

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSHUA BACHARACH

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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APPELLANT'S FAST TRACK APPENDIX VOLUME IV

ROCHELLE T. NGUYEN, ESQ.
NGUYEN & LAY
Nevada Bar Identification No. 8205
732 South Sixth Street, Suite 102
Las Vegas, Nevada 89101
Telephone: (702) 383-3200

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar Identification No. 1565
200 Lewis Avenue
Las Vegas, Nevada 89101
Telephone: (702) 671-2500

ADAM PAUL LAXALT
Nevada Attorney General
Nevada Bar Identification No. 12426
100 North Carson Street
Carson City, Nevada 89701
Telephone: (775) 684-1100

Attorney for Appellant
JOSHUA BACHARACH

Attorney for Respondent
THE STATE OF NEVADA

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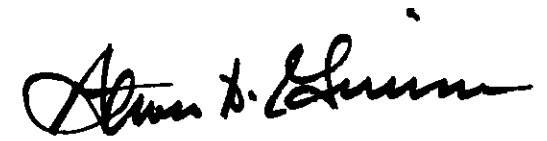
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

VS.

JOSHUA W. BACHARACH,

Defendant.

CASE NO. C299425

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE

TUESDAY, NOVEMBER 3, 2015
TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 2
VOLUME II

APPEARANCES:

For the State:

JOHN FATTIG, ESQ.
MEGAN S. THOMSON, ESQ.
Chief Deputy District Attorneys

For the Defendant:

ROCHELLE T. NGUYEN, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

TRANSCRIBED BY: BRITTANY MANGELSON, INDEPENDENT TRANSCRIBER

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1 TUESDAY, NOVEMBER 3, 2015 AT 8:56 A.M.

2
3 [Outside the presence of the jury]

4 THE COURT: All right. We're on the record. Are you --

5 THE COURT RECORDER: Yes.

6 THE COURT: -- recording?

7 By stipulation Dustin -- Juror Number 11, Dustin Krause is a witness in
8 a case and they need him this morning. So there -- we're -- there's a stipulation
9 between the two parties to release him as a juror, is that correct?

10 MR. FATTIG: That is correct. It's a felony jury trial out of Department IX that
11 is currently ongoing.

12 THE COURT: Okay. I was led to believe it was a preliminary hearing. I think
13 you were too as well --

14 MR. FATTIG: Yeah.

15 THE COURT: -- Ms. Nguyen?

16 MS. NGUYEN: That's correct.

17 MR. FATTIG: I think we didn't know very many details at the time --

18 THE COURT: Right.

19 MR. FATTIG: -- but we learned them subsequently.

20 THE COURT: All right. So the DA is -- here, you can take him. Take him
21 and we'll explain it to the jury. Or not.

22 MR. FATTIG: So Number -- Juror Number 13 --

23 THE COURT: Number 11 --

24 MR. FATTIG: -- will now be --

25 THE COURT: What -- no -- yeah. We'll put Trevor Yanke in the 11th spot,

1 which will leave us with just one alternate, right?

2 MR. FATTIG: Yes.

3 MS. NGUYEN: Your Honor, can I make a record regarding --

4 THE COURT: And you can take him.

5 THE DEFENSE ATTORNEY: Thank you.

6 THE COURT: You can find him in the hall. You know who he is.

7 Okay. Go ahead, you wanted to make a record.

8 MS. NGUYEN: Yeah. Yesterday, during the testimony of Eufrasia Nazaroff, I
9 had made a contemporaneous objection and a motion for a mistrial. During her
10 testimony, despite being admonished by this Court to not make any reference to
11 gangs or probation, she indicated that she had spoke with gang detectives regarding
12 my client's case. I think that that information we have previously admonished her,
13 it's prejudicial.

14 I think she was very loud and deliberate, and specific when she
15 mentioned it. I don't know if that was intentional but I think it came across and I
16 think that's something the jury was aware of.

17 THE COURT: All right.

18 MR. FATTIG: I don't remember it being any louder when she mentioned the
19 word gang than any other word she testified to. It wasn't like she exclaimed it, it
20 wasn't like she yelled it out. But it was certainly unsolicited -- it was an unsolicited
21 response by her on her own. It certainly wasn't something that the State was trying
22 to get out.

23 I would note that she is very much in line with Mr. Bacharach. She is
24 his longtime girlfriend, mother of his children, which is -- certainly explains some of
25 her motivations, both in what she did perhaps, as well as the fact that she refused to

1 meet with us for a pretrial conference before the trial, which was fine. So we never
2 spoke to her which is why we asked the Court to speak with her because we were
3 aware that she had certain information that certainly could be problematic if she
4 mentioned it during the trial.

5 Your Honor specifically admonished her not to talk about certain
6 information, including any information around gangs. And yet she, on her own
7 volition, decided to mention that a gang detective came and spoke with her. Now I
8 would also note that that is actually factually inaccurate. Gang detectives, to our
9 knowledge, did not speak with here. They were firearms detectives. But again, that
10 was her own un-elicited response to an innocuous question.

11 THE COURT: And my recollection of the event too -- as well is she is an
12 adverse witness to the State and it was clear to me that she didn't want to answer
13 some of the questions or she was hesitant in answering some. In fact she even said
14 she never said anything about the bullet-proof vest which -- at this point sounds
15 untrue because she has made statements to detectives about it.

16 And it was quick enough said that no one went into it, no one
17 highlighted it, no one talked about it. And based upon that I think it is -- I think -- the
18 motion to -- for a mistrial is denied. But you preserved that issue in case you need
19 that.

20 MS. NGUYEN: Thank you.

21 THE COURT: Thank you.

22 Is the jury here, Tom?

23 THE MARSHAL: I was still missing one.

24 [Pause in proceedings]

25 THE COURT: Bring them in, Tom.

1 THE MARSHAL: Yep.

2 [In the presence of the jury]

3 THE MARSHAL: All rise, please.

4 And be seated.

5 THE COURT: All right. Stipulate to the presence of the jury.

6 MS. THOMSON: Yes, Your Honor.

7 MS. NGUYEN: Yes, we would.

8 THE COURT: All right. Because of issues that Mr. Krause has we had to

9 release him as a juror. And Mr. Yanke you'll move into Seat 11. And Ms. Sankovich

10 you will move up to Seat 13. Thank you for being prompt.

11 Call your next witness, State.

12 MS. THOMSON: The State calls Officer McNabb

13 **RYAN McNABB**

14 [having been called as a witness and being first duly sworn, testified as follows:]

15 THE CLERK: Thank you. Please be seated. State your full name, spelling

16 your first and last name for the record, please.

17 THE WITNESS: My name is Ryan, R-Y-A-N, McNabb, M-C-N-A-B-B.

18 THE COURT: Go ahead.

19 MS. THOMSON: Thank you, Your Honor.

20 **DIRECT EXAMINATION**

21 BY MS. THOMSON:

22 Q Good morning, Officer, how are you employed?

23 A As a police officer with Metro Police Department.

24 Q And for how long have you been with Metro?

25 A About ten years.

1 Q And what is your -- was your job description back in June of 2014?

2 A I was a patrol officer in the Northeast Area Command.

3 Q As a patrol officer, were you in uniform in a marked unit?

4 A Yes, ma'am

5 Q Okay. And can you describe for us what your uniform looked like?

6 A It was a tan Metro shirt with a badge on the chest, and tannish pants

7 with a stripe, gun belt, boots.

8 Q And on the gun belt what did you carry?

9 A I carried my handgun, pepper spray, handcuffs, a baton, a Taser, and a

10 radio.

11 Q Okay.

12 MS. THOMSON: I'd move for admission of State's Proposed Exhibits 179

13 through 181.

14 MS. NGUYEN: No objection.

15 THE COURT: They'll be admitted.

16 **[STATE'S EXHIBITS 179 through 181 ADMITTED]**

17 MS. THOMSON: Permission to publish.

18 THE COURT: Yes.

19 BY MS. THOMSON:

20 Q Showing you what's been marked as State's Exhibit 179. Is that how

21 you appeared on June 26th of 2014?

22 A Yes.

23 Q Okay. And you said that you carry a firearm in your belt, is that correct?

24 A Yes.

25 Q What kind of firearm?

1 A It's a Glock 17, it's a 9 mm, full-size, semi-automatic.

2 Q Showing you what's been marked as State's Exhibit 180. Is this the
3 firearm that you carried on that date?

4 A Yes, it is.

5 Q And is that your P-Number written underneath your name?

6 A Yes.

7 Q What is a P-Number?

8 A That's my personnel number. It's issued to me when I'm hired by the
9 department.

10 Q So each officer has an individual or unique one?

11 A Yes.

12 Q And you indicated that the firearm was obviously loaded. Showing you
13 what's been marked as State's Exhibit 181. Is that the magazine to the firearm?

