

IN THE SUPREME COURT OF THE STATE OF NEVADA

LESEAN COLLINS

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May 16 2016 09:02 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 69269

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Kathleen Delaney, District Judge
District Court No. 25

**APPELLANT'S APPENDIX
VOLUME 7 OF 11**

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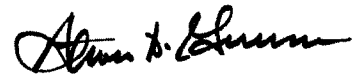
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TRAN
CASE NO. 09-C-252804
DEPT. NO. 25



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

THE STATE OF NEVADA,

Plaintiff,

vs.

LESEAN COLLINS,

Defendant.

REPORTER'S TRANSCRIPT
OF
JURY TRIAL

BEFORE THE HONORABLE KATHLEEN DELANEY
DISTRICT COURT JUDGE

DATED: TUESDAY, AUGUST 4, 2015

REPORTED BY: Sharon Howard, C.C.R. #745

1 APPEARANCES:

2 For the State:

ELISSA LUZAICH, ESQ.

3

JACQUELINE BLUTH, ESQ.

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7 For the Defendant:

DAVID SCHIECK, ESQ.

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MICHAEL HYTE, ESQ.

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1 LAS VEGAS, NEVADA; TUESDAY, AUGUST 4, 2015

2 P R O C E E D I N G S

3 * * * * *

4
5 THE COURT: On the record in State of Nevada vs.
6 Lesean Collins. Noting the presence of counsel for the
7 State, counsel for the defense. The Defendant,
8 Mr. Collins is not present. We will make a record of that
9 in a moment. Jurors are not present.

10 The discussion that the court had immediately
11 prior to going on the record was with Officer Razo from
12 the Detention Center indicating that he spoke directly to
13 Mr. Collins who refused to come to court today indicating
14 that he needed his medication and had not gotten it.
15 Until he gets the medications that he believes he is
16 entitled to, the court had confirmed yesterday and Officer
17 Razo again confirmed today that the order of the CCDC
18 medical staff is that he is to obtain Ibuprofen 2 times a
19 day. I don't know if it was as needed or it's 2 times a
20 day, or possibly less as needed, not necessarily more as
21 needed. But you can clarify, maybe, Officer Razo. But
22 then he did, over the weekend, was getting doses morning
23 and evening.

24 Again would note last week when Mr. Collins
25 complained about not having his medications then he was

1 given an opportunity to return to CCDC. He opted to stay
2 and work through and was able to continue to be present.
3 To my knowledge from what I observed he was able to
4 participate in the process of jury selection. As of
5 yesterday he absented himself when his medication was not
6 forthcoming and today he's not present at all for the
7 court, indicating he wished to have more medication.

8 I don't know what efforts he is undertaking to try to
9 obtain his medication, but the court is unable to do what
10 it has already done, which is to ensure that he is
11 obtaining what it is he has been prescribed. And that
12 appears to be the case.

13 The question the court had, Officer, can you clarify
14 if you know with regard to the 2 times a day Ibuprofen as
15 needed, is that more or less if needed, or is it possible
16 he can obtain more as needed.

17 THE OFFICER: From my understanding it was just
18 as needed.

19 THE COURT: Is that just two times a day.

20 THE OFFICER: Exactly.

21 THE COURT: Again, subject to Mr. Collins
22 efforts to work that out with medical staff there, that's
23 up to him. To our knowledge he was assessed by the
24 medical staff and determined that the most he would need
25 is 2 times a day. He is, in fact, getting that 2 times a

1 day. He's indicating that's not sufficient. That's
2 something for him to resolve.

3 My question for counsel then is last week -- and I
4 would just remind in the record today -- that the court
5 had extensive discussions with Mr. Collins when he was
6 present about his options, in terms of whatever the
7 circumstances were that would cause him possibly not to be
8 present. It was his election to not be present and not be
9 compelled to be present. The court could compel but would
10 not choose to compel his presence. That was his choice
11 not to be present. And that the court would certainly
12 inform the jurors if that choice was made at any point
13 during the trial and to ensure that the jurors were
14 instructed not to consider it. The court gave that
15 admonishment yesterday afternoon when Mr. Collins refused
16 to return and will give that admonishment again today.

17 The question I have for counsel is has Mr. Collins
18 indicated a desire to return to NDOC, or does he wish us
19 to keep him housed here at Clark County Detention
20 Center.

21 MR. SCHIECK: Your Honor, for the record, we did
22 not go see Mr. Collins yesterday evening. Both Mr. Hyte
23 and I felt it was better to continue to work on the case
24 then to go see him late at night last night. There was a
25 phone call this morning. Mr. Hyte initially spoke to him

1 on the phone, then he called back and I spoke with him
2 briefly over the phone. He did express consistent with
3 what's been place on the record now, his situation with
4 his perceived need to receive the additional medication
5 that he felt he was going to be getting based on the
6 conversation from last week.

7 And he did indicate to Mr. Hyte that it was his
8 desire to return to High Desert State Prison and not be
9 kept at the Detention Center, pending the remainder of
10 this case.

11 THE COURT: All right.

12 I appreciate that clarification. Honestly, I'm not
13 really sure what the circumstances would be to effectuate
14 that. I don't know that the court signed anything
15 technically that would force him to be here during the
16 course of the trial once NDOC transports him here and
17 assumes he would stay here for duration of trial. I'll
18 think about that. If anybody has any ideas or suggestions
19 on how to address that.

20 MS. LUZAICH: My only concern is if he goes back
21 to NDOC and decides he wants to come, it will just take
22 extra time.

23 THE COURT: That would be that much more
24 difficult to get him back.

25 MS. LUZAICH: Otherwise I don't have a dog in

1 this fight. Whatever they want to do. That's my only
2 concern.

3 THE COURT: The court shares that concern.
4 Again, it's possible -- he has I guess up to this point,
5 he certainly has stated certain things then the next day
6 acted in a different way, in terms of the court having the
7 impression that perhaps he could or would change his mind.
8 That certainly occurred with regard to the desire first
9 not to dress out but then ultimately dressing out. The
10 need for medications, the desire to stay. At one point,
11 without the medication, now the desire not to be present
12 without the medications, since it appears to be something
13 that could change from day-to-day at this point, the court
14 will take no further action or in any way facilitate
15 anything that would occasion his return to High Desert
16 State Prison. But if something else is requested, and is
17 put in the record, the court will address it in due
18 course.

19 Anything else we need to discuss.

20 MR. SCHIECK: Yes, your Honor.

21 Without going into the details of my discussion with
22 Mr. Collins this morning when he called, he did request
23 that we come over to see him. However, he was locking
24 down at that moment and it was, in fact, at the latter end
25 of the morning visitation schedule and Mr. Hyte and I

1 didn't feel we could get there before visitation was
2 completely locked down.

3 We do plan to see him this evening, if he is still at
4 the Detention Center, to address some questions he had
5 this morning when he talked with us on the phone.

6 THE COURT: So you'll keep us posted again if
7 anything -- need the court's assistance on any matters.

8 Anything from the State's perspective.

9 MS. LUZAICH: This has been incidental, just
10 because we are here. As far as the schedule for tomorrow,
11 would it be possible to start at 1:00 o'clock instead of
12 1:30. We just have two witnesses that we need to get on
13 because they are both leaving town for weeks.

14 THE COURT: We can do that. The only reason the
15 court would do 1:30 is because we didn't appear to be
16 pressed for time to complete in the time frame we
17 qualified the jurors. It just gives a reasonable
18 opportunity for a lunch in the event that morning goes
19 long. Based on what I know of what's on calendar
20 tomorrow, I don't anticipate a problem with us getting a
21 full lunch hour if we start at 1:00 o'clock. So we can
22 start at 1:00 o'clock.

23 Is there any problem on defense side starting at 1:00
24 o'clock.

25 MR. SCHIECK: No, your Honor.

1 THE COURT: We'll note that for the COs his
2 return time tomorrow will be for a 1:00 o'clock start.

3 THE OFFICER: Thank you.

4 MS. LUZAICH: Thank you.

5 THE COURT: Anything else.

6 MR. SCHIECK: If I can just have one minute.

7 (Brief recess taken.)

8 THE COURT: Back on the record in State of
9 Nevada vs. Lesean Collins.

10 Anything to address before we bring in the jurors.

11 MS. BLUTH: Not for the State.

12 MR. SCHIECK: No, your Honor.

13 THE COURT: I'll ask the marshall to bring in
14 the jurors.

15 Thank you, ladies and gentlemen of the jury. Please
16 take your seats as soon as you reach them. I invite
17 everyone to have a seat as well.

18 Please make sure if you were using your cell phones
19 before you came into court they are off or silenced.

20 At this time I'll ask that we return to the witness
21 stand Ms. Payton. If you would retake your seat, please.

22 Can I ask you to acknowledge for our record that you
23 understand you are still under oath from yesterday.

24 THE WITNESS: I am.

25 THE COURT: Please make sure all your cell

1 phones are off or silenced in the courtroom.

2 Whenever you are ready to proceed.

3 MS. BLUTH: Thank you, your Honor.

4 CONTINUED DIRECT EXAMINATION

5 BY MS. BLUTH:

6 Q. I would like to pick up where we left off
7 yesterday afternoon before we took our afternoon recess.

8 During that time period I was asking you some
9 questions about you and members of your family meeting
10 with Detective Mogg.

11 THE COURT: I apologize, Ms. Bluth. I do need
12 to address one matter with the jurors before we get
13 started. I apologize for the oversight.

14 I have the paperwork handy, but I reshuffled things
15 on my desk and it got misplaced.

16 Ladies and gentlemen of the jury, as I mentioned
17 yesterday and I want to remind you again today, to those
18 who may have noted the Defendant is not present with us
19 today in the trial. I want to remind you again of a
20 instruction you will receive at the end of the trial and
21 admonish you again, it is the right of a defendant in a
22 criminal trial that he may not be compelled to be present
23 at the time of trial. You must not draw any inference
24 from the fact a defendant has elected to exercise his
25 right to be present, nor should this fact be discussed by

1 you or enter into your deliberations in any way.

2 Thank you.

3 Ms. Bluth, you may proceed when you are ready.

4 BY MS. BLUTH:

5 Q. Like I was saying yesterday before we took our
6 afternoon recess, I was asking you questions regarding
7 your sit-down meeting and your family's sit-down meeting
8 with Detective Mogg shortly after you identified your
9 sister Brandy Payton.

10 So my questions are still related to that time
11 period.

12 A. Okay.

13 Q. Now, yesterday I asked you when you met with
14 Detective Mogg, did you give him names and numbers of
15 Brandy's family members and friends so they could conduct
16 an investigation?

17 A. Yes, I did.

18 Q. During that time period did you give them
19 Brandy's cell phone number?

20 A. Yes.

21 Q. You stated yesterday that you don't remember
22 that off the top of your head?

23 A. Uh-huh.

24 Q. Was that a yes?

25 A. Yes.

1 Q. Do you remember testifying at a preliminary
2 hearing in early 2009?

3 A. Yes, I do.

4 Q. During that time period do you remember giving
5 over Brandy's cell phone number during your testimony?

6 A. I remember at the time one of them.

7 Q. If I showed you a copy of that, a transcript
8 of your testimony, would that help refresh your
9 recollection to what her number was?

10 A. Yes, it would.

11 MS. BLUTH: Counsel, that would be page 31.

12 MR. SCHIECK: Thank you.

13 BY MS. BLUTH:

14 Q. My question is for the 323 number you
15 referenced yesterday. If you can read this yourself
16 silently and let me know when you are done.

17 After looking at that does that help refresh your
18 recollection to the number you testified being your
19 sister's number during that time period?

20 A. Yes.

21 Q. Can you tell us what the 323 number was?

22 A. 706-5164.

23 Q. That's 323 --

24 A. (323) 706-5164, yes.

25 Q. At this time did you also have a cell phone

1 yourself as well as a home phone?

2 A. Yes, I did.

3 Q. Do you remember off the top of your head those
4 numbers?

5 A. I don't. I'm sorry.

6 Q. Yesterday we talked about you filling out a
7 missing person's report.

8 When you did that, did you fill out your personal
9 numbers on that report?

10 A. Yes.

11 Q. If I showed you a copy of that report, would
12 that help refresh your recollection to your number at the
13 time?

14 A. Yes.

15 MS. BLUTH: May I approach.

16 THE COURT: You may.

17 BY MS. BLUTH:

18 Q. Again, just read this silently to yourself and
19 let me know when you are done and I'll have some questions
20 for you, okay.

21 Does that help refresh your recollection to what
22 your numbers were at the time?

23 A. Yes.

24 Q. What was your home phone number?

25 A. The 538-9933 number.

1 Q. Let me finish. I'm sure you know what
2 question is coming.

3 Then your cell phone number?

4 A. 503-9648.

5 Q. That's area code (702)?

6 A. Yes.

7 Q. As we spoke a little about yesterday, you also
8 provided the detectives with Lesean Collin's name and
9 number?

10 A. Yes, I did.

11 Q. But you don't have a recollection of the
12 specific number that you gave to the detectives?

13 A. No, not now.

14 Q. During this time of the investigation you and
15 your mother provided photos of your sister to the police
16 officers, correct?

17 A. Yes.

18 Q. You saw one of those yesterday?

19 A. Yes.

20 Q. If I approach with another photo of your
21 sister, would you recognize her?

22 A. Yes.

23 Q. Showing you what has been marked for purposes
24 of identification as State's Proposed Exhibit 2, do you
25 recognize this individual?

1 A. Yes.

2 Q. Who is that?

3 A. My sister.

4 Q. Just like yesterday, if we can get a time
5 frame for when this photograph was taken. Like I said
6 yesterday, you don't have to have a specific day or
7 afternoon, but just a time frame.

8 Was that taken within a year of her death?

9 A. That was within a year -- 2008 -- a year.

10 Q. 2008?

11 A. Yes.

12 Q. Was that a yes?

13 A. Yes.

14 MS. BLUTH: At this time I'd move into evidence,
15 State's Proposed Exhibit 2.

16 MR. SCHIECK: No objection.

17 THE COURT: State's Exhibit 2 is admitted.

18 MS. BLUTH: Permission to publish.

19 THE COURT: You may publish.

20 BY MS. BLUTH:

21 Q. On the computer in front of you can you see
22 the picture of your sister?

23 A. Yes.

24 Q. Around her neck she has several pieces of
25 jewelry. I'll go in so we can see those more clearly.

1 Was it common for your sister to wear multiple
2 necklaces?

3 A. All the time.

4 Q. Every day did she's wear multiple necklaces?

5 A. Yes.

6 Q. That is her right wrist -- you see a bracelet.
7 Do you remember her having that bracelet?

8 A. Yes, I do.

9 Q. Did it match the necklace she was wearing
10 around her neck?

11 A. Yes.

12 Q. Did she have those two pieces of jewelry in
13 2008?

14 A. Yes, she did.

15 Q. On both of her hands she has quite a few
16 rings. Was it also common for her to wear rings on all of
17 her fingers or most of them?

18 A. Yes.

19 Q. Again -- I apologize. I showed you a picture
20 yesterday.

21 Showing you what's already in evidence as State's
22 Exhibit 1. You identified this as your sister.

23 Common again, same type of necklaces she'd wear
24 every day?

25 A. Yes.

1 Q. Correct?

2 A. Yes, it is.

3 Q. There is a lot of necklaces on her so I'm not
4 sure I can see all of them.

5 Did Brandy have a necklace that bore a cross?

6 A. Yes.

7 Q. Was that a silver necklace or gold?

8 A. It was gold.

9 Q. Was it common for her to wear that?

10 A. Yes, it was.

11 Q. Now looking at Brandy's fingernails. Was she
12 an individual that got her nails done regularly?

13 A. Every two weeks.

14 Q. On the dot?

15 A. On the dot.

16 Q. Were they usually colorful in nature?

17 A. Very colorful.

18 Q. Were they usually long?

19 A. Always long.

20 Q. Long, maybe an inch?

21 A. Yes.

22 Q. In the days leading up to September 2, 2008,
23 did you ever recognize your sister to have any type of
24 injuries on her head or body?

25 A. No.

1 Q. The last time you saw her, did she seem to be
2 completely fine and in good health?

3 A. Yes.

4 MS. BLUTH: Thank you. I'll pass the witness.

5 THE COURT: Thank you.

6 Mr. Schieck.

7 MR. SCHIECK: Thank you, your Honor.

8 CROSS-EXAMINATION

9 BY MR. SCHIECK:

10 Q. Good afternoon, Ms. Payton.

11 A. Hello.

12 Q. I just have a few questions for you. If you
13 don't understand a question, I'll try to rephrase it.

14 A. Okay.

15 Q. You indicated that in September of 2008, you
16 were living next door to where Brandy was living?

17 A. Yeah.

18 Q. And do you recall Brandy's address?

19 A. Well, we had the same address. We lived in
20 apartments just different apartments.

21 Q. What was the address?

22 A. 5855 Valley Drive.

23 Q. 5855 Valley Drive?

24 A. I believe so.

25 Q. At that point did Brandy live alone in the

1 apartment or was there someone living with her?

2 A. She lived with Rufus Hicks.

3 Q. How long had you known Rufus?

4 A. A couple years maybe.

5 Q. Had you guys been living in those apartments
6 before you met Rufus Hicks or did he move in after you
7 guys were living there?

8 A. I lived there before she did. A year before
9 her. They lived in a different apartment prior, and they
10 moved into that apartment together.

11 Q. They moved in together?

12 A. Yes.

13 Q. How long were they living next door to you as
14 of September 2008?

15 A. I would say maybe 8 months. I'm not for sure.
16 I can't remember.

17 Q. Would you recognize a photograph of Rufus
18 Hicks if I showed it to you?

19 A. Yes.

20 MR. SCHIECK: I'll have this marked as
21 Defendants next in line.

22 THE COURT: Yes. That's going to be Defendant's
23 B. You may approach once it's marked to show the
24 witness.

25 MR. SCHIECK: Thank you, your Honor.

1 BY MR. SCHIECK:

2 Q. Ms. Payton, showing you what has been marked
3 as Defendant's Proposed Exhibit B and ask if you recognize
4 the individual depicted in this photograph?

