white male adult off
24 property?

25 A Yes, we made sure he don't come back towards him.

1 Q Were do you -- where does he go? Were are you guys
2 going right now at about 5:50?
3 A That's back towards the 7-Eleven wall.
4 Q Okay. Eventually do you come back to this location
5 here that we're seeing in channel 11 video?
6 A We do.
7 Q Okay. Does the white male adult stay away at this
8 point to your knowledge while you're there?
9 A I think he did.
10 Q Okay. I'm going to fast-forward it to about 11:20.
11 So at about 11:20 -- 11 minutes and 20 seconds has passed since
12 we started playing this video. Do you see you and Javon at
13 about 11 minutes past still outside?
14 A Yes.
15 Q Are there other officers there?
16 A Yes.
17 Q Okay. Where did they come from?
18 A The supervisor -- one of them was the prior
19 supervisor. You came outside of the casino, and the other one
20 that you can't really see, he was the one that actually
21 dispatched us to the call.
22 Q Okay. And that guy's name is Richard Anderson?
23 A Right.
24 Q Do you know the name of the other person that was out
25 there?

1 A It was Ian Wagner.

2 Q Okay. Did you at any time report anything back that
3 caused any security to call the Las Vegas Metropolitan Police
4 Department?

5 A No.

6 Q Now, as security, do you occasionally do that, call
7 Las Vegas Metropolitan Police Department?

8 A Yes.

9 Q All right. Is that when you think it's appropriate?

10 A Right.

11 Q Now, right here, is that the same white male we saw
12 going and leaving the room?

13 A Yes.

14 Q You and Javon and these other security officers are
15 still at this point out in the parking lot?

16 A Yes.

17 Q Now, do you stay there for a relatively decent amount
18 of time?

19 A Yes.

20 Q I'm going to fast-forward to 18:30 or so into the
21 video. At about 18:30, is that where we're currently at?

22 A Yes.

23 Q Now, the occupants that you saw that room -- that you
24 saw the Hispanic male go into and the females go into, are they
25 leaving at about this time?

1 A They are.

2 Q Okay. Again, had you trespassed them or told them

3 they had to leave at that point?

4 A No.

5 Q It appears to be four adult males leaving?

6 A Right. Well, it's -- I think it was two males, two

7 females.

8 Q I'm sorry. Exactly. And one of those was the

9 Hispanic male you saw earlier?

10 A Right.

11 Q Did you see any of those people again that night out

12 in the parking lot, or did they leave?

13 A They left.

14 Q Was that in the opposite direction of where the white

15 male adult left?

16 A Yes.

17 Q So this was back towards the casino?

18 A Right.

19 Q I'm going to show you a different angle. This one's

20 on the video as Channel 13. Do you recognize this angle?

21 A Yes.

22 Q Where is that shoot -- what angle is this?

23 A That's around entrance 2 where the big marquee sign

24 is that we talked about.

25 Q And so what we were looking at previously on channel

1 11, was that over to the left of where this view is?
2 A Yes.
3 Q Is this the parking lot where you were talking about,
4 which is to the right of the rooms?
5 A From that angle, it's to the left.
6 Q This particular view, is this the parking lot that
7 was to the right of the rooms?
8 A Yes.
9 Q Okay. And we see on the left the white male adult
10 walking in that direction?
11 A Yeah.
12 Q Now, this time, to your knowledge, you're not -- you
13 and the other security Javon aren't out in the parking lot; is
14 that right?
15 A Right. We're not in that area.
16 Q Okay. You come later?
17 A Right.
18 Q This particular direction that we're looking on the
19 surveillance video, would that be looking in the direction of
20 the 7-Eleven?
21 A Yes.
22 Q All right. I'm going to fast-forward it, and again,
23 I'm using the counter at the bottom. So it's how long the
24 video's been playing because there doesn't appear to be a
25 timestamp on this; is that right?

1 A Right.

2 Q You've seen this though, and this is an accurate
3 depiction of what was going on right before you got there --
4 well, you see yourself at some point, and it's accurate,
5 correct?

6 A Right.

7 Q Okay. So I'm going to fast-forward to about 3:20.
8 Do you see a silver vehicle driving up in this particular
9 parking lot?

10 A Yes.

11 Q And do you see the white male adult still out there
12 to the right?

13 A I do.

14 Q Does that vehicle seem to be stopped with the white
15 male adult next to it?

16 A Yes.

17 Q Now, does this appear to be the camera zooming in?

18 A Yes.

19 Q Does it appear that the white male adult is on the
20 phone and talking to the passengers?

21 A Yes.

22 Q All right. So at about 5:30, is that car driving
23 forward towards the casino?

24 A Yes.

25 Q I'm going to fast-forward this to about 12. 12

1 minutes into the video, do you see the -- well, hold on a
2 second. Do you see that same silver vehicle driving back?
3 A Yes.
4 Q It's heading towards the 7-Eleven?
5 A Right.
6 Q Now, what's it doing there?
7 A Parking.
8 Q Is there parking spaces to the right of this parking
9 area?
10 A Yes.
11 Q Is that facing the highway?
12 A Yes.
13 Q And did that car pull in?
14 A Yes.
15 Q Face forward?
16 A Yep. Yes.
17 Q Now, on the left, do you see -- I'm going to back it
18 up to about -- I'm sorry. This is about 12:46. Do you see two
19 people coming out of the -- on the view on the left towards the
20 rooms?
21 A Yes.
22 Q Does one of those appear to be someone wearing a
23 shirt similar to the Hispanic male you were talking about
24 earlier?
25 A Yes.

1 Q How about the one on the right, does it appear to be
2 consistent with the hoodie that one of the females was wearing?
3 A Yes.
4 Q And what direction are they coming from?
5 A They're coming from the hotel, south side.
6 Q The hotel, meaning like the casino?
7 A Right, the casino.
8 Q All right. And the direction they're walking, is
9 that towards the rooms?
10 A Yes.
11 Q Now, there appear to be some people out toward the
12 right near where that silver car parked?
13 A Yes.
14 Q I'm sorry. Yes?
15 A Yes.
16 Q Okay. And about 13 minutes into this video, does it
17 appear that person who is wearing a similar shirt to the
18 Hispanic male walking towards the group that's now in the
19 parking lot?
20 A Yes.
21 Q And is the Hispanic male walking back towards the
22 rooms at this point at 13:23?
23 A Yes.
24 Q Now, do you see the -- at about 13:26 the white male
25 adult still in the parking lot?

1 A Yes.
2 Q And which way is he walking?
3 A It looks like it's towards the hotel.
4 Q Now, in that particular --
5 A Going back to the -- now he's going back towards the
6 casino.
7 Q That path -- did he take a pathway towards where the
8 rooms -- kind of that direction on this particular video?
9 A Yes.
10 Q Does that pathway bisect the building 1 you were
11 talking about and room service?
12 A Right.
13 Q And is that where he just walked?
14 A Yes.
15 Q Did he run or did he walk?
16 A It looked like he walked.
17 Q All right. I'm going to fast-forward this to about
18 14:20. Now, this time -- is this the approximate time that you
19 had been called out via your dispatch and your surveillance?
20 A Yes.
21 Q Okay. Is that someone -- do you see a bike patrol at
22 this point?
23 A Yes.
24 Q Do you know who that is -- okay. Do you see two bike
25 patrols?

1 A Yes.
2 Q About 14:30 in?
3 A Yes.
4 Q Is that you and Javon?
5 A Yes.
6 Q Where are you riding?
7 A Towards building 1.
8 Q Okay. Now, right now nobody's out there; is that
9 right?
10 A Right.
11 Q Now, you're driving back towards the rooms; is that
12 right?
13 A Yes.
14 Q Now, are there kind of people walking in this general
15 area that you have no idea whether they're related or not
16 related to this incident?
17 A Yes.
18 Q Is that pretty common for where you're at on Boulder
19 Highway?
20 A Right.
21 Q All right. Do we see the white male adult walking in
22 a direction?
23 A Yes.
24 Q Where is that?
25 A Towards Boulder Highway.

1 Q Is that the marquee on the right that you were
2 talking about?
3 A In the top corner, yes.
4 Q So he's walking to the right towards Boulder Highway?
5 A Across the grass area.
6 Q So that's across the parking lot?
7 A Right.
8 Q Away from the rooms?
9 A Right.
10 Q That was at about 15:15, correct?
11 A Yes.
12 Q Now, you're still -- are you and the bike patrol
13 still out near the parking lot?
14 A Yes.
15 Q Okay. Now, we saw the two girls earlier on the other
16 channel 11 walk towards the room and then walk back and then
17 walk forward again; is that right?
18 A Right.
19 Q Okay. That happened here sometime in this general
20 time frame?
21 A It does.
22 Q All right. Now, you're riding your bike forward
23 towards the 711?
24 A Yes.
25 Q And is that at about 17 minutes in?

1 A Yes.

2 Q Okay. And do you see the white male adult coming
3 back from the marquee area across the parking lot towards the
4 rooms?

5 A Yes.

6 Q Okay. Now, you are -- are you riding forward to meet
7 him?

8 A We were trying to stop him, yep.

9 Q You were trying to stop him from going all the way to
10 the rooms to the left of this video; is that right?

11 A Right.

12 Q It appears right now that he's walking back towards
13 the marquee?

14 A Right.

15 Q And that's that 17:12?

16 A Yes.

17 Q You're kind of standing right there in front of the
18 room or sitting on your bikes in front of the room, right?

19 A Right.

20 Q Okay. Is this the time period in which there's
21 talking back and forth between the white male adult and the
22 girls?

23 A From this view I can't really tell.

24 Q Do you remember?

25 A He -- he could have been. I can't really tell from

1 that view though.

2 Q That's all right. Now is the white male adult coming
3 back towards you in the same direction at about 17:45?

4 A Yes.

5 Q Is that where the white male adult kind of charged
6 towards the females?

7 A Yes.

8 Q Okay. And you and Javon stopped him?

9 A Right.

10 Q Did he give up pretty quick?

11 A He kept trying to get to her, but we shouted him
12 back.

13 Q Okay. Is this him again walking back towards the
14 parking lot?

15 A Yes.

16 Q Are you kind of escorting him in that direction?

17 A Yes.

18 Q Okay. Is this at about 18 minutes the video doing a
19 close-up?

20 A Yes.

21 Q Now, do you see the argument here, that I believe the
22 white male adult's pointing in the direction of the rooms; is
23 that right?

24 A Right.

25 Q Is that when the Hispanic male's out and they're

1 talking back and forth?
2 A Yes.
3 Q Okay. Is he -- are you continuing to walk him
4 towards the 7-Eleven?
5 A Yes.
6 Q Did he ever get combative directly with you or Javon?
7 A He didn't.
8 Q Did not?
9 A No. I'm thinking that he's yelling back at the
10 Hispanic male.
11 Q This is when they're yelling back and forth still?
12 A Yeah, they're still yelling back and forth.
13 Q About 19 minutes in?
14 A Yes.
15 Q Does this show the white male walking off property
16 towards 7-Eleven?
17 A Right.
18 Q Is he running or walking?
19 A Walking.
20 Q At this point at 19 minutes and a half or so, does
21 the white male adult ever come back?
22 A He doesn't.
23 Q Is that you and Javon still out there?
24 A Yes.
25 Q Do you wait some period of time to make sure that he

1 leaves?

2 A Yes.

3 Q And then do you work your way back to that location
4 in front of building 1?

5 A Yes.

6 MR. BATEMAN: Okay. All right. Can we approach real
7 briefly, Your Honor?

8 THE COURT: Yes.

9 MR. BATEMAN: Thank you.

10 (Conference at the bench not recorded.)

11 BY MR. BATEMAN:

12 Q All right. I'm not going to play this whole thing
13 for you tonight. I just want you to identify something on a
14 couple additional views. Channel 7, do you recognize what's on
15 channel 7?

16 A Yes, sir.

17 Q And what is that?

18 A The inside of the casino.

19 Q Okay. All right. And I'm just going to fast-forward
20 briefly. All right. Do you see -- I'm going to stop you at
21 about one minute. Do you see the Hispanic male in that -- in
22 that surveillance video inside Arizona Charlie's?

23 A Yes.

24 Q And do you see the girl -- one of the girls that was
25 out there that you were -- that was out there when this was

1 going on?
2 A Yeah.
3 Q Do you see her with him?
4 A Yes.
5 Q Do they appear to be together?
6 A Yes.
7 Q Okay. I'm going to fast-forward to 18:20 into this
8 video. Does that appear to be Hispanic male getting up?
9 A Yes.
10 Q Do you see the female over here to the left?
11 A Yes.
12 Q And do you see the white male adult come into the
13 screen?
14 A Yes.
15 Q Okay. And do you see the white male adult with the
16 female over at a slot machine?
17 A Yes.
18 Q Did the Hispanic male leave at about 18:40?
19 A He did.
20 Q Does it appear just from this part of the video that
21 the white male adult and the female are talking?
22 A Yes.
23 Q Okay. I'm going to show you the other angle, which
24 would be channel 8, and this has a time stamp on it; is that
25 correct?

1 A Yes.
2 Q What does that timestamp show?
3 A 3 a.m.
4 Q Okay. On the 22nd?
5 A Yes, of 2013.
6 Q Okay. Is this a straight-on view of the white male
7 adult that you later see out in the parking lot?
8 A Yes.
9 Q Same area, same time frame, but a different camera
10 view?
11 A Yes.
12 Q Okay. And do you see the female that you saw later
13 out there again at the -- at the slot machine?
14 A Yes.
15 Q What does the PTZ mean at the top left? Does that
16 mean -- do you know what that means?
17 A I'm not sure.
18 Q Can these surveillance cameras be kind of tilted,
19 zoomed, panned around?
20 A They can.
21 Q Okay. You've seen the surveillance video do that?
22 A Right.
23 Q Okay. I'm going to jump forward real quick to four
24 minutes in. Can you see different views from this camera?
25 A Yes.

1 Q Is that the front door we just saw at about four
2 minutes?

3 A Yeah, that was one of the doors. I'm not sure which
4 one though.

5 Q Okay. Do we see that female that you saw outside
6 there at about 4:11?

7 A Yes.

8 Q What is that machine?

9 A The TX.

10 Q What is --

11 A That's where they cash their tickets.

12 Q If you gamble and you win, you get a ticket, and you
13 go there, and it cashes out?

14 A Right.

15 Q Does it show that female leaving out the doors?

16 A Yes.

17 Q Is that at about 4:27?

18 A Yes.

19 Q Now, at 4:30, do you see the outside of the casino?

20 A Yes.

21 Q Is that the female and the white male adult leaving
22 together?

23 A Yes.

24 Q Are they walking or running?

25 A Walking.

1 Q Where's this direction go?
2 A That's the south, like going back towards building 1.
3 Q Back to building 1?
4 A Back towards it.
5 Q Over toward the left?
6 A Yes.
7 MR. BATEMAN: Okay. I don't have any additional
8 witnesses -- questions for this witness, Your Honor.
9 THE COURT: Cross.
10 MS. LEMCKE: Thank you, Your Honor.
11 CROSS-EXAMINATION
12 BY MS. LEMCKE:
13 Q So with respect to the security cameras, there are
14 security cameras kind of all over the property; is that right?
15 A Yes.
16 Q In the -- they're kind of randomly viewing different
17 things at any given time; is that right?
18 A Yes.
19 Q And if there's something that arouses a concern,
20 shall we say, among security, the people surveilling the
21 property, they'll start training a camera on a particular
22 individual?
23 A Yes.
24 Q Or group of individuals, shall we say?
25 A Yes.

1 Q And in this case, when the cameras followed the white
2 male that we've seen in this video, it's because there was a
3 concern about him?

4 A Yes.

5 Q Because he had been involved in some kind of domestic
6 disturbance with the white female?

7 A Right.

8 Q And so the cameras were -- the people operating
9 surveillance were actually following him as he moved on and off
10 the property?

11 A Right.

12 Q Now, let's talk about for just a second that -- when
13 you first kind of found out about it. If I understand you
14 correctly, you and Javon Howard were out on bike patrol
15 together; is that right?

16 A Right.

17 Q And then at some point a call comes across the radio
18 regarding a white male who'd been trespassed from the property?

19 A Right, but at that point I don't know if he was
20 actually trespassed then or not.

21 Q Okay. So you don't know in the video -- in the
22 scheme of the whole videos at what point he was trespassed.
23 You just know that he had been trespassed?

24 A Right.

25 Q And so a call comes across the radio indicating that

1 this trespassed individual was kind of hanging around the
2 property?
3 A Right.
4 Q And that he'd been trespassed because there was some
5 kind of domestic disturbance, and that's why they kicked him
6 off?
7 A Right.
8 Q And when he was trespassed, he was actually read a
9 formal trespass warning; is that right?
10 A Yes --
11 Q And --
12 A -- he was supposed to be.
13 Q I'm sorry. Go ahead.
14 A I said, yes, he's supposed to be once he's
15 trespassed.
16 Q And when you read the formal warning, that's from
17 Nevada statutes, right?
18 A Right.
19 Q That is a Nevada law?
20 A Right.
21 Q That enables you to take people off the property when
22 they are creating a problem or might continue to create a
23 problem?
24 A Right.
25 Q And when you read it, you actually read it from the

1 statute?

2 A Yes.

3 Q And that enables you to actually -- that authorizes
4 you then to actually remove someone from the property?

5 A Right.

6 Q So if they come back again onto the property, it's
7 actually a crime?

8 A Right.

9 Q And they can be charged?

10 A Right.

11 Q Even after he was trespassed -- I think we watched it
12 on the surveillance video -- he kind of goes out to the parking
13 lot, hanging around?

14 A Right.

15 Q And it was then because he was still hanging around,
16 that's when you get the call across from dispatch saying, Hey,
17 we've got this guy who's been trespassed, and we need you all
18 to come --

19 A Make sure he gets off property.

20 Q And make sure everything's okay?

21 A Right.

22 Q And that's why you and Javon kind of came around on
23 your bikes and kind of stood by in that area?

24 A Right.

25 Q And so when we saw him on the video coming back onto

1 the property and walking where you identified as kind of being
2 the -- the area around where housekeeping and room services is,
3 he was actually at that point committing a crime?

4 A Yes.

5 Q Okay. At some point while you were out there with
6 Javon, you see this girl, the white female that you described?

7 A Right.

8 Q And just so that we're clear, so the ladies and
9 gentlemen of the jury are clear, when we talk about the white
10 female, we're talking about the blonde girl, right?

11 A Right.

12 Q Okay. And at some point it's made known to Javon
13 that she would like to get to her hotel room?

14 A I believe so. I wasn't -- I didn't hear that part,
15 but I think she did talk to him.

16 Q Okay. And there was some concern for her safety in
17 terms of getting to that hotel room?

18 A Right.

19 Q And somebody had asked --

20 MR. BATEMAN: I'm just wondering if this witness had
21 any percipient knowledge of what's going on with the female and
22 going to her room and not going to her room. That would be my
23 objection, just a foundation question.

24 THE COURT: All right. Sustained, foundation. You
25 need to lay a foundation.

1 BY MS. LEMCKE:

2 Q Okay. So you were working with Javon, right?

3 A Right.

4 Q You guys work in tandem? You work together?

5 A Right.

6 Q You communicate information back and forth as needed?

7 A Right.

8 Q So if there is -- you know, if you are going to work
9 together in securing the property, you know, you guys will
10 exchange information to the extent that you need to to keep
11 everything safe?

12 A Yes.

13 Q And so there was that -- Javon had indicated to you
14 that there was some concern on the part of a young lady that --
15 for her safety in terms of moving from the casino to the hotel
16 room?

17 A It's a possibility. I don't remember hearing him say
18 it. That's all.

19 Q Okay. But it was your understanding after talking
20 with Javon that -- that somebody wanted you guys to kind of
21 stay in the vicinity to make sure that this girl could get to
22 her room?

23 A Right.

24 Q And just so that the jury's clear, the casino was
25 actually separate from the hotel rooms; is that right?

1 A Right.

2 Q So that when you leave the casino you actually have

3 to walk outside this way to go to the hotel rooms?

4 A Right.

5 Q In other words, there's no other way that you can

6 access the rooms that they were in -- that particular room

7 without walking outside?

8 A Right.

9 Q The way that we saw them walk on that sidewalk to the

10 hotel room was really the only way that you could get there

11 from the casino where they had been inside earlier?

12 A Right.

13 Q And when you encountered this girl -- the blonde

14 girl -- and again, the blonde girl is the one that you referred

15 to throughout your testimony as the white female?

16 A Right.

17 Q Is that right?

18 A Yes.

19 Q And sometimes you'll say WFA for white female?

20 A Right.

21 Q And WMA for white male; is that right?

22 A Right.

23 Q And then HMA for Hispanic male; is that fair?

24 A Correct.

25 Q Okay. Just so the jury is clear because we were

1 using those terms earlier. So when you come in contact with
2 the white female, that is the blonde-haired girl, did she seem
3 like she was afraid?

4 A She did.

5 Q She had been crying?

6 A Yes.

7 Q Okay. And she was just wanting to get to her hotel
8 room?

9 A Right.

10 Q She was afraid of the white male?

11 A Right.

12 Q And at some point it even looked like she had been
13 hiding to keep the white male from seeing her?

14 A Right.

15 Q In fact, on the video --

16 MR. BATEMAN: Judge, I'm just going to object for
17 foundation to make sure that this witness actually saw any of
18 this.

19 THE WITNESS: I didn't see her when she looked like
20 she was hiding. I didn't see her.

21 MS. LEMCKE: Okay.

22 THE COURT: All right. So it seems like we're
23 assuming some facts not in evidence. So you need to lay a
24 better foundation.

25 MS. LEMCKE: Okay.

1 BY MS. LEMCKE:
2 Q You saw in the video how the white female was walking
3 to her hotel room initially, and then she abruptly turned
4 around; is that fair?
5 A Yes.
6 Q And after she turned around, she kind of stayed back
7 in that direction. She didn't come back out for a few minutes?
8 A Right.
9 Q Because she was hiding from that white male?
10 MR. BATEMAN: Objection. Again whether -- I think
11 that they're requesting him to speculate. I don't think he has
12 any foundation for what she's doing.
13 THE COURT: Right.
14 Were you present, or are you just testifying to what
15 you observed on the video? I'm guess I'm not clear on that.
16 THE WITNESS: Well, when the -- I didn't see that
17 female actually hiding. I just know the one went back in. She
18 came back with her. I don't know where they came from though.
19 THE COURT: You didn't see her beforehand?
20 THE WITNESS: I didn't.
21 THE COURT: So that's -- I'm confused about -- is he
22 testifying about -- are you asking him about what he's viewing
23 on the video --
24 MS. LEMCKE: Well, I'm --
25 THE COURT: -- or are you asking about what he saw?

1 MS. LEMCKE: That's a good question, Your Honor.
2 I -- I would prefer, you know, what he actually saw, but maybe
3 I kind of confused the issue with my questions. So forgive me.
4 Let me back up again.
5 BY MS. LEMCKE:
6 Q Were you actually present when the white female, the
7 blonde girl turned around, did that abrupt turnabout?
8 A At the one point -- I don't -- one of them had a hood
9 on when I first seen them.
10 Q Okay.
11 A So I'm not sure if that was the blonde or not.
12 Q Okay.
13 A I just know one of them, she turned around, and
14 she -- at first when I was there, she was by herself, and two
15 of them came back when I looked back.
16 Q Okay. Do you recall that the girl with the hood on,
17 the white female, stayed back? She didn't --
18 A Right, she stayed back --
19 Q -- come back until her friend was with her?
20 A Right.
21 Q Okay. All right. And then again, just so we're
22 clear, that's -- the one with the hood on, the blonde girl, is
23 the one that when you encountered her appeared as though she'd
24 been crying?
25 A Right.

1 Q And appeared scared?
2 A Right.
3 Q Now, when she walked by -- there was some testimony
4 on direct about the fact that she walks to that room, and there
5 was some screaming. The white male that was out in the parking
6 lot started screaming at her?
7 A Right, he was yelling at her.
8 Q And he was pretty agitated?
9 A Right.
10 Q He was aggressive?
11 A Right.
12 Q He was yelling at her?
13 A Right.
14 Q Now, she didn't say anything back to him as she
15 headed into that room, did she?
16 A I'm not sure.
17 Q Okay. You don't recall her saying anything?
18 A Right.
19 Q She just headed toward that hotel room?
20 A Right.
21 MS. LEMCKE: Court's indulgence.
22 BY MS. LEMCKE:
23 Q And it was after then that she approached that hotel
24 room as he -- as the white male was yelling her? That's when
25 he charged her?

1 A He walked off, and then he charged back, yes.
2 Q Okay. So he kind of walked off, like, out toward the
3 parking lot initially?
4 A Right.
5 Q And then he turns around abruptly and starts charging
6 at her.
7 A Coming at her, right.
8 Q Like, bends over and runs at her?
9 A Right.
10 Q Aggressively?
11 A Right.
12 Q As though he was going to attack her?
13 A Right.
14 Q And it was of such concern to you and Javon that you
15 guys immediately felt -- well, Javon dropped his bike, did he
16 not?
17 A Right.
18 Q And you put your kickstand down right away and ran
19 over there?
20 A Right.
21 Q And you got in between the white male and the white
22 female?
23 A Right.
24 Q Because you were concerned that he was going to
25 attack her?