14 A Yes, it is.

15 Q And when you load that magazine, did you load it with your own
16 ammunition or ammunition provided by the department?

17 A Department ammunition.

18 Q On that date were you wearing any kind of recording devices?

19 A Yes, I had a body camera on me.

20 Q Showing you again State's Exhibit 179. I'm going to zoom into your
21 head and shoulders area. Can you point for us on the screen, make a mark, where
22 the body camera is?

23 A This is the magnet on my lapel -- on my left lapel where the camera
24 was. It's not in this photo because they had taken it by the time they -- they had
25 removed the camera from me by the time they took this photo, but that's where it

1 was, on my left lapel.

2 Q All right. And can you explain for us generally how the body camera
3 works?

4 A It's -- has a wire that goes under my shirt and down to a battery pack
5 which I had on underneath my shirt on my ballistic vest. And it has a round,
6 rubberized circle in the middle and you tap it twice to activate it and then push and
7 hold it for about two seconds to turn it off.

8 Q And when you activate it, does it begin recording at that moment?

9 A It's -- it does begin recording with audio at that moment, but it's always
10 processing approximately 30 seconds. So even when it's off it's still processing, but
11 it's not recording until I hit the button twice, then it goes back approximately 30
12 seconds with video only and once it -- and only does audio from the moment I
13 activate it.

14 Q and when would you use the body camera? I mean, activate it.

15 A On calls for service, on traffic stops, on person stops. Anything that --
16 any situation where it would be useful.

17 Q And as of June 2014, how long had you had the body camera?

18 A It was approximately seven weeks. Maybe eight weeks.

19 Q So it was still relatively new to you?

20 A Yes.

21 Q On June 26th of 2014 you said that you were operating as a patrol
22 officer. Were you alone in your vehicle?

23 A Yes, I was.

24 Q And can you describe for us what are the general duties of a patrol
25 officer?

1 A Mainly respond to calls for service from citizens, traffic accidents,
2 domestic violence calls, some violent calls like robberies. Also doing traffic
3 enforcement, car stops, person stops.

4 Q And in a marked unit fair to say that it has lights and sirens?

5 A Yes.

6 Q And those lights are flashing red and blue?

7 A Yes.

8 Q And when you were driving on June 24th, 2014 did you keep your
9 windows rolled up -- or I'm -- sorry, June 26th -- June 16th, 2014. Windows rolled up,
10 down, or somewhere in between?

11 A I kept them usually about halfway down so that I could hear what was
12 going on, if something happened around me.

13 Q And at that time what shift did you work?

14 A Swing shift. It was 2:30 in the afternoon to midnight-thirty.

15 Q And what area of the city did you patrol?

16 A The northeast part of town, in the Northeast Area Command.

17 Q And can you tell us what are the basic boundaries of that?

18 A Sure. On the north end it's Craig and then it's basically Pecos is the
19 west boundary, all the way down to Sahara. And then the west -- the east boundary
20 is like Hollywood up to the mountain.

21 Q On June 26th of 2014 at about 10:45 were you investigating a
22 suspicious vehicle?

23 A Yes.

24 Q And was that at the corner of Walnut and Lake Mead?

25 A Yes.

1 MS. THOMSON: Move for admission of State's Exhibit 18 and 19.

2 MS. NGUYEN: No objection.

3 THE COURT: They'll be admitted.

4 **[STATE'S EXHIBIT 18 AND 19 ADMITTED]**

5 MS. THOMSON: Permission to publish.

6 THE COURT: Yes.

7 BY MS. THOMSON:

8 Q Showing you what's been marked as State's Exhibit 18. Do you
9 recognize this intersection?

10 A Yes.

11 Q And is that Lake Mead and Walnut?

12 A Yes, it is. That vehicle's on Walnut.

13 Q Okay. And so Lake Mead is the street that we see crossing on the left
14 side of the photograph?

15 A Yes.

16 Q A little hard to see because of the light. Okay. And is that the vehicle
17 that you were investigating?

18 A Yes.

19 Q Okay. Showing you what's been marked as State's Exhibit 19. When
20 you are initially with the vehicle, what was your reason for stopping to investigate it?

21 A Because it was a Honda, which is one of the most common stolen
22 vehicles in that area. And I noticed that front left tire looked like there was damage
23 possibly to the axle, so I thought it might have been a stolen vehicle. It didn't look
24 like anybody was in it, but that's why I stopped to check it out and run the VIN. And
25 it turned out to not be a stolen vehicle.

1 Q As you were finishing that -- would you call it a call or --
2 A It was a suspicious vehicle that I just came across. Nobody called it in.
3 Q So as you're finishing that investigation, did another vehicle catch your
4 attention?
5 A Yes.
6 Q And where was the vehicle that caught your attention?
7 A It was directly in front of me on Walnut, but it was facing north where I
8 was facing south and I noticed that -- and it was stopped at the stoplight at Lake
9 Mead, facing north on Walnut. And I noticed that its high beams or brights were on.
10 Q Showing you again State's Exhibit 18. If you could make a mark on the
11 screen generally where that vehicle was.
12 A I can't quite see. It would have been right over here is where Lake
13 Mead goes this way and I'm on Walnut. So it would have been there and facing
14 north.
15 Q And you said the high beams were on, correct?
16 A That's right.
17 Q As a result of that did you make a decision to do something?
18 A Yes. I decided to do a car stop on the vehicle for that minor traffic
19 infraction.
20 Q And how did you go about doing that?
21 A I waited for the light to turn green and then the car with its high beams
22 on came across and there was another car behind it. Then I signaled, then I did --
23 made a U-turn, and so now I'm going north on Walnut following. I activated my
24 lights -- my emergency lights. I wanted to get that vehicle, the one in between us, to
25 pull over, which they did about a half a block or a block ahead, they pulled over.

1 And then I grabbed my radio as I caught up to the vehicle with its high beams, I
2 started to call it out over the air that I was going to do a car stop.

3 Q Okay. As the vehicle was facing you when you're stopped behind the
4 white Honda, with the high beams on are you able to see into the vehicle?

5 A Yes, but not very well.

6 Q At between the time that you were looking straight on and the time, as it
7 passed you before you made the U-turn, were you able to determine how many
8 occupants in the vehicle?

9 A Yes. There was just one male in the vehicle. That's all I saw.

10 Q Okay. And being the only person, he was the driver?

11 A Yes.

12 Q Okay. Showing you --

13 MS. THOMSON: Move for admission of State's Proposed Exhibit 52.

14 MS. NGUYEN: No objection.

15 THE COURT: It'll be admitted.

16 **[STATE'S EXHIBIT 52 ADMITTED]**

17 BY MS. THOMSON:

18 Q Showing you what's been marked as State's Exhibit 52. Did you
19 ultimately determine that this was the vehicle that you were about to perform the
20 stop on?

21 A Yes.

22 Q Okay. And you said that you followed it along that the vehicle behind it
23 got out of the way, is that correct?

24 A Yes.

25 MS. THOMSON: Move for admission of State's Exhibit 1.

1 MS. NGUYEN: No objection.

2 THE COURT: It'll be admitted.

3 **[STATE'S EXHIBIT 1 ADMITTED]**

4 BY MS. THOMSON:

5 Q Showing you a map of the area, this being Lake Mead. That's Judson,
6 that's Gateway, that's Lamb, and that's Carey. Can you show us generally where
7 you were -- oh, and that's Walnut -- with a mark on the screen when you first saw
8 the vehicle?

9 A Yes. I was at -- right at Lake Mead and Walnut right here.

10 Q And then you said --

11 A Yeah. Where the -- it's not doing the mark where I -- right where I put
12 my finger, it's further on the north side of Lake Mead.

13 Q Okay. So the computer is registering a little bit off

14 A Yes.

15 Q Okay. When you made the U-turn and put on your lights for the other
16 vehicle between yourself and the vehicle you were trying to stop, the maroon
17 vehicle, got out of the way, can you make a mark where that vehicle got out of the
18 way generally?

19 A Yes. Approximately here.

20 Q And when the other vehicle got out of the way, what did you do?

21 A Then I accelerated around the vehicle that had pulled over and caught
22 up tot eh Dodge Intrepid. I still had my lights on and that's when I grabbed my radio
23 to tell the dispatcher I was going to do a vehicle stop.

24 Q When you did that, were you also preparing to read out the license
25 plate of that vehicle?

1 A Yes.

2 Q And what is the reason that you informed dispatch of that information?

3 A We have protocol we follow. We tell her we're going to do a car stop
4 and then we give the license plate and our location in case there was an emergency
5 that would occur, everybody would know where we are.