5 A. Yes.

6 Q. Who is that?

7 A. Rufus Hicks.

8 MR. SCHIECK: I move to admit Defendant's B.

9 MS. BLUTH: No objection.

10 THE COURT: Defendant's B is admitted. You may
11 publish.

12 BY MR. SCHIECK:

13 Q. So your sister was living with Rufus Hicks as
14 of September 2nd, 2008?

15 A. Yes.

16 Q. You indicated you had almost daily phone or
17 personal contact with your sister?

18 A. Yes.

19 Q. Do you recall on September 2nd, you had phone
20 contact with her in the morning concerning cheerleading
21 practice?

22 A. Excuse me.

23 Q. You had a phone conversation with her on the
24 morning of September 2nd?

25 A. Yes.

1 Q. In that conversation it was discussed there
2 was cheerleading that evening?

3 A. Yes.

4 Q. And that you expected to see her at
5 cheerleading practice?

6 A. Yes.

7 Q. On September 2nd you went to work?

8 A. Yes.

9 Q. Because you next -- after you went to work,
10 the next time you called was when you were getting off
11 work?

12 A. Yes.

13 Q. What time did you go to work? What time do
14 you start work?

15 A. I probably started work, I think maybe like
16 8:00 o'clock. I'm not for sure.

17 Q. You were working a full day's shift, 8-hour
18 shift?

19 A. No. Not an 8-hour shift.

20 Q. But you recall when you got off, what time it
21 was when you got off?

22 A. I got off around 1:00 o'clock, I believe.

23 Q. Is that the first time you called her after
24 you got off work at 1:00 o'clock?

25 A. I called again after I got off work.

1 Q. You recall what time you called her?

2 A. I don't know the exact time. It was after
3 1:00.

4 Q. Could it have been as late as 3:00 o'clock?

5 A. It was between 1:00 and 3:00.

6 Q. It could have been as late as 3:00 or as early
7 as 1:00?

8 A. Yes.

9 Q. You are not sure what time you called her?

10 A. It was after work, but before I went out for
11 errands.

12 Q. You went out on errands before you went to
13 cheerleading practice?

14 A. Yes.

15 Q. In that phone conversation that you had
16 sometime between 1:00 and 3:00 on September 2, you think
17 you told us that that was a very quick conversation?

18 A. Yes, it was.

19 Q. She was busy or on another line?

20 A. Yes.

21 Q. It was only one call or there was two calls?

22 A. I'm not for sure if I called her once or
23 twice. I know it was one for sure. I'm not sure if I
24 called her right back to ask her something. I know it was
25 for sure once.

1 Q. There was another phone call you told us about
2 yesterday that dealt with something to do with the fax
3 machine?

4 A. That is the one I'm talking about.

5 Q. That was the first call you made to her after
6 work was the call about the fax machine?

7 A. Yes.

8 Q. Where were you at when you made that call?

9 A. I was at her house.

10 Q. You'd gotten off work and you'd gone to her
11 apartment, which is next door to your apartment to call
12 her?

13 A. Yes.

14 Q. Because you were expecting a fax?

15 A. I needed her fax machine number or something
16 like that.

17 Q. Who was there when you got there? Was anybody
18 there at her house?

19 A. Rufus was there.

20 Q. Had you seen Rufus at all during that day?

21 A. He was there.

22 Q. When you got there he was there?

23 A. Yes.

24 Q. Whose phone did you use when you called her?

25 A. I'm not for sure if I used his phone or their

1 house phone.

2 Q. You didn't use your cell phone?

3 A. I don't think I used my phone.

4 Q. Is there a reason you hadn't used your cell
5 phone to call?

6 A. I don't remember. I know she wasn't home so I
7 was calling her because I needed the fax number to her
8 fax.

9 Q. Do you remember testifying at a preliminary
10 hearing about that conversation or that phone call that
11 you made to her?

12 A. I don't remember, no.

13 Q. Do you recall indicating who had dialed the
14 number?

15 A. No. You can refresh my memory if you like.

16 Q. Do you recall Rufus Hicks might have placed
17 the call and handed the phone to you?

18 A. Possibly.

19 Q. As you sit here, do you recall that
20 happening?

21 A. I'm not sure if he placed the call or I did,
22 but I know that the call was placed at her house.

23 Q. Do you recall whether or not you indicated a
24 reason why he was handing you the phone if it happened
25 that way?

1 A. I probably told him to call her, or I
2 probably --

3 MS. BLUTH: Objection, your Honor.
4 Speculation.

5 THE COURT: The witness already answered. I'll
6 overrule it. But please make sure Ms. Payton that if
7 there is going to be an objection that you halt your
8 answer once you hear the other counsel speak, so the court
9 can rule on it. Okay.

10 Go ahead Mr. Schieck.

11 MR. SCHIECK: Thank you very much, your Honor.

12 BY MR. SCHIECK:

13 Q. So that was a quick conversation when you
14 called her about the fax, because she was occupied on
15 another call or doing something, correct?

16 A. Yes.

17 Q. Did she answer your question that you wanted
18 to ask her about the fax or the fax machine?

19 A. No.

20 Q. So she didn't have time to do that?

21 A. No.

22 Q. Did you then call her back fairly quickly?

23 A. I don't think I called her back.

24 Q. Did you resolve the issue with the fax?

25 A. Yes, I believe so.

1 Q. Then you left the house at that point in
2 time?

3 A. Yes.

4 Q. She -- you indicated she never called you back
5 after that?

6 A. No.

7 Q. Later you tried to call her again?

8 A. Yes.

9 Q. On those calls were those the calls that went
10 directly to voice mail?

11 A. Yes.

12 Q. You didn't actually hear her voice. It went
13 straight the voice mail.

14 A. Right.

15 Q. You were calling her to tell her that
16 cheerleading practice had been changed to a different
17 location?

18 A. Right.

19 Q. So when you called her to tell her that, did
20 you leave her a voice message saying, look, the practice
21 has been moved over by Cheyenne and Tenaya. You need to
22 go there not the other place?

23 A. I don't think I left her a message. I just
24 called on her phone and it was going to voice mail.

25 Q. So even though practice had been moved and you

1 needed to let her know where to go, you didn't leave a
2 voice mail telling her where to go?

3 A. No.

4 Q. Did you use your own phone on that occasion?

5 A. I think my phone was dead cause I used a
6 friend's phone at the park.

7 Q. You used someone else's cell phone at the
8 park?

9 A. Yes.

10 Q. How many times did you try to call her from
11 the park?

12 A. Several.

13 Q. Several times to tell her the location had
14 been moved?

15 A. Yes.

16 Q. Using someone else's cell phone?

17 A. Yes.

18 Q. None of those calls did you leave a message to
19 inform her where the practice was going to be at?

20 A. No.

21 Q. Fair to say -- let me back up.

22 When you talked with her in the morning, when you
23 guys talked about there was a cheerleading that night, did
24 you use your own phone when you called her then?

25 A. Possibly, yeah. My cell phone or my house

1 phone.

2 Q. But other than that call early in the morning,
3 none of the other calls you made to Brandy during the
4 course of that day was actually made from your cell
5 phone?

6 A. I don't think so.

7 Q. Your cell phone was dead all day?

8 A. I don't know. It could have been dead when
9 you went out that day. I don't remember.

10 Q. You indicated that your cell phone number,
11 after refreshing your recollection was, 503-9648?

12 A. Yes.

13 Q. Did Mr. Hicks have a cell phone also?

14 A. Yes.

15 Q. Do you know what his cell phone number was?

16 A. Not by heart, no.

17 Q. Do you -- can you remember any of the digits
18 on it?

19 A. Honestly they were logged in my phone, so I
20 didn't remember any phone numbers. I'd just go to the
21 name.

22 Q. Now, Brandy didn't show up for practice for
23 the entire practice, correct?

24 A. Right.

25 Q. So when you got home did you go over to her

1 house?

2 A. Yes.

3 Q. And she wasn't there?

4 A. No.

5 Q. You indicated you could remember the license
6 number on that gold Sonata?

7 A. Yes.

8 Q. That's because you parked behind it every day.
9 Is that what you said?

10 A. Yes. We pulled in next to each other when we
11 parked on the sidewalk.

12 Q. How long had she been driving that gold
13 Sonata?

14 A. Not long. Maybe -- maybe a week.

15 Q. You remember testifying at the preliminary
16 hearing about when she picked up the Sonata?

17 A. I don't remember off the top of my head.

18 Q. You remember whether you said she picked it up
19 over that weekend, either Friday or Saturday?

20 A. I don't remember.

21 Q. So it's possible she'd only been driving that
22 car a couple days?

23 A. Possibly.

24 Q. Brandy changed rent-a-cars on a regular
25 basis?

1 A. Yes.

2 Q. How often?

3 A. Sometimes she'd have them a couple of weeks.

4 Sometimes like a month.

5 Q. Just kind of depended?

6 A. Yeah.

7 Q. You were aware that Brandy sold drugs?

8 A. I knew she didn't work a 9-to-5 job.

9 Q. Do you remember testifying at the preliminary
10 hearing?

11 A. Yes.

12 Q. You remember testifying at the preliminary
13 hearing you were aware she sold drugs?

14 A. Yes. Illegal activity, yeah.

15 Q. But you didn't know any specifics about what
16 she was doing?

17 A. Not specifically.

18 Q. But you knew that she had more than one cell
19 phone?

20 A. Yes.

21 Q. How many cell phones did she have?

22 A. She had 2 or 3.

23 Q. Do you have all of the numbers?

24 A. I probably had them, but I don't remember
25 them.

1 Q. When you would go to call her, did you have a
2 choice of two or three numbers to call to try to reach her
3 at?

4 A. I had one stored in. Then I might have
5 another one that I might have had in text messages. The
6 third one I don't recall as much, but she -- I think she
7 had 3 phones.

8 Q. That was as of September 2008?

9 A. Yes.

10 Q. If I were to show you your preliminary hearing
11 testimony where you talked about when she picked up the
12 car would that refresh your recollection?

13 MR. SCHIECK: Counsel, bottom of 14 going onto
14 15.

15 Approach your Honor.

16 THE COURT: You may.

17 MR. SCHIECK: Showing you your preliminary
18 hearing testimony and ask, starting with this question
19 here, read onto the next page your answer. Starting at
20 line 23.

21 THE COURT: You are asking her to read this out
22 loud.

23 MR. SCHIECK: No. Just read it to yourself.

24 THE WITNESS: Yes.

25 MR. SCHIECK: Does that refresh your

1 recollection to what you testified to.

2 THE WITNESS: Yes.

3 BY MR. SCHIECK:

4 Q. Is that correct, to the best of your
5 recollection?

6 A. Yes.

7 Q. That was much closer in time then we are now
8 to those events?

9 A. Yes.

10 Q. There you said you -- she had switched it
11 around Friday or Saturday. She'd just got that one. She
12 only had it a couple of days?

13 A. Yes.

14 Q. When you left to go to work September 2nd was
15 Brandy still at home? Was her car still there?

16 A. Yes.

17 Q. So you left for work before she left the
18 apartment?

19 A. Yes.

20 Q. Now you indicated that when you went down to
21 the police department to file the missing person's report
22 that Mr. Hicks went with you and your mother went also?

23 A. Yes.

24 Q. Did your mother go on both occasions?

25 A. I don't remember. I know she for sure was at

1 one of them.

2 Q. But Mr. Hicks was at both of them?

3 A. Yes. I think he was with me on the first and
4 second one.

5 Q. Both you and Mr. Hicks talked to police when
6 you went there?

7 A. Yes.

8 Q. When you provided information to the police
9 about you missing sister, you were worried about her
10 whereabouts and what might have happened to her?

11 A. Yes.

12 Q. Did you let the police know she was selling
13 drugs?

14 A. No.

15 Q. You kept that information from the police?

16 A. I didn't mention that to police.

17 Q. Mr. Hicks mention that to police?

18 A. No.

19 Q. Do you know whether Mr. Hicks was also selling
20 drugs?

21 MS. BLUTH: Objection, relevance as to
22 Mr. Hicks.

23 MR. SCHIECK: It goes to the relationship
24 between Mr. Hicks and Brandy Payton.

25 THE COURT: Overruled. You may proceed. You

1 may answer.

2 THE WITNESS: I know they was together a lot.

3 BY MR. SCHIECK:

4 Q. Did Mr. Hicks have a job?

5 A. Not that I know of.

6 Q. And when you were -- were you aware personally
7 of any problems that existed between your sister and
8 Mr. Hicks?

9 A. No.

10 Q. Were you aware of whether or not they had any
11 arguments on that day, whether or not you are personally
12 aware?

13 A. I can't recall. They could have had had words
14 exchanged with each other. I don't remember really.

15 Q. Did you continue after Brandy was found and
16 the investigation continued, did you continue to have
17 contact with Mr. Hicks?

18 A. For a short period of time.

19 Q. After that there was no further contact?

20 A. No, not really.

21 Q. Mr. Hicks didn't attend the funeral?

22 A. No.

23 Q. When you were talking with the police after
24 Brandy's body had been found and you were giving them
25 names and numbers of people that they might reach out to,

1 did you offer to give them any names and numbers you might
2 have in your cell phone?

3 A. Yes.

4 Q. Did you provide them with Mr. Hicks' cell
5 phone number?

6 A. No.

7 Q. Did they ask you for it, do you recall?

8 A. I don't think so, but I couldn't recall.

9 Q. And you were Brandy's younger sister,
10 correct?

11 A. Yes, I am.

12 Q. Brandy didn't keep you informed of everything
13 that was going on that she was doing, correct?

14 A. What do you mean?

15 Q. Specifically having to do with selling drugs.
16 She didn't tell you her business?

17 A. Not as far as that aspect of her life, no.

18 Q. She didn't include you in that part of her
19 life?

20 A. No.

21 MR. SCHIECK: Court's indulgence. I need to
22 check my notes your Honor.

23 THE COURT: Yes.

24 MR. SCHIECK: Thank you. No further
25 questions.

1 THE COURT: Ms. Bluth.

2 REDIRECT EXAMINATION

3 BY MS. BLUTH:

4 Q. Just a few your Honor. Thank you.

5 It's been almost 7 years since September 2008. Do
6 you remember which phone you used at which time on
7 September 2nd, 2008?

8 A. I don't.

9 Q. Have you done your best to try to remember the
10 best you can?

11 A. Yes.

12 Q. You were asked some questions about Mr. Hicks.
13 Do you have personal knowledge that they had had words
14 that day?

15 A. I don't recall them falling out.

16 Q. You were close with your sister?

17 A. Yes.

18 Q. Do you think if they had gotten into a big
19 fight that is something she would share with you?

20 MR. SCHIECK: Objection. Calls for
21 speculation.

22 THE COURT: Sustained.

23 BY MS. BLUTH:

24 Q. You stated that Mr. Hicks went with you twice
25 to help file a missing person's report. Did he appear to

1 you to be concerned about Brandy?

2 A. Yes, very much so.

3 Q. Did he help you and your family to the best of
4 his ability --

5 MR. SCHIECK: Objection, your Honor. Calls for
6 speculation.

7 MS. BLUTH: She can testify if she knows him and
8 if he was helpful in looking for her.

9 THE COURT: Rephrase the question.

10 BY MS. BLUTH:

11 Q. You knew him about a year?

12 A. Yes.

13 Q. When at any point in time from the time Brandy
14 went missing to the time her body was found, did Mr. Hicks
15 help you and your family trying to locate her?

16 A. Yes, he did.

17 MS. BLUTH: Nothing further. Thank you Ms.
18 Payton.

19 THE COURT: Mr. Schieck, anything further.

20 MR. SCHIECK: No recross, your Honor. Thank
21 you.

22 THE COURT: Thank you.

23 May I see by a show of hands if any jurors have
24 questions for this witness.

25 Seeing none you are excused. Mind your step as you

1 exit the witness stand. Thank you.

2 Your next witness.

3 MS. BLUTH: Ray Clark.

4 THE COURT: Mr. Clark, please step forward.

5 THE CLERK: You do solemnly swear the testimony
6 you are about to give in this action shall be the truth,
7 the whole truth, and nothing but the truth so help you
8 God.

9 THE WITNESS: I do.

10 THE COURT: Be seated. State and spell your
11 name for the record.

12 THE WITNESS: Raymond Clark, C-L-A-R-K, Roman
13 numeral III.

14 THE COURT: You may proceed.

15 DIRECT EXAMINATION

16 BY MS. BLUTH:

17 Q. How are you employed?

18 A. I work for Sprint.

19 Q. How long have you worked for Sprint?

20 A. Almost 9 years.

21 Q. Have you always worked in the same position?

22 A. No.

23 Q. Explain to the ladies and gentlemen of the
24 jury the different employment capacities you have worked
25 with at Sprint?

1 A. For the first 4-and-a-half years I worked as a
2 electronics surveillance technician. And for the last
3 4-and-a-half years now as a custodian of records.

4 Q. What does electronics surveillance technician
5 do. Explain the job duties.

6 A. We're responsible for working with law
7 enforcement to locate people in emergency circumstances.
8 Whether it be someone calling 911 and hang up for them to
9 be located, kidnappings, anything where someone needed to
10 b found.

11 Additionally we are also set up for real time
12 tracking, wire taps and things of that nature.

13 Q. So after working at 4-and-a-half years in that
14 position you moved into your current position?

15 A. Correct.

16 Q. What are you job duties in your current
17 position?

18 A. I'm responsible for maintaining as well as
19 retrieving documents produced in response to search
20 warrants, court orders and subpoenas. As well as coming
21 to trials and hearing to help identify and explain those
22 same documents.