1 A Right.
2 Q He would have hurt her?
3 MR. BATEMAN: Objection. Speculation.
4 BY MS. LEMCKE:
5 Q It appeared as though --
6 THE COURT: Sustained.
7 BY MS. LEMCKE:
8 Q It appeared as though he would have hurt her if had
9 you not --
10 MR. BATEMAN: Objection. Speculation.
11 THE COURT: Sustained.
12 MS. LEMCKE: I'm asking him what he observed.
13 THE COURT: All right. Well, you didn't ask him what
14 he observed.
15 BY MS. LEMCKE:
16 Q It appeared based on your observations, as hard as he
17 was running at her that, but for you and Javon getting in
18 between him, he would have hurt her?
19 MR. BATEMAN: Objection. Speculation.
20 THE COURT: Sustained.
21 What did you see?
22 THE WITNESS: I seen him charge at her and then throw
23 what looked like a phone charger.
24 THE COURT: Okay.
25 / / /

1 BY MS. LEMCKE:

2 Q And you and Javon felt as though you needed to get in
3 between him and the girl?

4 A We --

5 MR. BATEMAN: Objection as to what Javon felt.

6 MS. LEMCKE: Okay.

7 BY MS. LEMCKE:

8 Q You felt that you had to get in between him and the
9 white female?

10 A Right. We jumped in the way.

11 Q To stop him from hurting her?

12 A Well --

13 MR. BATEMAN: Objection as to speculation on hurting.

14 THE COURT: Sustained.

15 BY MS. LEMCKE:

16 Q To stop him from having contact with her?

17 A To stop him from having -- yes.

18 Q Okay. Now, at some point -- right after the -- and
19 then he -- if I understand you correctly, you threw -- the
20 white male threw something at her?

21 A Right.

22 Q And she kind of jumped back?

23 A She might have. We was -- he was running at her when
24 he did it. So we were trying to, you know, block him.

25 Q You were focused on him?

1 A Right.

2 Q Gotcha. All right. And then at some point the

3 Hispanic male comes out of the room?

4 A Right.

5 Q Okay. And we saw him on the videotape standing kind

6 of behind a pillar; is that right?

7 A Right.

8 Q And he didn't really leave from that spot the entire

9 time that he was talking?

10 A I don't think he did.

11 Q In fact, when he initially came out, he said to the

12 white male, Hey, what's wrong with you, What's your problem,

13 something to that effect?

14 A Correct.

15 Q He wasn't agitated at that point?

16 A No.

17 Q He was calm?

18 A Right.

19 Q Wasn't threatening the white male?

20 A I didn't hear him threaten him.

21 Q Wasn't angry at him?

22 A They was just arguing.

23 Q Just saying, Hey, what's wrong with you, What's your

24 problem?

25 A They was going back and forth. I'm not a hundred

1 percent sure everything that was said.

2 Q At that first -- at the moment when he first comes
3 out of the hotel room, when he said, Hey, what's your
4 problem --

5 A Right.

6 Q -- he wasn't threatening the white male at that
7 point?

8 A He never threatened him.

9 Q He never threatened him?

10 A No.

11 Q In fact, he was -- when he came out of the hotel room
12 and this dialogue initiated with the white guy, he was really
13 more defensive -- the Hispanic guy was more defensive of the
14 white female?

15 A Correct.

16 Q And then after -- it was after the Hispanic male said
17 something to the effect of, Hey, what's your problem, kind of
18 thing, that's when the white male really goes off on him?

19 A They just was arguing the whole time. I don't know.
20 He was -- they both were yelling back and forth at that point.

21 Q Okay. But the white male was screaming at the --
22 yeah -- the white male was screaming at the Hispanic male?

23 A Right. They were both yelling back and forth.

24 Q Threatening him?

25 A I never heard him threaten.

1 MR. BATEMAN: Asked and answered.
2 THE COURT: That's been asked and answered. Let's
3 move on.
4 MS. LEMCKE: Well, we're talking about different
5 segments in the argument, and I think it's pretty important.
6 He -- the --
7 THE COURT: But he said he didn't -- he doesn't know.
8 He's repeatedly said he doesn't know what they were saying,
9 that they were just arguing back and forth.
10 BY MS. LEMCKE:
11 Q Okay. Well, let me ask you this. The white male
12 started calling the Hispanic guy names?
13 A Right.
14 Q Okay. And then there was this back and forth; is
15 that right?
16 A Right.
17 Q Okay. And again, just so I'm clear, even as the
18 argument progressed the Hispanic guy never threatened the white
19 guy?
20 A I never heard him threaten him.
21 Q Okay. But the white guy -- I think to use an
22 expression that you used earlier with me -- was totally riled
23 up?
24 A Yeah, he was.
25 Q Okay. And -- and at some point during the back and

1 forth, the yelling between the Hispanic guy and the white guy,
2 the Hispanic guy said something to the effect of, Okay, you
3 know where I be?

4 A Right.

5 Q He never -- well, as this is going on, you and Javon
6 had to keep moving the white male away?

7 A Right.

8 Q Had to keep moving him back?

9 A Right.

10 Q Until he was finally off the property?

11 A Right.

12 Q And at no point during this back and forth did you
13 hear the Hispanic guy say, Hey, meet me at my place in 30
14 minutes?

15 A No.

16 Q In fact, then after this was kind of all over and the
17 white male was -- you had forced him off the property, you --
18 you see in the video they're having a little conversation with
19 the Hispanic guy; is that right?

20 A Right.

21 Q And during that conversation, the Hispanic guy, he
22 was very calm?

23 A Right.

24 Q He was not agitated?

25 A No.

1 Q He was not upset?
2 A No.
3 Q And in fact he was very respectful with you and
4 Mr. Howard?
5 A Right.
6 Q He told you that he didn't want any trouble?
7 A Right.
8 Q That he -- that he was happy to just leave?
9 A Right.
10 Q You never asked him to leave, if I understand you
11 correctly?
12 A No.
13 Q And you never trespassed him from the property?
14 A No.
15 Q He just volunteered to go?
16 A He got his stuff and left, right.
17 Q And he made it very clear to you that he didn't want
18 any trouble?
19 A Right.
20 Q There were never any homicide detectives that came
21 and interviewed you about this particular incident, were there?
22 A I don't think so.
23 Q In fact, the first person that you talked to was a
24 Ruben Garcia?
25 A Right.

1 Q And that would be an investigator with my office?
2 A Right.
3 Q Sometime last fall?
4 A Right.
5 Q And then you and I spoke last fall?
6 A Right.
7 Q And then we spoke again about a week -- no, we spoke
8 again today even?
9 A Right.
10 Q Yes, okay.
11 MS. LEMCKE: Court's indulgence.
12 All right. I have nothing further.
13 MR. BATEMAN: Just real briefly, Your Honor.
14 REDIRECT EXAMINATION
15 BY MR. BATEMAN:
16 Q You were asked some questions about whether the white
17 male adult had been trespassed?
18 A Right.
19 Q Do you remember those questions?
20 A Right.
21 Q Do you know whether he was trespassed from inside the
22 casino, or at some later time were you supposed to trespassed
23 him?
24 A We weren't told to. I'm not sure that he was
25 trespassed from the inside or not.

1 Q Okay. So you don't know whether he was trespassed or
2 asked to leave?

3 A Right.

4 Q Okay. You said you encountered the white female that
5 you were being asked about. Do you remember the one with the
6 hood?

7 A Right.

8 Q Okay. And did you ever see any injuries on her?

9 A I didn't.

10 Q You were asked some questions about the white male
11 adult running towards the females. Did you ever see the white
12 male adult run towards the Hispanic male?

13 A I didn't.

14 Q When the Hispanic male came out of the room, you were
15 asked some questions about what initially was said. Do you
16 remember that?

17 A Right.

18 Q And is it at that point that the white -- the
19 Hispanic male asked, What's your problem, or something along
20 those lines?

21 A When he came out of the room, yes.

22 Q Okay. And the response from the white male that was
23 out in the parking lot was, It's none of your -- It's not --
24 This isn't about you; is that --

25 A Something like that, or it didn't have nothing to do

1 with him or something like that.

2 Q Okay. And then from there did it progress further
3 into -- I think you used the term yelling back and forth?

4 A Right, they started yelling back and forth.

5 Q Both of them were yelling at each other?

6 A Right.

7 Q And if I remember correctly, you didn't testify that
8 you heard from either the Hispanic male or the white male any
9 actual threats?

10 A Right, I didn't hear anybody threaten anybody.

11 Q Did it appear that the Hispanic male was scared at
12 that particular point?

13 A No.

14 Q Okay. There was arguing back and forth?

15 A Right.

16 Q And eventually the white male adult left; is that
17 right?

18 A Right.

19 Q And you didn't trespass the Hispanic male? He left?

20 A Right.

21 MR. BATEMAN: Okay. I don't have any additional
22 questions.

23 MS. LEMCKE: I have a couple, Your Honor.

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1 whatever information's being put in there?
2 A Right.
3 MS. LEMCKE: I'm going to have this marked.
4 THE CLERK: What is it?
5 MS. LEMCKE: It's a --
6 MS. DIGIACOMO: Objection to what she's saying on the
7 record.
8 MS. LEMCKE: Well, it's --
9 MS. DIGIACOMO: It's not in.
10 THE COURT: It's not in evidence yet. So describe it
11 later.
12 MS. LEMCKE: Your Honor, may I approach the witness
13 with what's been marked as Defense Proposed LL?
14 THE COURT: All right.
15 BY MS. LEMCKE:
16 Q I'm just going to ask you to take a look at that and
17 see if that looks familiar to you at all, that document. If it
18 doesn't --
19 A It does.
20 Q Is this something -- is the some of your
21 computer-generated records --
22 A Yes.
23 Q -- regarding things that happen at the Arizona
24 Charlie's?
25 A Yes.

1 Q And security keeps these?
2 A Right.
3 Q Okay. So if you look at this, what's the date on
4 this?
5 A 12/22.
6 Q Is that the date that this incident occurred?
7 A Yes.
8 Q And I see that there's a timestamp on there of 3:58.
9 A Right.
10 Q Does that mean that the information that's put into
11 this is put in at 3:58, or could it have been put in earlier?
12 A It could've been started at that time, and it
13 could've been finished at a different time. That's just the
14 time that it started.
15 Q Okay. So you -- so the date -- the time on it
16 indicates a time that the information was started to be input
17 in the computer?
18 A Right.
19 Q Okay. And on this particular thing -- this
20 particular report, does it indicate anything about the white
21 male hanging around the property?
22 A It does.
23 Q And does it indicate whether or not he had been
24 trespassed from the property?
25 A It does.

1 Q Does it indicate whether or not he'd been read a
2 trespass warning?

3 MR. BATEMAN: Judge, is this --

4 MS. DIGIACOMO: It's not in evidence.

5 MR. BATEMAN: Is this in evidence?

6 THE COURT: It's not in evidence.

7 MS. LEMCKE: Well, I'm going to see if it refreshes
8 his recollection. If --

9 THE COURT: Well, wait a minute. Approach and bring
10 that with you.

11 MS. LEMCKE: Okay.

12 (Conference at the bench not recorded.)

13 THE COURT: The objection is sustained.

14 BY MS. LEMCKE:

15 Q So as you sit here now, you don't have a particular
16 recollection as to whether or not the white male had been
17 formally trespassed and when?

18 A Right.

19 MS. LEMCKE: Court's indulgence.

20 I have nothing further, Your Honor.

21 MR. BATEMAN: Nothing else, Your Honor.

22 THE COURT: May this witness be excused?

23 MR. BATEMAN: Yes, Your Honor.

24 THE COURT: And, Defense, is it okay if this witness
25 be excused completely?

1 MS. LEMCKE: Yes.

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

4 All right. Ladies and gentlemen, tomorrow morning
5 we're not going to be able to start until 10. So that'll be a
6 little better for your traffic challenges in the morning
7 anyway.

8 So during this overnight recess, it is your duty not
9 to converse among yourselves or with anyone else on any subject
10 connected with the trial, or read, watch, or listen to any
11 report of or commentary on the trial by any person connected
12 with the trial or by any medium of information, including
13 without limitation newspaper, television, radio or Internet.
14 You're not to form or express an opinion on any subject
15 connected with this case until it's finally submitted to you.
16 Again, no research, independent research or anything like that,
17 no visiting the scene, anything like that.

18 And I'll see you tomorrow morning at 10.

19 (Jury recessed 5:17 p.m.)

20 THE COURT: All right. And the record will reflect
21 that the jury has departed the courtroom.

22 And the clerk had asked for a description of that
23 document that was marked as a proposed exhibit. I think it
24 would be best described as a screen shot of a computer entry
25 from Arizona Charlie's.

1 MS. LEMCKE: Yes, it's a -- I think it's a security
2 log, and it's -- you know, they input information, and the
3 computer generates information.

4 THE COURT: Okay. Anything else outside the
5 presence?

6 MS. DIGIACOMO: Yes, Your Honor. I need to make a
7 record.

8 THE COURT: All right.

9 MS. DIGIACOMO: About something I learned while we
10 were in the testimony. I got a text from my boyfriend, who has
11 a daughter who apparently is friends with one of the daughters
12 of one of our jurors. She doesn't know who I am. I think --
13 she looks familiar, but I thought maybe from a dance
14 competition or something. I think I did see her at my
15 boyfriend's daughter's party when she dropped off her daughter
16 and then picked her up later, but I don't know her. I've never
17 had a conversation.

18 But apparently her boyfriend or fiance called my
19 boyfriend to set up a play date. He said, Yeah, I'm busy
20 because my wife's son is on a jury right now, and he goes, Oh,
21 my girlfriend's in a jury right now, too. There was -- there
22 was no indication -- her fiance said he would not tell her, and
23 so she doesn't know, but I just thought I'd bring it to the
24 Court's attention because I didn't know. I knew she kind of
25 looks familiar, but -- so anyway she doesn't know who I am, and

1 she doesn't know that her fiance knows, but I just thought I'd
2 bring it to the Court's attention.

3 THE COURT: Okay.

4 MS. DIGIACOMO: Small world.

5 THE COURT: Okay. All right. Well, it sounds like
6 nothing's happened as of yet.

7 I don't know if you want to make anything of it
8 either. I mean, it's -- it sounds like --

9 MS. DIGIACOMO: No, he -- he -- her fiance or
10 husband, as they call each other, specifically I guess told my
11 boyfriend that he would not say anything to her because he
12 said, you know, obviously.

13 MR. BATEMAN: Have the facts been brought to --

14 MS. DIGIACOMO: Oh, no, he doesn't know the facts.
15 He just knows she's sitting on a murder case.

16 THE COURT: Oh, okay.

17 MS. DIGIACOMO: So, no, they didn't -- they just --
18 it was coincidence. My wife's on a murder case. My
19 girlfriend's prosecuting a murder case right now, that kind of
20 thing.

21 THE COURT: What a coincidence? Oh, okay.

22 MS. DIGIACOMO: Yes.

23 THE COURT: Okay. All right.

24 MS. DIGIACOMO: So I just want to bring that to the
25 attention, but she has no idea who I am and of the connection.

1 THE COURT: Okay. Good. I hope it stays that way.
2 MS. DIGIACOMO: Me, too.
3 THE COURT: Let me know if anything changes in that
4 regard.
5 MS. DIGIACOMO: Yes.
6 THE COURT: Anything else?
7 MS. LEMCKE: No, Your Honor.
8 THE COURT: All right. Thank you. I'll see you all
9 tomorrow at 10.

10 (Proceedings recessed for the evening at 5:20 p.m.)
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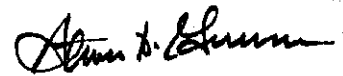
ACKNOWLEDGMENT:

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 7

TUESDAY, MAY 19, 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.

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WITNESSES FOR THE DEFENSE:

MICHAEL ORTIZ

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E X H I B I T S

EXHIBITS ADMITTED FOR THE DEFENSE:

NN Photo of defendant

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1 LAS VEGAS, CLARK COUNTY, NEVADA, MAY 19, 2015, 10:06 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: This is case No. C296234, State of Nevada
5 versus Luis Pimentel. The record will reflect the presence of
6 the defendant with his counsel, the deputies district attorney
7 prosecuting the case, all officers of the court.

8 We're outside the presence of the jury. Are there
9 any matters outside the presence before we resume?

10 MR. BATEMAN: Yes, can I ask one question, Your
11 Honor?

12 THE COURT: Sure.

13 MR. BATEMAN: It's just for your clerk. I think
14 yesterday we had admitted everything that we had offered other
15 than Exhibit No. 33. I just wanted to confirm because we only
16 have one additional witness, and then we intend to rest. May I
17 approach?

18 THE CLERK: Yes, the only -- the only thing that I'm
19 seeing is that the evidence envelope of 57 was admitted, but
20 the contents were not.

21 MR. BATEMAN: We had meant to admit the envelope and
22 contents.

23 THE COURT: Okay. Yes, it should. That's what we
24 did. It should reflect that it was the envelope and contents.

25 MR. BATEMAN: That's right. She marked it in, the

1 content.

2 I mean, we understood that when we weren't opening it
3 that it would be the envelope plus whatever was in it.

4 THE COURT: Right.

5 MR. BATEMAN: I mean, that -- and then 33.

6 THE CLERK: 33 just shows objection.

7 MR. BATEMAN: Okay. I think we're good otherwise,
8 Your Honor.

9 THE COURT: All right. Call your next -- well, let's
10 bring the jury in.

11 MS. LEMCKE: Let's -- oh, wait. We need the jury.

12 THE COURT: Let's bring in the jury, and then we'll
13 be --

14 Who will be the next witness?

15 MR. BATEMAN: Javon Howard.

16 THE COURT: Okay. And what did you say?

17 MS. LEMCKE: I was just -- I said we need the jury.

18 THE COURT: Oh, yes.

19 MS. LEMCKE: Because you started --

20 THE COURT: We'll get them. I think they're all
21 here.

22 MS. LEMCKE: It would feel a lot less pressure filled
23 if I got to cross without the jury.

24 (Jury entering 10:07 a.m.)

25 THE COURT: Thank you. Please be seated.

1 And the record will reflect that we have now been
2 joined by all 12 members of the jury, as well as the three
3 alternates.

4 Will counsel so stipulate?

5 MR. BATEMAN: Yes, Your Honor.

6 MS. LEMCKE: Yes, Your Honor.

7 MR. SLIFE: Yes, Your Honor.

8 THE COURT: Thank you. And you may call your next
9 witness.

10 MR. BATEMAN: State calls Javon Howard.

11 (State's witness, Javon Howard, sworn.)

12 THE CLERK: Thank you. Please state your first and
13 last name, spelling it.

14 THE WITNESS: My name is Javon, J-a-v-o-n. Last name
15 Howard.

16 THE COURT: Thank you.

17 You may proceed.

18 MR. BATEMAN: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. BATEMAN:

21 Q Sir, where are you currently employed?

22 A Arizona Charlie's Boulder Highway.

23 Q All right. And in what capacity?

24 A What do you mean?

25 Q What do you do?

1 A I'm a bike officer outside.
2 Q A patrol officer?
3 A Yes, sir.
4 Q Do you know someone by the name of Juan Knight?
5 A Yes.
6 Q All right. Does he work with you?
7 A Yes.
8 Q Doing the same stuff?
9 A Yes.
10 Q How long have you been working for Arizona Charlie's?
11 A Five years.
12 Q All the time in bike security?
13 A Yes.
14 Q Okay. Did you have -- I'm going to direct your
15 attention to December 22nd -- early morning hours of December
16 22nd, 2013. Do you remember if you were working that period?
17 A I was.
18 Q Okay. And when you say bike patrol, are you outside
19 on a bicycle?
20 A Yes, sir.
21 Q Okay. And did you have occasion to be dispatched to
22 an area of the Arizona Charlie's regarding a disturbance?
23 A Yes.
24 Q Okay. Do you remember approximately where you went?
25 A I believe it was building 1.

1 Q Okay. And did you go out there with Juan Knight?
2 A Yes, we were both dispatched at the same time.
3 Q And when you got out there, did you encounter a white
4 male adult?
5 A Yes, we did.
6 Q Okay. Was he in the parking lot area?
7 A Yes, he was in the parking lot area at the time we
8 came, yes.
9 Q Okay. Between building 1 where there are rooms and,
10 like, the Arizona Charlie's marquee?
11 A It's -- where he was at was where building -- where
12 building 1 was and then the Boulder Highway sidewalk.
13 MR. BATEMAN: May I approach your clerk?
14 THE COURT: Yes.
15 BY MR. BATEMAN:
16 Q I'm going to show you wants in evidence as 122. Do
17 you see on your screen Arizona Charlie's in the overhead
18 photograph that's 122?
19 A Yes.
20 Q Okay. And if you touch your screen, you can actually
21 make a mark on there as to where you encountered the white male
22 adult.
23 A Around this area here.
24 Q Okay. And --
25 A Right -- right there.

1 Q Where was he right where you touched on that screen?
2 A He was, like, around over -- on the pretty much
3 sidewalk area.
4 Q Sidewalk closest to Boulder Highway or the sidewalk
5 closest to the rooms?
6 A Boulder Highway.
7 Q Okay. And for the record, you've made notations at
8 the farthest building south; is that correct?
9 A Yes, sir.
10 Q Okay. And were there other individuals out there at
11 the time?
12 A It was -- I don't believe at the time that we
13 approached him. I didn't see the other individuals yet. It
14 was just him.
15 Q And at some point did you see some females?
16 A Yes.
17 Q One or two or more?
18 A It was -- the first time when we saw a female, it was
19 a female with blonde hair.
20 Q Okay.
21 A And she approached us and told us that --
22 Q Without telling me what she told you, you had a white
23 female approach you?
24 A Yes. We approached her.
25 Q Okay. All right. What was her demeanor?

1 A She was -- she was crying.
2 Q Okay. Did you see any injuries on her?
3 A No.
4 Q At some point did you talk to her?
5 A Yes.
6 Q Okay. And at some point did you direct your
7 attention to the white male adult?
8 A At that moment we didn't.
9 Q Okay. What did you do next?
10 A We asked her what was wrong with her because we knew
11 that --
12 Q And without telling me what she said, after you talk
13 to her, where did you go?
14 A We had went back -- I believe we had went back
15 inside.
16 Q Okay.
17 A No, we didn't -- we -- I went towards the casino
18 area, and then we got dispatched back out to the male.
19 Q Okay. So you talk to a white female, and then left
20 the area, and then got dispatched?
21 A Yes.
22 Q All right. So when you talked to the white female,
23 had you been told anything about what had been going on by
24 surveillance or dispatch?
25 A Yes.

1 Q Okay. So you were actually out there. What were you
2 out there initially doing? Were you looking for individuals?
3 A Yes, to keep -- yes, we were.
4 Q Okay. And that was based upon information that you
5 had received about things that had happened in the casino?
6 A Yes.
7 Q Okay. So at some point do you go back out to this
8 location where you notated on Exhibit 122?
9 A Yes.
10 Q Okay. And again, are you with Juan Knight?
11 A Yes.
12 Q And what do you encounter the second time that you
13 get out there?
14 A It was a WMA.
15 Q Describe him for me.
16 A He was about 6-foot, maybe 6 foot 2, pretty husky,
17 brown hair.
18 Q Is that when you see him out kind of closer to the
19 sidewalk near Boulder Highway?
20 A Yes.
21 Q Okay. Is there anybody else out there at that time?
22 A At that moment -- when we approached him, no. The
23 first time we approached him, there wasn't no one else.
24 Q Did there come a point in time in which other people
25 appeared in the area?

1 A Yes.
2 Q And can you just describe the other people that you
3 remember.
4 A WFA, brown hair, about 5 -- about 5, 5.
5 Q What do you mean by WFA?
6 A White female adult.
7 Q Okay. With brown hair?
8 A Yes.
9 Q All right. Did you ever encounter the female with
10 the blonde hair?
11 A Yes.
12 Q Okay. Same area?
13 A Yes.
14 Q Did you encounter someone identified as a Hispanic
15 male?
16 A Yes, it was later.
17 Q Okay. So you get back out there. You encounter the
18 white male that's in the parking lot; is that right?
19 A Correct.
20 Q Okay. And at some point you see these two females as
21 well; is that right?
22 A Correct.
23 Q Okay. And did an altercation occur between the
24 females and the white male?
25 A Yes, it did.

1 Q Okay. And what specifically was that?
2 A Pretty much as the females were coming around the
3 corner, after I talked to them, he started -- they started
4 talking back and forth.
5 Q Who was talking back and forth?
6 A The white male and the two female -- the two white
7 females.
8 Q There was actually words being said between the white
9 male and the two females?
10 A Yes.
11 Q Was this occurring in front of Building No. 1?
12 A Yes, it was.
13 Q Okay. And was the white male still out in the
14 parking lot area?
15 A Yeah, he was make -- he had came off of the sidewalk
16 and started making his way back onto property.
17 Q And do you remember anything -- well, did it seem
18 like an angry argument back and forth?
19 A Yeah, it did. He -- yeah. Yes.
20 Q At some point -- well, what happened next? What did
21 you see next?
22 A I know the female -- the white female with the blonde
23 hair was saying, Leave me alone, and I know the female with the
24 brunette hair was kind of like -- pretty much trying to protect
25 her, like, Leave us alone, you know.