6 Q And as you got close enough to read the license plate were you able to
7 actually inform the dispatcher of what the plate was?

8 A No. Right as I was about to read it out, the driver reached out of the
9 driver door and fired a gun up in the air.

10 Q Okay.

11 A And I didn't -- wasn't able to read out the plate. I -- instead I said he
12 just fired a shot out of the air and then I gave our location.

13 Q And was that in about the same location as the other vehicle had gotten
14 out of the way or was that further up Walnut?

15 A It was further north on Walnut.

16 Q If you could make a mark for us generally where that occurred.

17 A Like about right there.

18 Q So just a little before or right in the beginning of the dirt lot to the left --
19 or what appears to be a dirt lot?

20 A Yes.

21 Q And when the shot went up into the air, how did you know that it was a
22 shot?

23 A I saw -- I heard the shot and then I saw the muzzle flash -- you know,
24 like the light and it's fire literally up -- straight up in the air. So I knew that the fire --
25 the shot had been fired up.

1 Q When you saw that, what did you think, what did you do?

2 A I was pretty shocked that a gun had just been fired. I'm trying to just do
3 a routine car stop. It quickly upgraded the situation in my mind that this is a very
4 dangerous situation if a person's willing to fire a gun during this car stop.

5 Q At that time did -- you said you informed dispatch that they had
6 discharged their weapon?

7 A Yes.

8 Q Okay. Did you also turn on your body cam at that point?

9 A Yes. I'm not sure at the exact moment but it was right around that time
10 that I activated it.

11 Q And did you continue to follow the vehicle?

12 A Yes, I did.

13 Q Where did the vehicle go? You can make a line if that would help.

14 A He -- the vehicle accelerated right after the shot and it went -- continued
15 north on Walnut and then it turned right on Carey, it ran through the stop sign right
16 here, turned east on Carey and I followed it.

17 Q As it was approaching Carey on Walnut, about how fast did that vehicle
18 go, if you can estimate?

19 A I would say 35 to 40 miles an hour, as it made the turn.

20 Q Okay. And you said you've been a patrol officer for several years. A lot
21 of that time was it spent on patrol?

22 A Yes.

23 Q Or I'm sorry, you've been a police officer. A lot of that time was spent
24 on patrol?

25 A Yes.

1 Q And you said part of patrol is judging traffic infractions that would
2 include speeding?

3 A Yes.

4 Q Okay. And so you're familiar with sort of the speed vehicles are going
5 just by looking at them?

6 A Yes.

7 Q And you were also following behind this vehicle so you know what
8 speed you were going?

9 A I didn't look at my speedometer but I knew approximately how fast I
10 was going, yes.

11 Q Do you know the speed limit on Walnut in that area?

12 A I believe it's 35 miles per hour.

13 Q And would you describe Walnut between Lake Mead and Carey as
14 being a residential area?

15 A Yes, there are homes on one side and then a couple of churches on the
16 opposite side.

17 Q You said that the vehicle you were following, the maroon vehicle, ran
18 the stop light at the -- or I'm sorry -- the stop sign at the corner of Carey and Walnut.
19 When it did that, what did you do?

20 A I followed -- I continued to follow and I turned right on Carey as well.

21 Q As you turned Carey -- turned on to Carey, did anything notable occur?

22 A Yes. As soon as I made the right turn and my car was straightened out
23 to face east, the driver fired two more shots and one of them I heard it and one of
24 them went right by left ear like zing -- I heard a zing sound, just one time. I thought
25 it hit my car or possibly the ground right outside of my window.

1 Q So when you say the driver fired two more shots and you heard it, are
2 you talking about the sort of pop or boom that comes from the actual bullet being
3 expelled?

4 Ayes. I heard two more gunshots and then heard it -- heard one whiz by my
5 ear.

6 Q And later on did you determine that that did not hit your vehicle?

7 A I didn't determine that, but I was told they didn't find any marks on the
8 vehicle.

9 Q But you heard it goes past the window.

10 A Yes.

11 Q And at that time did you update dispatch again that you'd been shot at?

12 A Yes. I -- that there were two more shots fired and I gave an update that
13 we were now heading eastbound on Carey from Walnut.

14 Q As those two shots are fired, is there a significant period of time
15 between those two or are they in pretty quick succession?

16 A Very quick succession, just one after the other.

17 Q And you continue after this vehicle?

18 A Yes.

19 Q And why is that?

20 A Because he had just tried to kill me. It was --

21 MS. NGUYEN: Objection, Your Honor. Speculation.

22 MS. THOMSON: He's --

23 THE COURT: Overruled.

24 MS. THOMSON: Thank you.

25 BY MS. THOMSON:

1 A Shot that had just been -- the situation just escalated further where he
2 was no longer firing in the air the person fired at me. And so I -- it was a -- more of a
3 danger to me and to the community, so I followed.

4 Q And to where did you follow him?

5 A We continued eastbound on Carey. He accelerated, I estimate 70 to 80
6 miles an hour. I remember seeing my speedometer as I very quickly went up above
7 60 and then I stopped looking at it as we continued to accelerate it. And I saw that
8 he was -- he passed through Lamb where there was a solid or stale red light and I
9 didn't see any brake lights, he just accelerated straight through Lamb on a red light.

10 And I followed. I had to stop and clear my lanes so that I didn't cause a
11 traffic collision and then I -- there was a car that had to stop for me. Then I
12 continued through Lamb and as I passed through the intersection I heard two more
13 shots being fired but he had gained a bunch of distance on me so I couldn't tell if he
14 was firing in the air or at me, but I heard two more shots.

15 Q And as you approached Lamb, did you put on your sirens?

16 A I did.

17 Q You said that there was a vehicle that stopped for you as you crossed
18 Lamb. Do you recall seeing any other vehicles on Lamb, either before he went
19 through the intersection or -- other than that vehicle that stopped for you?

20 A There were cars before but I didn't see any like try to avoid a crash or
21 anything like that. But yes, there were -- there was traffic.

22 Q At that time about how long had you worked in that area?

23 A That had only been about two months, though I had previously worked
24 that area.

25 Q And in those two months did you work the same shift?

1 A Yes.

2 Q At that time of night about how busy is that area?

3 A It's not very busy, but Lamb is one of the major arteries there so there is
4 usually traffic.

5 Q And Carey, is that another main street in the area?

6 A Yes, just not as busy as Lamb.

7 Q So as you go through Lamb you get shot at two more times?

8 A I don't -- I couldn't tell if he fired at me or in the air because he had
9 gotten that distance because I had to stop at the light. I just know two more shots
10 were fired.

11 Q And can you mark for us generally on Carey where it is that those two
12 shots were fired past Lamb?

13 A I'm estimating it's approximately here, as I was a little bit further left of
14 where that mark just showed up. I was here at Lamb and approximately there.

15 Q And as those shots were fired or shortly after what did you see happen
16 with the maroon vehicle?

17 A As I passed through Lamb and tried to catch up I saw up ahead that the
18 vehicle crashed over something. It had turned to the right so it's facing south and I
19 saw it go over something. I didn't know what it was at first. I later saw that it was a
20 curb. But he went over and I saw some dust fly up and then I continued to
21 approach.

22 Q And was that turn and the dust at the corner, basically, of Carey and
23 Dolly?

24 A Yes.

25 Q Okay. As you approached did you see whether the vehicle had

1 stopped?

2 A Yes, I saw that it had stopped.

3 Q And describe for us what you observed as you approached.

4 A I saw the vehicle was just south of Carey and it had stopped facing
5 south. And as I'm approaching I'm still moving -- my car's still moving. I see the
6 drive jump out of the driver door and run to the -- around the trunk. So he runs north
7 around the trunk and as he turns towards me at the trunk I see that he has a
8 handgun in his right hand and he walks past the trunk out into the street towards me
9 and he raises the gun at me like this but further up in the air.

10 And I'm thinking is he going to fire in the air again? And then he fires
11 and I realized that there was no muzzle flash going up in the air; that it was just like
12 a circle and it -- I realized he was shooting gangster style and fired at me as I was
13 still moving in my car like this.

14 Q Okay. And so what you just described as gangster style is sort of how
15 we see in the movies with one hand up and the weapon, instead of at a right angle
16 to the ground, parallel to the ground?