23 Q. If a crime occurs and law enforcement asks
24 Sprint for records and then need someone to come into
25 court and testify to those records as a custodian, you'd

1 be that guy?

2 A. That's correct.

3 Q. I'm sure there's more than one of you since
4 Sprint is a rather large company?

5 A. Yes. I'm one of a group of people that do
6 this.

7 Q. What is the training and experience you went
8 through in order to obtain that position you are currently
9 in?

10 A. Specifically I was trained to become an
11 electronics surveillance technician. Through that process
12 we had to become familiar with all different records, the
13 record keeping processes, as well as how to read and
14 interpret those records. I was being qualified in that
15 position as first a full technician after the training
16 period and then to become a trainer who trained the other
17 technicians, then on to be a lead technician. At that
18 point Sprint asked me if I was interested in this knew
19 position because of my knowledge of the records.

20 Q. Now when -- excuse me. Have you testified in
21 other trials previous to coming here?

22 A. Yes.

23 Q. How many approximately have you testified
24 in?

25 A. In excess of 450.

1 Q. In those 450 times you have testified have any
2 of those been as an expert?

3 A. Yes, 29 of them.

4 Q. What jurisdiction have you testified as an
5 expert?

6 A. They've been both in criminal and in civil
7 trials -- Federal, State, and local. In California,
8 Louisiana, Maryland, New York, Florida, Texas. I believe
9 that -- Main, I think Massachusetts.

10 Q. Multiple places across the country?

11 A. Yes.

12 Q. Now, when you come to testify you were
13 obviously subpoenaed by the Clark County District
14 Attorney's office?

15 A. Yes.

16 Q. Does the Clark County District Attorney's
17 office pay you to be here?

18 A. No. They are covering my expenses for being
19 here, but my salary is covered by Sprint.

20 Q. When you say expenses, what does that mean?

21 A. They paid for my flight, my hotel. They
22 provide me a per diem for food. That's the expenses. My
23 actual salary comes from Sprint.

24 Q. So I would like to turn now to some questions
25 about Sprint records.

1 When law enforcement sends out what's called an
2 admin subpoena or an order to Sprint what kind of records
3 will they receive?

4 A. With that kind of order we provide information
5 pertaining to the subscriber. Information about the phone
6 calls and text messages that were made, as well as any
7 cell site used in that process.

8 Q. You just used the term cell sites. Explain to
9 the jury what a cell site is and what information we
10 receive from those?

11 A. Cell sites can be cell towers. They can also
12 be the tops of buildings or funny looking palm trees,
13 depending on where there at in the city. They are
14 locations where we have antennas that are used to send and
15 receive signals to connect cell phones or hand sets to the
16 network to allow to make and receive calls as well as
17 information.

18 The information from those cell sites is important
19 for us because it helps tell us where our customers are at
20 at the time they're using our network. And from the
21 information from a cell site, because a cell site is a
22 specific location, we can determine that the person using
23 that cell site would have to be in the general area of
24 that cell site for it to be able to be used.

25 Q. If I'm a Sprint user and I get my cell phone

1 and I start making a phone call, will then my cell
2 phone -- a lot of people use the term ping, connect,
3 transmit to a tower that may be even in this building or
4 antenna on this building or near it?

5 A. Yes, it will. It's going to be communicating
6 all the time, not just when you make a phone call. Cause
7 prior to a call being made or received that phone is in
8 communication to determine what cell site it wants to use
9 in the event a call is made or received. It's measuring
10 for the strongest signal.

11 Now, if everything was equal, the closest cell site
12 would always have the strongest signal. But networks
13 aren't perfect and cities aren't perfectly flat. There
14 are obstacles that block a signal. Because of that, the
15 network sometimes has to connect a phone by the strongest
16 signal and it may be the second closest, but still one in
17 the general area of where the person is at.

18 The way that's done is cell phones have ranges or
19 general areas where they cover. They cross a network
20 anywhere from a 2 mile range up to maybe a 10 mile range.
21 Those are averages. The 2 mile range really would apply
22 more to an urban environment, or 10 miles to our most
23 rural environments. But even in our most urban and rural
24 we still have some exceptions to that.

25 For instance, if you went down on the Strip, you

1 might find things are measured in fractions of a mile, as
2 far as the range, because of the number of people, and as
3 you get out to really open areas, that 10 miles may be 15
4 miles but narrowly covering a long a road. It just
5 depends on what the purpose is and how many people might
6 be in the area to how we set up the network.

7 Q. Just so I understand clearly in urban areas
8 that are highly populated, the range of 2 to 10 will be --
9 could be much more narrow, due to the amount of people in
10 that area?

11 A. Yes.

12 Q. Sprint wants to provide their customers with
13 good cell coverage?

14 A. Yes.

15 Q. With -- are cell towers numbered or how are
16 they configured so you know where a cell tower is and the
17 cell tower that a phone is transmitting off of?

18 A. For record keeping purposes we do have a
19 numeric system. It's broken down by switch, which is the
20 computed that controls the cell site in a particular area.
21 Then within it they are numbered.

22 On our records that number shows up along with
23 which switch is being used. The term for that is
24 repolled. We just have to look at the correct list and
25 then find the correct number of the cell site. Then it

1 will tell us the address as well as the latitude/longitude
2 of where that cell site is at. Then from that we make the
3 deduction of where we find the cell tower.

4 MS. BLUTH: May I approach, your Honor.

5 THE COURT: You may.

6 BY MS. BLUTH:

7 Q. Showing you what's been marked for purposes of
8 identification is State's Proposed Exhibit 105.

9 You were just talking about repole numbers.

10 A. Yes.

11 Q. Do you recognize the document I've put in
12 front of you?

13 A. I do.

14 Q. What do you recognize this to be?

15 A. This is repole 353. Which is the list of cell
16 sites that covers the Las Vegas metropolitan and
17 surrounding areas.

18 Q. Are these records kept in the normal and
19 ordinary course of Sprints business so you know which
20 numbers are matching which towers?

21 A. Yes. In fact this list is one that covers a
22 specific set of dates pertaining to 2008, since we
23 maintained them and update them since this information
24 changes.

25 Q. You are the custodian of those records?

1 A. Yes.

2 MS. BLUTH: I'd move into evidence State's
3 Proposed Exhibit 105.

4 MR. SCHIECK: No objection, your Honor.

5 THE COURT: State's 105 will be admitted. You
6 may publish.

7 MS. BLUTH: Thank you.

8 BY MS. BLUTH:

9 Q. To give the jury an idea what we are
10 discussing, I'll put on the monitor -- do you see it?

11 A. I do.

12 Q. I'll go in here. So like you said earlier
13 this is a Las Vegas cell site repole 353?

14 A. Yes.

15 Q. These are from the 2008 time period?

16 A. Yes. These are from September 2008.

17 Q. Thank you.

18 So I'd just like to move from the left side of the
19 document to the right, if that's okay with you.

20 So we have here on the left -- the furthest left a
21 cell number. Then it states 1. What are we looking at.
22 What is that information?

23 A. That indicates it's cell site No. 1. On the
24 corresponding call detail that would be 001. Prior to the
25 zeros would be a sector. We won't go into that yet.

1 That's the first cell site in numerical order we
2 look for if we saw that repole 353 on a call detail list
3 and we saw cell site No. 1.

4 Q. We talked about towers and antennas. It's the
5 same thing as a cell site?

6 A. Yes.

7 Q. So if cell site 1 where on top of this
8 building that would be the antenna with the cell No. 1?

9 A. Yes.

10 Q. But actually it's not at this building. Where
11 is it located?

12 A. It shows it's in a sight that says Kyle
13 Canyon. The address is 10695 Moccasin Road, Las Vegas.

14 Q. As we get to the right of the document it has
15 the physical address of the antenna or cell site. Then on
16 the furthest right hand of the document it also lists both
17 its latitude and longitude so you know its precise
18 location?

19 A. Correct.

20 Q. So when you look at cell phone records and you
21 see -- for instance if you received records and you saw
22 that the phone was transmitting off of a cell site or cell
23 tower 1, you would then go to this list and see the exact
24 location of cell site No. 1. Is that a fair depiction of
25 how it's done?

1 A. Yes.

2 Q. So now I would like to ask a few questions.
3 I would like phone number.

4 MS. BLUTH: Permission to approach.

5 THE COURT: You may.

6 BY MS. BLUTH:

7 Q. Showing you, for purposes of identification,
8 State's 107. Do you recognize these records?

9 A. I do.

10 Q. What do you recognize them to be?

11 A. I recognize this to be a Sprint call detail
12 record.

13 Q. The call detail record you previously referred
14 it to as a CVR?

15 A. Yes.

16 Q. The call detail record is what we were
17 discussing earlier when an admin subpoena is issued or an
18 order is issued to Sprint. Then you turn over these
19 records that then has incoming phone calls, outgoing phone
20 calls, text messages, cell site information, et cetera?

21 A. Correct.

22 Q. Are these records also kept in the normal and
23 ordinary scope of business?

24 A. Yes.

25 Q. And are you the custodian of these records?

1 A. Yes.

2 MS. BLUTH: I'd move into evidence State's
3 Proposed 107.

4 MR. SCHIECK: No objection.

5 THE COURT: State's 107 is admitted. You may
6 publish.

7 MS. BLUTH: Court's indulgence one second.

8 BY MS. BLUTH:

9 MS. BLUTH: To save me from walking back and
10 forth Mr. Schieck has graciously allowed me to leave the
11 record up with the expert and use my own as we're going
12 through that.

13 THE COURT: All right. We appreciate that.

14 BY MS. BLUTH:

15 Q. Let's go back out to the left again, if we
16 can.

17 We're now looking at the call detail record for No.
18 (323) 706-5164, correct?

19 A. Correct.

20 Q. So just like we did previously I would like to
21 go to the second -- go to the second list, just because
22 the second number on the list it looks like every box is
23 filled. So we can explain to the jurors what the numbers
24 mean. Okay.

25 A. Fine.

1 Q. So on the second phone call -- first of all,
2 to the left we have calling number. What does that
3 mean?

4 A. Calling number indicates the phone number that
5 is either making the phone call or sending the text
6 message. In this case (702) 503-6118.

7 Q. The next column we have called number.

8 A. This ultimately shows the phone number that is
9 receiving the call or text message. In this case it's
10 (323) 706-5164.

11 Q. Then the next section would be dialed digits.

12 A. This pertains only to phone calls. If it was
13 a text message we'd expect to see this go be blank. But
14 what this indicates is what was dialed by the hand set
15 making the phone call. So we may or may not see the 1
16 before the area code. In this case we see that (323)
17 706-5164 was what was dialed.

18 Q. Above -- under -- sorry. On the top of the
19 paper is says call records for (323) 706-5164. So would
20 it make sense that this individual is calling their own
21 number?

22 A. It's not them calling their own number. It's
23 the phone number (702) 503-6118 is calling in the phone
24 number of whose record this is. That's what they dialed
25 and where the phone call went to.

1 Q. The next column you see incoming?

2 A. Yes.

3 Q. Would that mean an incoming phone call?

4 A. Exactly. In that column with the MR and the
5 pound sign, stands for mobile role. What is the role of
6 the phone whose record it is in the call. So in this
7 case incoming mean received.

8 If it was an outbound call you'd see outgoing.

9 Then we see routed call. Routed means one or two
10 things. Meaning sent to voice mail. Or routed is part of
11 the incoming call process.

12 In this record this is a phone number with a
13 California phone number assigned to it, but it's located
14 outside of the State of California. It's located in Las
15 Vegas. For practicality purposes every phone has to have
16 a starting place for an incoming call so it doesn't get
17 sent across the planet. In this case it is one assigned
18 to Los Angeles.

19 So every incoming call first has to go to Los
20 Angeles and routed to where the phone is at. In this case
21 that incoming call line would show it being in Las
22 Vegas.

23 The prior line to it, the routing line is part of
24 the process of getting to here.

25 Q. How do we know the difference between a routed

1 call going to voice mail and a routed call go to os
2 Angeles?

3 A. If we go down on the page a few more lines.

4 Q. You want to tell me how many lines.

5 A. 2 more, if you could.

6 See on that very last line listed there you have a
7 1/1 prior to the (323) 706-5164. That 1/1 indicates it's
8 going to voice mail. If you see a routed call and you see
9 that 1/1 prior to the phone number, that is how we tell
10 the difference if it's a routed call to voice mail versus
11 if it's not there it's part of the incoming call
12 process.

13 Q. Thank you.

14 Obviously the next two categories are somewhat self
15 explanatory. Start date and end date. Is that the
16 beginning of the phone call and the end of the phone
17 call?

18 A. Yes. From the time the network receives the
19 call till it ends. I should note that that time stamp is
20 going to be local to where the phone call switch was
21 taking place. So in this case in Las Vegas it would be
22 Pacific time.

23 Q. So it's relative to the period in which the
24 phone is in. I'm sorry. In which -- Pacific standard
25 time?

1 A. Yes. It does adjust if it's Daylight Savings
2 or Standard time, it would be in the Pacific time zone
3 since the Las Vegas switch is in the Pacific time zone.

4 Q. The duration which is the next line. What is
5 that?

6 A. That's the number of seconds that the network
7 had the call.

8 Q. The next is repole number?

9 A. Repole is going to indicate the switch. For
10 ease of convenience it could also be able to determine if
11 it was a text message or if it is a phone call. On this
12 record we see the number 639353 a lot. Those are
13 indicative of phone calls. The 639 being the home switch.
14 So we see that when a call is being routed to voice mail
15 or the incoming process.

16 Any time you see the number 291 through 298 or a
17 506 through 533, that is inclusive. Then those are text
18 messages. In fact, we see on the fifth line down, one
19 that has 292 as an example.

20 There's a zero second duration. Text messages
21 don't take any duration or any time, but that would be an
22 indicator that that is a text message versus an actual
23 phone call.

24 Q. The last two on the list are first cell and
25 last cell. Does that have to do with the cell site or

1 cell tower you were talking about previously?

2 A. Yes, it does. They are the very first cell
3 site being used and the last one being used in a call.

4 You see a four digit number there. The last three
5 digits 305 and then 349, that is the cell site number.
6 That's what we look up in that list we looked at earlier
7 to determine its location.

8 The first digit refers to a sector. To briefly
9 explain. Cell sites have more than one side to them.
10 Sometimes there are only one side, but most of them on
11 Sprint are configured with three sides. To label them we
12 label as sides 2, 3, and 4 for the equipment in this
13 area.

14 That particular side then tells us which antenna is
15 being used. In 2008 we didn't record information about
16 where it's specifically facing, so we just know that one
17 side of the tower is being used. And what we determine
18 from that is from the cell site itself that the phone is
19 in the general area of that cell site.

20 Q. So if we look at the last cell here we see
21 349, so the tower or cell site that this phone is
22 transmitting off of is cell tower 349?

23 A. Yes.

24 Q. That would be the third sector on that
25 tower?

1 A. Correct. Once again remember there is no side
2 1. It starts with 2, then 3 or 4.

3 Q. So our options would be 2, 3, or 4?

4 A. Yes.

5 Q. Just to be clear. Like you said before if
6 someone is receiving text messages you would see zeros
7 across the board because text messages don't take any
8 time?

9 A. As well as see a zero for cell site because we
10 don't record what cell site is being used for text
11 messaging.

12 Q. If someone is on the phone and then receives
13 another call and answers it, does that register? Will
14 that show on the call detail record?

15 A. It will.

16 Q. And what happens if the phone is turned off or
17 runs out of batteries?

18 A. Once you see the phone is off the network,
19 being powered down, runs out of battery, been disabled,
20 we'll see that calls go straight to voice mail which means
21 there will be no cell site information. We'll see that
22 routing call with that 1/1 prior to it in the called
23 number field, you'll see that continually until it's
24 powered back up again or somehow is able to connect to the
25 network.

1 Q. I'd like to ask you some specific questions
2 about the 323 number on the records you have in front of
3 you.

4 First of all, what time frame, the date range do
5 those records start and end at.

6 A. They start on the 31st of August 2008 and
7 continue on through the early morning hours of the 7th of
8 September 2008.

9 Q. For the next range of questions I'd ask you to
10 turn your attention to September 2nd of 2008. Those
11 portions of the records, please.

12 A. Okay.

13 Q. Now let me know when you are there.

14 A. I'm there.

15 Q. What page are you starting at, for counsel, so
16 he can also look.

17 A. I'm looking at the beginning of the calls for
18 the 2nd of September, which is on page 11 of 18.

19 Q. Now during the morning and early afternoon
20 hours is there significant cell activity going on?

21 When I say significant cell activity I mean
22 incoming/outgoing phone calls, text messages, et cetera.

23 A. Yes, there are.

24 Q. In preparation for your testimony, were you
25 given the address location of 1519 Laguna Palms, North Las

1 Vegas?

2 A. Yes.

3 Q. Were you also aided in creating maps of 1519
4 Laguna Palms in showing the areas towers that were
5 closest?

6 A. Yes.

7 MS. BLUTH: May I approach.

8 THE COURT: You may.

9 BY MS. BLUTH:

10 Q. Showing you State's Proposed Exhibit 109. Do
11 you recognize this?

12 A. I do.

13 Q. Is this the map created by my office to help
14 show the jury where 1519 Laguna Palms is located and the
15 towers closest to it?

16 A. Yes.

17 Q. Is that a fair and accurate depiction to your
18 knowledge as custodian of records and your knowledge of
19 where the sites are located?

20 A. Yes.

21 MS. BLUTH: Move to admit into evidence State's
22 Proposed Exhibit 109.

23 THE COURT: Any objection.

24 MR. SCHIECK: May I voir dire briefly, your
25 Honor.

1 THE COURT: You may.

2 BY MR. SCHIECK:

3 Q. You indicated that the repolling sheet we have
4 is from 2008?

5 A. Yes.

6 Q. That showed the cell towers in 2008?

7 A. Yes.

8 Q. The map you created today, within the last
9 couple of days, does that show the 2008 tower sites or
10 cell tower sites now?