1 Q Okay.

2 A And then he was mad, saying stuff back to her. I
3 don't remember what he said to them, but then at one point he
4 did start charging at them like he was mad.

5 Q And this was during the point in time in which they
6 were saying things back and forth?

7 A Yes.

8 Q And did you and Juan do anything to stop him from
9 going towards the females?

10 A I put my body in front of him in between them.

11 Q Okay. And did he stop at that point?

12 A Yes, he did.

13 Q Was he still in the parking lot area?

14 A Yes.

15 Q And did you stay in between the white male and the
16 females after he -- you said he kind of charged towards them?

17 A Yes, I did.

18 Q All right. And was Juan Knight there as well?

19 A Yes, he was.

20 Q And then did any other males come into that
21 particular area at that point?

22 A I remember the Hispanic guy did come out of the room
23 as the two females were trying to get into the room.

24 Q Okay. And do you remember anything going -- was
25 there any communication back and forth between this Hispanic

1 male that came out of the room and the white male that was
2 still out in the parking lot?

3 A I remember the Hispanic male pretty much coming out
4 saying, Leave her alone, She doesn't want you, and the white
5 male, he was -- excuse my language -- Fuck you, I'll kick your
6 ass, along that line.

7 Q Okay. So the white male says, Fuck you, I'll kick
8 your ass; Hispanic male was saying, She doesn't want you?

9 A She doesn't want you. Leave her alone.

10 Q Was that the extent of the threats you remember
11 hearing?

12 A At this point, yes.

13 Q Was there further communication between the Hispanic
14 male and the white male at that point?

15 A They kept going back and forth, and I remember the
16 Hispanic male saying -- he pretty much said, You know where I'm
17 at, because the white male was making threats. The white male
18 was the aggressor. The Hispanic male was pretty much, You know
19 where I'm at, I don't want no problems.

20 Q And the threats you said were threats along the lines
21 of a fight?

22 A Yes.

23 Q And is that the extent to which you remember the
24 threats?

25 A Yes, sir.

1 Q Did there come a point in time in which you were able
2 to get the white male adult off property?
3 A Yes, we did.
4 Q And which direction did he go?
5 A He went southbound.
6 Q On this overhead photograph, which direction is
7 southbound? You can draw, like, a line.
8 A He was going this way.
9 Q Okay. So that's towards the bottom of that
10 photograph?
11 A Yes.
12 Q Is there a 7-Eleven next door?
13 A Yes, there is.
14 Q Okay. Is he going in that direction?
15 A Yeah, he hopped that wall and then went pretty much
16 towards the 7-Eleven.
17 Q So he walked off property as you guys stood there?
18 A Yes.
19 Q Did he ever come back?
20 A Not that -- no, he didn't come back on our property.
21 Q And did you stay in that area for a period of time?
22 A We stayed in that area for a good about 30 to 45
23 minutes.
24 Q Okay. And the white male adult never came back?
25 A Never came back.

1 Q And at no time did you actually ask the Hispanic male
2 and any of those other people to leave property, did you?

3 A No.

4 Q And eventually did the Hispanic male and those other
5 people actually leave the property going the other direction?

6 A He did. He went northbound.

7 MR. BATEMAN: Court's indulgence.

8 BY MR. BATEMAN:

9 Q Let me -- if I can follow up, did -- when the
10 Hispanic male said, You know where I'm at, how did you
11 interpret that?

12 A I interpreted it as you're making these threats, but
13 if you really want to beat me up, I'm over here. I'm not gonna
14 deal with you.

15 Q I'm over here, you're pointing kind of to the side?

16 A Where he was -- I guess where he stayed at or like
17 his main residence or his area where he hung out at.

18 Q So you took it to mean, You know where I live?

19 A You know where I live, yeah.

20 MR. BATEMAN: Okay. Pass the witness, Judge.

21 THE COURT: Cross.

22 CROSS-EXAMINATION

23 BY MS. LEMCKE:

24 Q Okay. So, Mr. Howard, let me go through because
25 chronologically I want to make sure the jury kind of

1 understands how all of this went down. In the early morning
2 hours on that day of the 22nd, you were first made aware of the
3 fact that there was an incident going on inside the casino?
4 A Yes.
5 Q And that was between a white male and a white female?
6 A Yes.
7 Q And it was, like, reported as kind of a domestic-type
8 disturbance?
9 A Yes.
10 Q That the male was getting loud?
11 A Excuse me.
12 Q Is that yes?
13 A Let me hear the question again.
14 Q I'm sorry. Oh, that the white male was getting kind
15 of loud?
16 A Yes, it was a little -- I wouldn't say aggressive,
17 but you could tell there was something going on between the
18 two.
19 Q And it was enough to alert security?
20 A Yes.
21 Q An in fact security kind of comes over and starts
22 hovering around them because there was some concern where that
23 male was at issue?
24 A Correct.
25 Q And so you were notified that this had gone on?

1 A Yes.

2 Q Is that -- okay. And -- but at this point, to your
3 knowledge the white male had not been formally trespassed, but
4 had just been asked to leave?

5 A Correct.

6 Q Okay. So then it was shortly after that that then
7 you were outside on your bike patrol?

8 A Yes.

9 Q And during your time patrolling, you encountered this
10 white female?

11 A Yes.

12 Q And again, just so the record's clear, when you
13 say -- there was some discussion earlier about WMA and WFA.
14 That's white male and white female respectively?

15 A Correct.

16 Q Okay. So when you encountered the white female
17 outside -- now, she had blonde hair?

18 A Yes.

19 Q Okay. And you saw her, and you stopped because she
20 appeared as though she had been crying?

21 A Yes.

22 Q Appeared to be scared?

23 A Yes.

24 Q Okay. Was concerned about that white male?

25 A Yes.

1 Q And in fact because of what you observed you then
2 asked her, Hey, does he put his hands on you?

3 A Correct.

4 Q And she responded, Yes?

5 MR. BATEMAN: Objection. Hearsay.

6 THE COURT: Sustained.

7 MS. LEMCKE: It goes to show why he did what he did
8 to follow up.

9 THE COURT: Well, it's -- all right. I'll overrule
10 it and allow it. Go ahead.

11 BY MS. LEMCKE:

12 Q So she told you that, Yes, he does put his hands on
13 her?

14 A Yes.

15 Q And so is it at that point then that you did formally
16 trespass the white male?

17 A Correct.

18 Q And in fact you read him a trespass warning that is
19 kind of spelled out by Nevada law?

20 A Yes.

21 Q And it's by statute?

22 A Yes.

23 Q And you actually read that warning as it is written
24 in the law?

25 A Correct.

1 Q And that formally tells them, You have to get off
2 this property?
3 A Correct.
4 Q And in fact it makes it a crime for them if they come
5 back on the property after that?
6 A Correct.
7 Q So it's really kind of an enforcement tool that you
8 have to make sure that they leave and they stay off the
9 property?
10 A Yes, ma'am.
11 Q Okay. But he doesn't leave and get off the property,
12 does he?
13 A First he gets off, but he hovers on the sidewalk.
14 Q Okay. And he hovers on the sidewalk kind of around
15 the perimeter of the property there at Arizona Charlie's?
16 A Yes.
17 Q And so he doesn't leave?
18 A No.
19 Q And then at some point after that, I think you
20 indicated you saw the woman who was about 5, 5, with brown
21 hair?
22 A Yes.
23 Q And she came up to you because she was concerned?
24 A Yes.
25 Q She was concerned about this white male?

1 A Yes.

2 Q And in fact, she was concerned about the safety of

3 the white female where that white male was concerned?

4 A Yes.

5 Q And she expressed that to you?

6 A Correct.

7 Q You could tell she was afraid?

8 A Yes.

9 Q And then when you saw the white female after that,

10 you could tell that she was still afraid?

11 A Yes.

12 Q And in fact, at that point, when the dark-haired girl

13 came to you, the blonde-haired girl was kind of standing behind

14 a pillar?

15 A Yes, I'm not sure where she was that exactly at, but

16 I know she was hiding because she was not inside.

17 Q So she was hiding at that point?

18 A I do believe.

19 Q From that white male?

20 A Yes.

21 Q And it was only after the dark-haired girl kind of

22 got you to stay in the area that then the blonde-haired girl

23 came out?

24 A Correct.

25 Q And it was at that point that then she started

1 walking toward her hotel room?

2 A Correct.

3 Q And, you know, I asked Juan this yesterday, but I

4 just want to make sure the jury is clear. When you go from

5 inside the casino to a hotel room, you necessarily have to go

6 outside?

7 A Correct.

8 Q So to the extent that they wanted to go where their

9 room was located they had to actually go outside the casino and

10 walk in the area where they were?

11 A Correct.

12 Q Okay. So in any event, the white female then starts

13 walking toward her room at that point; is that right?

14 A Yes.

15 Q And the white male started screaming at her?

16 A Correct.

17 Q He was threatening her?

18 A I'm -- at this moment I can't remember if he was

19 threatening her, but he was -- there was words going back and

20 forth.

21 Q Okay. But he was hostile?

22 A Yes.

23 Q Angry?

24 A Yes.

25 Q Aggressive?

1 A Yes.

2 Q And she appeared to be afraid.

3 A Yes.

4 Q In fact, she started just begging him to leave her
5 alone?

6 MR. BATEMAN: Objection. Hearsay.

7 MS. LEMCKE: He testified to something to that effect
8 on direct. Plus, it's not offered for the truth. It's offered
9 to show her state of mind.

10 THE COURT: I'll allow it. Overruled.

11 BY MS. LEMCKE:

12 Q So she started begging him to leave her alone?

13 A Yes.

14 Q And he didn't?

15 A He didn't, no.

16 Q Kept screaming at her?

17 A Yes.

18 Q And in fact it was not long after that that -- within
19 seconds of that that he then charges her?

20 A Correct.

21 Q Even though you and Juan were there at the time kind
22 of trying to keep the peace he still made a run for her?

23 A Correct.

24 Q And you guys were in uniform?

25 A Yes, ma'am.

1 Q You were wearing the yellow shirts?
2 A Yes, ma'am.
3 Q So it was obvious that you were security?
4 A Yes.
5 Q And you were out there on patrol?
6 A Yes.
7 Q And when he charged her, this was at the time that he
8 had been screaming at her?
9 A Yes.
10 Q And he --
11 MR. BATEMAN: Objection. Misstates. He said yelling
12 back and forth. He's never answered yes to screaming.
13 MS. LEMCKE: Okay. I'll rephrase.
14 THE COURT: All right.
15 BY MS. LEMCKE:
16 Q He was yelling at her?
17 A Yes.
18 Q When he came at her, he was aggressive?
19 A Yes.
20 Q He was angry?
21 MR. BATEMAN: Objection. Asked and answered. We
22 keep -- these three questions keep coming up, and they're the
23 exact same thing over and over again.
24 THE COURT: Sustained.
25 MS. LEMCKE: I'm asking at different points in time,

1 but --

2 BY MS. LEMCKE:

3 Q Let me ask you this. So it was -- it was enough to
4 where you felt like you needed to intervene?

5 A Yes.

6 Q And you did?

7 A Correct.

8 Q You dropped your bike and ran over and got in between
9 the two of them.

10 A Yes.

11 Q Because it appeared as though he might hurt her if he
12 got at her?

13 MR. BATEMAN: Objection. Speculation.

14 THE COURT: Sustained.

15 MS. LEMCKE: Well, I'm asking what it appeared as
16 though. He felt as though he needed to go there. I think that
17 he can testify that it appeared to him -- whether or not it
18 appeared to him.

19 THE COURT: He can testify about what was in his own
20 mind, but not what somebody else's was. So you can rephrase.

21 BY MS. LEMCKE:

22 Q So it appeared to you based on the way that -- well,
23 you saw him charge her?

24 A Yes.

25 Q It was concerning to you?

1 A Correct.

2 Q It appeared that if you didn't do anything he might
3 hurt her?

4 A Correct.

5 MR. BATEMAN: Objection. Objection to speculation,
6 Your Honor.

7 THE COURT: That's sustained.

8 BY MS. LEMCKE:

9 Q But you felt it necessary to get physically in
10 between them and separate them?

11 A Correct.

12 Q Okay. And the white female at this point appeared to
13 be scared?

14 A Yes.

15 Q In fact, at the same time that he charged her he then
16 threw something at her, correct?

17 A Correct.

18 Q And in fact you can kind of see that -- well, let me
19 ask you this. You watched the surveillance video?

20 A Yes.

21 Q And you can see actually him throw something at her
22 in the video?

23 A Yes, we heard it bounce around.

24 Q Okay. Do you know exactly what that was?

25 A No, we couldn't find it.

1 Q Okay. Did it appear to be, like, a cell phone or a
2 cell phone charger?
3 A That's what I -- that's what we thought it was, the
4 way it sounded. We're not sure, but that's what we think it
5 was.
6 Q All right. But it was something like hard plastic,
7 something of that nature?
8 A Yes.
9 Q And she had to jump out of the way of it?
10 A Yes.
11 Q As did the brown haired girl that was standing nearby
12 also?
13 A Correct.
14 Q Okay. And again at this point, that white male is
15 still yelling at her?
16 A Correct.
17 Q And then shortly after this or right around this time
18 the Hispanic male appears?
19 A Correct.
20 Q And when he first came out of the room, the white
21 male immediately started screaming at him, too?
22 A Yes.
23 Q And the Hispanic guy initially came out and was,
24 like, Hey, dude, what's up, just leave Amanda alone?
25 A Correct.

1 Q In fact, he was kind of just trying to protect her?
2 A Yes.
3 Q He wasn't agitated?
4 A No.
5 Q He wasn't angry?
6 A No.
7 Q He wasn't threatening?
8 A No.
9 Q He -- and the white male in response just started
10 screaming at him?
11 A Yes.
12 Q And started threatening him?
13 A Yes.
14 Q In fact, the white male said something -- if I
15 understand your direct testimony correctly, he said something
16 to the effect of, I'll kick your ass?
17 A Yes.
18 Q And he said, I'll kill you?
19 MR. BATEMAN: Objection. That's not what he
20 testified to.
21 MS. LEMCKE: I'm asking him if he heard that.
22 THE WITNESS: At this moment I --
23 THE COURT: Well, wait.
24 THE WITNESS: Oh.
25 THE COURT: The objection is overruled.

1 Go ahead. Did you hear that?

2 THE WITNESS: Not -- it's been so long. I can't say
3 exactly.

4 BY MS. LEMCKE:

5 Q Okay. Is it possible that he said that?

6 A Yes.

7 Q Okay. In fact, do you remember getting a phone call
8 from my investigator Ruben Garcia back in last September?

9 A Yes.

10 Q And do remember talking to Mr. Garcia?

11 A Yes, ma'am.

12 Q And do you remember telling Mr. Garcia that during
13 that exchange the white male said, I'll kill you, to the
14 Hispanic man?

15 A I told him that it was possible that that could have
16 been said.

17 Q Okay. And in fact I called you that same day right
18 after, and I did an interview with you as well?

19 A Yes.

20 Q And you told me the same thing?

21 A Correct.

22 Q And then you and I talked a week ago last Sunday,
23 about a week and a half, on the 10th of May?

24 A Correct.

25 Q And I asked you about this conversation again?

1 A Correct.

2 Q And you told me also at that time that the white male
3 had stated to the Hispanic male, I'll kill you?

4 A Correct.

5 Q Okay. In fact, during this exchange then between
6 the -- the Hispanic male and the white male, the Hispanic guy
7 kind of stayed at pillar the whole time?

8 A Yes.

9 Q He didn't move out from that?

10 A No.

11 Q Didn't come physically after the white male?

12 A No.

13 Q You didn't have to restrain the Hispanic guy?

14 A No.

15 Q But you did have to restrain the white male?

16 A Correct.

17 Q And in fact you had to kind of force the white male
18 off the property?

19 A Yes.

20 Q Had to stay in front of him and move him back until
21 he was actually at the perimeter or the edge of the property
22 there?

23 A Correct.

24 Q And was the white male still was yelling at everyone?

25 A Yes.

1 Q And he was still threatening the Hispanic guy?
2 A Yes.
3 Q And then at some point, the Hispanic guy said
4 something to the effect of, Okay, fine, you know where I be?
5 A Correct.
6 Q Is that right -- and you took that not as a challenge
7 to fight?
8 A No.
9 MR. BATEMAN: Objection. Objection as to how he took
10 it.
11 MS. LEMCKE: Well, they asked him on direct how he
12 interpreted some of the comments. I'm asking how it appeared
13 to him.
14 MR. BATEMAN: Also, legal conclusion.
15 MS. LEMCKE: They asked him on direct.
16 THE COURT: Right.
17 MS. LEMCKE: The exact -- how did this -- how did you
18 interpret X, Y and Z?
19 THE COURT: I'm going to sustain it as to legal
20 conclusion, but you can certainly rephrase it.
21 MS. LEMCKE: Okay.
22 BY MS. LEMCKE:
23 Q But you didn't take this, Fine, you know where I be,
24 to be some kind of challenge?
25 A No.

1 Q Or a threat to fight?
2 A No.
3 Q In fact, it was really -- your impression was the
4 Hispanic guy was really more just saying, Okay, I'm not afraid
5 of you?
6 A Correct.
7 Q And he seemed like he was really just trying to
8 protect the female?
9 A Correct.
10 Q In fact, he stayed relatively calm throughout this
11 whole ordeal?
12 A Correct.
13 Q In fact, he was one of the most calm people there at
14 the time?
15 A Yes, he was.
16 Q And when after you finally got the white male off the
17 property, you came back, and you spoke with the Hispanic male,
18 and he was very respectful of you?
19 A Yes.
20 Q You didn't kick them off the property?
21 A No.
22 Q Didn't ask him to leave?
23 A No.
24 Q And he volunteered to you, Hey, you know what, I'll
25 just go, I don't want any trouble?

1 A Correct.

2 Q It appeared as though he wanted to leave to avoid
3 further confrontation?

4 A Correct.

5 Q And that's what he did. He at that point left?

6 A Immediately.

7 Q Immediately. And in fact, you guys, if I understand
8 you correctly, kind of hung out outside the hotel room for a
9 little bit, and you actually saw that he left at some point?

10 A Correct.

11 Q Okay. And when he did leave, he walked off in the
12 opposite direction from the way that the white male walked off?

13 A Correct, northbound.

14 Q Okay. So the white male walked off southbound, and
15 the Hispanic guy walked off northbound?

16 A Correct.

17 Q You never -- I asked you a little bit about -- you
18 talked to my investigator Ruben Garcia?

19 A Yes.

20 Q You didn't talk to homicide detectives?

21 A No, I don't think so.

22 Q Okay. No one from Metro homicide ever came to
23 interview you?

24 A No.

25 Q In fact, the first time that you were interviewed

1 about this was when my investigator Mr. Garcia contacted you?

2 A Correct.

3 MS. LEMCKE: I have nothing further, Your Honor.

4 THE COURT: Redirect.

5 MR. BATEMAN: Thank you.

6 REDIRECT EXAMINATION

7 BY MR. BATEMAN:

8 Q Just to follow up, you were asked some questions
9 about the Hispanic male being calm. Did you testify -- do you
10 remember those questions?

11 A Yes.

12 Q Okay. Did you testify on direct that there was some
13 yelling back and forth between the Hispanic male and the white
14 male adult?

15 A There was some yelling.

16 Q Okay. So the Hispanic male was also yelling; is that
17 correct?

18 A Yes.

19 Q Okay. You were asked some questions about whether
20 it's possible the Hispanic male said -- I'm sorry -- the white
21 male said, I'll kill you. Do you remember those questions?

22 A Yes.

23 Q Do you -- as you sit here today, you don't have any
24 independent recollection of those words?

25 A It is possible -- it's been so long. It's vague, but

1 I do remember -- it was -- it was very possible that he did say
2 that.
3 Q What do you mean by possible?
4 A His -- the way that he was making threats towards
5 him.
6 Q He did -- I'm sorry. You do remember him saying,
7 I'll kick your ass?
8 A I do remember that.
9 Q You remember that very clearly?
10 A Very clearly.
11 Q But as you sit here today you don't remember, I'll
12 kill you?
13 A Vaguely. I can't.
14 Q Okay. You'd agree that if he said I'll kill you,
15 that's a whole lot more serious than, I'll kick your ass?
16 A Correct.
17 Q Okay. Kind of probably more important to a security
18 officer if something like that was said as opposed to I'll kick
19 your ass, right?
20 MS. LEMCKE: Well, I'm going to object. Leading. I
21 let the leading go on just a little bit, but at some point --
22 Your Honor, object.
23 MR. BATEMAN: I can rephrase.
24 BY MR. BATEMAN:
25 Q Let me ask you this. Are you responsible -- if

1 things get out of hand at the Arizona Charlie's, do you have
2 the ability to call the Las Vegas Metropolitan Police
3 Department?
4 A Yes, we do.
5 Q And in this particular case you didn't call for the
6 Las Vegas Metropolitan Police Department?
7 A No, we didn't.
8 Q If someone was making threats to kill someone, would
9 that be something in your mind that might trigger you calling
10 the Las Vegas Metropolitan Police Department?
11 A No.
12 Q You wouldn't call?
13 A No.
14 Q Okay.
15 A Not along the lines of where we have the situation
16 under control.
17 Q You had it under control?
18 A Yes.
19 Q Didn't seem like it was escalating?
20 A No.
21 Q Okay. In fact, the white male adult was leaving?
22 A After -- after I pretty much put my body -- I had to
23 put my body on him and keep stepping in front of him.
24 Q You didn't touch him?
25 A Well, my chest did.

1 Q You got that close?
2 A Yes.
3 Q And again, this was the period of time when you heard
4 yelling back and forth between the Hispanic male and the white
5 male?
6 A This was right before that.
7 Q Right before the yelling?
8 A Yes.
9 Q Okay. So the chest was when he was kind of heading
10 towards the building?
11 A Heading towards the females.
12 Q Right. And when is it that you specifically
13 remember, I'll kick your ass?
14 A After him and the Hispanic male were going back and
15 forth.
16 Q Okay. So again you remember, I'll kick your ass, but
17 you don't remember, I'll kill you?
18 A I can't say -- lots of words was said to where -- I
19 can't say --
20 Q Lots of words were said?
21 A Lots of words were said.
22 Q Back and forth?
23 A Back and forth.
24 Q And is that something that the public defender
25 investigator brought up with you? Did he suggest the term was,

1 I'll kill you?
2 A No.
3 Q Now, you talked a little bit about the inside of
4 Arizona Charlie's; is that right?
5 A Yes.
6 MR. BATEMAN: May I approach the witness, Your Honor?
7 THE COURT: You may.
8 BY MR. BATEMAN:
9 Q Are you familiar with -- there are cameras inside
10 Arizona Charlie's?
11 A Correct.
12 Q Showing you what's in evidence as State's Exhibit 16.
13 Do you recognize that?
14 A Yes.
15 Q And does it have your initials on it?
16 A Yes.
17 Q Did you have an opportunity to watch the video that's
18 on the CD?
19 A Yes, I did.
20 MR. BATEMAN: Okay. May I publish, Your Honor?
21 THE COURT: Yes.
22 MR. BATEMAN: Court's indulgence.
23 Again, may I sit down, Your Honor? I apologize.
24 THE COURT: Yes.
25 (Playing video recording, State's Exhibit No. 16.)

1 BY MR. BATEMAN:
2 Q I'm showing you channel 7. Is this the interior of
3 Arizona Charlie's, sir?
4 A Yes.
5 Q Okay. Is this kind of in a slot area?
6 A Yes, sir.
7 Q And it doesn't have a timestamp associated with the
8 surveillance video; is that right?
9 A I don't see one on here, but I believe they usually
10 do.
11 Q Okay. At the bottom, do you see the little counter
12 on the left showing how long the video's been running, where it
13 says, like, .28, .29?
14 A Yes.
15 Q Okay. And I'm going to fast-forward to .55. Do you
16 see the two individuals coming into view?
17 A Yes.
18 Q Okay. Do you see the Hispanic male on the left? Is
19 that the Hispanic male you were talking about earlier?
20 A Yes.
21 Q And is that the blonde female?
22 A Yes.
23 Q Does it appear at about 1:20 that they separate to
24 gamble?
25 A Yes.

1 Q And I'm going to forward all the way to 18 minutes
2 in. That's 14:40. Are they still gambling?
3 A Yes.
4 Q And they're in the same spots as you saw them before
5 I fast forwarded, correct?
6 A Correct.
7 Q And at 17 minutes, same spot?
8 A Correct.
9 Q I'm showing you about 17:45 on. Does it appear that
10 the Hispanic male is getting up to leave at about 18 minutes
11 in?
12 A Yes.
13 Q Now, do you see the white male adult come into view
14 at about 18 and 25 seconds?
15 A Yes.
16 Q Is that the white male adult that you came into
17 contact with out in the parking lot?
18 A Correct.
19 Q Okay. And in fact where did that white male adult go
20 in the video?
21 A Over to the white female that was in the altercation.
22 Q Did the Hispanic male leave out of the --
23 A Yes.
24 Q In the opposite direction?
25 A Yes.