17 A Right.

18 Q And you were using your right hand?

19 A Yes.

20 Q Okay. And he was using his right hand?

21 A Yes.

22 Q Okay.

23 MS. THOMSON: Move for admission of State's Proposed Exhibit 43.

24 MS. NGUYEN: No objection.

25 THE COURT: It'll be admitted.

1 **[STATE'S EXHIBIT 43 ADMITTED]**

2 BY MS. THOMSON:

3 Q Showing you what's been marked as State's Exhibit 43. Can you show
4 us on this photograph where your vehicle was?

5 A Yes, it's right here.

6 Q And is that where you left it when you ultimately got out of your vehicle?

7 A Yes.

8 Q Okay. And is the maroon vehicle visible in this photograph?

9 A It is.

10 Q If you'll mark that.

11 A Right here.

12 Q And as you observed him shooting a bullet at you, what did you do?

13 A I realized I needed to get my car stopped because I was still rolling so I
14 rolled up a little further, I put it in park, and I think I gave some radio traffic saying
15 that he was pointing the gun at me and I saw right after he fired, he started
16 walking -- he started walking to my right. It would be in a southwest direction
17 towards that corner where the street light is.

18 Q If you could make a mark in the direction that he was walking.

19 A Towards this corner. It's either southwest or west direction. And he's
20 manipulating the gun as I'm throwing it into park. And I don't -- I can't tell if he's
21 reloading or clearing a malfunction, I just knew that he was doing something with it.
22 And then as I'm getting out, starts to point it out like this.

23 Q And what you've demonstrated for us is right hand holding the gun, left
24 hand underneath where the magazine would go in, and extending out from the
25 body?

1 A Yes. And at me. He started point it back out at me. So I knew -- he
2 had already demonstrated a willingness to fire in the air, to fire at my car, to fire at
3 me on foot and while I'm in my car, and now going to point at me again. I knew I
4 need to stop that threat and so I opened my door and jumped out and across my
5 hood I fired approximately five rounds at him to try to stop or incapacitate him.

6 Q And as he was extending the firearm out from his body with the two
7 hands, was he directly underneath that street light?

8 A It was I think just behind the street light by that -- there's a chain-link
9 fence and I believe it was just behind that street light pole.

10 Q Would it be fair to describe the location he was in as being well-
11 illuminated?

12 A Yes.

13 Q And were you able to see him at that time?

14 A Yes.

15 Q Can you describe for us the individual you saw get out of the maroon
16 car?

17 A It appeared to be a Hispanic male, heavyset, 20 to 40 years old, and he
18 was wearing a white shirt.

19 Q And were you able to tell the color of the gun he was pointing at you?

20 A It was black.

21 Q As you shot at him, were you making any evaluations as to whether or
22 not it was safe to shoot?

23 A Yes. I saw that there was an open field behind -- my backdrop was
24 clear.

25 Q Okay. And obviously it's not an open field forever. Is it fair to say that a

1 bullet, when expelled will eventually just sort of drop to the ground? It doesn't go
2 flying forever?

3 A Yes.

4 Q Okay. And so you're making an estimate about how far away buildings
5 are and whether there's any individuals out on foot?

6 A I don't -- yes. I don't know about all those evaluations. I just knew
7 there was nobody over there.

8 Q Okay. And when you shot your weapon what, if anything, did you see
9 him do?

10 A Right as I fired he fell backwards and a little bit to my right, kind of
11 made himself smaller, and kind of into that -- he may have gone into the fence and
12 then he turned and took off running and -- southbound on Dolly, around the corner
13 from me.

14 Q So the photograph, we are on Carey looking at Dolly, is that fair to say?

15 A Yes.

16 Q Okay. And when you say he fell backwards is that like tripped fell or
17 moved backwards?

18 A Moved backwards and kind of -- it seemed like had a shock and then
19 made himself smaller because -- which makes sense as I'm shooting at him and
20 then took off running.

21 Q At that time did you know whether or not you had hit him?

22 A No, I didn't.

23 Q As he ran down Dolly what were you thinking?

24 A I was thinking that he's running into a residential area. He had just tried
25 to kill me and I was worried that he may become a threat, do a home invasion, or go

1 into one of these homes.

2 Q And so what did you do?

3 A I ran from my vehicle to the corner -- or I ran east to the crosswalk at
4 Dolly and I peeked down the sidewalk and saw him running. I saw his silhouette
5 and I fired three more rounds at him.

6 Q As you're running to the corner, do you run directly from your door to
7 the street lamp or a different path?

8 A It's a different path. More directly east in the travel lane to the
9 crosswalk, which runs north and south. And that's where I peeked and fired from.

10 Q And so the crosswalk north and south, can you make that line on the
11 map -- on the photograph for us?

12 A Sure. Approximately right here or a little bit further that way from there.

13 Q Okay. So am I correct in understanding that you are into Dolly a little
14 bit?

15 A Yes.

16 Q And why not go to the corner? Why go sort of into the street?

17 A I'm sorry. I'm not sure what you're --

18 Q Instead of running directly to the corner, why are you moving so you
19 have more of a street view?

20 A Because I'm -- I don't know if he's hiding behind that -- this turns into a
21 cinder block wall. I don't know if he was hiding behind the wall, so I was more
22 cautious, taking a wider angle as I'm -- call it slicing the pie, as I'm peeking around.
23 Not just running straight to the corner where he could still be there.

24 Q So that gives you a bigger view with a quicker ability to get out of sight?

25 A Yes.

1 Q As you saw the silhouette down the street, what did you do?

2 A As I saw the silhouette I knew it was the same person, the same build,
3 the same color shirt that I had just seen, and I knew that I needed to stop that threat
4 and so I fired three more rounds.

5 MS. THOMSON: Move for admission of State's Exhibit 45.

6 MS. NGUYEN: No objection.

7 THE COURT: It'll be admitted.

8 **[STATE'S EXHIBIT 45 ADMITTED]**

9 MS. THOMSON: Permission to publish.

10 THE COURT: Yes.

11 BY MS. THOMSON:

12 Q Showing you what's been marked as State's Exhibit 45. Can you mark
13 for us on here generally where you saw that silhouette.

14 A It's a little bit off, but.

15 Q And is that near the intersection of Dolly and El Tovar?

16 A Yes.

17 Q When you fired the further rounds what, if anything, did you see the
18 silhouette do?

19 A As I fired -- right after I fired my three shots I saw it -- the silhouette go
20 to the right, which would be El Tovar. He turned the corner.

21 Q And when he did that, what did you do?

22 A I followed. I gave radio traffic of what was going on and like a further
23 description of him; where we were.

24 Q When you got to El Tovar, did you run around the corner?

25 A No. It got very dark. I'm not sure if the street light was out, but it got

1 very dark compared to where I was at this corner. So I slowed down and there was
2 a sidewalk and then a line of cars and so I peeked around the corner. I didn't want
3 to just run in case he was hiding, laying in wait. So I peeked around the sidewalk
4 and then slowly around the line of cars.

5 Q And where I had you mark here on this photograph where you saw the
6 silhouette, that's pretty much the intersection of El Tovar is where you're trying to
7 mark. The computer is just not allowing it. Is that fair?

8 A Yeah. It was between Carey and El Tovar, but closer to El Tovar.
9 That's right. So I'm --

10 Q Let's do this. Showing you what's been marked as State's Exhibit 1.
11 Zooming in to the area of Carey, Dolly, and El Tovar. Can you mark on there,
12 generally, where you believe you saw him? Or I'm sorry. Not El Tovar. That's El
13 Tovar. I should go in further.

14 A I think it was approximately even with the house. Right here, just
15 before the corner.

16 Q Okay. And is that on the dirt side or on the sidewalk side?

17 A It's on the sidewalk side. This is not calibrated, it's making a mark not
18 right where I'm pointing.

19 Q Yeah, that's why I'm clarifying. It's a little bit off.

20 You said as you came up to El Tovar you came sort of slowly around
21 the corner, is that correct?

22 A Yes.

23 Q And showing you what's been marked as State's Exhibit 96. IS this the
24 view that you had from Dolly on to El Tovar?

25 A Yes, that's correct.

1 Q And as you came around the corner, what did you observe?

2 A I saw -- at first I didn't see anything, but as I continued to look, I had my
3 gun pointed down that corner, I saw a shadow go to my right across the sidewalk. It
4 was a couple of houses down. I didn't get a very good look, I just saw a shadow of
5 to the right.

6 Q Showing you what's been --

7 MS. THOMSON: Or move for admission of State's Proposed Exhibit 97?

8 MS. NGUYEN: No objection.

9 THE COURT: It'll be admitted.

10 **[STATE'S EXHIBIT 97 ADMITTED]**

11 BY MS. THOMSON:

12 Q Showing you what's been marked as State's Exhibit 97. You were
13 further over to the right side of this photograph on the sidewalk, is that correct?