11 A. It was using the date from 2008. When it was
12 created today by the district attorney's office that was
13 the data that was read in. My review prior to it was
14 using that same data.

15 MR. SCHIECK: Thank you. No objection.

16 THE COURT: Thank you. State's 109 is admitted.
17 You may publish.

18 MS. BLUTH: Thank you.

19 BY MS. BLUTH:

20 Q. So to be clear. The first exhibit I showed
21 you you used that repole list to see where the towers were
22 located in 2008?

23 A. Yes.

24 Q. Now specifically in the afternoon hours around
25 1:51 p.m., the individual using this phone -- I'm going to

1 use the term she, if that's okay, is she on the phone
2 during that time period?

3 A. Yes.

4 Q. How long does that phone call last?

5 A. She's on a phone call that takes approximately
6 52 minutes.

7 Q. During that phone call, that 52-minute phone
8 call, does this person receive and answer multiple phone
9 calls while she's still on the phone?

10 A. Yes. During that time period she received 3
11 different phone calls. And because of her cell site
12 information, it doesn't go to voice mail. It indicates
13 they answered or connected using call waiting.

14 Q. Now, at that end of that phone call, which may
15 I please have the approximate time or end time of that
16 phone call. The 1:51 start time phone call.

17 A. It ends at 2:43 p.m. and 38 seconds. It's
18 listed as 14:43 and 38 seconds. It's listed in military
19 time.

20 Q. At that point when she ends that phone call,
21 what cell tower is she transmitting off of?

22 A. Cell tower 239.

23 Q. Showing you now State's 109, which was just
24 put into evidence.

25 Explain to the jury what we're looking at here.

1 1519 Laguna Palms is in the middle region of the
2 photograph, correct?

3 A. Yes. Indicated by the red push pin.

4 Q. And there is a Sprint tower listed 144. Is
5 that the yellow push pin?

6 A. Yes.

7 Q. Now there is also a Sprint tower 239, which is
8 in the general area too; is that correct?

9 A. Correct.

10 Q. Now, when this telephone conversation ends,
11 the cell tower or cell site that the phone is pinging off
12 of or transmitting from is Sprint's 239?

13 A. Yes.

14 Q. So if someone was located at the 1519 Laguna
15 Palms would or could they be pinging or transmitting off
16 Sprint's 239 tower?

17 A. Yes. That is one of the possible towers that
18 could cover that location.

19 Q. Now Sprint 144 is closest in proximity to 1519
20 Laguna Palms, correct?

21 A. Yes.

22 Q. Just because, like you spoke about earlier,
23 just because someone is located closest to Sprint 144, it
24 does not necessarily mean they wouldn't ping off a closest
25 tower?

1 A. Correct. It's going to look for the strongest
2 signal. And even though the two different points between
3 that address and Laguna Palms and Sprint tower 144 are
4 very close together -- because we don't know how that
5 tower is configured, we don't know how that tower is even
6 broadcasting directing at that home location or near it,
7 or there may be something that has to do with the
8 construction in that area or buildings that potentially
9 could interfere with it.

10 But taking into account we usually I have multiple
11 cell sites in areas of a city, that way even if one would
12 go down you still have coverage. So 239 is the second
13 closest in proximity and still within the range we'd
14 expect in an urban or densely populated environment so
15 we'd still expect that that could cover that area.

16 Q. During that 52 minute phone call, that 323
17 number is using, does that number during the phone call
18 also hit multiple times off of the Sprint 144 tower?

19 A. It does of one of the calls, hits the tower
20 144.

21 Q. During that 52 minute phone call in the
22 afternoon of September 2 of 2008, the 323 number is
23 transmitting both off of Sprint 144 and Sprint 239,
24 correct?

25 A. Yes.

1 Q. After a certain point in the afternoon the
2 phone activity is completely shut off, right?

3 A. After a certain point we see all the phone
4 calls going to voice mail.

5 Q. When does that occur? What time?

6 A. The first call goes straight the voice mail.
7 It happens at 3:52 p.m. and 49 seconds. At that point in
8 time we know that the phone is going to voice mail and it
9 continues thereafter going to voice mail.

10 So between that time and the previous call which
11 was received at 3:38, somewhere between that time frame
12 the phone either was powered off or the battery died or
13 was disabled in some way.

14 Q. What is the timing on the last incoming
15 call?

16 A. The last incoming call starts at 3:38 and 1
17 second and ends at 3:38 and 25 seconds.

18 Q. The last outgoing call -- I think you already
19 testified to this -- was the 52 minute call we spoke of?

20 A. Yes that's the last time there was an outbound
21 call.

22 Q. So right before this phone is turned off and
23 never turned back on, it is pinging off of the towers
24 located closest to 1519 Laguna Palms?

25 A. It's hitting off that tower 239.

1 Q. Just to be clear. The cell records you have,
2 you've never seen the phone having activity after that
3 point?

4 A. After that point everything is inbound,
5 whether it be text messages or phone calls and the phone
6 calls going straight to voice mail.

7 Q. I would like to turn your attention to a
8 different number at this point.

9 MS. BLUTH: May I approach.

10 THE COURT: You may.

11 BY MS. BLUTH:

12 Q. Showing you what's been marked for purposes of
13 identification is State's Proposed Exhibit 106.

14 A. Thank you.

15 Q. Do you recognize the document that I put in
16 front of you?

17 A. I do.

18 Q. What do you recognize those to be?

19 A. This is a Sprint subscriber record as well as
20 call detail record with cell site.

21 Q. Are these records -- I apologize for the
22 repetitiveness of these, but are these documents kept in
23 the normal ordinary scope of Sprint's business?

24 A. Yes.

25 Q. Are you the custodian of these records?

1 A. Yes, I am.

2 MS. BLUTH: At this time I move to admit State's
3 Proposed Exhibit 106.

4 MR. SCHIECK: No, objection, your Honor.

5 THE COURT: 106 may be admitted. You may
6 publish.

7 MS. BLUTH: Thank you.

8 BY MS. BLUTH:

9 Q. In regards to the number, do you have it
10 memorized or should I -- I'll leave you a copy like we did
11 before to work off of. Okay?

12 A. Great. Thank you.

13 Q. Can I have the telephone number we're looking
14 at?

15 A. (702) 884-1539.

16 Q. Now, you stated that there is subscriber
17 information contained within these documents. Just
18 briefly can you tell us what subscriber information is.

19 A. Subscriber is the name and address information
20 about the account holder who opened the account.

21 Q. By looking at this subscriber information do
22 you see the name of the individual who opened the
23 account?

24 A. Yes.

25 Q. Who is that?

1 A. It's listed as Donita -- D-O-N-I-T-A --
2 Beasley -- B-E-A-S-L-E-Y.

3 Q. Explain to the ladies and gentlemen of the
4 jury what the difference is between a prepaid phone and a
5 non-prepaid phone?

6 A. A prepaid phone are ones where you come in and
7 you give the money up front. By doing that you get a set
8 number of minutes, based upon how much money you put up
9 front, or you pay for an unlimited number minutes or use
10 during a 30 day period of time. There is no verification
11 or credit check done, so if you want to continue using the
12 phone after the funds run out you have to come back in and
13 put additional funds. Because of that we do not verify
14 name or address. We take whatever the customers gives to
15 us and enter it into the system as is.

16 The second type of postpaid account is the one
17 where we provide you credit. You use that service and at
18 the end of the month we send you the bill for that service
19 that we provided to you.

20 In that case we verify name, address because we're
21 sending out credit to you and we need to verify to make
22 sure you are who you say you are.

23 Q. So the type of phone that (702) 884-1539
24 number, what type of phone is that?

25 A. It's a prepaid phone.

1 Q. Now, in looking at the record that are in
2 front of you, are these in the same -- looking at the call
3 detail records -- are these in the same format as the
4 (323) number?

5 A. Yes.

6 Q. When I say format I mean moving from left to
7 right of the calling number?

8 A. Yes. We'd expect to see same columns. And
9 the same rules would apply as far as if you seed a routed
10 call you check for the 1/1 prior to the number in the
11 called number field to see if it's going to voice mail or
12 not.

13 Q. Look at the records and tell the jury the time
14 frame from which these records cover.

15 A. They cover from the first of September 2008 on
16 through the morning of the 6th of September 2008.

17 Q. I would like to turn your attention to
18 September 2, 2008. Turn to that point in the records and
19 let me know what page that is on.

20 A. Page 5 of 18 is where the very first call on
21 the 2nd of September start.

22 Q. Now, again same question. In the early
23 morning hours, early afternoon hours do you see
24 significant history going on or activity -- incoming,
25 outgoing phone calls, text messages, et cetera?

1 A. I do.

2 Q. Now, I would like to turn your attention to
3 that time frame in which we were looking at the (323)
4 number. So the 2:15 to 4:30 time, if you could.

5 Would that be on the same page of the records?

6 A. That's on page 7 of 18 of the records.

7 Q. Looking at the time frame from about 2:23 to
8 4:15 in the afternoon, the individual using this 884
9 number, which tower or cell site locations are they
10 hitting off of?

11 A. They're hitting off of two different towers.
12 Tower 239 and tower 144.

13 Q. Same towers as which you were discussing the
14 323 number hitting off of in State's Exhibit 109?

15 A. Yes.

16 Q. That's during the same period in which we
17 previously spoke about the individual being on a 52 minute
18 phone call, she was also hitting those two towers?

19 A. Yes.

20 Q. So the same time that the 323 number received
21 the last incoming phone call is hitting off the same cell
22 tower as the 884 number is sitting off of?

23 A. Yes.

24 Q. Is there a time in the record within that time
25 period that there is no phone activity at all on the 884

1 number?

2 A. There is.

3 Starting at 2:35 p.m. and 43 seconds, which is the
4 end of an outbound call that's 5 seconds long.

5 The next activity doesn't occur until 4:09 p.m. and
6 43 seconds. There's a gap there of a little over an
7 hour-and-a-half where there is no phone activity.

8 Q. But there was phone activity at 2:35 and
9 4:09?

10 A. Yes.

11 Q. Which cell towers were the phone hitting off
12 of at those times?

13 A. Using cell tower 239, both before and after.

14 Q. Now, I would like to turn your attention to
15 the evening hours on that day, if you could, from about
16 7:30 p.m.

17 A. That starts at the very bottom of that same
18 page.

19 Q. Starting from about 7:33 p.m., during that
20 phone call using the cell site locations, does the
21 individual using the 884 number leave the 1519 Laguna
22 Palms area and begin traveling north?

23 A. At 7:33 and the duration of the call being 61
24 seconds on cell site 144, which is the same cell site in
25 close proximity to that address.

1 We don't see it leaving that until 7:42 p.m., which
2 is now on page 8 of 18, the second line down. Where you
3 see cell site 29, which is another one that is in close
4 proximity but further west from the Laguna Palms
5 address.

6 Q. Would that be marked by your yellow pin here,
7 029?

8 A. Yes.

9 Q. So at -- did you say 7:42?

10 A. Yes.

11 Q. You see the phone start to ping off a tower
12 located further from the home?

13 A. That's correct.

14 From there it continues on and actually starts
15 hitting cell sites that are northwest of the Las Vegas
16 area. Specifically cell sites near US Route 95.

17 Q. Have you also made -- excuse me. Were you
18 resent when the district attorney made a map showing you
19 where the towers you referenced are located?

20 A. Yes.

21 MS. BLUTH: Permission to approach.

22 THE COURT: You may.

23 BY MS. BLUTH:

24 Q. Showing you State's Proposed Exhibit 108. Do
25 you recognize the map?

1 A. I do.

2 Q. Bottom right side of the map, what are we
3 looking at?

4 A. The bottom right side of the map shows the
5 northern part of Las Vegas.

6 Q. The rest of the map is that the urban area
7 located outside of Las Vegas?

8 A. I wouldn't call it urban -- rural.

9 Q. I meant rural. I apologize?

10 Is that a fair and accurate depiction of the map
11 during this time period and the cell site location in
12 2008?

13 A. Yes.

14 MS. BLUTH: Permission at this time to move into
15 evidence State's 108.

16 THE COURT: Any objection to the admission and
17 publication of 108.

18 MR. SCHIECK: No objection.

19 THE COURT: State's 108 is admitted. You may
20 publish.

21 BY MS. BLUTH:

22 Q. If you would explain what we're looking at
23 here.

24 A. We have 3 yellow push pins. Starting on the
25 left going to the right these are Sprint towers 389, 117,

1 and 001, or cell tower 1 that are listed there.

2 Q. So as -- after the 884 number hits off of
3 Sprint cell site 029 from there where does the phone
4 travel?

5 A. We see it then connecting to cell tower 1,
6 then 117, then 389, then back to 1 again. Which would
7 indicate generally travel north along US Route 95.

8 Q. Okay.

9 Now, in between the time frame that I was
10 referencing earlier, I believe you corrected me. I said
11 7:33 but you corrected me to 7:42?

12 A. Yes.

13 Q. In between 7:42 and 8:56 p.m. there are
14 several, several phone calls made during that time period,
15 correct?

16 A. Yes.

17 Q. During that time period is the phone
18 traveling, like you said, up the 95 area and transmitting
19 off of the 3 towers we see?

20 A. We do see that. During that process it
21 appears to reverse itself. It appears after going north
22 the phone is coming back towards Las Vegas.

23 Q. On the map do you see state Route 156 area?

24 A. I do.

25 Q. Now the towers that are closest to that state

1 Route 156 area, are those the same towers you have marked
2 with the 3 yellow pins?

3 A. They are the 3 closest. The one is closer
4 then the others. That is tower 389.

5 Q. So if an individual traveled from the 1519
6 Laguna Palms area up the 95 and was on state Route 156,
7 would it be appropriate for him to be transmitting off of
8 Sprint 389 tower?

9 A. Yes.

10 Q. So during the time period of which we have
11 been discussing -- the 7:42 to 8:56 time frame -- do you
12 have an opinion if someone was at the state Route 156
13 location which tower they would be transmitting off of?

14 A. If they were on state Route 156, I would
15 expect that they would use the tower 389. And depending
16 on where along that route would depend on which sector of
17 the tower they would use. But based on the fact during
18 that time frame they are using Sector 3, which is side
19 two, I would say they were somewhat generally going to be
20 east versus more of the western part of that route.

21 Q. Now, do you agree or disagree with the opinion
22 it would not be possible for this cell phone to be
23 anywhere near 156 during the period of 8:05 to 8:28?

24 A. I disagree with that.

25 Q. You believe if someone was in that area they

1 would be hitting off of the 389 tower?

2 A. Yes.

3 Q. Which is the tower closest to state Route
4 156?

5 A. Yes.

6 Q. Now, you stated in 2008 you didn't keep
7 records of exactly where a satellite was facing,
8 correct?

9 A. Correct. We did not make it part of our
10 standard record, what is known as an ASMIS, which is
11 literally the direction that the antennas are facing on a
12 cell site. We didn't start doing that as common practice
13 until 2011.

14 Q. If I were to use Google and try to research
15 this information, would that give me accurate information
16 during that time period of where a cell tower was located
17 and the sector's directionality?

18 A. If you are able to get a capture from Goggle
19 Earth that would indicate 2008, at best it would show the
20 physical location of the cell site. You might have some
21 information as far as how the structure is set up, but it
22 would not tell you the specifically the direction the
23 antennas are facing.

24 Q. Now in 2015 does Sprint keep records of
25 exactly where the cell site antennas are facing?

1 A. Yes. Since 2011 through the present we do
2 keep that information.

3 Q. How does one receive that type of information
4 to know which way the antenna are facing?

5 A. We provide it on a similar cell site list,
6 like the repole 353 we have been discussing. We happen to
7 have newer versions of it with a slightly different name.
8 But that information is still out there and available.
9 It's often available through our website for people that
10 have access to it.

11 Q. In last time that these sites were done was in
12 2011?

13 A. Very first time that that site -- we recorded
14 that information was in 2011.

15 Q. In 2015 have you done the research and checked
16 the site to show which way the antenna is facing off of
17 Sprint 389?

18 A. I looked at both periods of time and found the
19 information from both periods of time are the same. In
20 this case the side 3 of the tower, which is the beta side
21 was facing 30 degrees. I know this is going go back to
22 our geometry lessons back in school, but a circle is 360
23 degrees in a circle. If we imagine zero degrees being due
24 north and 180 being due south, 90 is due east and 270 is
25 due west.

1 So 30 degrees means that sector is facing north,
2 northeast or slightly past north more of an easterly
3 fashion is where it's facing.

4 Q. Did you make a map to show the cell site
5 location and the way they were facing both in 2011 and
6 2015?

7 A. We created a -- had a map created with a
8 triangle put out showing the idea where we'd expect that
9 side 3 to cover. It's an approximation, but I think it's
10 a pretty good approximation to give an idea of what the 30
11 degree facing would cover.

12 MS. BLUTH: May I approach, your Honor.

13 THE COURT: You may.

14 BY MS. BLUTH:

15 Q. Showing you what's marked for purposes of
16 identification is State's Proposed Exhibit 110. Do you
17 recognize this map?

18 A. I do.

19 Q. Is this the map discussing what you were just
20 explaining to the jury?

21 A. Yes.

22 Q. Is it a fair and accurate depiction of the
23 current placement of the antenna and the way the antenna
24 faces?

25 A. Yes. Current at least through 2011, perhaps

1 prior.

2 MS. BLUTH: I'd move to admit into evidence
3 State's Proposed Exhibit 110.

4 MR. SCHIECK: Objection on relevance, your
5 Honor. It's 2001. He doesn't have any information from
6 2008 therefore it's misleading to the jury to show them
7 2011 information.