1 Q We're about 19:50 in. And the weight male adult's
2 still with the female at the slots?
3 A Yes.
4 Q Just standing there?
5 A Yes.
6 Q Does it appear -- the Hispanic male, is he in the
7 picture right now?
8 A No.
9 Q At about 20:43 I stopped it. Does it appear the
10 white male adult is looking over his right-hand shoulder?
11 A Yes.
12 Q Okay. Do you see a security officer up to the right?
13 A Yes.
14 Q Do you know who that is?
15 A Yes, I do.
16 Q Who's that?
17 A Bill.
18 Q Bill. Do you know his last name?
19 A Lloyd.
20 Q Okay. He works inside?
21 A Yes, he does.
22 Q About 12:55, do you see the Hispanic male coming back
23 in the picture?
24 A Yes.
25 Q Is he going towards the white male and the female?

1 A Correct.
2 Q And now what's he doing?
3 A It looks like they're talking.
4 Q Okay. Who's talking?
5 A The Hispanic male and the white male.
6 Q Okay. And is the security kind of coming in at this
7 point?
8 A Yes.
9 Q All right. Right now did it appear that the Hispanic
10 male was talking to the white male with his back to him?
11 A Yeah.
12 Q Or is he talking in the direction of the white male
13 and the white female?
14 A Correct.
15 Q And then did the Hispanic male leave at about 21:20?
16 A Yes.
17 Q I'm going to fast-forward it a little bit. So we're
18 at 21:36 now. Is the white male still with the white female at
19 the slot machine?
20 A Yes.
21 Q Twenty-two minutes and 20 seconds, still there?
22 A Yes.
23 Q Anything going on or does it just appear to be
24 talking?
25 A Talking.

1 Q And at 23 minutes, the white male adult is still
2 standing there with the white female?
3 A Yes.
4 Q Anything going on other than talking?
5 A No.
6 Q Fast-forward to 23:45, same thing?
7 A Yes.
8 Q Fast-forward to about 24 -- let me back it up just a
9 hair. At 24:36 does there appear to be a security officer
10 coming into the scene? Was that Bill?
11 A Yes.
12 Q Does it appear that the female was handing Bill
13 something?
14 A Yes.
15 Q Is the white male adult still standing there?
16 A Yes.
17 Q Who's the person talking to Bill at 25 minutes?
18 A That was our lieutenant at the time.
19 Q Who's that?
20 A Ian Wagner.
21 Q Okay. Ian Wagner, did he come out to the outside at
22 some point in this whole incident?
23 A Yes, he did.
24 Q Okay. Was it after the incident?
25 A Yes.

1 Q Now, is that Ian Wagner leaving at about 25:07?
2 A Correct.
3 Q And about 25:25, does the female get up and leave
4 with the white male adult from the video?
5 A Yes.
6 Q Okay. I'll show you --
7 A That's one of our supervisors, too, that just popped
8 in and popped out.
9 Q What was his name?
10 A Gavin. I'm not sure of his last name.
11 Q All right. I'm going to show you one additional
12 view. It's the same view from the opposite angle?
13 A Correct.
14 Q It has a timestamp on there of 3 in the morning or
15 so?
16 A Yes.
17 Q And does it show the white male adult with the
18 female?
19 A Correct.
20 Q From this view you can actually see his face rather
21 than his back?
22 A Yes.
23 Q Right now at about 50 seconds in does it look like
24 they're speaking very much?
25 A Yes.

1 Q About a minute 40, 50 in, they're still just talking
2 and standing?

3 A Yes.

4 MS. LEMCKE: Well, I'd object to talking and
5 standing. I don't know that he knows, like, the decibel level
6 at which we were getting to with the two of them.

7 THE COURT: Were you there?

8 THE WITNESS: No, I wasn't there, but on our radio we
9 were told that they were getting loud inside the casino, that
10 someone needed to approach them.

11 BY MR. BATEMAN:

12 Q Here at two minutes, you have Bill again showing up?

13 A Yes.

14 Q Is this what we saw earlier where the white female
15 was handing him something from her purse?

16 A Yes.

17 Q Is that likely an identification?

18 A Yes. Pretty much our -- I do remember the reason
19 they were dispatched to them was because they were getting
20 loud, and they kept causing a commotion inside the casino.

21 Q This is a little wider angle at three minutes; is
22 that correct?

23 A Yes.

24 Q Okay. Is the female getting up, and they're leaving
25 at that point?

1 A Correct.

2 Q Do you see the Hispanic male anywhere?

3 A No, I do not.

4 Q Which direction are they headed, do you know? Are
5 you familiar with the interior of the casino?

6 A It looks like they might be going to the main cage.

7 Q This camera appears to be bouncing to two different
8 angles. Is that -- do you have the ability to do that with
9 your surveillance cameras?

10 A Yes.

11 Q Okay.

12 A There they turned towards the north end of the
13 casino. That guy was the one that had pretty much -- me and
14 him approached the -- Amanda, the white female, and we're
15 asking her, Does he put hands on you?

16 Q That was inside the --

17 A That was when we were going outside.

18 Q Okay. Now, right here on four minutes on the video,
19 do you see her?

20 A Yes.

21 Q And what's that machine she's that? I'll play it a
22 little further to see if you can see.

23 A Pretty much the cash out, the TX machine.

24 Q And at that point, did she appear to cash something
25 out?

1 A Yes.
2 Q And is that the front door that she's leaving out of?
3 A Yes, that's out of the south doors.
4 Q Do you see her leaving with the white male?
5 A Yes.
6 Q And walking out?
7 A Yes.
8 Q Which direction are they heading out in the parking
9 lot?
10 A Southbound, pretty much towards building 1, the
11 7-Eleven area.
12 Q At this point, at 5:25, are they blocked out of view
13 by the tree?
14 A Yes.
15 Q Okay. Do you know which direction this was?
16 A That's in -- in between building 6 and 7, in the
17 middle of the hotel area.
18 MR. BATEMAN: I'm going to stop it there. I'm don't
19 believe I have any additional questions, Your Honor.
20 THE COURT: Any recross?
21 MS. LEMCKE: Yes, Your Honor.
22 RE CROSS-EXAMINATION
23 BY MS. LEMCKE:
24 Q Just very briefly, when you -- when you first -- you
25 were asked some questions by Mr. Bateman about your

1 conversation with my investigator, and the first conversation
2 that you had was back in September of last year, right?
3 A Correct.
4 Q And that was about a month ago?
5 A Correct.
6 Q When things were a little more fresh in your mind?
7 A Correct.
8 Q And when -- when -- when we contacted you, you tried
9 to give as much information as you could?
10 A Correct.
11 Q And be as accurate as you could?
12 A Correct.
13 Q Okay. In fact, the first time that you spoke to the
14 prosecutors in this case was within the last week or two?
15 A Yes.
16 Q Okay. So just recently?
17 A Yes.
18 Q In fact, maybe within the last week?
19 A Correct.
20 MR. BATEMAN: Objection as to relevance.
21 THE COURT: Overruled.
22 BY MS. LEMCKE:
23 Q And again, nobody from law enforcement had contacted
24 you prior to this time?
25 A No.

1 MR. BATEMAN: Objection. Asked and answered.
2 THE COURT: Sustained.
3 BY MS. LEMCKE:
4 Q Now, you were shown a lot of the surveillance video
5 that you walked the jury through, and one of the things that
6 kind of becomes apparent with the video is that the video is
7 kind of following the white male and the white female; is that
8 fair?
9 A Yes.
10 Q And there's -- the cameras I think, if I understood
11 you correctly on redirect, can kind of bounce around and be
12 moved around to focus in on things as needed?
13 A Correct.
14 Q So when security has a concern that there might be a
15 problem, the cameras can kind of trail the person or people
16 that they think might be an issue?
17 A Correct.
18 Q And in this case the cameras trail that white male?
19 A Correct.
20 Q They didn't trail the Hispanic male?
21 A Correct.
22 MS. LEMCKE: I have nothing further.
23 MR. BATEMAN: Nothing else.
24 THE COURT: May this witness be excused?
25 MR. BATEMAN: Yes, Your Honor.

1 THE COURT: Thank you very much for your testimony,
2 sir.
3 THE WITNESS: You're welcome.
4 THE COURT: Do you have any further witnesses?
5 MR. BATEMAN: The State rests, Your Honor.
6 THE COURT: The State has rested its case.
7 Defense.
8 MS. LEMCKE: Can we approach?
9 THE COURT: Yes.
10 (Conference at the bench not recorded.)
11 MR. BATEMAN: May I approach your clerk?
12 THE COURT: Yes.
13 All right. Defense, you may call your first witness.
14 MR. SLIFE: Your Honor, the Defense calls Sergeant
15 First Class Michael Ortiz.
16 (Defense witness, Michael Ortiz, sworn.)
17 THE CLERK: Thank you. Please state and spell your
18 first and last name for the record.
19 THE WITNESS: It is Michael Ortiz, O-r-t-i-z.
20 THE COURT: And it's Michael, common spelling?
21 THE WITNESS: Excuse me?
22 THE COURT: Michael, common spelling?
23 THE WITNESS: Yes, ma'am, a-e-l.
24 THE COURT: Thank you.
25 MR. SLIFE: May I proceed, Your Honor?

1 THE COURT: Yes, you may.

2 DIRECT EXAMINATION

3 BY MR. SLIFE:

4 Q Sir, where do you currently live?

5 A I currently live in Fayetteville, North Carolina.

6 Q Who do you currently do for work right now?

7 A I am the department manager for Target in
8 Fayetteville, North Carolina.

9 Q And do you have a family out there?

10 A I do.

11 MS. DIGIACOMO: Objection. Relevance.

12 MR. SLIFE: Judge, it's just some foundational
13 questions as to this witness, where he's from, who he is, just
14 a few foundational questions.

15 THE COURT: Well, his -- whether he has family is
16 probably not relevant. So that's sustained.

17 MR. SLIFE: Okay.

18 BY MR. SLIFE:

19 Q Were you formerly in the military?

20 A I was, sir, yes.

21 Q How long did you serve total in the military?

22 A Fourteen years and 11 months, just under 15 years.

23 Q What was your rank when you got out of the military?

24 MS. DIGIACOMO: Objection. Relevance.

25 THE COURT: Sustained. Approach.

1 (Conference at the bench not recorded.)

2 MR. SLIFE: Thank you, Your Honor.

3 BY MR. SLIFE:

4 Q All right. I believe we were to the point you have
5 been in for 14 years and some months. What was your rank when
6 you got out?

7 A I got out as Sergeant First Class or enlisted grade
8 seven.

9 Q What was your position in the military?

10 A I got out as a Sergeant First Class Senior
11 Instructor.

12 Q Why did you get out?

13 A I got medically discharged for a blood condition.

14 Q Okay. Did you want to get out?

15 MS. DIGIACOMO: Objection. Relevance.

16 MR. SLIFE: Just foundational questions on him, Your
17 Honor. That was my last one.

18 THE COURT: I need you to keep your voice up though.
19 I'm having a little difficulty hearing you.

20 THE WITNESS: Sorry.

21 THE COURT: Thank you.

22 Go ahead.

23 BY MR. SLIFE:

24 Q Do you know a person by the name of Luis Pimentel?

25 A Yes, sir, I do.

1 Q How did you know him?

2 A I was in charge of him from 2005 to about 2008. He
3 was in my squad, and I was eventually section sergeant.

4 Q What name did you know him by?

5 A Specialist Pimentel.

6 Q Okay. Do you see Specialist Pimentel in the court
7 today?

8 A Yes, sir, I do.

9 Q Could you point to him and describe a piece of
10 clothing he's wearing?

11 A He's right there, sir, wearing a gray jacket and a
12 blue shirt.

13 MR. SLIFE: Your Honor, may the record reflect
14 identification of Mr. Pimentel.

15 THE COURT: It will.

16 BY MR. SLIFE:

17 Q What unit were you and Mr. Pimentel in together or
18 Specialist Pimentel?

19 A We were part of the Southern European Task Force,
20 173rd Airborne Brigade, Second Battalion Airborne, 503rd
21 Infantry Regiment.

22 Q Where is that located?

23 A In Vicenza, Italy, sir.

24 Q Okay. About how long did you serve with Specialist
25 Pimentel?

1 A Right at about three years, sir.

2 Q Okay. Did you serve with Specialist Pimentel in
3 combat?

4 A Yes, sir, I did.

5 Q How would you describe him in combat? How would you
6 describe his reliability in combat?

7 MS. DIGIACOMO: Objection. Relevance.

8 THE COURT: Sustained.

9 BY MR. SLIFE:

10 Q How would you describe Mr.-- Specialist Pimentel in
11 your interactions with him on deployments to combat?

12 A He was a very knowledgeable medic. I would describe
13 him as being passionate about his job. He wasn't the best
14 soldier we had, wasn't the worst soldier we had, just he was
15 reliable. When the time came to accomplish his tasks, he would
16 accomplish his tasks.

17 Q You said -- used the term passionate. Could you
18 describe that a little more.

19 A We trained our medics to be there for a certain
20 reason. Being a medic with the kind of units we were deployed
21 with wasn't just pulling sick haul daily. It was right there
22 in the middle of the fight with the infantry guys, you know,
23 taking the same amount of rounds, seeing kind of the horrors of
24 war, and to have a medic do that you have to be passionate
25 about what you do. You have to love what you do.

1 Medics are kind of given an opportunity to kind of go
2 hospital side or combat side. So the guys that were with us
3 obviously wanted to be there. It was a -- it's just a little
4 different level of medicine we have to practice. You have to
5 love what you do to do it.

6 Q Is he somebody that cared about his fellow soldiers?

7 MS. DIGIACOMO: Objection.

8 THE COURT: Sustained.

9 BY MR. SLIFE:

10 Q What specifically was Specialist Pimentel's position?

11 A He was the senior line medic for battle company when
12 we initially deployed, but he served as combat station medic,
13 evacuation medic and senior line medic for one of the line
14 companies, sir.

15 Q What was the primary weapon that you and he used?

16 A All medics are issued an M4 assault rifle and a .9mm
17 Beretta.

18 Q Okay. Do you have specific training with both?

19 A Yes, sir, we do.

20 Q What was the training that you and he were given with
21 regard to shooting a target --

22 MS. DIGIACOMO: Objection, Your Honor, I'm going to
23 object to -- about this witness. If he wants ask about the
24 defendant, I don't object, but it's what were you and he given.
25 I don't know how it's relevant what this gentleman did.

1 MR. SLIFE: That's fine.

2 THE COURT: All right. What was the question, the
3 last question?

4 MR. SLIFE: I think it was discussing the training
5 that the witness and Mr. Pimentel were given with regard to
6 firearm use, engaging targets.

7 THE COURT: Were you present when he was trained in
8 use of firearms?

9 THE WITNESS: I was the instructor, ma'am.

10 THE COURT: Thank you.

11 I'll allow that.

12 BY MR. SLIFE:

13 Q Okay. So Mr. Pimentel was specifically instructed by
14 you with regard to firearm use?

15 A Yes, in any capacity of pistol use, which all medics
16 carried, and M4 use, we are the ones that assigned the ranges.
17 It's called diamond washer drills, just to kind of use -- how
18 to study position, aiming, breathing, trigger squeeze, just
19 fundamentals of marksmanship, and then countless ammo ranges,
20 just kind of honing in on your skills as a -- as a shooter and
21 a medic.

22 Q What was the type of training specifically though
23 that you gave to Mr. Pimentel though with regard to when you
24 engage an enemy target?

25 A The intent of any combat situation is to suppress

1 enemy. With all medical training, that is the first rule is to
2 suppress the enemy. If they can't shoot back, they can't
3 injure you or your fellow comrades. In direct engagements, the
4 intent is to neutralize the enemy.

5 Q What does that mean, neutralize?

6 A To hinder the enemy's ability to provide any injury
7 to yourself, your comrades or themselves.

8 Q And with regard to the specific training you gave
9 Mr. Pimentel, could you talk about the training with regard to
10 muscle memory. Was that part of the training?

11 A Everything, especially as a medic, has to be through
12 muscle memory. We trained our medics to kind of thrive in
13 hostile situations to where we would fatigue them purposely
14 through exercise, and then make them go do IVs, or fatigue them
15 and then make them go to a shooting range so that they
16 understood that just through repetition, given any
17 circumstance, they could carry out their duties as a medic and
18 a soldier.

19 Q Was that sort that when things really got hot that
20 you would have sort of an automatic reaction?

21 A Yes, sir.

22 Q And you wouldn't have to think about it?

23 A Yes, sir.

24 Q Okay. What about -- what about the need to be calm
25 as a medic? Could you talk about that. Is that -- is that

1 part of what you need as a medic?

2 A Yes, sir, my biggest thing that I looked for in our
3 soldiers prior to assigning them to the line companies, which
4 they'd be in direct engagements, was their ability to handle
5 stressful situations. If they couldn't handle me making them
6 doing push-ups and running a couple laps and then going and
7 caring for a mock patient, I wouldn't feel right about them --
8 them going and doing that in the real situations.

9 Q And you trained Mr. Pimentel specifically. Did
10 you -- how would you rate his ability to be calm in the
11 situation?

12 A He was signed off to go to the line during the
13 initial deployment, sir.

14 MS. DIGIACOMO: I'm sorry, Your Honor. I can't hear
15 the witness.

16 THE WITNESS: He was signed off initially to go to
17 the line companies during deployments. We felt that he
18 possessed the ability to remain calm in stressful situations
19 and to provide immediate care as a medic and serve as a
20 soldier.

21 BY MR. SLIFE:

22 Q Well, then other than just signing off on him to go
23 to the line, did you witness him on the line?

24 A Yes, sir.

25 Q How was his ability to remain calm when stuff was

1 really going on?

2 A He never got any bad compliment or bad remarks from
3 his chain of command during harsh times, during firefights or
4 during, you know, IED attacks or whatnot. He did his job as a
5 medic. He did what he was supposed to do.

6 Q Okay. Now, even though you're a medic, you're still
7 a soldier though, right?

8 A Yes, sir, correct.

9 Q Do you know if Specialist Pimentel ever had to engage
10 the enemy with his firearm?

11 A Yes, sir.

12 Q Specifically are you aware if whether he had to kill
13 anybody?

14 A I don't know to that capacity, sir.

15 Q But you were -- I mean, you were in firefights with
16 him where he was engaging the enemy?

17 A I wasn't never directly in a firefight engagement
18 with him.

19 Q Okay.

20 A All mine were either coming in latter or before, kind
21 of just after-action result reviews and stuff like that. I was
22 never directly side-by-side in that environment with him.

23 Q But when he would come back from an engagement, you
24 would have to review what happened with him?

25 A Yes, sir, myself, the platoon sergeant at the time,

1 our platoon leader and PA, physician's assistant, would debrief
2 all our medics on what they did and use it as our opportunity
3 to kind of either change the situation or improve it or sustain
4 it.

5 Q Now, you, yourself, were deployed numerous times to
6 Iraq and Afghanistan, right?

7 A Yes, sir.

8 Q I just want to focus on the deployments you were with
9 Specialist Pimentel. I specifically want to focus in on the
10 2007 deployment, okay. We're you guys deployed to Afghanistan
11 in 2007?

12 A Yes, sir, we were deployed to Korengal Valley in
13 northeastern Afghanistan.

14 Q How long was that deployment?

15 A That was 15 months.

16 Q Was that deployment the subject of a movie?

17 A Yes, sir, it is the subject of --

18 MS. DIGIACOMO: Objection. Relevance.

19 THE COURT: Sustained.

20 MR. SLIFE: It just goes to the fact that the combat
21 was so intense that moviemakers actually took notice.

22 THE COURT: Counsel, don't testify, okay. I
23 sustained the objection.

24 The jury is admonished to disregard comments of
25 counsel. Of course it's not evidence, as you've been told

1 before.

2 Ask your next questions.

3 MR. SLIFE: My apologies, Your Honor. I was just --
4 I was just responding to the objection.

5 BY MR. SLIFE:

6 Q Could you describe that deployment.

7 A That was -- that was the hardest deployment I had
8 personally been through, and I know for my medics, the ones
9 that I've trained, it by far took --

10 MS. DIGIACOMO: Objection, Your Honor. Now he's
11 speculating as to his medics.

12 THE COURT: All right. Sustained.

13 Your testimony needs to be based on your personal
14 experience.

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Okay.

17 BY MR. SLIFE:

18 Q How close with you -- how many medics did you have
19 under your supervision?

20 A At the time we had 33 medics, sir.

21 Q How close were you with all those medics?

22 A All of our medics were very close. We had to be. In
23 an environment like that, you have to -- you have to be close.

24 Q All right. Could you explain why that deployment was
25 bad for you.

1 A As a leader, it was the first time -- I had lost
2 friends throughout deployments, but it was the first time I as
3 a leader had actually lost my own soldiers. We lost three
4 medics that deployment, and it's something that just -- I'll
5 never be able to swallow that pill as a leader not bringing
6 someone's son home.

7 Q Was one of those medics you lost that you were
8 responsible for by the name of Restrepo [phonetic]?

9 MS. DIGIACOMO: Objection. Relevance.

10 BY MR. SLIFE:

11 Q Was -- was --

12 THE COURT: All right. Wait a minute.
13 Just approach.

14 (Conference at the bench not recorded.)

15 MR. SLIFE: Thank you, Your Honor.

16 BY MR. SLIFE:

17 Q All right. Sir, who was Restrepo?

18 A Specialist Juan Restrepo was one of our medics and
19 the first one of our medics to be killed during that
20 deployment, sir.

21 Q Do you know if he had -- if he was friends with
22 Specialist Pimentel?

23 A Yes, sir.

24 MS. DIGIACOMO: Objection. Foundation.

25 THE COURT: How do you know?

1 THE WITNESS: I was the one that assigned all of the
2 medics to their individual platoons. So he was also his direct
3 first line supervisor.

4 BY MR. SLIFE:

5 Q Why do you think they were friends?

6 A When there's four medics at a platoon taking care of
7 133 people, you have to rely on those four people to get you
8 through your good and your bad days.

9 Q In your opinion did they get along?

10 A Yes, sir.

11 Q Do you think they were close?

12 MS. DIGIACOMO: Objection.

13 THE WITNESS: Yes, sir.

14 MS. DIGIACOMO: Speculation.

15 THE COURT: Well, if you can lay a foundation, I'll
16 allow it.

17 BY MR. SLIFE:

18 Q What was Specialist Pimentel's relationship with --
19 was it Private Restrepo, Specialist Restrepo?

20 A He was a PFC at the time, sir, yes.

21 Q Okay. What was their relationship like, if you know?

22 A Since Pimentel was his first line supervisor, he was
23 the one ultimately charged to make sure that they were stocked,
24 equipped, combat ready at all times to go do their missions.

25 Q What ultimately happened to Private Restrepo?

1 A He was killed during one of the first patrols that we
2 had during that deployment.

3 Q Are you aware of where Specialist Pimentel was during
4 the time he was killed?

5 A Specialist Pimentel was not at the actual site of
6 incident. He was there as the first medic along with the PA
7 when they sent him back to their base where Restrepo ultimately
8 expired.

9 Q Okay. Do you have any knowledge -- and I understand
10 you can't look in Specialist Pimentel's mind, but based on what
11 you knew of Specialist Pimentel serving with him as long as he
12 did, could you have -- do you have an opinion with regard to
13 the effect that Restrepo's death had on Specialist Pimentel?

14 MS. DIGIACOMO: Objection, Your Honor. Speculation
15 and relevance.

16 THE COURT: I'll allow it, but you're going to need
17 to also lay some foundation as to why he has this.

18 MR. SLIFE: Okay.

19 THE WITNESS: At the initial incident, no, I don't.
20 I just know when I had -- when Pimentel was brought back to our
21 base for the memorial is when we all got a chance to talk to
22 him and the other medics that were there, and he was
23 devastated.

24 BY MR. SLIFE:

25 Q Why do you say he was devastated?

1 MS. DIGIACOMO: And I'm going to object if any of
2 this is hearsay.

3 MR. SLIFE: Judge, none of this is offered for the
4 truth. It all goes to the state of -- to the effect on
5 Specialist Pimentel.

6 THE COURT: Overruled. Again, just foundation as to
7 what he observed.

8 BY MR. SLIFE:

9 Q What did you observe about Specialist Pimentel that
10 made you think he was devastated?

11 A He couldn't get his sentences out of his mouth. He
12 kept saying that he was sorry, and he did everything he could,
13 and it was my responsibility to ensure that -- with our job
14 there's just times we can't save everybody. It's just
15 different when it's one of your own. It's -- you exhaust the
16 resources you don't have to save one of your own, and in that
17 instance he did, and that was the one thing I can remember
18 vividly, was him constantly saying he was sorry and that he
19 tried, and you just -- we can't save everybody as medics.