14 A Yes.

15 Q Okay. Can you show us generally in this photograph where you saw
16 that silhouette move?

17 A It would be --

18 Q Or the shadow I think you called it.

19 A The shadow, yes. It was over-- it would be on the other side of these
20 trucks on the sidewalk, but approximately here. But on the other side of the truck.

21 Q So in front of the white truck?

22 A To the right.

23 Q Okay.

24 A And -- yes, a little bit in front of, but on the right side of the truck,

25 Q So on the sidewalk side.

1 A On the sidewalk.

2 Q As you came around the corner, did you follow into El Tovar?

3 A I did. I go into El Tovar. Not very far. I heard the -- I heard the sirens
4 coming that I was very happy to hear. And I didn't -- I couldn't tell where he was; if
5 that was the shadow I saw or if he was laying in wait and I needed back-up and I
6 was pretty shocked at that point with the adrenaline and I decided to hold up there
7 as my back-up was arriving.

8 Q And would it be fair to say that while it may not have felt like it, back-up
9 did arrive very quickly?

10 A Yes.

11 Q When back-up arrived walk us through what happened?

12 A One -- I remember one patrol car pulled up and I just told him all I knew
13 is that he had gone that direction, towards my right. I didn't know from there and I
14 just remember directing them that. And then a K9 officer quickly arrived and another
15 patrol officer and I remember them telling me to stay back. And they -- I remember
16 hearing over the air somebody had reported someone in their backyard and then I
17 Think some people came out of their house saying someone was in their backyard.

18 And I didn't go in. I was taken back at that point and they put me with
19 someone else. But I know from hearing the radio that the K9 officer and other
20 officer captured the suspect in the backyard of the house.

21 Q Did you see the K9 officer or another officer come out with an individual
22 from the area of that house?

23 A Yes.

24 Q Okay. And when you observed that individual, did you recognize the
25 individual?

1 A Yes.

2 Q And how did you recognize the person?

3 A It matched the person that I had been chasing, though he didn't have a
4 white shirt on that I -- that he did have when I -- when he was -- when we were in the
5 gun fight. But I knew it was him.

6 Q Showing you --

7 MS. THOMSON: Move for admission of State's Exhibit 46 and 89.

8 MS. NGUYEN: No objection.

9 THE COURT: They'll be admitted.

10 **[STATE'S EXHIBIT 46 & 89 ADMITTED]**

11 BY MS. THOMSON:

12 Q Showing you first what's been marked as State's Exhibit 89. Is this the
13 view from your vehicle as you were shooting?

14 A Yes.

15 Q Okay. And obviously this photograph's not taken while you're standing
16 there shooting.

17 A Right.

18 Q It was taken later by a CSA?

19 A Yes.

20 Q And showing you what's been marked as State's Exhibit 46. A little bit
21 better photograph. If you could mark on here generally where it was that you had
22 seen the silhouette as you came up to the corner of Carey and Dolly and then fired
23 your second volley of shots.

24 A Okay. He was further down here, almost at El Tovar, when I saw his
25 silhouette. I couldn't tell if he was facing me or facing away from me, but I knew it

1 was him.

2 Q After the other officers arrived, do you know if there was a perimeter set
3 up?

4 A Yes, there was.

5 Q But once the first officer -- canine officer arrived you sort of ceased to
6 be part of that active investigation, is that fair?

7 A Yes, I came back to that corner of Dolly and El Tovar and they held me
8 back there.

9 Q How did you feel as the suspect was pointing the firearm and aiming it
10 at you?

11 A I felt scared that I was going to get shot and killed.

12 Q And same when he was shooting at you?

13 A Yes.

14 Q You indicated that you were wearing a body camera that night. Have
15 you had an opportunity to review that video?

16 A Yes.

17 Q Okay. And does it match with your recollection of that evening?

18 A Yes.

19 MS. THOMSON: Move for admission of State's Exhibit 187.

20 MS. NGUYEN: No objection.

21 THE COURT: It'll be admitted.

22 **[STATE'S EXHIBIT 187 ADMITTED]**

23 MS. THOMSON: And permission to publish.

24 THE COURT: Yes.

25 BY MS. THOMSON:

1 Q And as we go through this I'm going to pause it and ask you some
2 questions.

3 A Okay.

4 Q And it's a pretty lengthy video, is that fair?

5 A Yes.

6 Q And we won't go through the whole thing. But there was a point at the
7 end of -- when the situation became static where you realized you couldn't hear, is
8 that correct?

9 A Yes. I couldn't hear that -- the body camera beeps every couple of
10 minutes to let you know that it's still on and my ears were ringing. I didn't hear it at
11 all.

12 Q And do you know why it was you couldn't hear it?

13 A Because of having fired my shots, my ears were ringing from that.

14 [Body cam video starts playing]

15 BY MS. THOMSON:

16 Q I'm going to start that back up because we were having a little trouble
17 there. You had described after you pushed the start button that it records 30
18 seconds of video but no audio, is that fair?

19 A Yes.

20 Q And is that what we're watching now?

21 A Yes.

22 MS. NGUYEN: And Your Honor -- can you pause it just for a second?

23 MS. THOMSON: Yeah.

24 MS. NGUYEN: The State had mentioned that they were going to play this in
25 clips. I actually would prefer if the whole thing was played in its --

1 THE COURT: Well --

2 MS. NGUYEN: -- complete nature.

3 THE COURT: -- I appreciate that. They can present their evidence the way
4 [indiscernible].

5 MS. NGUYEN: Okay.

6 [Body cam video continues playing]

7 BY MS. THOMSON:

8 Q All right. So as the video starts, where are you?

9 A We're on Walnut heading north. And I think we're just passing Judson
10 coming up on -- towards Carey.

11 Q Okay. And there is a vehicle in the left side of your windshield. Is that
12 the vehicle that ultimately was involved in everything you've testified?

13 A Yes.

14 [Body cam video continues playing]

15 BY MS. THOMSON:

16 Q And the vehicle just turned through the stop sign. Is that -- or what
17 street is that?

18 A That's at Carey. So when the video starts it would -- he had already
19 fired the shot in the air. I don't think it was captured on here. And then that's the
20 turning right on Carey.

21 Q As we're watching the video looking at the screen, for example, in this
22 shot, we can see sort of the globes of the street lights. Is it fair to say that this
23 doesn't capture exactly what you're seeing in the sense that your eyes better
24 equipped to record what it is you're seeing?

25 A Yes.

1 Q Okay. So you don't have the glare of street lights in the way it shows
2 on the video?

3 A That's correct.

4 [Body cam video continues playing]

5 BY MS. THOMSON:

6 Q So you're now turned onto Carey, correct?

7 A Yes.

8 Q And where are the second set of shots fired?

9 A As soon as I turned right onto Carey and my car being straight that's --
10 two shots were fired right then.

11 Q And we just saw the car sort of leave what is notably visible. Is that
12 where it sped up?

13 A Yes.

14 Q And we also had sound just start. That was about 30 seconds in?

15 A Yes.

16 [Body cam video continues playing]

17 BY MS. THOMSON:

18 Q We just saw something go across the screen. What was it that we were
19 seeing?

20 A Oh, that was my seatbelt that I realized I didn't have on.

21 Q And you didn't have it on because you had planned on performing a
22 simple traffic stop where you're going to be getting out of the car immediately.

23 A That's right.

24 [Body cam video continues playing]

25 BY MS. THOMSON:

1 Q Where -- what street did we just pass, do you know?

2 A I know we went through Lamb where the light was. I don't know what
3 those smaller streets were after Lamb.

4 [Body cam video continues playing]

5 BY MS. THOMSON:

6 Q So this is as you've just come up to the corner of Carey and Dolly?

7 A Yes.

8 Q And are you able to see on the screen where that vehicle is located
9 now?

10 A Yes.

11 Q Can you touch the screen and see if it makes a mark?

12 A Sure.

13 Q Oh, it does. And so that's where the vehicle is located?

14 A Yes.

15 Q Is this where you stopped?

16 A It was either right here or just a little bit further. Not very many feet
17 further when I actually come to a stop.

18 Q And fair to say that you indicated that you could see the individual
19 pointing the firearm at you, correct?

20 A Yes.

21 Q Is this generally where he was -- where you were when he was at the
22 back of the vehicle? Or has he already started to move across the street?

23 A I'm not sure at this point. If you can play it again. I'm not sure if he's
24 already coming around or not at this point.

25 Q So we'll scoot back a little bit?

1 A Yeah.

2 [Body cam video continues playing]

3 BY MS. THOMSON:

4 Q Was that where he was out and at the back of the trunk?

5 A Yes. When I'm seeing that he'd already passed the back of the trunk
6 and walked across and fired the one round, was manipulating it, and then pointed
7 out again.