8 THE COURT: Ms. Bluth.

9 MS. BLUTH: State's position is that in 2015 it
10 was the same as in 2011, so he's showing the general area
11 in which the antenna is facing.

12 THE COURT: I believe it would be perspective to
13 assume it was the same in 2008, regardless of the time
14 frame. I'll sustain the objection.

15 MS. BLUTH: I'm not asking -- definitely not
16 asking them to speculate as to 2008. I'm just showing the
17 way it is facing now.

18 THE COURT: The relevance for that would be.

19 MS. BLUTH: To show the way the antennas work
20 and work out in the urban areas.

21 THE COURT: On that basis I'll allow it. I will
22 admit State's 110, with that limited understanding.

23 BY MS. BLUTH:

24 Q. State's admitted 110 -- so explain to the
25 ladies and gentlemen now with the visual aid.

1 MR. SCHIECK: I'd object again. You said general
2 demonstration purposes, now we'll talk about this area on
3 this map. He has described how it works. He doesn't need
4 this.

5 THE COURT: It may aid the jury how the towers
6 work. It is understood that this is not relevant to the
7 time frame in question. Simply for the general
8 understanding to see what this triangulation is.

9 You may proceed.

10 THE WITNESS: What we see is that red triangle
11 would indicate the area covered by a sector. We talked
12 about cell sites having more than one sector, that shows
13 the portion of the circle we'd expect to be covered by one
14 sector.

15 Showing with a 30 degree ASMIS that it would face
16 that way. There is limitations that because it faces one
17 particular direction, it's not going to face in the
18 opposite direction. That sector limits the scope as far
19 as the area that would be covered by that cell site and
20 that sector.

21 Q. The area within the red triangle?

22 A. Yes.

23 Q. Then one last question that I had for you. I
24 apologize to go back in regard to the subscriber
25 information.

1 On the 884-1539 number, there is an e-mail given?

2 A. Yes.

3 Q. Is that an e-mail given by the individual that
4 gets the phone or is that e-mail given -- assigned by
5 Sprint?

6 A. That e-mail is referred to as a network access
7 identifier -- NAI. It's one that's created by Sprint.
8 It's based upon the subscriber's name, then the time of
9 service.

10 In this case it's abbreviated. It says Donita
11 Beasley at BO -- abbreviation for my Boost Mobile, dot,
12 Sprint, PCS, dot, com.

13 Q. That is not an e-mail that Donita Beasley
14 provided Sprint?

15 A. Correct.

16 MS. BLUTH: Thank you, your Honor. I'll pass
17 the witness.

18 THE COURT: I think we should take a brief
19 recess before we reassume questioning with Mr. Clark.

20 I will remind jurors on this 10 minute recess --

21 JURY ADMONITION

22 During the recess, ladies and gentlemen, you are
23 admonished not to converse among yourselves or with anyone
24 else, including, without limitation, the lawyers, parties
25 and witnesses, on any subject connected with this trial,

1 or any other case referred to during it, or read, watch,
2 or listen to any report of or commentary on the trial, or
3 any person connected with this trial, or any such other
4 case by any medium of information including, without
5 limitation, newspapers, television, internet or radio.

6 You are further admonished not to form or express any
7 opinion on any subject connected with this trial until the
8 case is finally submitted to you.

9 Please follow the direction of the marshal and have
10 your break in back.

11 I have one matter to bring to counsel's attention. I
12 observed a significant period of time during the course of
13 the testimony of Mr. Clark when it appears that one of the
14 jurors was sleeping. That is Juror No. 13, Mr. Harry. I
15 would like to, after the break and before we bring all the
16 jurors back, ask my marshal to bring Mr. Harry back in,
17 I'd like to inquire of him with regard to the
18 circumstances.

19 I watched. It was at least in excess of a 10 minute
20 period to see if there was any -- some people listen with
21 their eyes closed. Some listen with their head in a
22 certain position. While he did shift positions once
23 during that 10 minute period I saw no effort on his part
24 to view any exhibits that were being posted, watch the
25 movement of Ms. Bluth through the room, or in any other

1 way listen to the testimony. So I want to, at least, if
2 nothing, inquire and further admonish him if need be.

3 MS. BLUTH: Thank you, your Honor.

4 MR. SCHIECK: Thank you.

5 THE COURT: Anybody make these observations as I
6 did.

7 MR. HYTE: I did not.

8 MS. LUZAICH: I did not.

9 THE COURT: All right. See you back in 10
10 minutes.

11 (Brief recess taken.)

12 THE COURT: There was a request by Ms. Payton
13 after her testimony she could come back into the
14 courtroom. Since I had not had a discussion with counsel
15 and I wasn't sure if there was any reason to expect she
16 might be recalled, I told him to advise that until there
17 was a discussion and either agreement or some
18 determination made she could not return to the
19 courtroom.

20 I don't know if she is still out there. He indicated
21 she'd gone elsewhere. But I did want to find out if there
22 were any reason why she cannot return to the courtroom.

23 Does the State intend to recall Ms. Payton.

24 MS. LUZAICH: We don't.

25 MS. BLUTH: We don't have any reason.

1 THE COURT: Does defense have any intent to call
2 Ms. Payton or any objection to her returning to the
3 courtroom or staying in the courtroom going forward with
4 the trial.

5 MR. SCHIECK: We have no intention to recall Ms.
6 Payton. Nor is she under subpoena by our office.

7 THE COURT: I'll advise my marshal -- if you do
8 see Ms. Payton again you are welcome to check once you are
9 back in the area with jurors, if she is there, advise her
10 she is able to return. If she's not there, just leave it
11 be until you are asked again.

12 We're ready for Mr. Harry.

13 Mr. Harry, hello.

14 IMPANELED JUROR: Hi.

15 THE COURT: Can you remind me what you do for
16 work or school.

17 IMPANELED JUROR: LVNPD.

18 THE COURT: That is your occupation. I remember
19 you had that experience.

20 The court observed for what the court would consider
21 to be a significant period of time during testimony of
22 this witness you with your head in hand with your eyes
23 closed in two different positions, but with zero reaction
24 to or effort to view any of the evidence shown to the jury
25 or keep track of any of the conversations involving

1 counsel and the witness.

2 Are you sleeping in here Mr. Harry.

3 IMPANELED JUROR: No, ma'am. I was not
4 sleeping.

5 THE COURT: Can you help me understand why it
6 appears to the contrary. It appeared you were sleeping in
7 here.

8 IMPANELED JUROR: I was trying to basically wake
9 myself up. There is many -- sometimes I was going to doze
10 off, but I was trying to keep myself up.

11 THE COURT: All right. We didn't reassume trial
12 here until about 1:30 today, maybe 1:40. We went for just
13 over an hour half we broke. Is there some reason why
14 you're having difficulty staying awake.

15 IMPANELED JUROR: I woke up around 5:24 this
16 morning. I took my sister to camp. I had to do a couple
17 of other things, so I was up all day today.

18 THE COURT: I saw you in here with Jim Jones
19 food and drink while I don't have a problem with drinks
20 don't bring food. Finish your lunch before you come here
21 please. And endeavor to remain all appears of being
22 attentive to the evidence and I'll take your
23 representation at face value that you were not in fact
24 sleeping although you had moments of being.

25 Either counsel have any questions.

1 MS. LUZAICH: Not by the State.

2 MR. SCHIECK: No, your Honor.

3 THE COURT: You may return to your fellow
4 jurors, Mr. Harry.

5 THE WITNESS: Thank you, ma'am.

6 MR. SCHIECK: Your Honor, I did not personally
7 observe Mr. Harry sleeping nor did Mr. Hyte. However, I
8 accept the court's representation that it went on for a
9 period of 10 minutes.

10 At first he denied he was sleeping at all, then
11 recanted that and said, well, he was trying to keep
12 himself awake and he was dozing. Given the court's
13 observations and his concession that he was dozing during
14 testimony, I would, in an abundance of caution, ask that
15 we remove Mr. Harry.

16 We have 2 other alternates that are available.
17 There's not that many days of trial left. I just think we
18 run a risk of -- and he's the first alternate. If
19 something should happen to one of the other jurors, we're
20 going to be faced with the record we have now -- that the
21 court has now rightfully noted that we had an inattentive
22 juror. I'm constrained because I don't have my client
23 here to ask him his observations, but I certainly would be
24 asking this juror be removed.

25 THE COURT: Ms. Luzaich or Ms. Bluth, any

1 response.

2 MS. LUZAICH: The State doesn't have a position.
3 I'll submit it.

4 THE COURT: As the court said on the record
5 before we brought in Mr. Harry, the time I observed was
6 approximately from 2:45 to 2:55. And I'm not sure prior
7 to that time how long it had been that Mr. Harry -- and to
8 try to describe for the record the first position I saw
9 him in was with his left hand under his chin covering his
10 mouth with his head down into his hand. His eyes were
11 closed. I would say he sustained that position for
12 approximately 5 minutes.

13 There was then a shift in position to which he
14 switched to his right hand, on the side of his right cheek
15 with his head, again, down, eyes closed. And both times
16 somewhat slumped in the chair.

17 Again, what I was looking for was any movement That
18 lasted 5 minutes at which point he shifted to a straight
19 up sit up position with his eyes open and did not appear
20 to be otherwise not paying attention.

21 That observation I had directly contradicts his
22 representations that he was not sleeping. Although I can't
23 swear that he was sleeping. What I saw was any number of
24 times during that approximate 10 minute period in which
25 evidence was asked to be introduced, evidence was placed

1 on the Elmo for display, the attorney asked to approach,
2 and did in fact approach the witness, the attorney
3 approaching the clerk's desk and taking exhibits. Any
4 which movements I would assume if someone was just resting
5 their eyes would have prompted them to be engaged. None
6 of it occurred.

7 I also noticed two jurors observing the juror who was
8 not paying attention. Most notably Juror 12 and Juror 15.
9 I am concerned about the circumstances. I did not further
10 inquire of the witness, but I was tempted to, if he knew
11 who this witness was. I was refrain ed from making that
12 inquiry, but I'm concerned what the answer to that would
13 be.

14 MR. SCHIECK: Just to clarify the record. The
15 witness on the stand was Mr. Clark. And most of his
16 testimony related to exhibits being shown to him and
17 describing the various columns and things of that on the
18 repole and the phone records and on the mapping. So this
19 was, as opposed to a witness you could just listen to, he
20 was a visual witness with a number of items being
21 displayed. If the juror's eyes were closed, we're pretty
22 sure he wasn't looking at the evidence presented and
23 described by the witness.

24 THE COURT: Out of an abundance of caution at
25 this time, given the period of lack of attention and the

1 amount of evidence in which the Juror did not observe, as
2 much as I hate to do so I think we need to excuse Mr.
3 Harry at this time, and I'm going to do so.

4 It's not clear whether or not -- we'd have no way to
5 know -- whether or not we'd require further service of the
6 alternates, as we are in the first alternate position, I
7 think it would be of concern to the court should he be
8 called into service. So at this time we'll excuse him.

9 Tom, return the other jurors to the courtroom. Ask
10 Mr. Harry to stay behind. Ask the jurors to return to the
11 courtroom. Then you can tell Mr. Harry that he is
12 excused. You might check in with Cindy to see if there is
13 any additional information she needs to know, but he can
14 return to 3rd floor jury services and be advised he has
15 been excuse from this panel.

16 Anything else before the jurors return.

17 MR. SCHIECK: No, your Honor.

18 THE COURT: Take your seats. I invite each of
19 you to, if you used them during the break, to make sure
20 your cell phones are off.

21 I do want to, although the court has a record, I do
22 want to advise the jurors that we have excused Juror 13,
23 because the court observed Juror 13 being inattentive of
24 the trial for an extended period of time. Because the
25 inattention began during court the court did not interrupt

1 the proceedings to interfere with the circumstances but
2 observe and determine that we could not proceed out of an
3 abundance of caution with that juror since he missed a
4 significant portion of the visual evidence provided.

5 I ask all jurors please, there is not a significant
6 period of time that we are in here so please do whatever
7 is necessary to ensure your full attention at all times
8 during the course of trial.

9 Thank you.

10 State -- I don't have my marshal. Could I impose Ms.
11 Luzaich to get Mr. Clark to the stand. Mr. Clark, retake
12 the stand when you reach it. I'll ask you to acknowledge
13 for the record that you are reminded you are still under
14 oath.

15 THE WITNESS: I understand.

16 THE COURT: Mr. Schieck.

17 CROSS-EXAMINATION

18 BY MR. SCHIECK:

19 Q. Good afternoon.

20 A. Good afternoon.

21 Q. I'll try to be brief with my questions this
22 afternoon.

23 Let me clarify. You indicated on direct
24 examination that the cell tower information is going to
25 provide a general area where a cell phone is located?

1 A. Yes.

2 Q. Especially when we're talking about records
3 from 2008, which aren't as sophisticated as the records we
4 have now.

5 A. Yes. They are more sophisticated or less
6 sophisticated and not as inclusive as they are now.

7 Q. They don't provide as much information?

8 A. Correct.

9 Q. Some of that information would be which
10 direction each sector is aimed on a tower?

11 A. Yes. Where as in 2008 that information was
12 available if requested for a tower. It wasn't part of the
13 standard record keeping process until later.

14 Q. So the records you have been provided today do
15 not contain that information?

16 A. That's correct.

17 Q. So if we have a cell phone that is hitting off
18 of a particular tower, you can't say whether or not the
19 phone is to the east, to the south, or to the north of
20 that tower?

21 A. We know we have sectors, but since we don't
22 have the orientation we know it's within the vicinity of
23 the tower.

24 Q. Each tower may have a different strength to
25 it, correct?

1 A. I wouldn't say they all have different
2 strengths. Though that is likely, I'm not sure if that
3 answer, as far as if they are all set up differently, and
4 how it's different.

5 But the range, yes. They are set up by ranges.
6 The ranges vary according to the number of customers it's
7 trying to serve. The more customers you want to serve,
8 the less the range is.

9 Q. That's something that Sprint could set itself
10 on each tower?

11 A. It's something we do set on each tower to meet
12 the needs of that area.

13 Q. But we don't have that information on any
14 towers we're involved in?

15 A. That's not standard record as far as the
16 specific range on any cell tower.

17 Q. The range that is set by Sprint on a cell
18 tower in large part would be determined by the amount of
19 use that tower gets?

20 A. Or the number of potential users that tower
21 could get.

22 Q. So when we talk about the particular towers in
23 this case, for instance, Sprint tower 239, we don't have
24 information available to us as to the range that that
25 tower was set at?

1 A. No. That's why at that time -- at the
2 beginning I said we have the approximate ranges of 2 to 10
3 miles across that network, depending on the density of
4 people in that area.

5 Q. Likewise on Sprint 144, we don't know what
6 range that was set at?

7 A. Correct.

8 Q. Geographically speaking, Laguna Palms is
9 closer to tower 144?

10 A. Yes.

11 Q. Are there other towers -- I'm going to put
12 State's Exhibit 109 back up, which is the general
13 geographic area surrounding 1519 Laguna Palms. Are there
14 other cell towers not depicted on this map that if we put
15 them all on there they would show up?

16 A. I believe in this range there may have been 1
17 or 2. One that was further north and one further south
18 that aren't depicted on here.

19 Q. You don't know those numbers?

20 A. I don't recall them off the top of my head.
21 There is a couple hundred cell towers that made up the
22 whole city of Las Vegas.

23 Q. You were only pointed to these towers in
24 preparing this exhibit?

25 A. I was asked to look at time frames and these

1 were particular cell towers that came out through those
2 time frames.

3 Q. And in order to avoid being unfair to you, you
4 are not based here in Las Vegas?

5 A. No. I'm based out of Kansas City.

6 Q. You don't know streets and addresses and
7 things like that?

8 A. Correct.

9 Q. Other than the information on the cell tower
10 list you have?

11 A. Yes. And I relied on a mapping program to
12 determine where those would be at.

13 Q. If I ask you other addresses and where they
14 would be on this map, you wouldn't be able to tell me
15 where those are at?

16 A. No.

17 Q. Now, correct me if I'm wrong, but cell usage
18 is such that when I pick up the phone and go to use the
19 phone, the phone is going to reach out to the network and
20 find me the strongest connection?

21 A. It's done that prior to you making the phone
22 call or attempting it. So at the time you made that
23 attempt, it's reaching out to the one it's already
24 determined. And as long as that one is available it will
25 connect to it.

1 Q. That is the strongest signal available?

2 A. Yes.

3 Q. Not the closest?

4 A. Strongest signal.

5 Q. It's possible there could be a tower that is
6 closer but it doesn't have as strong of a signal as the
7 tower further away?

8 A. Yes.

9 Q. It's possible that the tower that is closest
10 to me may have a great deal of usage at one moment and the
11 system would kick me to the next strongest tower?

12 A. I want to be careful about saying a lot of
13 usage and kicking to the next tower. If the tower you are
14 trying to connect to is too busy, it cannot allow new
15 traffic into it, you get that dreaded message of unable to
16 complete the call or network not available on the phone.
17 At that point in time when the phone goes back and takes
18 that information then quickly determines what's the
19 strongest signal knowing the one chosen is busy, it uses
20 that. But the network doesn't kick anything over.

21 If the time it has connected to a phone call and
22 it's already successful and the network is saying while
23 this tower is starting to get overloaded, it can move the
24 phone that's in progress to another tower that's still
25 going to provide an adequate signal to help balance the

1 load. But that's after the call has been successfully
2 started.

3 Q. If I make a phone call and I connect to tower
4 No. 1, and while I'm on the phone I have not moved tower
5 No. 1 gets overloaded, has a lot of traffic coming into
6 it, the system could kick me to tower No. 2, and I don't
7 realize it because I'm talking consistently, correct?

8 A. As long as tower No. 2 provides adequate
9 strength to be able to complete the call, it's possible
10 that happened and the user is not aware of it.