20 Q After Private Restrepo died, were there any other
21 medics that died?

22 A We lost two other medics that deployment, Specialist
23 Rokay [phonetic] and then Specialist Mendoza.

24 Q Did you observe Specialist Pimentel after that?

25 A During?

1 Q After the other medics died.

2 A Not directly. I wasn't with him when those instances
3 happened.

4 Q At some point though, after those other deaths, did
5 you start to notice anything about Specialist Pimentel?

6 A I noticed that after -- after Restrepo had been
7 killed.

8 Q What was it that you noticed about him?

9 A His kind of demeanor and his ability to kind of lead
10 in that scenario was kind of diminished to an extent that we
11 had to kind of keep a close eye on him, but the command was
12 worried about his ability to perform on the line.

13 Q What was it that made you think he was diminished? I
14 mean, what would he specifically do?

15 A He just -- he had a hard time focusing on initial
16 tasks. He had a hard time letting go. If I had to put it --
17 it just -- I think it haunted him to the point to where he was
18 ineffective to be in that kind of environment.

19 Q What's a specific example?

20 A Just missing --

21 Q That you can think of.

22 A Failure to communicate with us at certain instances
23 for, you know, orders or what their level class eight or
24 medical supplies -- what their medical supplies shortages were,
25 just minor things that we had to know about that he just really

1 kind of was lagging in getting back to us.

2 Q Did anything happen as a result of you noticing this
3 change?

4 A Yes, sir, we ultimately had to pull him off the line
5 and then back to the aid station.

6 Q Did you talk to him about that?

7 A Yes, sir, we always -- as a group of leaders, we
8 always ensure that this is the plan we're going to do. We're
9 going to, you know, go through with that plan and follow
10 through, and that, you know, as soon as that individual soldier
11 gets back to the platoon, explain why, try to rehabilitate them
12 in the intent to try to push them back out to the line.

13 Q Did he want to leave the line?

14 A No, sir, he didn't.

15 Q Did he tell you he didn't want to leave the line?

16 MS. DIGIACOMO: Objection. Hearsay.

17 THE COURT: Overruled.

18 THE WITNESS: Yes, sir, he did say he did not want to
19 leave the line.

20 BY MR. SLIFE:

21 Q Why?

22 MS. DIGIACOMO: Objection. Speculation.

23 THE COURT: Sustained.

24 BY MR. SLIFE:

25 Q Let me ask you a little bit about just some general

1 questions of that 15 months. I think a lot of people think of
2 combat zone over there, that there's sort of a safe zone, and
3 then you go out and do raids. Could you just describe to the
4 ladies and gentlemen of the jury the specific area where you
5 and Specialists Pimentel sort of lived and stayed.

6 A The areas in which we stayed were considered and
7 still considered to be the hardest environment for soldiers to
8 deploy.

9 Q Why is that?

10 A There's no running water. Everything we had to do --
11 we were so high in the mountains, everything we had had to be
12 flown in. Trucks couldn't drive to us because of IED threats.
13 So our water, our food --

14 Q Okay. What was the term you just used?

15 A I'm sorry. IED, it's an Improvised Explosive Device,
16 the bombs in the grounds that would blow up the trucks.

17 So everything from mail to food, water, everything
18 was evac -- excuse me -- helicoptered in to us.

19 Q What was it like on a day-to-day existence there?

20 A For me, it was --

21 Q Let me ask you this. Were their periods of time
22 where you were shot at all the time? Were there periods of
23 time where you weren't? Could you describe that to the jury.

24 A We were shot at -- or a unit in our vicinity that
25 fell under our control was shot at just about every day. I

1 think it was just under 40 days total time that one of our
2 units didn't take fire out of 15 months.

3 Q So in a 15-month period, there were 40 days when
4 there was no fire. Every other day within the 15-month period
5 they were taking fire?

6 A Someone in that vicinity was getting shot at, yes,
7 sir.

8 Q Okay. Taking fire that much, what was it like in the
9 days when you didn't take fire?

10 A For me, those were the hardest days because you
11 expect it, and you wait for it, and then when it doesn't
12 happen, your mind kind of let's you drift to something bigger
13 is going to happen. You're going to get overran. They're
14 scaling some kind of huge ambush. Those were the days I was
15 the worst, was when nothing happened.

16 Q Was it normal to get shot at then?

17 A It became the norm for us, just you expect to get
18 shot at every day.

19 Q And lastly, I mean, everyone -- everyone is certainly
20 an individual, and the experiences they have over there are
21 different, but do you think there are some of effects of the
22 people you served with on that second deployment, do you think
23 there are things sort of across-the-board that stay with
24 someone?

25 A To myself, I know it does.

1 Q What are some of those general characteristics that
2 you think would apply to all people that were where you and
3 Specialist Pimentel were?

4 A I think we're a little more guarded. I think we're a
5 little bit more withdrawn. We look at situations -- I know I
6 do -- significantly different. I just -- I have to be aware of
7 where I'm going, who's in the room with me, what I'm saying,
8 whom I'm talking to, even to the movies I watch. I just don't
9 put myself in situations that I know will not be safe for me or
10 my family.

11 Q Do you think your experiences over there would
12 potentially influence the way you reacted if someone was to
13 pull a gun on you right now?

14 MS. DIGIACOMO: Objection. That's speculation and
15 goes to the ultimate question.

16 THE COURT: Sustained.

17 MR. SLIFE: May I have a moment, Your Honor?

18 THE COURT: Yes.

19 MR. SLIFE: Nothing further, Your Honor.

20 Thank you, sir.

21 THE COURT: Cross.

22 MS. DIGIACOMO: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. DIGIACOMO:

25 Q Sir, now, based on your experiences in the military,

1 you said that now you're kind of more guarded, more withdrawn,
2 correct?

3 A Yes, ma'am.

4 Q And then you stated that you have to be aware of
5 everything around you, correct?

6 A Yes, ma'am.

7 Q And do you mean by that, like, even as you come into
8 this courtroom you're kind of taking note of where everyone is
9 and if there could be any potential threats?

10 A Yes, ma'am.

11 Q Based upon your experience, would you say that now --
12 you know, when you said you try not to put yourself in
13 situations that could hurt you and your family, is it more that
14 you would try and avoid what could be a high-risk conflict?

15 A Yes, ma'am, I would say I just don't purposely put
16 myself in excessively big crowds. You know, if -- if -- I
17 think if I'm by myself, I'm okay, but I know if I have my wife,
18 and my daughter is there, I go into protective mode where I
19 just -- it's instinct just to -- I want to keep them close. I
20 just --

21 Q And keep them safe?

22 A Keep them safe.

23 Q And so would it be more your reaction to kind of try
24 and take them away from a situation instead of, like, confront
25 a situation?

1 A Yes, ma'am.

2 Q Now, with regard to the defendant, did you know

3 him -- did you call him by a first name?

4 A No, ma'am.

5 Q Always by his last name?

6 A Always by his rank and last name, ma'am.

7 Q And so even if you were on off time, you would still

8 use rank and last name --

9 A Yes.

10 Q -- because you were his leader or his supervisor?

11 A Yes, ma'am. I think if there was ever any -- I don't

12 even think we ever hung out outside. Sergeants or above didn't

13 hang out with enlisted.

14 Q The enlisted, all right. Now, with regard to -- you

15 said he was a front-line medic. You said you had 33 in your --

16 under your supervision when you went to that Afghanistan

17 deployment, correct?

18 A Yes, ma'am.

19 Q Is it -- and medics were armed?

20 A Uh-huh.

21 Q Correct? And I'm sorry you have to say, yes --

22 A I'm sorry. Yes, ma'am, they were armed. I

23 apologize.

24 Q She's recording everything. All right. But is it

25 the role of the medic to just kind of hang back as the soldiers

1 in your unit went over to engage or to go out, and that they
2 would only come up if somebody was hit or injured, or were
3 medics fighting as well, and then if somebody got hit or
4 injured then they would change from their position to go help
5 them?

6 A Yes, ma'am. The intent of every soldier is to
7 provide -- is an extra round going down range. It's an extra
8 bullet to keep the enemy suppressed. So every soldier's, to
9 include medics, job is to suppress the enemy. We don't -- we
10 don't start firefights. We don't -- you know, we're not the
11 snipers. We just -- we engage to the point to where we need to
12 suppress until someone calls for a medic, friendly or enemy.

13 Q Okay. No, I understand. I'm sorry. I wasn't trying
14 to imply that you were initiating.

15 A No.

16 Q But what I mean is as -- as -- let's say you have a
17 unit and you have to go this way through a village?

18 A Uh-huh.

19 Q Is that a yes?

20 A Yes, ma'am. Sorry.

21 Q Okay. You would -- would the medics be the first on
22 the line or -- or, you know, would they kind of hold back and
23 come up secondary or third so that you did have a medic in case
24 somebody got injured that was initial in the line?

25 A Medics were right there in the front, ma'am. We

1 positioned -- the commanders will position the medics anywhere
2 from the third person in the file and space them out throughout
3 so if someone got hit in the front, and just given the terrain
4 in which we were in Afghanistan, there were times where that
5 medic, if he was in the back, there would be no way possible
6 for them to work their way up to the front without either
7 falling off a mountain or subjecting themselves to further
8 injury. So we were always placed just, you know, through the
9 command somewhere more towards the middle, but always kind of
10 lead towards the front since it was usually the first couple
11 guys that took the most fire.

12 Q Okay. So they weren't the first, but they would be
13 right there close so that in case someone took fire they could
14 be there?

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

16 MS. DIGIACOMO: I have nothing further.

17 MR. SLIFE: May I have a moment, Your Honor.

18 All right. Just a few more.

19 REDIRECT EXAMINATION

20 BY MR. SLIFE:

21 Q So medics were on the line in the middle of the
22 shooting?

23 A Yes, sir.

24 Q And, you know, I had you describe a little bit about
25 where you lived, that there are daily shootings. Was this to

1 the point where -- I mean, could you -- could you do things
2 where you didn't have to worry about being shot?

3 MS. DIGIACOMO: Objection. Beyond the scope.

4 THE COURT: Well, it is, but you could recall him.
5 So I'm going to allow it. Go ahead.

6 MR. SLIFE: Thank you, Your Honor.

7 BY MR. SLIFE:

8 Q Things like using the bathroom, going for jogs,
9 working out, other things that you could do where you didn't
10 have to be worried about being shot?

11 A It was -- it was every base's policy in that area you
12 had to take your kit with you everywhere you went, to include
13 the bathroom, the shower, to a jog. You had to have your kit
14 with you.

15 Q What does your kit include?

16 A Your bulletproof vest, your helmet, and then medics
17 usually carried a small aid bag or drop -- the kit patches that
18 are on your leg, just a small, miniature kind of just first aid
19 initial response kit just with us everywhere we went.

20 Q Was there any time that you could just sort of let
21 down?

22 A In the confines of your living quarters. There
23 were -- there were old village cemented buildings that we kind
24 of occupied. That was just about it.

25 Q Have you specifically had any nightmares or

1 flashbacks?

2 MS. DIGIACOMO: Objection. Relevance.

3 THE COURT: Sustained.

4 MR. SLIFE: All right. Nothing further, sir. Thank
5 you.

6 MS. DIGIACOMO: Nothing, Your Honor.

7 THE COURT: Thank you very much for your testimony.
8 Is he excused?

9 MR. SLIFE: Yes, Your Honor.

10 THE COURT: All right. Thank you very much.

11 THE COURT: You may call your next witness.

12 MS. LEMCKE: Grace Nunez.

13 MR. BATEMAN: Can we approach real quick, Your Honor?

14 THE COURT: Yes.

15 (Conference at the bench not recorded.)

16 THE COURT: Ladies and gentlemen, we're going to take
17 our lunch recess at this point. We're going to do a little
18 work without you. So we're going to send you early, and we'll
19 come back at 1:15. So you're going to get an hour and a half.

20 So, ladies and gentlemen, during this recess it is
21 your duty not to converse among yourselves or with anyone else
22 on any subject connected with the trial or read, watch, or
23 listen to any report of or commentary on the trial by any
24 medium of information, including without limitation newspaper,
25 television, radio or Internet, and you are not to express an

1 opinion on any subject connected with the case until it's
2 finally submitted to you.

3 I'll see you at 1:15.

4 (Jury recessed 11:43 a.m.)

5 THE COURT: All right. The record will reflect that
6 the jury has departed the courtroom.

7 Okay. So do we want to talk about the photo that was
8 brought to the bench at this point?

9 MS. LEMCKE: Yes. Your Honor, with -- my next
10 witness is going to be Grace Nunez, who was my client's wife,
11 and I wanted to admit a photograph of my client showing what he
12 looks like in, you know, circa 2011-ish -- I can't give you the
13 exact date and time on that -- before he left Virginia and came
14 back to Las Vegas where he grew up.

15 There have been many photos put in of our client at
16 the time of his arrest, and I want to put in that photo to show
17 what he looked like and kind of what his life was like before
18 he came out here because I think the testimony is going to
19 reveal and disclose there was, you know, quite a change in
20 lifestyle, shall we say, from when he left Virginia and came
21 out here, and this is ultimately relevant -- it's going to be
22 relevant when the experts testify.

23 THE COURT: Okay.

24 MS. DIGIACOMO: And I guess I'm missing how it's
25 relevant. It sounds more like mitigation evidence, not

1 anything that goes to the issues in the guilt phase.

2 THE COURT: Well, just explain how you believe it's
3 relevant as far as -- so this was in 2011. Fill me in on the
4 timing. When was he discharged from the military?

5 MS. LEMCKE: 2010.

6 Is that right?

7 MR. SLIFE: 2010, Your Honor.

8 MS. DIGIACOMO: 2010.

9 MR. SLIFE: 2003 to 2010.

10 THE COURT: Okay. And so this is a year after?

11 MS. LEMCKE: Well, don't quote me on the date because
12 I -- I -- I don't remember exactly the date. The witness will
13 testify to approximate date. So please don't hold me to that,
14 but -- but the point is is that he's discharged from the
15 military. You know, he's relatively healthy. He has, you
16 know, a good life with his family and then can't quite keep it
17 together because of all the symptoms he's experiencing from the
18 Posttraumatic Stress Disorder, comes out to Las Vegas, and kind
19 of goes off the rails, for lack of a better term.

20 The experts are going to get into that. I don't
21 think we have any choice but to address it, and it's only one
22 photo. I'm not asking to admit a bunch. I didn't put any
23 photos of him in the military or try to prejudice them.

24 You know, the State put in the one photo of Bobby.
25 You know, they could've put in his booking photo. What they

1 did was they intentionally found the nice beach photo to
2 juxtapose against the booking photo of Amanda and the arrest
3 photo of Luis. You know, I get it. I know why they did that.
4 They didn't need that. There was going to be testimony about
5 his size and his weight, but they did it so that they could
6 create that juxtaposition.

7 I'm not trying to inflame their passions in the way
8 that I believe the State kind of did with their Bobby photo.
9 What I'm trying to do is set the stage and draw this picture
10 that the experts are ultimately going to testify to about his
11 dissent after he gets out of the military, kind of tries to
12 keep it together and then doesn't.

13 MS. DIGIACOMO: Your Honor, first of all, I take
14 offense obviously to Ms. Lemcke as to why we put that photo in.
15 Actually, size is important, and a picture is worth a thousand
16 words. So seeing his whole body, which you can't see in a
17 booking photo, and I know they keep trying to muddy the victim
18 and how he's got the criminal history, although he's not the
19 one that's murdered somebody here, but with regard to the --
20 and also, when we agreed -- they agreed --

21 MR. SLIFE: Or allegedly.

22 MS. DIGIACOMO: -- to put in that one picture of
23 Bobby, and the only one that his mom gave us of him alone was
24 on the beach, we also agreed not to show the face photo of him
25 after death at the request of the defense.

1 Now, with regard to this photo, we take issue that it
2 does try and play on the passions of the jury because it's not
3 just him alone showing how he looked, but it's him with a
4 family and a baby and at a christening, trying to show he had a
5 family. I don't think it's relevant. If they want for, you
6 know, the jury to see how he looked before he had his
7 decline -- because clearly in the -- in his booking photos and
8 the photos taken that night he looks different because he's
9 thinner probably -- I'm not -- you know, Ms. Lemcke had
10 mentioned at the bench probably due to substance abuse, but the
11 State won't object if it's just a picture of him, but the fact
12 that you throw in the whole family and his wife, and that goes
13 back to the jury deliberation room, I think it's trying to play
14 to the passions of the jury.

15 THE COURT: All right. This is a digital photo, and
16 so you can crop it. I think this photo would be certainly
17 relevant if the case got to a penalty phase for mitigation
18 purposes, but I think for the purpose you're offering it, I
19 think you can get what you need by cropping the photo so that
20 it's not showing the other folks that are in here. If you crop
21 it right to here -- I mean, he looks in this photo much more
22 like he does today, you know, in terms of his weight and
23 whatnot. Obviously he doesn't get as much sun in the jail. So
24 he -- his -- you know, his complexion is a little lighter but,
25 yes, and you'll have time to do that on lunch.

1 MS. LEMCKE: Right. And just, Judge, I would like to
2 have my -- the original photo marked as a court exhibit, just
3 so when the record -- if there's an appeal taken, the record
4 will reflect what we tried to get in, and then -- because
5 she -- the wife will discuss, you know, he had a family, and
6 they had a family life, which includes folks in the picture and
7 those kind of activities. So to that end -- and then so I'll
8 have it marked as a court exhibit, that one that's in Your
9 Honor's hand, and then I will go right now and crop my -- crop
10 whatever digital imagery we had on that photo.

11 THE COURT: Okay. And, you know, obviously if you
12 were going to show it to the witness and have her set when this
13 occurred --

14 MS. LEMCKE: Yes, I will.

15 THE COURT: -- you know, you'll have to -- she'll
16 know that this is from that photo to set it as far as timewise.

17 Okay. We'll mark that as --

18 Did you want to mark it as a proposed?

19 MS. LEMCKE: Well, you know, it's funny because we
20 were talking about that the other day, about -- you know, I had
21 something marked that I wanted to get in, and I think you even
22 asked me should you put it in as a court exhibit, and I think
23 it's a really good question.

24 THE COURT: I think you should mark it as proposed
25 because I'm not going to allow you to put that in.

1 MS. LEMCKE: As long as the proposed actually are
2 part of the record. I know for a fact that the court exhibits
3 are. So to the extent that the proposed ones are -- which that
4 was my gut instinct. As long as they are, then, yes, okay,
5 that's fine.

6 THE COURT: They are because it has to be because if
7 you argue later on appeal that you should have been allowed --

8 MS. LEMCKE: Okay. I just --

9 THE COURT: It's part of it.

10 MS. LEMCKE: It was funny because when Your Honor
11 raised that I thought that is a good question. I'm not sure if
12 it should be a court exhibit or not, but, yes, as long as Your
13 Honor is satisfied that it will be part of the record, that's
14 fine.

15 THE COURT: It'll be part of the record.

16 So we'll mark it as next in order.

17 THE CLERK: MM.

18 THE COURT: MM.

19 MS. LEMCKE: MM.

20 THE COURT: Double M, defense, and State's objected.
21 I've sustained, but I'm going to allow a cropped version, which
22 she'll bring after lunch, and we'll take a look at that, and
23 I'm sure it'll be fine.

24 MS. LEMCKE: Okay.

25 THE COURT: Anything else?

1 MR. BATEMAN: No, Your Honor.
2 THE COURT: All right. I'll see you at 1:15.
3 MR. BATEMAN: Thank you, Your Honor.
4 (Proceedings recessed 11:52 a.m.)
5 (Outside the presence of the jury.)
6 THE COURT: All right. We're back in session on Case
7 No. C296234, State of Nevada versus Luis Pimentel. Defendant
8 is present with his counsel. The deputies district attorney
9 prosecuting the case are present, as are all officers of the
10 court, and we're outside the presence of the jury at the
11 present time.
12 Are there any matters outside the presence?
13 MS. LEMCKE: No.
14 MS. DIGIACOMO: Wasn't it -- let's just cut it right
15 there.
16 MR. BATEMAN: Just trim it.
17 MS. DIGIACOMO: Just trim it so you don't see the
18 baby and the people around it.
19 MS. LEMCKE: Oh, my gosh. Are you serious? I
20 spent -- no, I'm not going cutting it. It's fine.
21 THE COURT: All right. Let me see it.
22 MS. LEMCKE: I mean, they're not going to know -- I
23 mean, she's going to testify that it was at a family function.
24 I mean, I'm going -- they're going to know that there's family
25 there. I mean, it's not --

1 THE COURT: I told you to cut out the --
2 MS. LEMCKE: It's the best we could do. Your Honor,
3 if you -- if you cut it so that it's just him, the photo is
4 funky --
5 THE COURT: It pixelates?
6 MS. LEMCKE: That was part of the problem.
7 MS. DIGIACOMO: We could just cut it with scissors
8 right now.
9 MS. LEMCKE: Oh, my gosh. I think this is much ado
10 about nothing. If they really think that slivers of a baby and
11 family member when she is going to testify it was at a family
12 function are really going to be that detrimental to their case,
13 I mean, it's just --
14 THE COURT: All right. Well, whose baby is this?
15 MS. LEMCKE: It's his.
16 MS. DIGIACOMO: Okay.
17 MS. LEMCKE: Well, she's going to testify he has a
18 child. So, I mean --
19 MS. DIGIACOMO: That's different than this going back
20 with the jury and, you know, them trying to play on sympathy.
21 THE COURT: Well, if the only relevance that you're
22 indicating it has is to show how he looked beforehand, then
23 it's not relevant to have the picture of the child in there or
24 this other person, you know. This was the only picture they
25 had?

1 MS. LEMCKE: Well, okay. I mean, I can show you the
2 other ones that I have. I mean -- I mean, honestly it's not --
3 I guess I don't have them with me. There was none -- there was
4 one of him and his son playing a video game. This was the
5 only -- I mean, first of all, she's going to talk about -- I
6 mean, they're having a lot of control over what the case is.
7 It's a simple photo. I don't think that the jury is going to
8 look at a partial picture of a baby and go, Well, this is it.
9 I find him so compelling and sympathetic. This is the reason
10 upon which I'm going to base my decision. I don't think the
11 prejudice to the State is outweighed by the probative value of
12 the jury being able to see what he looks like.

13 She's going to explain the photo was taken at a
14 family function. She's going to explain that there were other
15 family members there and that her child was there. It was his
16 baptism. You know, I mean --

17 THE COURT: Well, that's fine, but -- but I told you
18 I wasn't going to let the photo in unless you cropped the rest
19 out because I didn't think it was relevant except for the
20 purposes you indicated.

21 You know, this comment that they were taking control
22 of this case or have control of this case, what is it you mean
23 by that?

24 MS. LEMCKE: I feel like every single time we try to
25 put on a witness or put on some evidence, there's some -- well,

1 they-just-can't-do-it-objection, and there's -- and they've
2 been able to put on their case without any -- with very little
3 controversy from us.

4 They tried to stop our defense presentation with
5 respect to Michael Ortiz, and Your Honor almost allowed them to
6 stop that, and until we made representations about the
7 foundational basis that he was laying for what would later
8 become our expert.

9 Now I try to introduce one photo -- it's one single
10 photo -- and now that is outrageously prejudicial to them, so
11 much so that any probative value that it has for us is so
12 outweighed by some alleged prejudice to them that it shouldn't
13 be in. It should be cropped to such an extent that it
14 compromises the integrity of the photo.

15 I mean, I wish I had brought over the little narrow
16 sliver that it looked -- we tried initially to get all of
17 the -- everything out, and it was this tiny little narrow
18 sliver, and it doesn't very adequately reflect his body
19 composition and, you know, what he really looks like, and so I
20 asked my --

21 THE COURT: Well, the original photo was much smaller
22 than this. I mean, the only part that you said was relevant
23 was the photo of him, right? You could've taken that photo if
24 you wanted to and cut those cut it, but you -- you know, I
25 said, Well, you can blow it up, and so it would be larger of

1 him. I understand what you're saying, that it pixelates, but
2 that doesn't change the fact that it is, you know, depicting
3 this family scene, and so you could have taken that smaller
4 photo and cut it if you wanted to, I mean, because you were
5 offering that photo, and he's just as small in that photo if
6 you cut it.

7 MS. LEMCKE: The problem is is that when you cut --
8 when you cut off those -- I have -- I didn't bring them with
9 me. I left them in my office, but when you cut off --
10 initially I was, like, Get everybody out of the photo. That's
11 what I instructed my IT guy to do or my secretary, who then
12 instructed my IT guy. When it came back, it was so narrow
13 because to cut out every single sliver of the people around
14 him's body, now you can't really get a very good apprehension
15 of what his build was like and his makeup.

16 And so in my -- I said -- I said -- take a little off
17 the top so it doesn't look so long and narrow, and the bottom,
18 and take it out just a little bit wider because in my mind
19 having slivers of other humans in the photo is not so wildly
20 prejudicial to them that it -- that the prejudicial value
21 outweighs the probative value, and I understand that that's
22 what Your Honor is saying, that there -- literally that the
23 probative value of this photo is outweighed by prejudice to the
24 State. Then the objection is sustained, and I will have to,
25 you know, try to do it differently.