8 Q And as we talked about before, obviously the camera doesn't have the
9 same capabilities your eyes do.

10 A Correct.

11 Q We can't see the suspect in the video, is that fair to say at this point?

12 A It's pretty hard to see him, yes.

13 Q Okay. But you could see him clearly as you were pulling up?

14 A Yes.

15 [Body cam video continues playing]

16 BY MS. THOMSON:

17 Q Here is where you got out of the vehicle, fair to say?

18 A Yes.

19 Q And what was it that caused you to get out and pull your weapon?

20 A He had -- he was starting to point out again -- punch out and point the
21 gun toward me because he walked to that corner behind the stoplight and I knew
22 that he already fired at me several and I needed to stop him from doing it again.

23 Q And that moves pretty quickly from the time that you announced that he
24 has it pointed at you to the time that you are shooting. Can you see in the video in
25 this spot -- and we can move it around a little bit if necessary -- where you see the

1 individual in the white shirt?

2 A Yes. A little bit further to my right. Right there.

3 Q So you sort of underlined that person now?

4 A Yeah. Yes. The mark on the right is right below where he is.

5 Q And when you first saw him he was left towards -- or not first, but --
6 when you stopped the vehicle to shoot he was left towards the street light and has
7 moved across as you start firing, is that fair?

8 A Yes.

9 [Body cam video continues playing]

10 BY MS. THOMSON:

11 Q At this point as you're running, he has already proceeded down Dolly?

12 A Yes.

13 [Body cam video continues playing]

14 BY MS. THOMSON:

15 Q And that's where you described having seen the silhouette down Dolly?

16 A Yes.

17 Q In the camera, obviously we can't see that silhouette. Same thing,
18 camera not as good as your eyes?

19 A Correct.

20 [Body cam video continues playing]

21 BY MS. THOMSON:

22 Q We just saw your cheek sort of as you turned your head across the
23 camera's view. Were you looking into the red vehicle?

24 A Yes, I was.

25 Q And why?

1 A To make sure there was nobody else in the car.

2 Q And did you see anyone else in the car?

3 A No, I didn't.

4 Q And was there anyone else in the area that you observed?

5 A No, nobody.

6 [Body cam video continues playing]

7 BY MS. THOMSON:

8 Q Is that where you indicated you came around the corner and saw the
9 individual by the truck?

10 A Yes. Not right at that moment. I think it's after I peek around the other
11 side and then go back. I saw a shadow go across the sidewalk to my right.

12 Q At this point you had expelled several projectiles, fair?

13 A Yes.

14 Q Did you do anything to ensure that you would be ready if the individual
15 was at this corner waiting for you?

16 A Yes. Just a moment ago when you talked about me looking to my left
17 in the car, at the same time I had put in a full magazine of ammunition in my gun
18 before I went down to the corner.

19 Q And what did you do with the old magazine?

20 A I dropped it on the ground.

21 Q And why drop it instead of put it in your belt?

22 A I probably would have preferred, in hindsight, to put it in my belt but I
23 thought I -- I felt like I had shot a lot more rounds than I did, so I just wanted to get a
24 full one in there. So I left that one on the ground, full one in there, and kept going.

25 Q Is there a term for that?

1 A That would be a speed reload.

2 Q Okay. And that's something that you learn in training and going through
3 qualification and such?

4 A That's right.

5 [Body cam video continues playing]

6 BY MS. THOMSON:

7 Q So you said about this point is where you saw the shadow, is that fair?

8 A Yes, that's right.

9 [Body cam video continues playing]

10 BY MS. THOMSON:

11 Q And we're seeing lights approach and hear sirens. Those are sirens
12 not associated to your vehicle, correct?

13 A Right.

14 [Body cam video continues playing]

15 BY MS. THOMSON:

16 Q And so that's the first patrol officer who is arriving on scene as backup
17 and you're conveying what you've seen?

18 A That's correct.

19 [Body cam video continues playing]

20 BY MS. THOMSON:

21 Q And that's the set-up of the perimeter occurring through sergeant
22 direction?

23 A Yes, that's what you hear.

24 [Body cam video continues playing]

25 BY MS. THOMSON:

1 Q And describe for us -- we've just used the term perimeter. What is a
2 perimeter?

3 A It's us setting up officers like in a -- either in a circle or a square around
4 the area where we're chasing a suspect so that to better our chances of
5 apprehending him, so he doesn't get outside of the perimeter and escape.

6 Q Okay. So those officers are at a reasonable distance, but can generally
7 see each other so that you have an area covered by officer sight?

8 A Yes.

9 Q Did the Air Unit come out also?

10 A Yes, I believe they did.

11 Q And I think you already indicated a K9 Officer came out?

12 A Yes.

13 Q Okay.

14 [Body cam video continues playing]

15 BY MS. THOMSON:

16 Q And you just made a reference, if you didn't copy, there were shots fired
17 by me. What gave you the idea that they may not have heard you?

18 A There were some problems with our radio system at the time and it
19 didn't appear like she was -- she wasn't acknowledging me -- some of what I was
20 saying -- a lot of what I was saying over the air. So I was repeating myself in case
21 she hadn't heard.

22 Q Okay. And the see we're talking about is the dispatcher?

23 A Yes.

24 Q Okay. Now other units are arriving on scene. Is it fair to say that the
25 other units could hear you, it was just the dispatcher who could not?

1 A From what I understand it of the other unit couldn't hear me as well on a
2 lot of what I was saying.

3 Q Okay.

4 A It was broadcast at all. Some of what I was saying.

5 [Body cam video continues playing]

6 BY MS. THOMSON:

7 Q And is that Officer Morgan with his dog?

8 A Yes.

9 Q And that's an officer, the dog? Not just his dog?

10 A Correct.

11 Q Okay.

12 [Body cam video continues playing]

13 BY MS. THOMSON:

14 Q You seem to be looking into this yard with the flashlight on your gun.
15 What are you looking for?

16 A I thought that perhaps, based on previous experience that the suspect
17 may have tossed the gun in that front yard as rounding the corner. So that's what I
18 was looking for.

19 Q Okay. And as you looked in, you didn't see anything notable, is that
20 fair?

21 A NO, I didn't.

22 [Body cam video continues playing]

23 BY MS. THOMSON:

24 Q Do you recognize the voice of the individual who just spoke?

25 A I believe that was Lieutenant Pelletier.

1 [Body cam video continues playing]

2 BY MS. THOMSON:

3 Q Is it common for lieutenants to respond to calls?

4 A To the major incidents, yes.

5 Q Okay. And would it be fair to say that a large number of officers
6 responded to this call?

7 A Yes.

8 [Body cam video continues playing]

9 BY MS. THOMSON:

10 Q So we've just heard other officers securing the scenes of where shots
11 were fired as quickly as possible and also the announcement of a suspect in a
12 backyard, is that correct?

13 A Yes.

14 [Body cam video continues playing]

15 BY MS. THOMSON:

16 Q Who was that?

17 A That was Sergeant -- his name is escaping me at that moment.

18 Q Okay. And who is the individual in the yellow jacket?

19 A That's Detective Turcaz. That was Sergeant Briggs before.

20 Q And Detective Turcaz is in plain clothes with a jacket over to signify he's
21 an officer?

22 A Yes.

23 Q Okay. Do you know if he was working as an undercover officer at that
24 time?

25 A I think he was on something else. This was in the area and heard what

1 happened, and responded.

2 Q So the nature of the call, you're drawing all kinds of patrol, sergeants,
3 lieutenants, undercover officers?

4 A Yes.

5 [Body cam video continues playing]

6 BY MS. THOMSON:

7 Q So you just made a statement, I think I stopped out on Carey, I might be
8 wrong, I can't remember. Is that a correct repetition of what you just said on the
9 video?

10 A Yes.

11 Q Okay. And you obviously just left your car. What's the basis of I can't
12 remember?

13 A I'd just been in one of the most traumatic experiences of my life.
14 Having been in this shootout and my life being threatened. And I had a big
15 adrenaline dump and it was all slowing down at that point and I couldn't really think
16 straight and remember things as accurately.

17 [Body cam video continues playing]

18 BY MS. THOMSON:

19 Q Okay. We see an individual through the front window of this truck. Is
20 that a neighbor that has come out?

21 A I think so, yes.

22 [Body cam video continues playing]

23 BY MS. THOMSON:

24 Q And you said that the beeps every minute or two to remind you it's on.
25 Is that what we just heard?

1 A Yes. The body camera does that.

2 [Body cam video continues playing]

3 BY MS. THOMSON:

4 A I probably would have already turned it off, but I didn't even think that it
5 was -- I didn't even think about it because I wasn't hearing the beeping.