11 Q. It can look at the records, if I hang up while
12 still connected to tower No. 2, if we looked at the
13 records it appeared perhaps I moved from the location of
14 tower 1 to tower 2?

15 A. The records would indicate that tower 2 was
16 the indicator. As far as whether there is movement or not
17 based on the duration of the call, distance between the
18 towers, we could come up with a conclusion that the
19 network transferred the call over, or if it's far enough
20 apart there may have been some type of motion. But it is
21 inclusive unless you had a lot of the data put together to
22 make that assumption.

23 Q. Okay. Likewise, I could be on a call and be
24 hooked up to tower No. 1 and I could go somewhere else,
25 but as long as tower No. 1 is still the strongest signal I

1 have I'll stay on that tower, correct?

2 A. Once the call has begun and that is the
3 strongest signal and the network doesn't feel there's a
4 need to transfer you and you are in range of it, you can
5 stay on tower 1 the entire time.

6 Q. Tower 1 may have a range of 2 miles?

7 A. Yes.

8 Q. So I could move 2 miles and still remain on
9 tower No. 1?

10 A. Yes.

11 Q. Given all of the other variables we've talked
12 about?

13 A. Yes.

14 Q. Are there other reasons why if I made a call
15 the phone wouldn't connect to what would be the nearest
16 tower to me?

17 A. Once again the focus is being on the strongest
18 signal. So if there is something else that's causing that
19 signal not to be the strongest signal, those are the
20 factors involved. And there are many of those. I don't
21 know if I can name all of them. But if the signal is not
22 being broadcast at you from the nearest tower, it's not
23 intended to cover the area, there is no signal, so it
24 wouldn't be the strongest. If there was something
25 physically blocking that signal, a building or physical

1 structure, hill, mountain, those kinds of things, that
2 could interfere. Extreme weather, blizzard, hurricanes,
3 those could play a role. But the list goes on and on as
4 far as all the factors that can play a role in it.

5 Q. Now, are there situations where just glitches
6 happen in the system and we get strange information on
7 these reports?

8 A. I guess -- could you clarify, strange
9 information.

10 Q. Right in the middle of two calls in one
11 location for some reason the middle call hits on somewhere
12 in a different area?

13 A. I'd ask you to clarify what you mean,
14 completely different area. Are you talking hundreds of
15 miles away.

16 Q. 10, 15 miles away. Do you have any of the
17 exhibits in front of you?

18 A. I do have 106 in front of me.

19 Q. I'm going to hand you State's Exhibit 107 and
20 105, which are the call records for the (323) area code
21 and cell site repole for 353.

22 A. Okay.

23 Q. If I could direct your attention to on Exhibit
24 107, which is the (323) area code. If you could look at
25 the entry on page 12.

1 Can you go to page 12.

2 A. Sure.

3 Q. Page 12.

4 A. I have it.

5 Q. There are several of the calls in the middle
6 of the page on the third column under dialed digits, it
7 has hash tag and value.

8 A. Yes.

9 Q. What does that indicate on your records?

10 A. That whoever printed this out that there
11 formatting on the page didn't allow for the number that
12 was there to show up so it shows that as the actual number
13 present.

14 Q. I don't understand. How does your system not
15 be able to print out the number that was the dialed
16 digits?

17 A. Our system did. It's whoever printed the
18 physical copy, however, they had their Excel spreadsheet
19 set up didn't take into account that was a larger number
20 and there was not enough room in the field. So it's a
21 print preference setting.

22 Q. Document 107 has missing information that
23 would have been provided by Sprint, but didn't get printed
24 out?

25 A. Yes. There are outgoing calls, and we see in

1 the call number field ultimately where it reached to, so
2 that dial digits column, we don't know did they dial a 1
3 before the area code, did they dial the area code, did
4 they dial star 67 to block the call. That information is
5 not there as far as the two numbers communicating with one
6 another. That information is there.

7 Q. Directing your attention to the last column,
8 there appeared to be the last cell is hitting off of tower
9 121 on several sequential calls. Do you see that?

10 A. I see that.

11 Q. And repolling would tell us where that tower
12 is. These are calls that commence on September 2nd at
13 1:38 p.m., correct?

14 A. It also is using that tower 121 at 1:37 p.m.

15 Q. Tell us where tower 121 is according to your
16 repolling information.

17 A. That is the located at 130 West Owens, Las
18 Vegas, Clark County, Nevada.

19 Q. That sequence of hitting off of tower 121
20 appears to end at 1:45 p.m; is that correct?

21 A. Yes.

22 Q. The next entry which is at 146 -- so less than
23 a minute later -- would indicate cell tower 2351?

24 A. It shows that that phone call ending at tower
25 351, yes.

1 Q. What is the location of 351?

2 A. That is 200 South First Street, Las Vegas,
3 Clark County, Nevada.

4 Q. Is there a physical description of where that
5 location is?

6 A. Says Golden Nugget parking garage.

7 Q. So it shows the phone traveled from 130 West
8 Owens to the Golden Nugget parking garage in less than a
9 minute?

10 A. It indicates that in between there it also hit
11 tower 40 at 1:45. Yes. It shows those were the beginning
12 and ending towers.

13 Q. So that we are clear. Tower 040 --

14 A. That's 400 West Carey, Las Vegas, Clark
15 County, Nevada.

16 Q. If this information is correct it indicates
17 that strongest tower strength for this phone between being
18 at 400 West Owens and 400 West Carey was the parking
19 garage at the Golden Nugget when it ended that call?

20 A. Yes, that was the strongest signal.

21 Q. There could be any number of reasons why a
22 phone would jump to a different location to get the
23 strongest signal that we just talked about?

24 A. There are a number of reasons, including
25 proximity as well as balancing by the network.

1 MR. SCHIECK: Court's indulgence, please.

2 THE COURT: Yes.

3 MR. SCHIECK: Thank you, sir. No further
4 questions, your Honor.

5 THE COURT: Thank you.

6 Ms. Bluth.

7 MS. BLUTH: Just one question.

8 REDIRECT EXAMINATION

9 BY MS. BLUTH:

10 Q. If I could ask you one question pertaining to
11 State's 109. It's kind of similar to the question that
12 defense asked you.

13 If I am located inside of 1519 Laguna Palms, let's
14 say having a conversation with whoever I'm on the phone
15 with that lasts 5 minutes, is it possible that even though
16 I don't leave 1519 Laguna Palms during that 5 minute
17 conversation, my conversation can transmit off the 144
18 tower and at a different time during that phone call also
19 hit off Sprint 239 tower?

20 A. Yes.

21 Q. Without leaving the house?

22 A. Without leaving the house.

23 Q. Thank you.

24 MS. BLUTH: Nothing further.

25 THE COURT: Anything on that point.

1 MR. SCHIECK: Nothing, your Honor.

2 THE COURT: By a show of hands, do the jurors
3 have any questions for this witness. Seeing there are
4 none, you are excused. Thank you. Mind your step as you
5 exit.

6 THE WITNESS: Thank you, your Honor.

7 State may call their next witness.

8 MS. BLUTH: State calls Shalana Eddins.

9 THE COURT: Remain standing and my clerk will
10 swear you in.

11 THE CLERK: You do solemnly swear the testimony
12 you are about to give in this action shall be the truth,
13 the whole truth, and nothing but the truth so help you
14 God.

15 THE WITNESS: I do.

16 THE COURT: Be seated. State and spell your
17 name for the record.

18 THE WITNESS: Shalana Eddins, S-H-A-L-A-N-A,
19 E-D-D-I-N-S.

20 THE COURT: Thank you.

21 Ms. Bluth.

22 DIRECT EXAMINATION

23 BY MS. BLUTH:

24 Q. Thank you, your Honor. Good afternoon.

25 Do you know an individual by the name of Lesean

1 Collins?

2 A. Yes.

3 Q. If I showed you a picture of Mr. Collins would
4 you recognize him?

5 A. Yes.

6 Q. Showing you State's Exhibit 102, there is a TV
7 in front of you. This is showing up on the screen.

8 A. Yes.

9 Q. You recognize the individual in this
10 photograph?

11 A. Yes.

12 Q. Who is that?

13 A. Lesean Collins.

14 Q. How do you know Mr. Collins?

15 A. We share 5 children together.

16 Q. How long have you known Mr. Collins for?

17 A. 19 years.

18 Q. So I apologize. I'm not good at math. What
19 year did you meet?

20 A. '96.

21 Q. And you were in a relationship for some time
22 period; is that correct?

23 A. Yes.

24 Q. How long would you say your relationship
25 lasted?

1 A. 12 years.

2 Q. How many children do you have in common?

3 A. 5.

4 Q. I would like to turn your attention to
5 September of 2008. Now during that time period where were
6 you living?

7 A. 1519 Laguna Palms.

8 Q. Is that here in North Las Vegas?

9 A. North Las Vegas.

10 Q. Who also lived at that residence?

11 A. Me and at the time 4 children. So me and the
12 4 children.

13 Q. Was it common for the Defendant -- I'm
14 speaking of Lesean Collins -- was it common for him to
15 frequent the home?

16 A. Yes.

17 Q. Sometimes he'd stay over night there?

18 A. Yes.

19 Q. Did he keep clothes there?

20 A. Yes.

21 Q. Was it in regard to -- strike that.

22 With your children in 2008, you stated you had 4.
23 How old was your youngest child during that time?

24 A. 5.

25 Q. Was he going to school during that time

1 period?

2 A. Well, he was 4, so no he wasn't in school.

3 Q. Who was it that took care of him during the
4 day while you were at work?

5 A. Lesean.

6 Q. Where was it that he took care of him at?

7 A. At my residence.

8 Q. 1519 Laguna Palms we were speaking of?

9 A. Yes.

10 Q. I would like to turn your attention to
11 specifically September 2nd of 2008. On that day did you
12 go to work?

13 A. Yes.

14 Q. What were your work hours during that time
15 period?

16 A. 8:30 a.m. to 5:30 p.m.

17 Q. Was this a Monday through Friday job?

18 A. Yes.

19 Q. Where was it you were working at? Can you
20 give me the type of firm?

21 A. Architectural firm.

22 Q. During this time period, did the Defendant
23 have a job?

24 A. No.

25 Q. So when you were at work, like you previously

1 testified, was he sole caretaker of your son who was just
2 4 at that time?

3 A. Yes.

4 Q. September 2nd, did you work your normal hours
5 of 8:30 a.m. until 5:30 p.m.

6 A. Yes.

7 Q. Who picked you up or did someone pick you up
8 that evening after work?

9 A. Lesean.

10 Q. Do you remember what time Mr. Collins picked
11 you up?

12 A. 5:30.

13 Q. What type of vehicle was he driving?

14 A. Ford Expedition.

15 Q. When he picked you up that evening on
16 September 2nd, did he have a gift for you?

17 A. Yes.

18 Q. Had you recently had a birthday?

19 A. Yes.

20 Q. When is your birthday?

21 A. August 27th.

22 Q. September 2nd, was this gift, was it your
23 belief it was for your birthday?

24 A. Yes.

25 Q. Can you explain what the gift was?

1 A. It was a bracelet and necklace and a pig.

2 Q. And a pig?

3 A. Yes.

4 Q. When you say -- just to be clear. When you
5 say a pig, we're not talking about an actual pig?

6 A. No.

7 Q. Explain the pig to me?

8 A. It was just a little pig.

9 Q. Glass pig or a stuffed pig?

10 A. I think a ceramic pig.

11 Q. In regard to the necklace and bracelet, did
12 they appear to you to be new?

13 A. No.

14 Q. And can you describe what it is they looked
15 like?

16 A. Rolex.

17 Q. Rolex, do you mean like the type of chain you
18 see with like a Rolex watch?

19 A. Yes.

20 Q. Was it silver or gold?

21 A. It was gold.

22 Q. Did the Defendant explain to you where he got
23 the jewelry?

24 A. He said he bought it from a pawn shop.

25 Q. Did he tell you how much he paid for it?

1 A. 2,000.

2 Q. \$2,000.00?

3 A. \$2,000.00.

4 Q. Now, did you want the present? Did you want
5 to keep the necklace and bracelet?

6 A. No.

7 Q. Did you express that?

8 A. Yes.

9 Q. Was that done in the car right after he gave
10 you the present?

11 A. More than likely, yes.

12 Q. Did you ever -- Mr. Collins stated to you that
13 he had bought it from a pawnshop. Did you see any
14 receipts or proof he bought it from a pawn shop?

15 A. No.

16 Q. Was it common for you to keep receipts or pawn
17 slips for the Defendant?

18 A. Yes.

19 Q. After you leave your work when you get picked
20 up around 5:30 where do you go?

21 A. We went to Henderson to pick my mom up.

22 Q. After you go to Henderson to pick up your mom
23 where do you go from there?

24 A. We stopped to get food.

25 Q. You are still talking background the Defendant

1 and yourself?

2 A. Yes, and my mom.

3 Q. After you get something to eat where do you go
4 from there?

5 A. We go home.

6 Q. Home is 1519 Laguna Palms?

7 A. Yes.

8 Q. When you are driving on your way home, who is
9 driving the vehicle?

10 A. Lesean.

11 Q. When -- on other days when either you would be
12 driving or Lesean would be driving and you returned home,
13 where would the vehicle be parked?

14 A. The left side of the garage.

15 Q. On that day when you got home and the garage
16 was open, did you -- were you able -- or was Lesean able
17 to park in the normal parking spot?

18 A. No.

19 Q. Why not?

20 A. There was another car in the garage.

21 Q. Can you speak up a little louder. I can't
22 hear you.

23 A. There was another car in the garage.

24 Q. What did that look like?

25 A. It was a gold Hyundai.

1 Q. Gold Hyundai?

2 A. Yes.

3 Q. Had you ever seen that car previous to that
4 evening?

5 A. No.

6 Q. Did you ask the Defendant, hey, what's this
7 random car doing in my garage?

8 A. Yes.

9 Q. What was his Response?

10 A. He said that it was a car he'd got from
11 Brandy.

12 Q. When you say got, meaning, she bought it for
13 him?

14 A. He said she had rented him a car.

15 Q. As you guys were parking and getting ready to
16 go into the house, did the Defendant warn you about
17 something that you'd see in the house that may anger
18 you?

19 A. Correct.

20 Q. What was it he told you about?

21 A. There was a bleach stain in the carpet.

22 Q. Did he explain to you how the bleach stain got
23 there?

24 A. Yes.

25 Q. What did he say?

1 A. He said he did an oil change and spilled some
2 oil on the carpet.

3 Q. Had you ever known the Defendant -- you said
4 -- at this point in time, we're talking about 2015. You
5 said you'd known him about 19 years?

6 A. Yes.

7 Q. So back then we're talking about 12, 13 years.
8 In 12 or 13 years that you had known him, had you lived
9 with him through -- on and off throughout that period?

10 A. Yes.

11 Q. In those 12 or 13 years you'd known him had
12 you seen him to do an oil change?

13 A. Not on his own, no.

14 Q. Did you see any other evidence, whether it be
15 in the garage or inside, that an oil change had been done?

16 What I mean by evidence is an oil pan or a bottle
17 of oil. Things of that nature.

18 A. No.

19 Q. After he told you, did you enter the home?

20 A. Yes.

21 Q. Did you enter through the garage door?

22 A. Yes.

23 Q. Once you entered the home did you see the
24 bleach stained area that the Defendant was speaking of?

25 A. Yes.

1 Q. Where was that located within the home?

2 A. I know it was somewhere on the carpet when I
3 entered from the garage in my laundry room.

4 Q. Do you remember speaking to the detectives on
5 October 1st, 2008 and giving a transcribed statement?

6 A. Yes.

7 Q. Do you remember what you said about where that
8 bleach stain was located, or would it help refresh your
9 recollection to look at your statement?

10 A. To look at my statement.

11 MS. BLUTH: Counsel, page 42. May I approach
12 the witness.

13 THE COURT: You may. What are you showing the
14 witness.

15 MS. BLUTH: I'm showing her her voluntary
16 statement given to police October 1st, 2008.

17 THE COURT: Page?

18 MS. BLUTH: Page 42.

19 BY MS. BLUTH:

20 Q. If you could read this section to yourself,
21 and I'll have questions for you.

22 A. Okay.

23 Q. Does that help refresh your recollection as to
24 where you told the detectives that the bleach stain was in
25 your home?

1 A. Yes. In the front of the laundry room on the
2 carpet.

3 Q. So when you walked in to your home through the
4 garage what is the first area of the home that you would
5 run into?

6 A. The living room.

7 Q. Do you have to go through the laundry room?

8 A. Yes.

9 Q. So these stains would be right in front of
10 that laundry room area?

11 A. Yes.

12 Q. Besides the stain on the carpet, did you see
13 what you believed to be oil anywhere else on the house --
14 in the house?

15 A. I seen a splatter on the side panel of the
16 wall in the laundry room.

17 Q. Did you say splatter, like drops?

18 A. Yes.

19 Q. Now, when you get into the house you go into
20 the kitchen area, do you find something else that you kind
21 of find to be out of the ordinary?

22 A. A fingernail.

23 Q. When you say a fingernail is this like a short
24 fingernail, a long fingernail?

25 A. Like an acrylic fingernail.

1 Q. Like when you went to a manicure shop and got
2 a set of acrylic nails?

3 A. Yes.

4 Q. Were they colorful?

5 A. It was colorful.

6 Q. Remember what colors you described it to be?

7 A. Pink and green and blue.

8 Q. Was this a fairly long nail?

9 A. Yeah.

10 Q. Yes?

11 A. Yes.

12 Q. Did you confront the Defendant with why is
13 there a fingernail in my home?

14 A. Yes.

15 Q. What did he say?

16 A. That the nail belonged to Brandy.

17 Q. Did he state whether she had been at the
18 home?

19 A. Yes.

20 Q. When he said that's Brandy's, did you know who
21 he was referring to?

22 A. Yes.

23 Q. Who was that?

24 A. Brandy Payton.

25 Q. Did you know who Brandy Payton was?

1 A. Yes.

2 Q. How long had you known Brandy for?

3 A. I've known her shortly after me and Lesean got
4 together.

5 Q. So for a fairly long period of time?

6 A. Yes.

7 Q. At any point in time after you return home,
8 does the Defendant leave the home in the Hyundai Sonata?

9 A. Yes.

10 Q. Where was it he told you -- did he tell you
11 where he was going?

12 A. No. Yeah, he said he was going to go get --
13 we had an argument about the garage opener so he said he
14 was going to his friends to get the garage opener.