1 But my position is is that so prejudicial to them
2 that it's more probative than issues that it's going to
3 engender for them? It's not a sympathy ploy. I want the jury
4 to see what he looked like without having it cut off so much
5 that you can't see his body.

6 THE COURT: All right. State, I mean, are you saying
7 that he's not -- she's not going to be able to elicit testimony
8 that he was married before or had a child or --

9 MS. DIGIACOMO: Well, first, I would ask why is that
10 relevant? How is that relevant? That sounds like mitigation
11 if we were at a sentencing hearing. Why is it relevant to what
12 his life was like as to this murder and his claims of
13 self-defense or the PTSD? How is it relevant how he was, and
14 he had a family, and he had a wife?

15 THE COURT: Well --

16 MS. DIGIACOMO: We can't do the -- we could and try
17 to dress up the victim in the case. They would have objected
18 to that. How is it relevant what his background is. If
19 they're -- I mean, I understand they're claiming PTSD, but is
20 this background for the expert? We don't know if this witness
21 talked to the expert.

22 THE COURT: Frankly, I'm still unclear as to how your
23 PTSD comes in, you know, as far as the case. I mean, your
24 defense is self-defense, or is your -- or you saying the PTSD
25 deprives him of the intent of first-degree?

1 MS. LEMCKE: Yes.
2 THE COURT: Okay.
3 MS. DIGIACOMO: So it's an either or.
4 THE COURT: Maybe.
5 MS. LEMCKE: Well, I don't know that it'll really do
6 as much on the self-defense, if anything. It's really more
7 targeted toward --
8 THE COURT: The intent aspect?
9 MS. LEMCKE: Intent, yes, and premeditation,
10 deliberation. I mean, that's really where -- and the State in
11 their pleadings on the issue concedes the propriety of the
12 testimony for that purpose. So there is -- there's really not
13 any dispute where that's concerned. I don't know that it will
14 do anything where self-defense is concerned. I really don't.
15 I can't make that representation one way or the other. I don't
16 think it will.
17 THE COURT: PTSD vis-à-vis --
18 MS. LEMCKE: Correct. Correct.
19 THE COURT: -- self-defense --
20 MS. LEMCKE: Right.
21 THE COURT: Those are two separate theories.
22 MS. LEMCKE: Correct. They are separate issues, you
23 know.
24 THE COURT: Right.
25 MS. LEMCKE: And so -- as Your honor well knows, once

1 we raise the issue of self-defense they have to disprove it
2 beyond a reasonable doubt, and so they in my mind -- they're
3 separate issues, and that doesn't mean that the jury won't
4 apprehend some crossover. I don't know, but at least in terms
5 of how I see that presentation going I think Your Honor is
6 correct, and I see that as exactly how the State has kind of
7 articulated in their pleadings on this issue, and that is where
8 intent and first-degree murder is concerned.

9 THE COURT: Okay. So you mean you -- the State has
10 several theories, one of which is the challenge to fight and
11 one of which is just the open murder, where you'd have to
12 establish the intent, first-degree, but so since you're going
13 on both of those alternative theories, then intent is relevant,
14 and it would seem to me that then the issue of the PTSD, which
15 would be relevant on the intent, it is relevant then how he was
16 before because it's relevant as to the PTSD. So I'm going to
17 go ahead and allow this photo. It's cropped out some.

18 I mean, we're still going to have testimony that --
19 from the wife, and I assume she's probably going to testify
20 something to the effect as to what occurred and perhaps why
21 their marriage broke up. I don't know if it had any effect,
22 but is --

23 MS. DIGIACOMO: So did this witness also -- is this
24 what the expert relied upon?

25 MS. LEMCKE: Uh-huh.

1 MS. DIGIACOMO: Yes?
2 MS. LEMCKE: Yes.
3 MS. DIGIACOMO: Okay. And the brother as well?
4 MS. LEMCKE: Yes, I -- you know what --
5 MS. DIGIACOMO: Did the brother talk to the expert?
6 MS. LEMCKE: I'm almost positive the brother did, but
7 I can't --
8 Conor, do you know off the top of your head?
9 MR. SLIFE: I don't know.
10 MS. DIGIACOMO: Well, we'll object to the brother
11 until that's foundation for the expert.
12 MS. LEMCKE: Okay. Well -- okay.
13 THE COURT: So we're going to mark this as double NN.
14 MS. LEMCKE: Well, I can find out in two seconds.
15 MS. DIGIACOMO: Okay.
16 THE COURT: That's the next in order I think.
17 MS. DIGIACOMO: And I -- so I'm sorry. Is she going
18 to talk about --
19 When you say before, before he went in the military?
20 MS. LEMCKE: She didn't know him before.
21 MS. DIGIACOMO: So she only knew him when he came
22 back. So how -- when -- so how would she know how he was
23 before the PTSD versus -- she's going to talk about what he was
24 after?
25 THE COURT: I don't --

1 MS. DIGIACOMO: I'm confused by the before.

2 THE COURT: Okay. I don't know about the wife.

3 MS. LEMCKE: Are we going to just have to make a
4 proffer every time we call a witness? I mean, is this what
5 it's going to come down to? We need to put the witness on. If
6 they don't -- if they think there is an objection to the
7 testimony, they can object, like we have to do. I mean, this
8 is getting absolutely ludicrous --

9 MS. DIGIACOMO: Well, and it --

10 MS. LEMCKE: -- that we're going to have to make a
11 proffer every single time I put a witness on.

12 MR. BATEMAN: There's a big difference. The State's
13 case is usually documented in reports. Anything about --

14 MS. DIGIACOMO: Voluntary statements.

15 MR. BATEMAN: Voluntary statements. It's a
16 different -- it's a different situation. The defense has the
17 exhibits. We put on people who they have record of what
18 they're going to say, and we have to think through the items of
19 evidence that we can introduce and whether it's objectionable
20 or --

21 THE COURT: Yes, but didn't you get notice of this
22 witness?

23 MR. BATEMAN: We did.

24 THE COURT: Okay. So did you call him?

25 MR. BATEMAN: I'm just saying the reason we are --

1 honestly, Judge, I filed a motion on this expert -- I know and
2 you know, I've said it five times -- about what this expert's
3 even going to talk to, and today, when you're calling up an
4 expert and saying, you know, what are you -- I spent half an
5 hour with the expert the other day on the phone, and I can't
6 tell you right now what she's going to testify to with regard
7 to PTSD.

8 THE COURT: Well, that's because you didn't file a
9 proper motion to challenge their notice of expert witness. I
10 mean, I don't know how many times I've told both sides that you
11 don't -- you guys just don't follow the rule regarding what
12 you're supposed to put in these expert --

13 MR. BATEMAN: Actually, we did.

14 MS. DIGIACOMO: We did file that, and you granted it,
15 and we had to refile them.

16 THE COURT: Okay. But I never saw anything more --

17 MS. LEMCKE: And I refiled according to the
18 Court's --

19 THE COURT: -- so I assumed you had everything you
20 needed.

21 MR. BATEMAN: But my point to the extent is that when
22 you -- I have -- I mean, what am I going to ask the -- you
23 talked to the doctor about PTSD. That's fine if that's the
24 extent of what they're going to go through, but --

25 MS. DIGIACOMO: The last witness didn't even say that

1 they had talked to the expert.

2 THE COURT: I understand this -- this --

3 MR. BATEMAN: That's why we're objecting and asking
4 for some information.

5 THE COURT: Well, I don't know that every expert --
6 or excuse me -- witness as to the issue of PTSD and symptoms
7 has to have been interviewed by the expert. Why do you think
8 that should be the case?

9 MR. BATEMAN: We don't.

10 THE COURT: Okay. So --

11 MS. DIGIACOMO: Well, they don't, but -- but before
12 what we're objecting -- if they're just trying to sympathize --
13 you know, put sympathy for the defendant by calling in all
14 these witnesses, Oh, his poor life, what he's turned into. She
15 stated -- Ms. Lemcke stated at the bench that it was because
16 their expert relied on this. So they're just putting in the
17 groundwork for what their expert's going to come in and testify
18 to, and so, you know, I mean, how -- just the fact of he went
19 through all this stuff we don't find as relevant. If it's
20 relevant to the PTSD or some other defense -- but she said
21 before that these witnesses talked to the expert, and the
22 expert relied on them for their opinion -- for the opinion.

23 THE COURT: Okay. Well, yes, I do remember some talk
24 about that at the bench. Again, I don't necessarily think that
25 every witness who, you know, would have to have talked to the

1 expert, but every witness that does testify needs to actually
2 have -- you know, have something relevant to offer --

3 MS. DIGIACOMO: Right. And relevant --

4 THE COURT: -- as to this defendant --

5 MS. DIGIACOMO: Right.

6 THE COURT: -- and as to the issue of PTSD. So in
7 other words -- that's why I was trying to get -- okay. What
8 did that last witness actually know, his own personal knowledge
9 as opposed to, you know, I have all these people that I
10 supervise, but I think it did come out, you know, that -- that
11 he didn't necessarily witness some of these things himself,
12 but, I mean, that's what I'm just trying to get to make sure
13 that there's foundation laid so it is relevant. That's all.

14 MS. DIGIACOMO: And we're not saying it's not
15 relevant, the PTSD and how it related to the way maybe he
16 responded in life or if he had the nightmares, but if they're
17 trying to go past that, where it's really mitigation evidence,
18 like, you know, oh, he lost his family, or he's got a daughter,
19 and he was at her christening, I don't see how that's relevant
20 to the ultimate issue, which is did the PTSD affect his ability
21 to form intent?

22 THE COURT: All right. So are you making some type
23 of motion at this time that this next witness, the wife --
24 ex-wife should not be allowed to testify?

25 MS. DIGIACOMO: No, not making a motion she can't

1 testify, but I think it should be very limited to the effects
2 the PTSD had on him, the changes she saw in him. Whether or
3 not he was married and he had a baby and then they lived
4 happily together, I don't think that's relevant. I think it's
5 relevant the way the defendant acted and how the PTSD affected
6 him if that's their defense.

7 THE COURT: Right. So, I mean, that's really the
8 reason we have motions in limine that are pretrial so you
9 can -- so we can address these issues before we're in the
10 middle of trial. I mean, you knew these witnesses -- they were
11 noticed, right? Because I got an order of reciprocal
12 discovery. So you got the notice. You could've attempted to
13 try and interview, you know, any of these witnesses. I don't
14 know if you did, but if you were concerned and you don't think
15 the ex-wife has anything relevant to say or that her testimony
16 should be limited, that's the reason you file a motion in
17 limine, and just because this is a criminal case doesn't mean
18 that, you know, you can't file those kinds of motions.

19 MS. DIGIACOMO: I understand, but we also have the
20 right to object as the testimony is going on.

21 THE COURT: Yes, that's right.

22 MS. DIGIACOMO: And so we're just trying to do this
23 instead of having to keep approaching. We just want to vet
24 this out now while we're outside the presence. So I don't -- I
25 mean, we can -- if Your Honor would prefer we'll just -- we can

1 object as we're going. It's just, you know, I'd rather move
2 through this and then just put in what's relevant and us not to
3 have to object, but we can do it that way.

4 THE COURT: I would, too. The problem is that you
5 didn't file a motion ahead of time where we could've had it all
6 in one bag and had everybody, you know, say, Okay, we want to
7 limit her testimony to this. The defense would then say, No,
8 and this is why. So you're just going to have to make your
9 objections contemporaneously now --

10 MR. BATEMAN: Okay.

11 THE COURT: -- and sadly it will prolong the trial,
12 but can't help it.

13 MS. LEMCKE: I think it's going to stay focused in
14 the areas that are relevant. I mean, obviously there needs to
15 be some foundational information, just so that they can see the
16 transition, you know, and the personality, but I think -- I
17 think Your Honor will be okay with the direction the testimony
18 goes. It's pretty limited.

19 THE COURT: Okay. We'll see.
20 Anything else?

21 MR. BATEMAN: No, Your Honor.

22 THE COURT: I had your photo marked Proposed Double
23 N.

24 MS. LEMCKE: Okay.

25 THE COURT: It's the next in order.

1 MS. LEMCKE: Thank you.
2 THE COURT: It's right up here.
3 MS. LEMCKE: Thank you.
4 THE COURT: All right. Are you ready to bring them
5 in, the jury?
6 Okay.
7 (Jury entering 1:41 p.m.)
8 THE COURT: All right. Thank you. Please be seated.
9 And the record will reflect that we have been
10 rejoined by all 12 members of the jury, as well as the three
11 alternates.
12 Will counsel so stipulate?
13 MS. LEMCKE: Yes, Your Honor.
14 THE COURT: And, State, are you stipulating as well?
15 MR. BATEMAN: Yes, Your Honor. I'm sorry.
16 THE COURT: Thank you. All right.
17 And you may call your next witness.
18 MS. LEMCKE: The defense calls Grace Nunez.
19 (Defense witness, Grace Nunez, sworn.)
20 THE CLERK: Thank you. Please be seated. State your
21 first and last name and spell it for the record.
22 THE WITNESS: Grace Nunez. G-r-a-c-e, N-u-n-e-z.
23 THE COURT: You may proceed.
24 MS. LEMCKE: Thank you, Your Honor.
25 / / /

1 DIRECT EXAMINATION

2 BY MS. LEMCKE:

3 Q Ms. Nunez, where do you currently live?

4 A In Virginia.

5 Q Okay. Do you know an individual by the name of Luis
6 Pimentel?

7 A Yes, I do.

8 Q How do you know Luis?

9 A We're married.

10 Q Okay. Are you currently married?

11 A We're separated.

12 Q Okay. Do you see Luis in court?

13 A Yes, I do.

14 MS. LEMCKE: Okay. Your Honor --

15 BY MS. LEMCKE:

16 Q Can you point to him and describe what he's wearing.

17 A He's right there, wearing a blue shirt and the square
18 tie I guess.

19 MS. LEMCKE: Okay. I would ask that the record
20 reflect that Ms. Nunez has identified her husband Mr. Pimentel.

21 THE COURT: It will.

22 BY MS. LEMCKE:

23 Q Can you tell us a little bit about how you -- where
24 you met Luis.

25 A Yes. Luis and I met at Walter Reed, towards the end

1 of 2008.

2 Q Let me ask -- stop you there. Is Walter Reed a VA
3 medical facility back east?

4 A We met at the military facility --

5 Q Okay.

6 A At Walter Reed.

7 Q So -- but just so the jury is clear because they may
8 not have heard of Walter Reed, it is -- it's a military
9 facility?

10 A It's a medical -- yes, military medical facility.

11 Q And that is located where?

12 A In Washington, DC.

13 Q Okay. At the time that you met Luis, was he living
14 at Walter Reed?

15 A Yes, ma'am.

16 Q Okay. Was he getting treatment there?

17 A Yes, ma'am.

18 Q Okay. And how is it that you came to meet him there?

19 A I was receiving -- well, I had appointments at
20 various military hospitals.

21 Q Okay. Let me stop you there. Have you been in the
22 military also?

23 A Yes.

24 Q Okay. So you were -- you had appointments at that
25 particular facility because you had also been in the military?

1 A Yes.

2 Q Okay. And so through those appointments, you going
3 to Walter Reed, is that how you initially came in contact with
4 Luis?

5 A Yes, ma'am.

6 Q And so that's how you guys met?

7 A Yes.

8 Q Okay. Did you -- when you first met him, like, what
9 was he like?

10 A He was very outgoing. He was calm. He was easy to
11 talk to.

12 Q Okay. Was he -- did you enjoy his company?

13 A Yes, I did.

14 Q Okay. Did he seem to get along okay with other
15 people?

16 A Yes, he did.

17 Q Okay. Did there come a point in time at which you
18 got married?

19 A Yes, ma'am.

20 Q Now, you said you met approximately when? When did
21 you meet?

22 A We started going out towards the end of December of
23 2008.

24 Q Okay.

25 A I believe we met either at the beginning of December

1 or end of November.
2 Q Okay. And then when did you guys get married?
3 A July 24th of 2009.
4 Q Okay. And did you have a child?
5 A Yes, ma'am.
6 Q And what is your child's name?
7 A Damien.
8 Q And when was Damien born?
9 A December 22nd, 2009.
10 Q And so Damien is about 5 now?
11 A Yes.
12 MS. LEMCKE: May I approach the clerk, Your Honor?
13 THE COURT: Yes.
14 MS. LEMCKE: And I'm showing counsel what's been
15 marked for identification as Defense Proposed NN, and may I
16 approach the witness?
17 THE COURT: Yes.
18 BY MS. LEMCKE:
19 Q Grace, I'm going to show you a photo that has been
20 marked as Defense Proposed Exhibit NN. Would you take a look
21 at that.
22 A Uh-huh.
23 Q Who is in that photo?
24 A That's Luis.
25 Q And approximately when was that taken?

1 A That was in I believe June of 2010.
2 Q Was that a family function?
3 A Yes.
4 Q What was that?
5 A Damien's baptism.
6 Q Okay. Does that fairly and accurately depict the way
7 that Luis looked back in the middle of 2011?
8 A Yes.
9 MS. LEMCKE: Okay.
10 THE COURT: Wait.
11 MS. LEMCKE: Move its admission, Your Honor.
12 THE COURT: I'm confused. I thought she said it was
13 '10.
14 THE WITNESS: '10, yes. '10.
15 MS. LEMCKE: Oh, I'm sorry. Did I say 2011? I'm
16 sorry. I had it in my head.
17 BY MS. LEMCKE:
18 Q 2010. Does that fairly and accurately depict the way
19 he looked back in 2010?
20 A Yes.
21 MS. LEMCKE: Move its admission, Your Honor.
22 THE COURT: All right. It'll be admitted.
23 (Defense Exhibit No. NN admitted.)
24 MS. LEMCKE: And may I publish?
25 THE COURT: Yes.

1 MS. LEMCKE: Okay.

2 BY MS. LEMCKE:

3 Q Okay. And so again, just -- now the jury is seeing
4 it. This is -- this was just at a family function back in
5 2010?

6 A Yes, ma'am.

7 Q And for the time that you knew him around this time
8 period, this is -- this is how Luis appeared?

9 A Yes. Can I add something?

10 Q Of course.

11 A He -- he always liked to dress this way --

12 MR. BATEMAN: I'm going to object, unless there's a
13 question present.

14 THE COURT: Sustained. There's no question pending.

15 You need to ask the --

16 MS. LEMCKE: Okay. Yes.

17 THE WITNESS: Okay.

18 BY MS. LEMCKE:

19 Q Let -- let me move on. I want to take you forward
20 just a little bit, okay. Did there come a time in 2011 then
21 that you guys separated?

22 A Yes, it was February of 2011.

23 Q Okay. And did you become aware of some infidelity on
24 Luis's part?

25 A Yes, ma'am.

1 Q Did you have discussions with him about that?
2 A Yes.
3 Q And did he admit that to you?
4 A Yes.
5 Q Okay. After that -- after that you -- did you guys
6 try to get back together a little?
7 A Yes, we did.
8 Q And did that work out?
9 A Initially it did.
10 Q Okay. And then did there come a point where it -- it
11 didn't?
12 A Yes.
13 Q And is that when you guys separated?
14 A Yes.
15 Q And after you separated did Luis move to Las Vegas?
16 A Yes, a few months after we separated the second time.
17 Q Okay. And so about when would that have been?
18 A I believe around May or June of 2012.
19 Q Okay. So and -- and you understood that he had
20 family in Las Vegas?
21 A Yes.
22 Q Had he grown up here?
23 A Yes.
24 Q Okay. At least spent part of his life as a young
25 person here?

1 A I'm sorry?
2 Q He spent part of his life as a young person here?
3 A Yes.
4 Q Okay. And is that why he came to Las Vegas?
5 A Yes, he told me he came to Las Vegas to -- because he
6 needed his family's support.
7 Q Okay. Now, I want to talk to you just briefly about
8 his medical diagnoses. When you met him, obviously he was at
9 Walter Reed, and if I understand you correctly, that's a VA
10 treatment facility in DC; is that right?
11 A Yes, ma'am.
12 Q So he had some medical issues that he was dealing
13 with, correct?
14 A Yes, ma'am.
15 Q Tell me a little about that. Had he been diagnosed
16 with a back injury?
17 A Yes, ma'am.
18 Q And the back injury that he had, would it affect his
19 ability to move from time to time?
20 A Yes.
21 Q Were there times when he could move better than
22 others?
23 A Yes, there was times where he could.
24 Q Okay. And then there were times when it wasn't so
25 good?

1 A There was times when he had a limp. There was times
2 where he couldn't walk at all.

3 Q Okay. But there were times when he was fine?

4 A Yes.

5 Q To your knowledge did he take medication for that?

6 A Yes.

7 Q Okay. Had he also been diagnosed do you know with,
8 like, a TBI, we call it?

9 A Yes, ma'am.

10 Q Is that Traumatic Brain Injury?

11 A Yes, ma'am.

12 Q Okay. And then he also had been diagnosed with PTSD?

13 A Yes, ma'am.

14 Q And is that known to you as Posttraumatic Stress
15 Disorder?

16 A Yes, ma'am.

17 Q Okay. I want to talk to you for just a second about
18 that PTSD, kind of focus in on that for a minute. When you
19 first started -- well, now are you familiar through your
20 dealings with Luis and some of the other gentlemen that you had
21 experiences with in the military with Posttraumatic Stress
22 Disorder?

23 A Yes.

24 Q Okay. You kind of have just a general understanding
25 of the symptoms?

1 A Yes.

2 Q Okay. When you started dating Luis and as you were
3 married, did you notice some symptoms that you thought might be
4 reflective of PTSD?

5 MR. BATEMAN: I'm just going to object as to the
6 foundation of what she would know are symptoms of PTSD at this
7 point.

8 THE COURT: Sustained. Could you lay a better
9 foundation for how she knows or what she knows.

10 MS. LEMCKE: Okay. Well -- all right.

11 BY MS. LEMCKE:

12 Q Once you and Luis developed a relationship, did you
13 have to familiarize yourself kind of with what his medical
14 diagnoses were?

15 A No.

16 Q Okay. Did you have an understanding of PTSD from
17 your interactions with the soldiers that you dealt with?

18 A Yes, ma'am.

19 Q And did you have any training and experience where
20 that was concerned?

21 A Not -- we had some training, but most of my
22 experience was from hand -- hand-on-hand training of
23 experience.

24 Q Did you deal with soldiers that had PTSD?

25 A Yes, ma'am.

1 Q In what way did you deal with them? What was that
2 experience like?

3 A I was a recruiter for three years of my military
4 career, and aside from being a recruiter I was a career
5 counselor. A lot of my soldiers kept in touch with me and came
6 to me for advice. They came to me asking for help because they
7 felt more comfortable talking to me than they did to other
8 people, and I saw even my coworkers -- I saw the symptoms. I
9 saw the -- the different treatments, the phases that they were
10 going through.

11 Q Okay. So -- and were there some symptoms that were
12 kind of fairly common that you saw?

13 A Yes, ma'am.

14 Q Sleeping problems?

15 A Yes, ma'am.

16 Q Issues with certain things startling them?

17 A Yes, ma'am.

18 Q And maybe things with certain people that they might
19 see?

20 A (Unintelligible.)

21 Q I'm sorry. Is that a yes? Sorry you just have to
22 say yes for the record?

23 A Yes, ma'am.

24 MR. BATEMAN: I'm just going to object a little bit
25 as to leading. Maybe just ask what symptoms does she see.

1 MS. LEMCKE: Well, Your Honor, at this point I think
2 that we've laid an adequate foundation. I'm just going to ask
3 her now to talk about some of the things that she's observed
4 with Luis.

5 THE COURT: But I'm going to sustain. She's your
6 witness. You can't lead her.

7 MS. LEMCKE: Okay.

8 BY MS. LEMCKE:

9 Q Well -- okay. Then you go back and tell me in your
10 own words, what are some of the symptoms that you're familiar
11 with where PTSD is concerned? How do they manifest themselves
12 with an individual?

13 A Well, what I saw in my soldiers was that a lot of
14 them told me about nightmares. Some of them -- I was the kind
15 of person that wouldn't ask questions. I waited for them to
16 tell me what was going on. Some of them told me that they
17 couldn't forget what was going on over there. Some of them
18 told me that they didn't feel the same way at home. They felt
19 separated from their family, distant.

20 MR. BATEMAN: Is this going to be tied back to the
21 defendant or future testimony in this case? Just overall as to
22 relevance.

23 MS. LEMCKE: Well, they wanted the foundation, Your
24 Honor. I'm just trying to lay it. I'd like to move on to what
25 she observed with Mr. Pimentel, but they objected, foundation.

1 So.

2 THE COURT: Overruled.

3 BY MS. LEMCKE:

4 Q Continue.

5 A Okay. Some of them were always talking about the
6 treatments that they had that they weren't working. They were
7 frustrated with the treatments, with the way the system was
8 working. It --

9 Q Let me ask you -- can I stop you for a second and ask
10 you about some particulars? What about the issues with noises?