6 [Body cam video continues playing]

7 BY MS. THOMSON:

8 Q And that's an awful pause location but in between the door and the
9 truck, is that the individual that you were just asked, is this him?

10 A Yes.

11 Q And is that the same individual you'd seen earlier under the street lamp
12 at the corner of Carrey and Dolly?

13 A Yes, it is.

14 [Body cam video continues playing]

15 BY MS. THOMSON:

16 Q Now you had told -- or at least stated several times that you only saw
17 one person. Did they continue to look in case there was a second individual?

18 A Yes.

19 Q Okay. And that was just to ensure that there was no possibility there
20 were any other suspects outstanding?

21 A Yes. And I think some neighbor called in and said someone was
22 banging on their door. So that's why we kept looking just -- we don't know who that
23 was.

24 Q That's part of having the Air Unit to ensure that there's no one else on
25 the street who could possibly be related to this.

1 A Correct.

2 [Body cam video continues playing]

3 BY MS. THOMSON:

4 Q And that's the individual that we had in the really bad pause before --

5 A Yes.

6 Q -- that you -- that they brought out from the backyard?

7 A Yes, that's correct.

8 Q And the same individual you saw on the corner?

9 A Yes.

10 Q And the only individual that you saw get out of the maroon vehicle?

11 A Yes.

12 Q The only individual you ever saw in the maroon vehicle?

13 A Correct.

14 Q And the same one who was shooting at you?

15 A Yes.

16 [Body cam video continues playing]

17 BY MS. THOMSON:

18 Q And there you just said you didn't look in the car. We know from
19 watching the video you actually did, is that fair?

20 A Yes, I was grateful for -- that my training kicked because I didn't even
21 remember looking in the car, but I did.

22 [Body cam video continues playing]

23 BY MS. THOMSON:

24 Q And the rest of what goes on is just sort of the administrative is there
25 doing investigation and you're winding down and then realizing that you have the

1 body camera still on?

2 A Yes, that's correct.

3 [Colloquy between Counsel]

4 MS. THOMSON: And I'd move for admission of State's Exhibit 92.

5 MS. NGUYEN: I stipulated. That's fine.

6 THE COURT: It'll be admitted.

7 **[STATE'S EXHIBIT 92 ADMITTED]**

8 BY MS. THOMSON:

9 Q You described previously -- and I finally found the picture that was the
10 best one -- having stood on Carey and looking down Dolly, seeing the silhouette. Is
11 this where you were standing -- the area and what you could see when you shot at
12 the silhouette?

13 A Yes.

14 Q And the area that we were looking at on the map, which is State's
15 Exhibit 1. The area of Carey and Dolly, the main entrance into where you were on
16 El Tovar and Dolly, what would you -- what would the main direction of entrance be?

17 A On to El Tovar?

18 Q The most common -- the most highly travelled, put it that way.

19 A It would be on Carey.

20 Q So that would be along this route?

21 A Yes.

22 Q And on to Dolly?

23 A That's right.

24 Q Okay. And the majority of the streets, the other direction on to Dolly,
25 are most residential and smaller?

1 A Yes.

2 Q As you were standing at your patrol car looking over at the suspect as
3 he's underneath the street lamp, about what distance were you, if you could
4 estimate?

5 A 35 to 40 yards.

6 Q And do you see the individual who was underneath that street lamp,
7 pointing the firearm at you, in court today?

8 A Yes, I do.

9 Q Will you please point to the individual and describe something they're
10 wearing today?

11 A Yes. That's him right there with the greenish shirt and yellow tie.

12 Q Let the record --

13 THE COURT: The record will reflect he's identified the Defendant, Mr.
14 Bacharach.

15 MS. THOMSON: Thank you, Your Honor.

16 BY MS. THOMSON:

17 Q And everything that you've talked about here today, did that all occur
18 here in Las Vegas, Clark County, Nevada?

19 A Yes.

20 Q When you saw the individual underneath the street lamp -- the
21 Defendant underneath the street lamp you described him as wearing a white shirt.
22 Later on when we're looking at the camera, the body camera, we see as he comes
23 out that he's in a yellow shirt, is that fair?

24 A Down on El Tovar?

25 Q Yes.

1 A Yes and yes, it was a green shirt.

2 Q And that was a different shirt than you'd seen him in previously?

3 A Yes.

4 Q Did you later find out why the color was different?

5 A Yes, I did.

6 Q Was it a failure in your memory or a change of his appearance?

7 A A change in appearance.

8 MS. THOMSON: I'll pass the witness.

9 MS. NGUYEN: Your Honor, is it possible to have just a quick five-minute
10 break?

11 THE COURT: Yeah.

12 MS. NGUYEN: Thank you.

13 THE COURT: We'll take a five-minute recess. During this recess you're
14 admonished not to talk or converse among yourselves or with anyone else on any
15 subject connected with the trial. Or read or watch or listen to any report of or
16 commentary on the trial or any person connected with this trial, without limitation,
17 newspapers, television, the radio, or the internet. Or form or express an opinion on
18 any subject connected with the trial until the case is finally submitted to you.

19 Take five minutes, please.

20 [Outside the presence of the jury]

21 THE COURT: All right. Jury is gone. Door's closed. Go ahead.

22 MS. NGUYEN: Thank you.

23 [Recess taken at 10:14 a.m.]

24 [Trial resumed at 10:23 a.m.]

25 [In the presence of the jury]

1 THE MARSHAL: All rise, please.

2 And be seated.

3 THE COURT: All right. I'd just remind you Officer, you're still under oath to
4 tell the truth.

5 Cross.

6 MS. NGUYEN: Your Honor, I believe there was one exhibit that didn't get
7 admitted. It had been stipulated to, so we have no objection to it being admitted.

8 MS. THOMSON: That's correct. It's Number 96.

9 THE COURT: It'll be admitted.

10 MS. THOMSON: Thank you.

11 **[STATE'S EXHIBIT 96 ADMITTED]**

12 MS. NGUYEN: Can everyone see that?

13 **CROSS-EXAMINATION**

14 BY MS. NGUYEN:

15 Q Can you see that Officer McNabb?

16 A Yes.

17 Q Okay. I'm hoping that it's somewhat aligned. I think we tried to do it.

18 But can you just kind of -- I know before we had done some dots. Can you kind of

19 just make a line of where initially this call occurred and where it ultimately let up?

20 Can you just kind of draw that in?

21 A Sure. So it started here at Lake Mead and Walnut and then -- well, it's
22 on the north side of Lake Mead, on the way up to Carey, and then east on Carey,
23 through Lamb, and then to Dolly -- well it goes up -- it's not calibrated right here but
24 it goes down.

25 Q Okay. So down. This is Dolly, so --

1 A Right there.

2 Q -- down Dolly here.

3 A Yeah, right, Dolly.

4 Q Okay.

5 A And then to -- that's El Tovar right where it -- I ended it.

6 Q Right here.

7 A Yes.

8 Q Is that correct?

9 A Yes.

10 Q Okay. Can't clear it up here. Thanks. Okay.

11 And along that route can you -- initially when you were -- were you
12 outside of your patrol car when you were investigating that -- what you thought was
13 perhaps an abandoned car?

14 A Yes, I did get out to investigate that.

15 Q Okay. And when you saw the car with the high beams on, were you in
16 your car at that time or were out -- still outside of your car investigating that Honda?

17 A I was back in my car and I had just put in notes that the car wasn't
18 stolen and I was just about to clear from that call -- hit the button that I was free
19 when I noticed the vehicle with the high beams on.

20 Q Okay. And at that road is there a stoplight or is there a stop sign, or is it
21 just a two-way stop?

22 A At Lake Mead and Walnut?

23 Q Yes.

24 A There is a four-way stoplight.

25 Q So this is a four-way stoplight?

1 A Yes.

2 Q Okay. And that's right here, is that correct?

3 A Correct.

4 Q Okay. And that vehicle that you saw was -- what direction was it
5 coming from; this direction or this direction?

6 A It was on Walnut, facing north. So it was -- it's not going to be cal -- it
7 was right --

8 Q On Walnut right here?

9 A No, it's not putting it where I want it to. It's --

10 Q Closer to Lake Mead?

11 A Yeah. Where the arrow is. Do you see the arrow? It's just north of the
12 arrow, stopped at the stoplight there. It was the first car, facing north, stopped at the
13 red light.