15 Q. Was your garage opener missing from your
16 home?

17 A. Yes.

18 Q. When he told you that he was going to a
19 friend's house to pick up the garage opener did he give
20 you the name of the friend?

21 A. Yes.

22 Q. Who is that?

23 A. Tidy (ph).

24 Q. So after the Defendant left your residence did
25 you call that friend to kind of check up and see if the

1 Defendant was telling the truth?

2 A. Yes.

3 Q. And when you called that residence was the
4 Defendant there?

5 MR. SCHIECK: Objection. Hearsay, your Honor.

6 THE COURT: I'm not sure the witness answered
7 the question. It overlapped with what the answer was, and
8 I want to get your objection again for the record Mr.
9 Schieck.

10 MR. SCHIECK: Objection as hearsay, your Honor.
11 That information is what somebody else told her.

12 THE COURT: Ms. Bluth, your exception, if any.

13 MS. BLUTH: I'll move to the next question.
14 That's fine.

15 THE COURT: I'm going to ask the jury if they
16 heard the answer to disregard it. I'll sustain the
17 objection and ask Ms. Bluth to proceed.

18 BY MS. BLUTH:

19 Q. Did you in fact call Tidy (ph)?

20 A. Yes.

21 Q. I'm not going to get into what you said or
22 what Tidy (ph) said, but did you have a conversation with
23 Tidy (ph)?

24 A. Yes.

25 Q. After that conversation with Tidy (ph) did you

1 then call the Defendant?

2 A. Yes.

3 Q. And what -- did you ask him any questions?

4 A. Yes.

5 Q. What did you ask him?

6 A. I asked him where was he at.

7 Q. Did he tell you where he was?

8 A. Yes. He said he was driving to Stateline.

9 Q. Now during this time period in the evening
10 after you get home after he leaves the residence and you
11 are calling him, what number, if you remember, were you
12 using during that time period in September of 2008?

13 A. What mine was?

14 Q. Yes.

15 A. (702) 788-7790.

16 Q. Would that be a cell phone or a residence
17 number?

18 A. Cell phone.

19 Q. Did you also have a residence number you were
20 using at that time?

21 A. Yes.

22 Q. What was that?

23 A. (702) 649-8373.

24 Q. What number if you needed to get hold of the
25 Defendant, what number would you reach him at?

1 A. I don't recall the number.

2 Q. Do you remember testifying at preliminary
3 hearing?

4 A. Yes.

5 Q. Do you remember you gave the number for the
6 Defendant at the preliminary hearing? Would looking at a
7 copy refresh your recollection?

8 A. Yes.

9 Q. Yes it would help?

10 A. Yes.

11 Q. Page 103, Counsel, of the preliminary hearing
12 transcript.

13 MS. BLUTH: May I approach.

14 THE COURT: You may.

15 BY MS. BLUTH:

16 Q. Showing you a copy of your testimony of the
17 preliminary hearing transcript. I'm referencing you to
18 page 103, lines 17 through 20. Read that and let me know
19 when you are done.

20 A. (702) --

21 Q. Sorry. Read it to yourself.

22 A. I'm done.

23 Q. Did that help refresh your recollection as to
24 the number that Lesean was using at that time?

25 A. Yes.

1 Q. What number is that?

2 A. (702) 884-1539.

3 Q. To your knowledge did you know where he
4 received that telephone from?

5 A. From one of his friends.

6 Q. Do you know the name of that individual?

7 A. Donita.

8 Q. What's Donita's last name?

9 A. Beasley.

10 Q. When he tells you -- when I say he, when the
11 Defendant tells you he's on his way to Stateline, does he
12 do anything to prove to you that he's out at Stateline?

13 A. Yes. He waived his phone out the window so I
14 could hear there were no stop lights or any signals.

15 Q. While he's gone, during the time he's gone do
16 you attempt to contact him several times?

17 A. Yes.

18 Q. Do the two of you get in arguments?

19 A. We were arguing back and forth.

20 Q. During that time period are you both kind of
21 calling each other and arguing?

22 A. Yes.

23 Q. Every time you called him does he always
24 answer?

25 A. Sometimes he does. Sometimes he doesn't.

1 Q. While he's gone that evening do you recognize
2 that there is an item missing from your home?

3 A. Yes.

4 Q. What do you recognize that item to be?

5 A. His mother's blanket.

6 Q. Was that kind of a special blanket to your
7 family or him?

8 A. Yes.

9 Q. When you say the Defendant's mother blanket
10 you may have said I -- I apologize -- was his mother alive
11 at that time?

12 A. No. She was deceased.

13 Q. When the Defendant gets home, do you ask him
14 where that blanket is?

15 A. Yes.

16 Q. What is his response?

17 A. He used it when he did the oil change.

18 Q. Do you ever make an effort to go look for that
19 missing blanket around the garage or in the Hyundai
20 Sonata?

21 A. Yes.

22 Q. Did you ever find it?

23 A. No.

24 Q. Have you ever found that blanket since
25 September 2008?

1 A. No.

2 Q. When you went to the vehicle looking for the
3 blanket did you find any paperwork in another individual's
4 name?

5 A. Yes.

6 Q. What was it you saw?

7 A. Brandy's papers that belonged to her that let
8 me know that the car came from her.

9 Q. At any time do you go through the Defendant's
10 wallet?

11 A. Yes.

12 Q. When you go through the Defendant's wallet do
13 you find anything else in Brandy's name?

14 A. Yes.

15 Q. What would that be?

16 A. Rental car receipt.

17 Q. In the later evening hours do you ultimately
18 go to bed but awake by some noise in front of your
19 house?

20 A. Yes.

21 Q. What is it? After you are awake, do you go
22 out to see what the noise is?

23 A. Well, it wasn't noise. I just woke up in the
24 middle of the night cause Lesean wasn't there in the bed,
25 so I went outside and he was sitting outside washing the

1 car.

2 Q. When you say he was outside washing the car,
3 is that in the driveway of your home?

4 A. In the driveway.

5 Q. When you say the car, you are talking about
6 the Hyundai Sonata?

7 A. Yes.

8 Q. When you say you were awakened, what time
9 would that have been around?

10 A. That I went outside and seen him washing the
11 car?

12 Q. Correct.

13 A. I don't recall the time.

14 Q. Turning to the early morning hours of
15 September 3rd, 2008 around 2:30 in the morning, do you
16 have to get up early to do something?

17 A. Yes. I have to take my mom to the bus stop to
18 go to work.

19 Q. What time would you have left the house?
20 Would it have been right about 2:30, 3:00 a.m.

21 A. Somewhere around there, yes.

22 Q. When you leave the home to take your mother to
23 work, do you see the Defendant?

24 A. Yes. He was in the driveway in the car
25 asleep.

1 Q. On your way home from dropping off your mother
2 somewhere around the 3:00 a.m. hour, are you alerted to
3 the fact that something is going on with the Defendant?

4 A. Yes.

5 Q. Does he call you or do you call him?

6 A. He called me.

7 Q. What did he tell you was going on?

8 A. Police were chasing him. He wanted me to come
9 pick him up.

10 Q. Do you ultimately go and are you able to find
11 him and pick him up?

12 A. Yes.

13 Q. What area is that?

14 A. Within the housing area that we reside in.

15 Q. When you go to pick him up in that area do you
16 see the gold Hyundai Sonata we've been talking about?

17 A. Yes.

18 Q. Where was that in reference to where he was?

19 A. It was parked in a driveway.

20 Q. Do you have any idea whose driveway that
21 was?

22 A. No.

23 Q. From when you pick him up where do the two of
24 you go from there?

25 A. Back to Laguna Palms.

1 Q. Does he stay at the residence that evening?

2 A. No.

3 Q. Does he tell you why he's not staying at the
4 residence?

5 A. Yes. He said because he didn't know why the
6 police was there, so he didn't feel comfortable staying
7 there so he left.

8 Q. Later on in the morning on September 3rd, do
9 you go to work on that day?

10 A. Yes.

11 Q. Does the Defendant come to see you while you
12 are at work?

13 A. September 3rd?

14 Q. Correct. The day after.

15 A. Yes.

16 Q. What is he driving when he arrives at your
17 work?

18 A. The Expedition.

19 MS. BLUTH: Court's indulgence, your Honor.

20 THE COURT: Yes.

21 BY MS. BLUTH:

22 Q. Page 21, Counsel?

23 Do you remember telling police on your October 1st
24 interview on Wednesday morning when he came to pick up
25 your youngest son he was driving the gold Hyundai

1 Sonata?

2 A. I don't recall.

3 Q. When you were speaking to police on October
4 1st was that closer in your memory then 7 years down the
5 road?

6 A. Yes.

7 Q. Is it possible when he showed up Wednesday
8 morning at your job he may have been driving the Hyundai
9 Sonata?

10 A. Possible, yes.

11 Q. We talked a little earlier on September 2nd of
12 2008 about the jewelry that the Defendant tried to give
13 you.

14 When he showed up to your work on September 3rd,
15 did you recognize him to be wearing any jewelry that you
16 hadn't seen before?

17 A. Yes.

18 Q. What was that?

19 A. A rope necklace with a cross on it.

20 Q. Did the two of you ever have a conversation
21 about the Defendant returning the rental vehicle?

22 A. Yes.

23 Q. And do you remember on what day in relation to
24 September 2nd it was that the Defendant -- ultimately told
25 you that he returned the Hyundai Sonata?

1 A. I believe it was on a Friday.

2 Q. Page 6, Counsel.

3 If you told detectives on your October interview
4 that he returned it on that Thursday would you have any
5 reason to believe you were mistaken on that day?

6 A. No.

7 Q. I recognize it's hard to remember things 7
8 years later, so I appreciate you trying.

9 Did the Defendant tell you when he'd last spoken to
10 Brandy?

11 A. Yes.

12 Q. When was that?

13 A. It Tuesday -- on a Tuesday.

14 Q. Tuesday before that Thursday?

15 A. Yes.

16 Q. Now, though the vehicle -- after the Defendant
17 said he returned the vehicle, did you ever see it again?

18 A. No.

19 Q. Though the vehicle was no longer at your home,
20 did you later find item associated with that vehicle in
21 your garage?

22 A. Yes.

23 Q. What were those?

24 A. It was like a head rest, but they were new
25 items.

1 Q. When you say new --

2 A. They were packaged in plastic like brand new
3 items.

4 Q. Was it clear they had been related the Hyundai
5 Sonata?

6 A. They were from a Hyundai Sonata, but they were
7 a Sonata but not from that gold one.

8 Q. But you saw those items around the same time
9 you saw the gold Hyundai Sonata in your garage?

10 A. Yes.

11 Q. Close in time to the September 2nd incident,
12 did the Defendant ask you to pawn anything for him?

13 A. Yes.

14 Q. Did you in fact attempt to pawn the item?

15 A. Yes.

16 Q. What was that item?

17 A. The rope necklace and the cross.

18 Q. Were you able to pawn both of those items?

19 A. No. They wouldn't accept the necklace, but
20 they accepted the cross.

21 Q. Did you learn at some point that Brandy Payton
22 was found dead?

23 A. Yes.

24 Q. Who was it that told you that?

25 A. I don't recall how I first heard the news.

1 Q. Page 28, Counsel.

2 Your interview October 1st with police on page 28,
3 you state you heard about Brandy's death from the
4 Defendant himself. Do you remember saying that to
5 police?

6 A. Yes.

7 Q. Any reason to believe you were incorrect on
8 the day that you were interviewed by detectives that
9 Lesean is the one who told you about Brandy's death?

10 A. That's correct.

11 Q. Shortly after you found out that Brandy was
12 found dead, did you look into the trash can and find
13 anything that belonged to her?

14 A. Yes.

15 Q. What was that?

16 A. Papers.

17 Q. Were those papers in condition like this or
18 torn, spilled, what were they like?

19 A. I think they were -- I can't remember. Just
20 papers in the trash can.

21 Q. If I brought you your statement, would that
22 help refresh your recollection as to the state of the
23 papers found in the trash can?

24 A. Yes.

25 MS. BLUTH: Page 41, Counsel. May I approach.

1 THE COURT: Yes.

2 BY MS. BLUTH:

3 Q. For the record, page 41.

4 Read that to yourself and let me know when you are
5 done.

6 A. Okay.

7 Q. Does that refresh your recollection as to the
8 state of the papers you found at the bottom of the trash
9 can?

10 A. Yes.

11 Q. How were those situated?

12 A. They were torn.

13 Q. In the days after September 2nd, did the
14 Defendant ever express to you that he needed to speak to
15 you about something related to Brandy?

16 A. Yes.

17 Q. Did he ever do so?

18 A. No. We didn't have that conversation.

19 Q. October 1st, 2008 we referenced your statement
20 several times. Did you sit down and meet with detective
21 from Las Vegas Metropolitan Police Department?

22 A. Yes.

23 Q. Did you discuss with them things that you have
24 discussed with us here in court today?

25 A. Yes.

1 Q. To your knowledge after they spoke with you
2 did they conduct what's referenced as a search warrant on
3 your home?

4 A. From my understanding, yes.

5 Q. Had there recently -- on September 30th --
6 had there been a fire at your house?

7 A. Yes.

8 Q. That's unrelated to this case, but there was a
9 fire at the 1519 Laguna Palms residence?

10 A. Yes.

11 Q. How much of your home was destroyed by that
12 fire?

13 A. The whole house.

14 Q. Now, did detectives also meet with you and
15 show you two picture of Brandy wearing jewelry?

16 A. Yes.

17 Q. In those photographs did you identify the
18 jewelry in that picture as the same jewelry that you
19 received from the Defendant on September 2nd?

20 A. Yes.

21 Q. On that TV I'm showing you what's already in
22 evidence as State's 1 and also State's 2.

23 Are these the photographs you were shown October
24 1st, 2008 when you met with detectives?

25 A. Yes.

1 Q. If I zoom into the necklace and bracelet you
2 see in State's 2, do you recognize the gold necklace that
3 matched the gold bracelet on the right hand?

4 A. Yes.

5 Q. Are those the items that you identified to
6 police on October 1st that the Defendant had given to you
7 on September 2nd?

8 A. Yes.

9 MS. BLUTH: Thank you. I'll pass the witness.

10 THE COURT: Thank you.

11 Mr. Schieck.

12 MR. SCHIECK: Thank you.

13 CROSS-EXAMINATION

14 BY MR. SCHIECK:

15 Q. Good afternoon.

16 You indicate that you'd known Lesean for about 19
17 years?

18 A. Yes.

19 Q. You have 5 kids together?

20 A. Yes.

21 Q. But as of September 2nd, you have 4 kids
22 together?

23 A. Yes.

24 Q. You were pregnant at the time or shortly
25 thereafter?

1 A. I was pregnant.

2 Q. You were pregnant as of September 2nd, 2008?

3 A. Yes.

4 Q. You indicated that you had 4 boys that were

5 staying at the house with you at Laguna Palms?

6 A. Yes.

7 Q. The youngest child was 4, correct?

8 A. Yes.

9 Q. His name was -- is?

10 A. Do I have to disclose my child's name.

11 THE COURT: You don't have to. What's the

12 relevance.

13 MR. SCHIECK: I was going to ask questions

14 concerning his care during the day.

15 THE WITNESS: I don't want to disclose --

16 BY MR. SCHIECK:

17 Q. I'll refer to him as the 4-year-old.

18 A. Thank you.

19 Q. The other 3 boys were in school at that

20 time?

21 A. Yes.

22 Q. School had started as of that first week in

23 September?

24 A. Yes.

25 Q. So did they all go to the same school or

1 different schools?

2 A. They all went to the same school.

3 Q. They all had the same schedule?

4 A. Yes.

5 Q. Do you recall what that schedule was when they
6 were attending school that September?

7 A. Elementary, 8:30 -- back then I think school
8 got out at 3:20, 3:30.

9 Middle school at the time -- middle school got out
10 late. I want to say they got home about 3:00, 3:30.

11 Q. Did they walk home from school or would Lesean
12 pick them up?

13 A. Lesean would pick them up in most cases, yeah.
14 Or they would walk home.

15 Q. Do you recall September 2nd was a Tuesday. Do
16 you recall September 1st if Lesean took them and picked
17 them up on that Monday?

18 A. I would have to say, yes, he would have.

19 Q. Likewise that would have been the schedule for
20 Tuesday?

21 A. Yes.

22 Q. You had a Ford Expedition at that time?

23 A. Yes.

24 Q. Do you recall if on Monday, September 1st,
25 whether Lesean took you to work and dropped you off and

1 picked you up in the afternoon or the end of the day?

2 A. Usually Lesean did pick me up and take me to
3 my mom so that he could pick the boys up from school. He
4 didn't like them to walk home.

5 Q. He would have use of the Expedition during the
6 day while you were at work?

7 A. Yes.

8 Q. Do you recall if the routine was the two of
9 you would go drop the kids off at school then he would
10 take you to work or take you to work and drop the kids
11 off, if you recall?

12 A. I think that he would drop me off and he would
13 drop off the kids -- no. I think we'd drop them off in
14 the morning. It depends on what time I left for work.

15 Q. So do you recall if that's what occurred on
16 September 2nd, Tuesday?

17 A. That's the normal schedule.

18 Q. Then the 4 year old would be with Lesean
19 during the course of the day?

20 A. Yes.

21 Q. Then whatever the time was when the 3 older
22 boys would get out of school he'd pick them up and bring
23 them home?