11 A Yes, a lot of noises, and lot of -- anything -- not
12 necessarily noises, anything that would bring back a memory
13 could bring, like, a flashback from something that happened.
14 It could be visual or something that they hear, like, you know,
15 a sound or something.

16 Q Okay. And you talked about the nightmares. What
17 about any other sleeping issues?

18 A A lot of them had drinking problems because they
19 couldn't sleep because they didn't want to -- or because they
20 didn't want to think about it, but a lot of them sleeping
21 problems was a big deal for them, definitely.

22 Q All right. Now, let's turn your focus to Luis for a
23 minute. After you started dating Luis and as you got married,
24 did you observe some things that -- some issues with his
25 sleeping?

1 A When we got married?

2 Q Yes.

3 A Yes. When we got married, initially he got moved to

4 Georgia, but when he got back I noticed that he couldn't sleep.

5 He would wake up in the middle of the night and go to either

6 get a smoke or watch TV, or sometimes he just couldn't fall

7 asleep at all. Sometimes I would wake up at 5 o'clock in the

8 morning, and he was still up. Sometimes he would wake up

9 screaming, sweaty, shaking --

10 Q Did you ever -- let me stop you for a second. Did

11 you ever try to ask him, you know, what the nightmares were

12 about?

13 A No, ma'am, I wanted to wait for him to tell me

14 because I didn't want to trigger a bad memory.

15 Q Did it -- did he ever want to talk about that kind of

16 thing with you?

17 A A few times he told me what the nightmares were

18 about.

19 Q But not always?

20 A No.

21 Q What were some -- you said that he would wake up

22 sometimes screaming and sweaty, that type of thing. Would he

23 also sometimes wake up crying?

24 A Yes, ma'am.

25 Q And when he woke up crying, would he be saying

1 certain things?

2 A Sometimes he would wake up crying, saying, I couldn't
3 save him, It should have been me, stuff like that.

4 Q But the things that he would say related to his
5 experiences in combat?

6 A Yes.

7 Q Okay. What about driving, were there every any
8 issues with him driving?

9 A Yes, mostly when we were dating. When -- if I was
10 driving in the Walter Reed area -- there's a lot of potholes --
11 and if I hit a pothole, he would get really startled because of
12 the pothole. I'm thinking that would bring him back to, like,
13 an IED or something. If you saw -- when he was driving, he
14 would try to avoid anything on the road, potholes, bags, boxes,
15 a bottle of soda or anything that's on the road.

16 Q Almost -- would he avoid it, like, almost, like, he
17 thought it was an IED, or he was concerned that that would
18 be --

19 MR. BATEMAN: Judge, I'm going to object as to
20 speculation as to what he thought.

21 THE COURT: Sustained.

22 BY MS. LEMCKE:

23 Q Did it appear to you based on your observations when
24 you were with Luis in the car on those occasions when he would
25 avoid things in the road that that was a response -- that was a

1 concern he had, that there might be a problem?
2 MR. BATEMAN: Same objection.
3 THE COURT: Sustained. Sustained.
4 MS. LEMCKE: I'm just asking her how he appeared.
5 THE COURT: No, you said did it appear to you that.
6 So you're asking her to speculate about what was in his head.
7 MS. LEMCKE: Okay.
8 BY MS. LEMCKE:
9 Q How did he appear to you when there would be things
10 like soda bottles in the road?
11 A Well, he would get I guess anxious. He would swerve
12 off -- he would hit the -- he would hit the sidewalk a lot of
13 times, and I'm pretty sure he told me that that the reason --
14 MR. BATEMAN: Objection. Hearsay.
15 THE COURT: Sustained.
16 MS. LEMCKE: I think it goes to his state of mind.
17 It's not offered for the truth. Obviously a soda bottle is not
18 an IED, but it goes to show his state of mind.
19 THE COURT: I don't know what the statement was. So.
20 MS. LEMCKE: She was starting to say he told her, and
21 I think explain what his issues were.
22 THE COURT: Okay.
23 THE WITNESS: Can I continue?
24 THE COURT: Would he make any statement at the time
25 he would swerve?

1 THE WITNESS: Not -- not at the time, eventually,
2 like when we arrived at our destination or something, or later
3 on in the night he would tell me the reason why his reactions
4 were like that.

5 THE COURT: Okay.

6 BY MS. LEMCKE:

7 Q And the reason for that was because of --

8 MR. BATEMAN: Same objection and leading.

9 THE COURT: Wait. You just said same objection
10 and --

11 MR. BATEMAN: As hearsay.

12 THE COURT: Okay.

13 MS. LEMCKE: Leading or hearsay?

14 THE COURT: I thought you said leading, too. Did --

15 MR. BATEMAN: And leading. Sorry, Your Honor.

16 THE COURT: All right. Sustained as to leading.

17 BY MS. LEMCKE:

18 Q What would he say to you to explain his actions in
19 avoiding things on the road?

20 A He would say something like, You don't know what --
21 You don't know what's on the road, or, You don't know what I've
22 been through.

23 Q Again it related to his combat experience?

24 A Yes, I know what -- I know a lot of people that have
25 been through that, and I know what can -- I mean, it's a trauma

1 that stays in their head.

2 Q Okay. What about noises, you know, fireworks, that
3 type of thing?

4 A The first Fourth of July that we spent was in 2009.
5 We went to Washington, DC to the fireworks with my family, and
6 he I believe -- I'm not a doctor, but I believe he got into a
7 really bad panic attack.

8 Q Let me stop you for a second. Did the panic attack
9 come after the loud noises from the fireworks?

10 A During.

11 Q Okay. It was during?

12 A As soon as it started he just covered his ears. He
13 started rocking and shaking and sweating, and I don't remember,
14 but I believe he was even crying.

15 Q Okay.

16 A And --

17 Q What about -- oh, I'm sorry. I didn't mean to cut
18 you off.

19 A That's, okay. And I don't know, I tried to cover
20 his -- I tried to cover his ears. He grabbed the blanket, but
21 nothing was working. It was loud.

22 Q What about, like, helicopters around DC? Like, would
23 that have a similar kind of --

24 A Yes, we lived -- we lived in Alexandria, and we were
25 very close to DC, and in our area they always do rounds to --

1 you know, traffic rounds or whatever in helicopters, and a lot
2 of times he would get a little anxious when he heard the
3 noises. Sometimes when he heard a noise outside he would tell
4 me, That was a gunshot, or something like that.

5 Q Okay. What about startling, would he startle with
6 you sometimes easily?

7 A Yes. When we got married, initially I didn't notice
8 it so much. When he came back from Georgia, I couldn't come up
9 to him.

10 Q Now, wait, let me stop you there, just so the jury
11 knows. There was a time at which he went to Georgia; is that
12 right?

13 A Yes, ma'am.

14 Q And it was right around the time that -- actually
15 right after you guys got married, right? And that was that --
16 that was a treatment facility that he went to in Georgia?

17 A Yes, ma'am.

18 Q Was that a military facility?

19 A Yes, ma'am.

20 Q And was that kind of like Walter Reed in that
21 veterans can get medical treatment there?

22 A Yes. Well --

23 Q So he went to that Georgia facility for a period of
24 time after you guys were married?

25 A Yes.

1 Q Do you remember about how long he was there?

2 A I believe he went sometime in August, and he came
3 back in May of the following year.

4 Q Okay. So we're talking 2009 to 2010?

5 A Yes.

6 Q Okay. So now continue. So you said that after he
7 got back from Georgia, what?

8 A When he got back from Georgia, he -- if he was in the
9 living room, wherever he was, if I wasn't there and I was
10 coming there and I was saying something, like, Hey, Luis, do
11 this, or, Hey, Luis, this, he would get startled. Sometimes he
12 would fall on the floor, or he would just get -- I don't
13 know -- shocked. He would grab onto something and get -- I
14 don't know -- scared, something, and --

15 Q Did it get to the point where you had to, like,
16 announce your presence before you came into the room?

17 A Yes. Eventually I had to because that happened --
18 one time his response was, Don't do that, You don't know how
19 I'm going to react, and I knew what he was talking about. So
20 eventually with time I got used to announcing myself, whereas
21 to wherever he was I had to say, Luis, I'm coming to the
22 kitchen, Luis I'm coming to the living room, or something like
23 that, you know. Wherever he was I had to announce myself.

24 Q Let me ask you this. Did he have a hearing problem?

25 A Yes, ma'am.

1 Q And so when you announced yourself, was there an
2 issue with it being too loud or too quiet sometimes?

3 A Yes, sometimes -- actually a couple of times, I
4 announced myself, and I went, and he would still get startled
5 and jump and fall on the floor, and I would say, But I
6 announced myself, and he would say, I didn't hear you. So
7 sometimes I had to say it to -- in a certain tone where he
8 could hear me but not loud enough where I would scare him.

9 Q Okay. Okay. So were just some issues --

10 A Yes.

11 Q -- having to find the right decibel level almost?

12 A Uh-huh.

13 Q Okay. How about people who appear to be of Middle
14 Eastern dissent?

15 A When we went to the -- mostly it was at the grocery
16 stores or the super -- the wholesale centers, like Costco and
17 stuff. There was a lot of people there, and sometimes when he
18 saw someone from Middle Eastern dissent, he would get sweaty
19 and agitated, and you could see him just getting really angry,
20 and he would tell me, I have to leave. Initially I didn't know
21 why, but then he -- I eventually noticed, but --

22 Q Okay. Let me ask you that. Did it get -- was
23 that -- was that worse, like, early on in your relationship,
24 the concern with folks of Middle Eastern dissent?

25 A I want to say for the first year of our marriage it

1 was about the same, and eventually he started handling it
2 better.

3 Q Okay. So it got to a point where he could handle
4 that better?

5 A Yes.

6 Q Did you ever think -- in the course of him exhibiting
7 all the symptoms, did it appear as though he was exaggerating
8 for attention?

9 A No.

10 Q Okay. Did the symptoms appear to be fairly genuine
11 to you?

12 A Yes.

13 Q Did -- was Luis proud of having these issues?

14 A No, not at all.

15 Q How did he feel about it?

16 MR. BATEMAN: Objection.

17 THE COURT: Sustained.

18 BY MS. LEMCKE:

19 Q Was Luis embarrassed by this?

20 MR. BATEMAN: That's the same --

21 THE COURT: Sustained.

22 MS. LEMCKE: I think it goes to show, like -- do you
23 want me to make a speaking objection, or do you want me to
24 approach and I can explain how it's relevant?

25 THE COURT: I'm not saying it's not relevant, but the

1 form of the question calls for speculation.

2 MS. LEMCKE: Well, okay.

3 BY MS. LEMCKE:

4 Q When -- when these issues regarding his posttraumatic
5 stress disorder was -- when the issue of those symptoms would
6 come up, how did Luis to you appear to feel about his issues?

7 MR. BATEMAN: Same objection.

8 THE COURT: Sustained. She can testify what she
9 observed.

10 MS. LEMCKE: Okay.

11 THE COURT: But she can't tell how somebody else
12 felt.

13 MS. LEMCKE: Well, I said -- okay.

14 BY MS. LEMCKE:

15 Q How did you observe Luis to feel about his symptoms?

16 THE COURT: Okay. No.

17 Can you -- when he would have one of these, you know,
18 startling episodes or a panic attack, after that would occur,
19 when you would observe him, what would he -- how would he
20 behave? What was his demeanor?

21 THE WITNESS: When he had an episode, his mood would
22 change. He would totally change. Afterwards, he would be
23 very -- I would say he would be somewhat depressed because he
24 would tell me that he's not half the man he was, and he seemed
25 ashamed of being in the state he was.

1 THE COURT: Okay.

2 BY MS. LEMCKE:

3 Q So he appeared to you to be ashamed of this?

4 A (Unintelligible.)

5 Q Is that yes? Sorry.

6 A I'm sorry. Yes.

7 Q I just have to hear you say yes for the record.

8 Based on your observations did it appear as though he wanted
9 people to know that he had these issues?

10 A Not at all.

11 Q Did he try to hide this?

12 A Yes.

13 Q Did he -- did he take any medications for this that
14 you're aware of?

15 A Yes.

16 Q Did -- sometimes -- and the Court asked you the
17 question about that -- I think it's obviously very relevant
18 about how he would react after -- after he had an anxiety
19 attack or one of these episodes kind of that you described.
20 Did he -- did it sometimes take him a while to calm down?

21 A Yes, when he had a -- I call it a panic attack -- it
22 would take him a good five minutes to come back to normal, and
23 it wasn't really normal. If he was in a good mood, eventually
24 he became into a neutral mood, or he was just agitated for the
25 rest of the day.

1 Q Would he ever smoke to calm down?
2 A Yes, he smoked a lot to calm down.
3 Q What about drinking?
4 A Only socially..
5 Q So he didn't drink at home on a regular basis?
6 A (Unintelligible.)
7 A Okay. Now, you're aware that in this case -- and the
8 jury is going to hear about it -- that he had some substance
9 abuse issues once he came out to Las Vegas. Did you observe
10 any kind of substance abuse issues with him back when you were
11 with him before he moved out to Las Vegas?
12 A Not at all.
13 Q Did there come a point -- you said that, you know, he
14 kind of wanted to hide his symptoms and his issues. Did there
15 come a time when he started, like, working, going to school,
16 that type of thing?
17 A Yes.
18 Q And did he -- when I asked about going to school, was
19 he going to a community college?
20 A Yes, he was going to Northern Virginia Community
21 College.
22 Q And that's by where you guys lived in Virginia?
23 A Yes.
24 Q Was he also working?
25 A Yes, he was working as a waiter.

1 Q Okay. A waiter in a restaurant?

2 A Uh-huh.

3 Q Okay. And about that time did he start kind of going
4 out more, that type of thing?

5 MR. BATEMAN: Can I just ask you a question on
6 foundation. I'm not sure as to the time period.

7 MS. LEMCKE: Oh, sure.

8 BY MS. LEMCKE:

9 Q About what time was -- about what -- can you do a
10 year and a month roughly? Like, where were you in your
11 marriage when he was going back to school and working?

12 A He came back from Georgia in -- in May of 2010. He
13 stayed at home for about a year. So I want to say in the
14 spring semester of 2011 he started going to school.

15 Q Okay. Give or take a little bit?

16 A Uh-huh.

17 Q Okay. And then this is when he was also working now
18 as a waiter in a restaurant?

19 A Yes.

20 Q Okay. And he started -- about this time or shortly
21 after that did you notice he started -- you know, he'd go to
22 poker night with his friends and go out, that type of thing?

23 A Yes, he was -- well, not during school time. Poker
24 night was before that. It was when we were married, and he was
25 just at home. When he started going to school, he started

1 going out with his friends to study or going out to bars to
2 relax and, well, you know, every other weekend or something
3 like that.

4 Q And his -- to your knowledge, did he ever allow the
5 people that he socialized with to know about his PTSD issues?

6 MR. BATEMAN: Objection. I mean, just foundation and
7 speculation as to when, or was she there?

8 THE COURT: All right. Sustained.

9 BY MS. LEMCKE:

10 Q Just very generally, did it appear as though he
11 wanted the people with whom he was socializing to know about
12 his PTSD issues?

13 MR. BATEMAN: The general part was my objection.

14 THE COURT: So sustained. If you can lay a
15 foundation as to -- I mean, was she around his friends?

16 BY MS. LEMCKE:

17 Q What was -- how did it -- okay. When -- at about
18 that time when he started -- he started -- he started
19 socializing more, going out with his friends, did he do that
20 mostly without you?

21 A Yes.

22 Q You did -- did you go with him at all?

23 A Initially I went a couple of times, but most of the
24 time he went by himself.

25 Q Okay. So do you -- do you know whether or not he

1 discussed his PTSD issues with any of those people?

2 A He never discussed anything regarding that with any
3 of those people or any of our friends.

4 MR. BATEMAN: I object, unless she was present.

5 MS. LEMCKE: Okay. Well, let me do it this way.

6 BY MS. LEMCKE:

7 Q You were present obviously --

8 THE COURT: A little late, after -- after she's
9 already responded. So what's the objection?

10 MR. BATEMAN: The question was -- she said that she
11 wasn't there when he was out with his friends, and then the
12 next question was, Well, did he relate to these friends his
13 PTSD? Well, she just said she wasn't there with the friends.
14 So then the answer is, Yes, he did. Well, I don't know how
15 that is because they haven't laid any foundation. So that's my
16 objection.

17 THE COURT: Okay. Well, overruled. Because she
18 testified. You can cross-examine her about that.

19 BY MS. LEMCKE:

20 Q So you knew about the PTSD obviously because you were
21 living with him?

22 A Yes, ma'am.

23 Q To your knowledge -- and I understand you work -- let
24 me ask you this. You weren't with him every time he went out
25 with his friends?

1 A No.

2 Q Okay. So you don't know every single thing that he
3 said to his friends?

4 A No.

5 Q Okay. But were you aware at all of him ever
6 disclosing his PTSD issues to anybody besides you?

7 A No.

8 Q And did he still have bouts of depression also during
9 this time that you guys were together?

10 A Yes.

11 Q Were there certain times of the year that was worse
12 than others?

13 A Yes, ma'am.

14 Q And when was that?

15 A Around June and around December.

16 Q And why was that?

17 A He told me that one of his soldiers had died around
18 June and another one around December.

19 Q Okay. Did --

20 MR. BATEMAN: June or December of what year?

21 BY MS. LEMCKE:

22 Q Of every year, is that correct?

23 A Yes, every year he -- every June and every December
24 his mood would change.

25 Q I mean during the time that you guys were together?

1 A (Unintelligible.)
2 Q Is that yes?
3 A Yes.
4 Q Then -- then were there times when he -- that you're
5 aware of that he attempted to kill himself?
6 A Yes, ma'am.
7 Q Do you recall approximately when that was?
8 A One time I believe was when we were dating, and I
9 believe the other one was when we were already separated. I'm
10 not sure about dates.
11 Q Okay. So -- but when you were dating, just so the
12 jury -- let's take them back. You were dating about
13 approximately when?
14 A From December of 2008 until June of 2009.
15 Q Okay. And then -- so you think one of the suicide
16 attempts was around that timeframe?
17 A Yes -- well, I'm not sure if it was a suicide
18 attempt. He was hospitalized for -- at the hospital for I
19 believe over a week, and they do that when it's a suicide
20 attempt. So.
21 Q Okay. And again this was the one from when you were
22 dating?
23 A Yes.
24 Q And then you think there was another one maybe around
25 or after the time that you were separated?

1 A Yes.

2 Q So that would have been in 2011 sometime?

3 A 2011 or 2012, I'm not sure.

4 Q Okay. And from the time that you were with him to

5 the time now that you guys separated and he came out to Las

6 Vegas, you had -- after he was out here was your contact with

7 him more limited?

8 A Yes.

9 Q Okay. Did you see him from time to time?

10 A Yes, we -- only when his son and I came here.

11 Q So you and Damien -- you would bring Damien out to

12 come visit?

13 A Yes.

14 Q Okay. And as time went by you had less and less

15 contact with him?

16 A Yes, ma'am.

17 Q And then -- but in the time that you were with him

18 and together with him, did you ever notice -- his symptoms that

19 you described for the jury, did you ever notice them to go

20 away?

21 A His symptoms?

22 Q His symptoms, like, his PTSD symptoms that you

23 described, did you ever notice them to just go away, to be

24 gone?

25 A Not go away, maybe lower a little bit during certain

1 times for whatever was going on in his life. Maybe everything
2 was going right, his family, his work and things were getting
3 better, and he seemed to be better, but the symptoms were not
4 going away.

5 Q Okay. So the symptoms were still present?

6 A Yes.

7 MS. LEMCKE: Court's indulgence.

8 I have nothing further.

9 THE COURT: Cross.

10 MR. BATEMAN: Okay. Just briefly.

11 CROSS-EXAMINATION

12 BY MR. BATEMAN:

13 Q I was a little confused about the dates, ma'am. I
14 apologize. You first met the defendant in -- did you say 2008?

15 A Yes, sir.

16 Q In approximately what month?

17 A We started dating in December of 2008.

18 Q You met a few months before then?

19 A Maybe about a month before that.

20 Q And it was at a facility; is that correct?

21 A Yes, sir.

22 Q Okay. And that was Walter Reed. Is that in DC?

23 A Yes, it is.

24 Q And then you continued dating until -- was there a
25 break in the dating?

1 A No.
2 Q And when did you get married?
3 A July 24th.
4 Q Of '09?
5 A 2009.
6 Q Okay. Did you remain in the DC area?
7 A Yes, sir.
8 Q So during this period of time, the defendant was
9 not -- was he still in the military?
10 A Yes.
11 Q Okay. But he was here obviously in the United
12 States?
13 A Yes.
14 Q Okay. And ultimately I think you said that you broke
15 up in -- you separated in February of 2011; is that right?
16 A Yes.
17 Q And you separated because of an issue -- potential
18 issue with infidelity?
19 A Yes, sir.
20 Q Okay. And did you separate because of the PTSD
21 symptoms?
22 A No.
23 Q And then did you -- you said there was a period of
24 time in which you attempted to get back together?
25 A Yes..

1 Q When was that?
2 A November of 2011.
3 Q For how long?
4 A Until December 24th -- 25th.
5 Q For about -- so November until the end of December, I
6 gotcha. And you broke -- it just wasn't working?
7 A It was working, and I don't know what happened. He
8 said -- he said he couldn't handle it. So he left.
9 Q He left you in December of 2011?
10 A Yes.
11 Q Okay. I think you said you broke up in February, got
12 back together in November of 2011; is that right?
13 A Yes.
14 Q Now, you had talked about him going to -- he was
15 staying at home, and he was going to school and working and
16 working at a restaurant in -- was that in 2011 or 2010?
17 A I believe it was 2011.
18 Q It was 2011?
19 A I'm not sure.
20 Q Were you together when he was doing that, or were you
21 separated?
22 A We were together initially, and then he continued to
23 go to school when we separated. I'm sorry. My memory is
24 really bad. Maybe -- because we separated in February. So
25 maybe he went -- he started in the fall of 2010.

1 Q So he starts going back to school at the end of 2010
2 and goes into the early spring of 2011. You were together, but
3 ultimately broke up --

4 A Yes.

5 Q -- in February of 2011; does that sound right?

6 A Yes.

7 Q Okay. And that's about the time he was going to
8 school and hanging out with his friends?

9 A Yes.

10 Q Okay. And he was leaving the house fine. He was
11 going out with his friends?

12 A Yes.

13 Q You talked a little bit about issues where you were
14 walking into a room, and the defendant would get excited if you
15 didn't announce yourself in the right tone. Do you remember
16 that? Do you remember those questions?

17 A Anxious. Yes.

18 Q So that was all before he started going back to
19 school and you separated?

20 A It was initially towards the beginning of our
21 marriage. Eventually I learned to announce myself. So it
22 didn't happen as much or at all anymore because I would always
23 announce myself.

24 Q Okay. And --

25 A It was a change that I had to do in my life. So.

1 Q I understand. You said he would have panic attacks
2 while he was your home; is that right?
3 A Yes.
4 Q And it would take a while for him to calm down?
5 A Yes.
6 Q Did you -- did he stay in the home until his panic
7 attack was over?
8 A Yes. Sometimes he would fall on the floor, and
9 because of his back problem he couldn't get up, and he didn't
10 want help getting up. Sometimes he would sit there. He would
11 ask me to give him a minute to calm down sometimes. If he
12 didn't fall, he would go sit on the couch or something until he
13 would calm down.
14 Q Were his panic attacks brought on by you not
15 announcing yourself in the right way?
16 A Most of the times they were because I just showed up
17 or he saw my shadow or something.
18 Q And he would stay at home until the panic attacks
19 subsided?
20 A Yes. Yes.
21 Q You said he was on some medications during the period
22 of time. Do you remember those questions?
23 A Yes.
24 Q And what were those medications? Do you know?
25 A I don't remember the names of them. He was -- he was

1 on sleep medications. He didn't take it as much because it
2 didn't work. He was on pain medication for his back, for his
3 legs, and he was also on depression medication.

4 Q Okay.

5 A I think --

6 Q I'm sorry. Go ahead.

7 A I think he was on other medications, too. I don't
8 remember.

9 Q Were you ever around him when he wasn't on
10 antidepressants?

11 A No, I believe I wasn't.

12 Q You don't know for sure?

13 A When he was with me, I think he was always taking
14 them.

15 Q Eventually what -- he had stopped dating you again in
16 December of 2011, and then what time -- when specifically did
17 he move -- this was -- you guys were back east; is that right?

18 A Yes.

19 Q And what was the date or period of time that he went
20 to Las Vegas?

21 A Maybe May or June?

22 Q Of 2012?

23 A Of 2012.

24 Q And once he left, you had far less contact with him;
25 is that right?

1 A Yes.

2 Q Okay. So from May or June of 2012 through let's say
3 December of 2013, what level of contact do you think you had
4 with him?

5 A Sometimes he will call maybe once or twice a week for
6 a couple of months, and then he would stop calling for two or
7 three months. Sometimes he would call almost every day for two
8 weeks, and then he would stop calling for another two months.