24 A. That's correct.

25 Q. On September 2nd, that took place. The boys

1 were dropped off at school and you were taken to work.
2 Then Lesean came back at the end of the day and picked you
3 up, just like the normal routine?

4 A. Yes.

5 Q. When he came to pick you up he had the boys
6 with him?

7 A. Yes.

8 Q. So that would be the 4 year old and the 3 old
9 boys, correct?

10 A. Yes.

11 Q. So it was Lesean and the 4 kids in the car
12 that came to your work and picked you up.

13 Lesean had a gift for your birthday for you,
14 correct?

15 A. Yes.

16 Q. Also balloons in the car?

17 A. He did have balloons, yes.

18 Q. Were those the type of balloons you get at the
19 store you blow up that say happy birthday type of
20 balloons?

21 A. No. They weren't like the ones you blow up,
22 no.

23 Q. The kind that have helium in it?

24 A. Helium, yes.

25 Q. Those weren't at the house when you left in

1 the morning?

2 A. No.

3 Q. So that was a surprise to you that he brought
4 you the birthday balloons and the gifts when he came and
5 picked you up in the afternoon?

6 A. Yes.

7 Q. You and Lesean sometimes argue, fair
8 statement?

9 A. Yes.

10 Q. Had you had an argument that day?

11 A. More than likely, yes.

12 Q. I don't want to get into all the details of
13 your arguments, but you aren't happy with him when he came
14 and picked you up, fair statement, because he had an
15 argument earlier?

16 A. Yes.

17 Q. When he presented you with the jewelry and the
18 balloons you wanted nothing to do with it?

19 A. Correct.

20 Q. Same thing with the porcelain pig?

21 A. Correct.

22 Q. Physically, how does that happen when he comes
23 to pick you up. They pull up and you come out of work and
24 get into the car and Lesean would drive and the boys are
25 in the back of the Expedition?

1 A. Yes. But I think that day I think he came
2 upstairs and brought the gift upstairs.

3 Q. Okay. Did you try them on or pretty much, I
4 want nothing do with it?

5 A. I didn't want it.

6 Q. You didn't take possession of them and have
7 them in your hand or you're like, no?

8 A. I think I looked at it and I said, no. I
9 don't want it and threw it down.

10 Q. You only saw it for a brief second then?

11 A. Yes.

12 Q. You weren't interested in what he was trying
13 to give you?

14 A. No, I wasn't.

15 Q. And if you recall whether you were inside or
16 back in the car, did he take them back or put them
17 somewhere? What became of the jewelry?

18 A. He took them back.

19 Q. Did you see the jewelry again?

20 A. No.

21 Q. Other than that brief time that you saw that,
22 said I want nothing to do with it and he took it back,
23 that's the only time you saw the jewelry, correct?

24 A. Correct.

25 Q. Correct me if I'm wrong. It's not until after

1 October 1st when the police talk with you -- which is
2 about a month later -- they show you a picture of the
3 jewelry, correct?

4 A. Yes.

5 Q. Are you sure it's the same jewelry or just
6 looks the same?

7 A. To me it looks the same.

8 Q. But you don't know if it's the same or not?

9 A. I can't say that it is for sure exactly the
10 same, no.

11 Q. You didn't take the time to look at it,
12 correct?

13 A. Yes.

14 Q. And more than 30 days had passed before you
15 were shown pictures?

16 A. That's correct.

17 Q. And as the prosecutor mentioned, you had a
18 house fire, so you probably upset by the fire?

19 A. Yes.

20 Q. Now, after he picked you up at work you picked
21 up your mom. That was part of the routine for your
22 family, correct?

23 A. On my days, yes.

24 Q. On the days she would be reporting to take the
25 bus, correct?

1 A. Which would be on my day.

2 Q. So that was a normal day?

3 A. Yes.

4 Q. This was on a Tuesday on the 2nd when he
5 picked you up with the balloons and you went to pick up
6 your mom?

7 A. Well, because if it was a holiday or something
8 I think she would go -- I think she would go in for
9 Tuesdays. However -- but then we picked her up and take
10 her to the bus stop.

11 Q. For whatever reason for that week her schedule
12 changed, but it was already planned she was going to be
13 picked up that evening?

14 A. Yes.

15 Q. That was the normal part of your planned
16 today?

17 A. Yes.

18 Q. Now, you testified that you'd known Brandy for
19 about as long as you'd known Lesean?

20 A. Yes.

21 Q. Had you been present when Lesean recently
22 received a phone call from Brandy?

23 A. Yes.

24 Q. And I don't want to talk about what was said,
25 but what was Lesean's reaction when he saw it was Brandy

1 calling?

2 A. They had a conversation. They talked. He was
3 fine during the conversation with her. He passed me the
4 phone. I said a few words and passed the phone back to
5 him. They continued on a conversation, but he was upset
6 because he'd asked her how did she get his phone number.

7 Q. He was surprised she had his phone number?

8 A. Yes.

9 Q. Do you recall what day that was?

10 A. I don't recall what day it was.

11 Q. Now, did Lesean refer to Brandy in any
12 particular way when he would talk about her?

13 A. Yes.

14 Q. What would that be?

15 A. His sister.

16 Q. Was that a favorable term he used in a
17 favorable fashion?

18 A. Yes.

19 Q. Like she was someone important to him?

20 A. He'd always refer to her as that's my
21 sister.

22 Q. Now, after you got home you indicated that
23 you'd came into the house and saw there was this bleach
24 stain on the floor, correct?

25 A. Yes.

1 Q. Lesean told you about that before you got
2 home?

3 A. Yes.

4 Q. Do you recall exactly what his explanation was
5 you talked about before. Was it -- did he change the oil
6 or spilled oil?

7 A. I don't remember if it was spilled the oil or
8 did the oil change.

9 Q. You indicated that you had never seen Lesean
10 change oil by himself before?

11 A. Correct.

12 Q. Had you seen him change oil with someone
13 else?

14 A. His dad works on cars.

15 Q. There were occasions where someone else
16 changed the oil and he'd been around?

17 A. Sorry. Repeat the question.

18 Q. There have been occasions where oil has been
19 changed where Lesean was around?

20 A. Yes. His dad always worked on cars and worked
21 on our car.

22 Q. During that day of September 2nd, while you
23 were at work, do you recall if you called the house
24 during that work day?

25 A. I can imagine I did. Usually I worked up at

1 the front so I had access to the phone. I can't tell you
2 what time I called, but I called throughout the day
3 periodically just to see what he was doing or what my son
4 was doing.

5 Q. That's normal for you during the course of
6 your work day?

7 A. Yes.

8 Q. Nothing that stands out in your mind as out of
9 the ordinary when you would call home during the day?

10 A. No.

11 Q. I assume that part of the phone calls you make
12 is to find out how the 4 year old is doing and how his day
13 is going?

14 A. Yes.

15 Q. Nothing out of the ordinary that stands out in
16 your mind from that day?

17 A. Not that I recall, no.

18 Q. You also indicated that you had seen one
19 single fingernail on the kitchen counter that was on
20 September 2nd?

21 A. Yes.

22 Q. The conversation you had with Lesean
23 concerning the fingernail, was that in person or over the
24 phone?

25 A. Over the phone.

1 Q. So he was gone when you found the
2 finger nail?

3 A. He was already gone when I found the
4 finger nail.

5 Q. So that's the time he left indicating he was
6 going to look for the garage door opener?

7 A. Yes.

8 Q. So how long had the garage door opener been
9 missing?

10 A. I don't know. We had been arguing about it a
11 couple of days or so. It had been an argument. I was
12 kind of questioning exactly the exact whereabouts of where
13 the garage opener was.

14 Q. Without the garage door opener you would have
15 to -- the remote, right?

16 A. The remote.

17 Q. You have to go inside the house. Enter the
18 garage. Hit the button to open the garage?

19 A. I want to say it was -- I want to say that
20 that was the second opener. I want to say we had one in
21 the car. I can't remember if Lesean was getting out of
22 the car to go to the front door when we pulled up, cause
23 at that point we still didn't have the garage opener when
24 we picked up my mom.

25 I want to say that he did run in through the front

1 door and came in and went through the house to open the
2 garage. I'm not mistaken I think he did do that.

3 Q. What became of that fingernail?

4 A. It was on the kitchen counter. I called and
5 asked him.

6 Q. Ever see it again?

7 A. I threw it in the trash.

8 Q. That was the end of the fingernail as far as
9 you were concerned?

10 A. Yes.

11 Q. Were you ever shown photographs of the
12 fingernails to try to make a comparison to the nail you
13 had seen on September 2nd?

14 A. Yes.

15 Q. The detective showed you that photograph?

16 A. Yes.

17 Q. You told them that that was not the nail you
18 had seen, correct?

19 A. Correct.

20 Q. That was based on your best recollection when
21 they showed you the photograph?

22 A. Yes.

23 Q. That recollection hasn't changed?

24 A. No.

25 Q. Now, so I'm clear on the sequence of events,

1 Lesean leaves going to look for the garage door opener.
2 You have numerous phone calls with him while he's gone,
3 but he does come back home?

4 A. Yes.

5 Q. Do you have contact right away when he comes
6 back home?

7 A. Yes.

8 Q. He comes in the house when he gets home?

9 A. He came back in the house when he came home.

10 Q. Was it later he washed the car?

11 A. It was later, yeah.

12 Q. So he'd come home and come in the house?

13 A. Yes. Because at that point I probably was
14 kind of laying in bed wrapping up watching TV or talking
15 on the phone or something of that nature. My mom was
16 there, so she probably was asleep -- her and the kids were
17 asleep. He let me know he made it back.

18 Q. It was sometime after then you heard him
19 washing the car?

20 A. I did not hear him washing the car. I woke in
21 the middle of the night. Hey, he's not here in the bed,
22 so I went outside to find out where he was.

23 Q. It's not unusual for Lesean to wash your car
24 at night?

25 A. No.

1 Q. He's done that in the past?

2 A. Yes.

3 Q. You've washed cars with him at night?

4 A. Yes, we have.

5 Q. There in the driveway of 1519 Laguna Palms?

6 A. Yes.

7 Q. So it's not something you've never seen
8 before?

9 A. Yes.

10 Q. When you saw the bleach stain on the floor did
11 you inspect it at all or look at it or try to clean it up
12 yourself or walk over it?

13 A. I probably -- I know for a fact when I noticed
14 the bleach I realized it's bleach and it's not going to
15 come up. I didn't investigate it. I took it for what it
16 was worth.

17 Q. Just looked at it. You didn't do anything?

18 A. No.

19 Q. When you left to take your mom to the bus stop
20 on that next morning you said Lesean was asleep in the
21 car?

22 A. He fell asleep in the car.

23 Q. The car was in the driveway in front of the
24 house?

25 A. Yes.

1 Q. It wasn't parked in the garage?

2 A. No.

3 Q. You took the Expedition to take your mom to
4 work?

5 A. Yes.

6 Q. Did you have to move the car Lesean was in or
7 could you get around it?

8 A. The Expedition was in the garage.

9 Q. You were able to pull out of the garage and
10 get around the car that Lesean was in?

11 A. Yes.

12 Q. You didn't see anything that happened before
13 you got back home from dropping your mom off?

14 A. No.

15 Q. Just got a phone call from Lesean?

16 A. Correct.

17 Q. You went and picked him up?

18 A. Correct.

19 Q. You indicated you took a gold chain to try to
20 pawn it at the pawnshop and they wouldn't take it?

21 A. No.

22 Q. Because it wasn't worth anything?

23 MS. BLUTH: Objection, speculation.

24 THE COURT: I'll overrule it. If she knows.

25 THE WITNESS: I can't recall why they didn't

1 take it. I remember they did take the cross.

2 BY MR. SCHIECK:

3 Q. How much did you get for the cross?

4 A. \$25.00.

5 MR. SCHIECK: Court's indulgence, please.

6 THE COURT: Yes.

7 MR. SCHIECK: Thank you. I have no further
8 questions.

9 THE COURT: Thank you, Mr. Schieck.

10 Anything further on redirect.

11 MS. BLUTH: Just briefly, your Honor. I can
12 stay here.

13 REDIRECT EXAMINATION

14 BY MS. BLUTH:

15 Q. You were asked questions about September 1st,
16 2008.

17 Working backwards from September 2nd of 2008, we
18 know that was a Tuesday. So the 1st would be a Monday.
19 Would it be possible that September 1st of 2008 would have
20 been Labor Day, a holiday, as you have stated?

21 A. Yes.

22 Q. Would that make sense as to why you took your
23 mom to work on Tuesday instead of Monday?

24 A. That's correct. I took her Tuesday evening
25 for work for Wednesday, yes.

1 Q. You were working at the architecture firm.
2 Where was that located at?

3 A. Jones and Sahara.

4 Q. Mr. Schieck asked you some questions in regard
5 to the necklace and bracelet. When you met with
6 detectives you were able to give them a description of
7 what that necklace and bracelet looked like, correct?

8 A. Yes.

9 Q. You mean you were able to tell them that they
10 matched, correct?

11 A. Yes.

12 Q. That they were like a Rolex type of chain?

13 A. Yes.

14 Q. And it was only after you described that
15 jewelry they then came back later with a picture and you
16 identified the jewelry, correct?

17 A. When we had the conversation about the jewelry
18 they asked me what the jewelry looked like and showed me
19 pictures and asked me if that was the same jewelry.

20 Q. You described the jewelry to them before they
21 showed you pictures of it?

22 A. I did describe it, yes.

23 Q. Mr. Schieck asked you questions in regard to
24 whether it was your recollection that the Defendant told
25 you he was doing an oil change or that it was an actual

1 oil spill. Remember those questions?

2 A. Yes.

3 Q. Would looking at your statement refresh your
4 recollection as to whether he told you he was doing an oil
5 change or if it was an oil spill?

6 A. Fine.

7 Q. Page 15, Counsel. May I approach.

8 THE COURT: You may.

9 BY MS. BLUTH:

10 Q. Showing you your statement with detectives
11 October 1, 2008. Read your answer here at the top. When
12 your done go ahead and let me know.

13 A. Okay.

14 Q. Does that help refresh what it was the
15 Defendant said and that it was an oil change?

16 A. The statement says oil change.

17 Q. The Defendant had done an oil change?

18 A. Yes.

19 Q. It's your testimony that Lesean's father is
20 the one who would normally work on all your cars and did
21 oil changes and that type of stuff, true?

22 A. He did actually, yes.

23 Q. He worked on cars. That's what he did?

24 A. Yes.

25 Q. When the Defendant's father would work on your

1 vehicle would that be at his shop or where was it done
2 at?

3 A. Sometime we'd either go to his place or he'd
4 come to our house.

5 Q. But on September 2nd, 2008 Lesean's father
6 hadn't been there?

7 A. No.

8 Q. He never said dad helped me with the oil
9 change?

10 A. No.

11 MS. BLUTH: Thank you. I'll pass the witness.

12 MR. SCHIECK: No recross.

13 THE COURT: Thank you. Let me see by a show of
14 hands if any jurors have questions for this witness.

15 Seeing no questions, you are excused. Thank you.
16 Make sure you mind your step as you exit the witness
17 stand.

18 May I have counsel at the bench.

19 (Discussion held at the bench)

20 THE COURT: It is 5 to 5:00, so we're going to
21 not start any witnesses today. We'll conclude the
22 evidence for today's purposes.

23 I do need to let you know we've had a slight
24 adjustment in start time tomorrow. I believe I indicated
25 most days we'd start at 1:30, but it was possible it could

1 MS. BLUTH: Yes. Thank you.

2 MR. SCHIECK: Thank you, your Honor.

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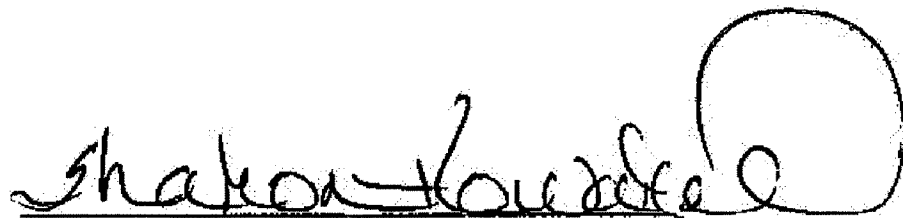
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CERTIFICATE
OF
CERTIFIED COURT REPORTER

* * * * *

I, the undersigned certified court reporter in and for the
State of Nevada, do hereby certify:

That the foregoing proceedings were taken before me at the
time and place therein set forth; that the testimony and
all objections made at the time of the proceedings were
recorded stenographically by me and were thereafter
transcribed under my direction; that the foregoing is a
true record of the testimony and of all objections made at
the time of the proceedings.

A handwritten signature in cursive script, reading "Sharon Howard", is written over a horizontal line. The signature is fluid and includes a large, circular flourish at the end.

Sharon Howard
C.C.R. #745

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ORIGINAL

JURL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

AUG 04 2015

BY, 
DANIA BATISTE, DEPUTY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA

CASE NO.: 09C252804

VS

DEPARTMENT 25

LESEAN T COLLINS

AMENDED JURY LIST

- | | |
|-------------------------|---------------------------|
| 1. Ms. Alexandra Foss | 8. Ms. Hope Juarez |
| 2. Ms. Jennifer Allee | 9. Mr. Hal Leppala |
| 3. Ms. Amnesty Woodhall | 10. Ms. Sally Marotta |
| 4. Ms. Ronda Fulkerson | 11. Mr. C. Tom |
| 5. Mr. Earl Wedgeworth | 12. Mr. Francisco Isakoff |
| 6. Ms. Sandra Gibbons | 13. EXCUSED |
| 7. Ms. Heidi Cwik | 14. Ms. Mariana Lopez |
| 15. Mr. Robert Reynolds | |

ALTERNATES

Secret from above