9 Q How many times do you think you came out to visit?

10 A I'm sorry?

11 Q How many times do you think you came out to visit?

12 A I? Me?

13 Q After the defendant moved here, yes, in May or June.

14 A I came three or four -- I believe it was four times.

15 Q Four times?

16 A Yes.

17 Q And you saw him each time?

18 A Yes.

19 Q And for about how long of periods where you out here?

20 A About a week.

21 Q Four times, about a week at a time?

22 A (Unintelligible.)

23 Q Is that yes?

24 A Yes.

25 Q Okay. Would you stay with him, or would you stay

1 with other people?

2 A One time I stayed with him at his apartment. The
3 other times --

4 Q So three times with other people?

5 A At a hotel.

6 MR. BATEMAN: Court's indulgence.

7 BY MR. BATEMAN:

8 Q You were asked some questions about substance abuse.
9 Do you remember that?

10 A Uh-huh. Yes.

11 Q Okay. And what substance abuse -- what were you
12 referring to?

13 A I'm sorry?

14 Q When you were asked questions about substance abuse
15 with the defendant, what were you referring to?

16 A She asked me if I knew about him doing substance
17 abuse here, right? Is that what you're referring to?

18 Q I don't know. Do you know what she was referring to
19 to when she was asking you about substance abuse?

20 A In Virginia, when we were together, he was not
21 involved in anything.

22 Q Okay.

23 A I found out that here he was dealing with meth.

24 Q When did you find that out?

25 A He told me over the phone maybe about a year ago.

1 Q He told you a year ago or some time before December
2 of 2013? Do you know?
3 A When he was already incarcerated. I don't know when
4 it was. He was already incarcerated.
5 Q Prior to him telling -- so that would have been after
6 the December 2013 incident?
7 A Yes.
8 Q You didn't know ahead of time?
9 A No.
10 Q When you came out, did you see differences in his
11 appearance?
12 A Yes, completely.
13 Q Did it give you some suspicions?
14 A Yes.
15 Q And you said you're still married. You're not
16 technically divorced; is that right?
17 A Yes.
18 Q You said he would sometimes call you back or -- when
19 he was here and you were back east, he would call you, or would
20 he call to talk to his son?
21 A He will call me or talk to his son, sometimes to both
22 of us.
23 MR. BATEMAN: Court's indulgence.
24 BY MR. BATEMAN:
25 Q Just lastly, you had talked to him on the phone at

1 some point where it was recorded; is that right?

2 A Yes.

3 Q Okay. And he said he was involved with
4 methamphetamine; is that right?

5 A Yes, he told me -- that's when he told me.

6 Q What was his involvement that he told you?

7 A He told me that he had been dealing with them.

8 Q Like, selling it?

9 A I'm thinking that's what he meant.

10 Q Okay. You took it -- the term you used was dealing?

11 A That's what he said.

12 Q Okay. And that was the extent of the conversation
13 you had about the meth?

14 A Yes, that's all he said.

15 MR. BATEMAN: Okay. I'll pass the witness.

16 REDIRECT EXAMINATION

17 BY MS. LEMCKE:

18 Q So just to clarify, because I asked you this on
19 direct and I want the jury to understand that when you had
20 those conversations that was kind of the first time that you
21 were having an understanding of his involvement with
22 methamphetamine?

23 A Yes.

24 Q And again, so when you were with him back in
25 Virginia, you didn't notice any issues that gave you concern

1 where that was concerned?
2 A Not at all.
3 Q Okay. And Mr. Bateman asked you questions about
4 Luis's panic attacks, and, you know, you've described at length
5 for the the jury the panic attacks. Luis was never violent
6 with you?
7 A No.
8 Q He was never confrontational?
9 A No.
10 MS. LEMCKE: Okay. Court's indulgence.
11 I have nothing further.
12 MR. BATEMAN: Nothing else, Your Honor. Thank you.
13 THE COURT: May this witness be excused?
14 MS. LEMCKE: Yes, Your Honor.
15 THE COURT: Thank you very much for your testimony.
16 THE WITNESS: Thank you.
17 THE COURT: Call your next witness.
18 MR. SLIFE: Your Honor, the defense calls Raymond
19 Gonzalez, please.
20 (Defense witness, Raymond Gonzalez, sworn.)
21 THE CLERK: Please be seated. State and spell your
22 first and last name for the record.
23 THE WITNESS: My name is Raymond Gonzalez.
24 R-a-y-m-o-n-d, G-o-n-z-a-l-e-z.
25 THE COURT: You may proceed.

1 MR. SLIFE: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. SLIFE:

4 Q Sir, do you know a person by the name of Luis
5 Pimentel.

6 A Yes, sir.

7 Q Do you see him in court today?

8 A Yes, I do.

9 Q Could you point to him and describe something that
10 he's wearing?

11 A He's wearing a gray suit and blue shirt.

12 MR. SLIFE: Your Honor, may the record reflect that
13 he's identified Mr. Pimentel.

14 THE COURT: It will.

15 BY MR. SLIFE:

16 Q Sir, I'm just going to ask you a couple of questions
17 about what he was like before and after the military, and so
18 let's start with could you describe your relationship to the
19 ladies and gentlemen of the jury, the relationship you have
20 with Mr. Pimentel.

21 A The relationship with -- he's my brother.

22 Q Okay.

23 A Okay. We were very close, and we still are.

24 Q Did you -- did you -- would you -- how would you
25 describe that closeness? Why would you say you're close?

1 A I practically raised my brother.

2 Q Okay.

3 A You know, since the day he was born until today.

4 Q Okay. Do you know about when he was in the military
5 and when he got out?

6 A I would say not specifically on the dates, but I know
7 he's been there over -- close to about 10 years.

8 Q Does it sound about right that he went in the
9 military in 2003? He got out somewhere in 2010; does that
10 sound about right?

11 A About right.

12 Q Okay. But let me -- let me start with before he went
13 to the military. You raised him?

14 A Yes, sir.

15 Q So you obviously knew him before he went to the
16 military?

17 A Yes.

18 Q Could you describe him to the ladies and gentlemen of
19 the jury. What kind of person was he like before he went into
20 the military?

21 A Luis was a funny, well-liked individual ever since he
22 was born. It wasn't about -- nothing about him that was
23 negative, you know. He was -- everyone loved him. He was
24 always funny. He was always loved by everyone, you know. So.

25 Q How would you describe his general demeanor?

1 A Very quiet. You know, he was very quiet, just to
2 himself, you know, and the people that was around him he's
3 basically close to. He's open. He's sort of an outspoken
4 individual. He's funny, and like I say, everybody loved him if
5 you got to know him, and if you're someone new that he's
6 getting to know, he's sort of a shy person.

7 Q In the time you knew him before he went to the
8 military, are you aware of any kind of substance abuse
9 problems?

10 A Not at all, sir.

11 Q Okay. And are you aware that -- let's see. Let's
12 talk about after. Are you aware that he was married at some
13 point?

14 A Yes, sir.

15 Q Do you remember when that was?

16 A Exact date, no, because it was overseas.

17 Q Okay. Were you at his wedding?

18 A No, I wasn't.

19 Q Okay. Are you aware that at some point he got
20 separated from his wife?

21 A Yes, I'm aware of that.

22 Q What did he do after that?

23 A He moved back to Vegas, and he stayed with my mother
24 for a few months, and then he moved in with me.

25 Q Okay. How long did he live with you when he moved

1 back to Las Vegas?

2 A Almost a year.

3 Q At some point did he move out?

4 A Yes.

5 Q Why?

6 A I got engaged.

7 MS. DIGIACOMO: I'm sorry. I couldn't hear that

8 answer.

9 MR. SLIFE: I think it was that he had gotten

10 engaged.

11 THE WITNESS: I got engaged.

12 MS. DIGIACOMO: Oh, got engaged, thank you.

13 BY MR. SLIFE:

14 Q Why did he move out when you got engaged?

15 A Well, where I work, that is where I lived. So when I

16 moved out, I couldn't leave him behind. So what I did was I

17 offered him to stay with me with my fiance.

18 Q And he declined your offer?

19 A Yes, sir.

20 Q Okay. During the year that he lived with you -- and

21 obviously this is post military -- how would you describe Luis?

22 Was he different? Was he the same?

23 A When he came back?

24 Q When he came back.

25 A He was basically to himself. He was very quiet, very

1 secluded. I noticed a change when he got home because he
2 wasn't the same Luis that went in.

3 Q Could you describe what change you noticed. Why
4 would you say that?

5 A He was basically a funny guy, but -- and then when he
6 got home he was more secluded. He was more private. He didn't
7 want to leave. He didn't want to talk about much about
8 anything. You know, he always talked to my mom, always talked
9 to me about something that has to do with the family or
10 anything else, but anything other than that, he was very
11 secluded.

12 Q Did he ever talk about any of his experiences in the
13 military?

14 A No, and I did push, but he wouldn't talk to me about
15 it.

16 Q Was there anything about loud noises that you
17 remember?

18 A Several times. I remember that I dropped a pan, and
19 he jumped, and I said what's wrong, it's just a -- it's a pot,
20 and he goes, I don't know, I just jumped, you know. So I
21 noticed that things has been -- has changed since he got home.

22 Q Can you think of any other examples?

23 A Yeah, as a matter of fact I can. One time I was
24 coming home. It must have been about 2 o'clock in the morning,
25 and I accidentally slammed the door, and he just ran right out.

1 I mean, he just ran out of the room, and I said, I'm sorry.

2 Q Did you feel that that was unusual for him to run out
3 of the room?

4 A It was, it definitely was.

5 Q Did he jump at the sound of a pan in your experience
6 before he went to the military?

7 A No. I mean, you know, things -- I mean, he'd get
8 startled, but not to the extent that he was after.

9 Q So you thought it was a different type of startled?

10 A It was.

11 Q Was there ever anything in the middle of the night
12 that would happen?

13 A Basically he -- one example, one night, it was late
14 night. I was going to sleep from a hard day's work, and he
15 woke me up screaming, just absolutely screaming, and I ran into
16 his room, burst into his room, and I says, Hey, what's your
17 problem, What happened, and he goes, Oh, nothing, I'm just
18 having bad dreams, and I was like, Do you want to talk about
19 it, and he says, No. Because of the war? He goes, Yeah, I
20 just don't talk about it. He seemed like he was drenched in --
21 I mean, he was just sweating, just sweating up a storm, and he
22 looked like he ran a marathon, and I was worried about him, and
23 that's not the first time that he's done that. He done that
24 several times, and then he stopped. I know why he stopped.
25 It's because --

1 MS. DIGIACOMO: Objection. First of all, this is
2 turning into a narrative. There's no question pending, and
3 it's gotten nonresponsive at this point.

4 MR. SLIFE: Well, Judge, the question was to give an
5 example of what happened. It's just -- it's just an in-depth
6 example I think.

7 MS. DIGIACOMO: Well, no, he's given an example.

8 THE COURT: I'm going to sustain. You can break it
9 down.

10 MR. SLIFE: All right.

11 BY MR. SLIFE:

12 Q All right. So you go in the room. Did that scare
13 you that he was screaming and sweating?

14 A I never heard my brother scream like that ever.

15 Q And then what happened? You started to ask him about
16 it.

17 A Yeah, I told him, What's wrong, What's your problem,
18 and he says --

19 MS. DIGIACOMO: Objection hearsay, and asked and
20 answered.

21 THE WITNESS: He said that --

22 THE COURT: Wait.

23 MS. DIGIACOMO: Objection.

24 THE COURT: Wait.

25 MR. SLIFE: Judge, I'm just -- we had already gotten

1 past that point. I was just going back and sort of unpacking
2 it a little bit so it wasn't a narrative.

3 THE COURT: Okay. Well, I think he's already
4 testified to that. Go to the next question then because he
5 testified about waking up from the dream, and he talked to him.
6 Now pick up from there.

7 MR. SLIFE: Okay.

8 THE COURT: Okay.

9 BY MR. SLIFE:

10 Q After you went in and he was screaming and he was
11 sweating and you started trying to ask him about it, what
12 happened after that?

13 A He just clams up.

14 Q He didn't -- I'm sorry?

15 A He clammed up. He wouldn't say anything to me. He
16 just said he didn't want to talk about it.

17 MS. DIGIACOMO: Objection. Hearsay.

18 THE COURT: Overruled.

19 BY MR. SLIFE:

20 Q Did he ever discuss with you what that was about, why
21 he jumped at pans, anything with regard to what was going on?

22 A No.

23 Q Do you know if he -- if he had any kind of jobs while
24 he lived with you for a year?

25 A He was a waiter in a couple of restaurants.

1 Q Do you know if he was able to kind of keep steady
2 employment?

3 A I know that he quit one job -- well, one waiter job,
4 and then he went to another one. I had no idea what he was
5 doing with work -- when it comes to work. I know he worked for
6 a restaurant, but I just didn't know.

7 Q Let me ask you -- and this question is with regard to
8 before the military, after the military. Have you ever seen
9 Luis with a gun?

10 A Not one day of -- not one day ever.

11 Q I mean, you're Luis's brother. You raised him. You
12 lived with him for a year. Do you have any understanding of
13 whether he even wanted to have a gun?

14 MS. DIGIACOMO: Objection. Foundation and hearsay.

15 THE WITNESS: No, sir.

16 THE COURT: Well, wait a minute. Well, foundation
17 I'll sustain. There's not been any statement -- I mean, it
18 doesn't call for hearsay statements. So that's overruled, but
19 the foundation objection is sustained.

20 BY MR. SLIFE:

21 Q I think you answered it. You've never seen Luis with
22 a gun?

23 A No, sir.

24 MR. SLIFE: May I have a moment, Your Honor?

25 THE COURT: Sure.

1 BY MR. SLIFE:
2 Q Just one last question, sir. In your experience with
3 Luis, did you ever know him to be violent?
4 A Not one day.
5 MR. SLIFE: Okay. Nothing further, Your Honor.
6 Thank you.
7 THE COURT: Cross.
8 MS. DIGIACOMO: Thank you.
9 CROSS-EXAMINATION
10 BY MS. DIGIACOMO:
11 Q All right. Sir, you are a convicted felon, correct?
12 A Correct.
13 Q All right. And was it 2008 for invasion of the home?
14 A Yes, ma'am.
15 Q All right. And you said that you've never known one
16 day with -- you've never seen your brother with a gun, correct?
17 A Correct.
18 Q All right. But he was in the military, correct?
19 A Yes.
20 Q And so he does know how to use a gun?
21 A He was trained to use a gun.
22 Q All right. So just because you've never seen him
23 with a gun doesn't mean he didn't know how to use a gun,
24 correct?
25 A Correct.

1 Q It doesn't mean he never had a gun, correct?
2 A Correct.
3 MS. LEMCKE: Well, I'd object.
4 MR. SLIFE: Judge, object to foundation, time frame.
5 Obviously he had guns in the military.
6 THE COURT: Overruled.
7 BY MS. DIGIACOMO:
8 Q Now, you said you've never known your brother to be
9 violent, correct?
10 A Never, ma'am.
11 Q All right. But that doesn't mean he necessarily was
12 never violent?
13 A I've never seen it.
14 Q But you're not with him 24/7, correct?
15 A That's correct.
16 Q All right. Now, you stated that when he moved back
17 to Las Vegas he stayed with your mom -- I'm sorry. Do you both
18 share the same mom or the same dad?
19 A Mom.
20 Q Okay. So you said that he stayed with your mom for a
21 couple of months and then moved in with you?
22 A Yes, ma'am.
23 Q Do you know what time period he moved in with you
24 from?
25 A I couldn't give you accurate dates.

1 Q Just approximately the month and the year?
2 A I couldn't -- I wouldn't remember the dates actually.
3 Q Well, let me ask you this. When did you get engaged?
4 Do you remember that date?
5 A Don't repeat it, or my fiance will kill me.
6 Q Hope she's not here.
7 A I proposed to her in -- let me see -- two years ago.
8 It was December.
9 Q December of 2013?
10 A Yes, ma'am.
11 Q Okay. In December of 2013, if your brother had
12 been -- Well, let me ask you this. When he moved out from
13 living with you, he moved to the Siegel Suites on Boulder
14 Highway?
15 A Siegel Suites -- we moved -- we --
16 Q Siegel suites on Boulder Highway?
17 A Yes, he moved -- when he moved out of my place, yes.
18 Q Okay. And so in December of 2013, he had been there
19 one or two months. Is it fair to say he moved out of your
20 place in October or November of 2013?
21 A Something like that. I can't -- like I said, I
22 don't -- when it comes the dates, I'm not accurate on it.
23 Q Okay. But you stated the reason he moved out is
24 because he got engaged and you were moving?
25 A Yes.

1 Q So it had nothing to do with you kicking him out
2 because of an electric bill that he didn't pay?

3 A No. No.

4 Q Okay. Did you kick your brother out?

5 A No, I did not.

6 Q So --

7 A He was offered to move in with me with my fiance.

8 Q Okay. So you moved, and so your brother couldn't
9 stay where you were?

10 A No.

11 Q No. Is that correct? You moved and your brother
12 couldn't stay where you guys had been living together?

13 A Right.

14 Q Okay. So you never kicked him out?

15 A No.

16 Q There's never any bills that he was supposed to pay
17 when he lived with you and he didn't pay?

18 A All the bills -- all the bills were paid.

19 Q Okay. So if your brother had said that you kicked
20 him out because you --

21 MS. LEMCKE: Well, I'd object to what she's going to
22 discuss about a conversation that she hasn't identified that he
23 was a party to.

24 MS. DIGIACOMO: I was going to ask, If his brother
25 said a contrary statement, that wouldn't be true or it would be

1 true?
2 MS. LEMCKE: Well --
3 THE COURT: Well, what brother are we talking about?
4 MS. DIGIACOMO: The defendant.
5 THE COURT: So, well, is it true or not true, it
6 doesn't matter.
7 THE WITNESS: My brother --
8 THE COURT: I mean, did someone --
9 THE WITNESS: I did not throw out my brother.
10 THE COURT: Okay. And nobody has ever said the
11 contrary?
12 THE WITNESS: No.
13 MS. DIGIACOMO: Well, the defendant said the
14 contrary. That's what I was trying to ask him.
15 MS. LEMCKE: Well, I'd object to her testifying.
16 It's whether or not this witness knows.
17 THE COURT: Well, no. I mean, if it's -- approach
18 for a second.
19 (Conference at the bench not recorded.)
20 THE COURT: All right. Objection sustained.
21 BY MS. DIGIACOMO:
22 Q All right. So when you lived with him for a year --
23 A Almost a year.
24 Q Okay. You said that once you dropped a pan and he
25 jumped, correct?

1 A Uh-huh.
2 Q And that once you came home, slammed the door, and he
3 ran out of his room?
4 A Uh-huh.
5 Q Correct? You have to say yes or no for the record.
6 A Oh, yes. Yes.
7 Q Okay. Thank you. Did you ever have to announce your
8 presence when you came into a room if his, like, back was to
9 you?
10 A I don't understand the question. Say that again.
11 Q Well, if you were walking into a room --
12 A Uh-huh.
13 Q -- and you were going to say something to your
14 brother, what would happen if he didn't see you coming in the
15 room?
16 A Basically he would just -- I don't understand. I
17 just --
18 Q Well --
19 A If I walked into the apartment you mean?
20 Q No. Let's say your brother is in the kitchen.
21 A Okay.
22 Q And you're in your bedroom. You walk out of your
23 bedroom, and you're walking towards the kitchen. His back is
24 towards you.
25 A Okay.

1 Q Did he easily startle?
2 A No, because he heard me coming in.
3 Q Okay. So if he heard you coming in, he didn't
4 startle?
5 A Right.
6 Q How do you know he heard you coming in?
7 A Because the living room door -- the door is at the
8 living room, and the kitchen is right there. So.
9 Q I didn't say living room. I said bedroom.
10 A Oh, the bedroom?
11 Q Yes.
12 A His room would be closed basically. He'll have his
13 room closed.
14 Q So there was never a time when you walked into a room
15 where your brother already was and he got startled because you
16 walked in the room, correct?
17 A It was basically just a lot of noise. Anything --
18 Q So I'm just asking, you never -- in that almost year
19 that you lived with him, you never accidentally startled him
20 when you walked into a room?
21 A I guess once or twice.
22 Q Okay. So what happened? How did you startle him?
23 A I was coming with the groceries, and I opened the
24 door. He walked out. He didn't hear me come in.
25 Q Okay. So -- but not while you're in the house

1 walking from room to room, only when you would come in the
2 front door?
3 A Right, unless I dropped something or broke something.
4 Q Okay. But you never had to announce, Hey, I'm coming
5 into the room right now?
6 A I used to knock on his -- I used to knock on his
7 door.
8 Q All right. And what did you call your brother?
9 A Excuse me?
10 Q What did you call him? What name did you use for
11 him?
12 A Son.
13 Q You called him son?
14 A He was my son.
15 Q All right. Did you ever call him Lorenzo?
16 A Lorenzo?
17 Q Yes?
18 A No.
19 Q So you never knew him to go by the name Lorenzo?
20 A No.
21 Q All right. The time that he lived with you, did you
22 notice whether or not he had any sort of substance abuse
23 problem?
24 A No, the only substance I saw him use was medicate
25 [phonetic] the military had given him.

1 Q Okay. So he used a prescription?
2 A Yes, ma'am.
3 Q All right. Never saw him do any methamphetamine?
4 A No.
5 Q Never saw him deal any methamphetamine or sell any
6 methamphetamine?
7 A He knew better.
8 Q Okay. Sir --
9 A No.
10 Q I need you to -- so you -- so you never knew him to
11 sell methamphetamine, correct?
12 A No, ma'am.
13 Q And you said he knew better?
14 A Yes, ma'am.
15 Q How did he know better? Because you taught him
16 better?
17 A No, ma'am. See I'm a black sheep in my family, and I
18 accept it, but my brother, I hold him in a higher level. I
19 always have, okay. That's why my brother doesn't have records.
20 That's why he doesn't have any of that stuff. Because I make
21 sure I put my foot up his ass if he did.
22 Q So if he was dealing in methamphetamine, you would
23 have shoved your foot up his ass?
24 A It would have been a lot easier.
25 Q I mean, you would have taken care of it because you

1 raised him like a son?

2 A Exactly.

3 MS. DIGIACOMO: All right. Nothing further.

4 And, Your Honor, also for the record, defense counsel
5 has had this up for two witnesses. May I take this down off
6 the door?

7 THE COURT: Yes, put it back at the -- yes.

8 MS. DIGIACOMO: Thank you. And for the record, that
9 was NN that I just took off of the door.

10 THE COURT: Okay.

11 THE COURT: Redirect.

12 MR. SLIFE: Thank you, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. SLIFE:

15 Q Sir, does the fact that you have a felony have
16 anything to do with your testimony here with regard to your
17 brother today?

18 A No, sir.

19 Q And very specifically, with the gun, obviously you
20 would be safe to assume that Luis when he was in combat in
21 Afghanistan had a -- had a gun probably, right?

22 A In the military, yes, sir.

23 Q Obviously you weren't with him in Afghanistan?

24 A No, sir.

25 Q My question was very specifically from the time you

1 knew Luis premilitary, post military, did you ever see Luis
2 with a gun?

3 A No, sir.

4 MR. SLIFE: Okay. Nothing further, Your Honor.
5 Thank you -- may I have a moment?

6 THE COURT: Yes.

7 BY MR. SLIFE:

8 Q And, sir, I appreciate the fact that you're looking
9 out for your little brother with the substance abuse, but you
10 obviously don't know what he did after he moved out?

11 A No, sir.

12 Q Okay. You don't know whether he did or did not get
13 into meth at some point after that?

14 A I have no idea.

15 Q Because he wasn't living with you?

16 A No, he was not.

17 MR. SLIFE: Okay. Nothing further, Your Honor.
18 Thank you.

19 MS. DIGIACOMO: Briefly.

20 RECROSS-EXAMINATION

21 BY MS. DIGIACOMO:

22 Q And you also don't know because your brother never
23 confided in you with what was going on with him in November,
24 December of 2013, correct?

25 A Yes, ma'am.

1 MS. DIGIACOMO: Nothing further.

2 THE COURT: I just have one question. What's the age
3 difference between you and your brother?

4 THE WITNESS: I'm 50. My brother is 38, 39.

5 THE COURT: Any questions as a result of that?

6 MS. DIGIACOMO: No, Your Honor.

7 MR. SLIFE: Not by the defense.

8 THE COURT: Thank you.

9 May this witness be excused?

10 MS. LEMCKE: Yes, Your Honor.

11 THE COURT: Thank you for your testimony.

12 THE WITNESS: Thank you, ma'am.

13 MS. LEMCKE: Court's indulgence.

14 MR. SLIFE: May we approach?

15 THE COURT: Yes.

16 (Conference at the bench not recorded.)

17 THE COURT: Ladies and gentlemen, this is a good time
18 for our afternoon recess, which will be 20 minutes, until 10
19 after 3 because we're going to be setting up some video
20 equipment, and we need to make sure it works before so you're
21 not sitting there while we try and figure out our technology.

22 So, ladies and gentlemen, during this 20-minute
23 recess, it is your duty not to converse among yourselves or
24 with anyone else on any subject connected with the trial or to
25 read, watch, or listen to any report of or commentary on the

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