14 Q Okay. Were there other vehicles at that stop?

15 A Yes. There was a car behind it.

16 Q And you noticed when it stopped it was -- was it perpendicular to you,
17 parallel, kitty-corner from where you were located?

18 A It was facing towards me and I was a little bit off the side of the road.
19 So we were a little bit offset. It was like this and I was like this across the
20 intersection, if that makes sense.

21 Q Yes, that makes sense. And that's why you noticed the high beams, is
22 that correct?

23 A Yes.

24 Q Because they were kind of flashing in your face --

25 A Right.

1 Q -- for lack of a better term. Okay. And that's when you decided to get
2 into your car -- or you were in your car?

3 A I was in my car when I observed that.

4 Q And you called out that you were going to make a traffic stop?

5 A Not at that point. It was after I did the U-turn and flipped on my lights,
6 that's when I started to call out over the radio. But I decided while I was still parked
7 that I was going to try to do a traffic stop.

8 Q And when did you start your lights?

9 A After I'd done a U-turn, the car that had its high beams on it passed me
10 north -- heading north and the car behind it had passed me. I did a U-turn and that's
11 when I flipped on my lights.

12 Q Can you indicate where you did that U-turn?

13 A Right at that intersection of Walnut and Lake Mead?

14 Q Okay. So right here is where you did that U-turn --

15 A That's right.

16 Q -- is that correct?

17 A Uh-huh.

18 Q Okay. And you -- after you did the U-turn, you turned on your lights?

19 A Right. I did a U-turn and then I caught up to the car that was in
20 between us.

21 Q Okay.

22 A The car that was behind the car with the -- that I wanted to stop and
23 that's when I flipped on my lights.

24 Q Does that car pull over?

25 A Yes.

1 Q How did that car -- did that car know that -- did they think they were
2 being pulled over?

3 A I don't know what they thought but when I turned on my lights they
4 started to pull over to the side of the road and then I went around them to the car
5 that had the high beams on.

6 Q Okay. And that car was still travelling northbound, is that correct?

7 A Yes. Uh-huh.

8 Q Okay. And was that car driving at, I think you said about 35 miles per
9 hour?

10 A yes, approximately 30 to 35.

11 Q Okay. And that's the speed limit for this road, is that--

12 A I believe so, yes.

13 Q So at about what time did you catch up the car that you intended to pull
14 over?

15 A It was right around Judson which is --

16 Q Right here?

17 A -- right here. Yeah.

18 Q Okay.

19 A That's --

20 Q So this is Judson right here --

21 A Right.

22 Q -- where I'm indicating with this line here?

23 A I think it was a little bit before Judson when I actually got up to it and
24 started to call out over the air that it -- that I'm doing a car stop.

25 Q Okay. And were your lights still active at this time?

1 A Yes.

2 Q Okay. Did you have a siren on at all?

3 A No, I didn't turn the siren on.

4 Q Did the car pull over?

5 A No, it didn't.

6 Q And what happened at that point?

7 A That's when the driver reached out and fired a round in the door out of

8 the driver door and then accelerated north on Walnut.

9 Q Okay. And were you shocked by that action?

10 A Yes.

11 Q Okay. Were you just driving behind the person thinking you were going

12 to pull them over for a traffic violation?

13 A Correct.

14 Q Did you even see the arm go out or --

15 A Yes, I did.

16 Q -- the gun go out?

17 A I did.

18 Q Okay. So you saw the arm go out. It's dark outside, is that correct?

19 A Yes.

20 Q Okay. You have your lights on?

21 A Yes.

22 Q Do you have your spotlight on at that time?

23 A No.

24 Q Okay. And do you see a gun immediately or do you just an arm out of

25 the car?

1 A I was focused on the license plate and then when the shot went off I
2 saw the muzzle flash go up and I could see that it was a gun, heard it, and saw
3 boom, out the window.

4 Q So you -- at that time you're looking at the license plate, intending to
5 call it in so people know who ye calling in.

6 A Yes.

7 Q And your location. And that's when -- do you hear it first or do you see
8 the hand in muzzle shot?

9 A I heard it first.

10 Q Okay. And then -- so your eyes are immediately drawn up, is that
11 correct?

12 A Yes.

13 Q Okay. I see you're wearing glasses today. Do you wear glasses?

14 A Yes.

15 Q Okay. And I saw that you were wearing glasses in the picture, were
16 you wearing glasses that night as well?

17 A Yes.

18 Q Are you near-sighted or far-sighted?

19 A Near-sighted.

20 Q Do you have to have your glasses?

21 A Yes.

22 Q Okay. And where was it -- where did you see that first shot up into the
23 air?

24 A It was right at approximately Judson -- I think it was right there, right
25 around Judson.

1 Q Okay. And at this time the occupant of the vehicle is still driving, is that
2 correct?

3 A Yes.

4 Q Okay. So the shooting up into the air is occurring at the same time that
5 they're driving?

6 A Yes.

7 Q No one's stopped?

8 A No.

9 Q When is that you received the second -- when you hear the second or
10 you feel the second shots you -- I think you said go by on your left side?

11 A That's after we'd continued north on Walnut and the suspect vehicle
12 turned right on Carey.

13 Q Okay. So this is Carey right there, is that correct?

14 A Uh-huh. There -- that's right. There was a stop sign there. He didn't
15 stop for the stop sign. He turned right and as soon as I made the right turn and my
16 car was straightened out, that's when I heard two shots and then one zing right past
17 my left ear.

18 Q Okay. And what point did you turn on your body camera?

19 A You know I'm not really exactly sure at what point I did. I remember
20 thinking I got to activate this. So I don't know exactly what point I did? Probably
21 right when the audio kicks in is when it would be.

22 Q When would your training and experience have indicated for you to --
23 you had indicated before that you had relied on some of your training and
24 experience and you automatically did certain things like looking into the vehicle, is
25 that correct?

1 A Yes.

2 Q Is that something you're trained to do as well when you were issued a
3 body camera, as to when to turn it on?

4 A Yes. And it was very new to me. It had only been seven or eight
5 weeks. So there were some calls I went on that I didn't -- I forgot to turn it on at all.
6 So I was getting -- still getting used to turning it on on every stop.

7 Q And some calls where you forgot to turn it off, is that correct?

8 A Yes.

9 Q Okay. Is it likely that you turned it on after you heard the first shots?

10 A Yes.

11 Q Into the air?

12 A Yes.

13 Q Okay.

14 A I don't know at what point after, but yes.

15 Q And approximately here at the turn, this is where you felt and -- you felt,
16 I guess bullets whizzing by you, is that correct?

17 A Yes, just one. I heard two shots, but I only felt one go zing like it had hit
18 my car or the ground.

19 Q Okay. At that time could you see any guns outside of windows or did
20 you just hear --

21 A Heard and --

22 Q Felt, I guess.

23 A -- felt only. I didn't see it.

24 Q Okay. So you heard what you thought was possibly two shots but you
25 only --

1 A It was --

2 Q -- felt, I guess, one.

3 A It was more than a possible. I knew they were gunshots that I had

4 heard.

5 Q No, I'm saying the number of them.

6 A Yeah, there were two.

7 Q Two.

8 A Yes.

9 Q Okay. So you heard two, but you felt one?

10 A Yes.

11 Q Is that correct?

12 A Uh-huh.

13 Q And at that time you weren't sure whether or not your car had been hit

14 or if anything had been hit, is that correct?

15 A Correct. I don't know what that round hit that would make the sound.

16 Q Do you recall any other vehicles on Carey?

17 A Other than the one that had pulled over that was between us, no.

18 Q Okay. And that car had pulled over here off of Walnut, before Judson,

19 is that correct?

20 A I think it was right near Judson where it actually pulled over and I went

21 around.

22 Q Okay.

23 A When the road widens out a little bit.

24 Q And this car had pulled over before the shots had been fired into the

25 air?

1 A Yes.

2 Q Okay. So you believe there was two shots here, you felt one or what
3 you thought was one, is that correct?

4 A Yes, there were definitely two shots fired.

5 Q And then the car -- is it on Carey that you indicated that the car really
6 decided to speed up, is that correct?

7 A Yes.

8 Q Okay. Because up until then, kind of the speed limit.

9 A After the fire -- the first shot was fired in the air, he accelerated. I don't
10 know what speed it -- it was above the speed limit, but it was at the corner when he
11 ran the stop sign when it seemed to be 35 or 40 miles an hour to me estimating
12 when he made the turn. But I don't know what the speed was.

13 Q Once you realize you had been -- you, you know, felt the shot; that you
14 thought you had been shot at right here --

15 A Yes.

16 Q -- did you stop your car at all or slow down at all?

17 A No.

18 Q Was there any kind of instinctual reactions to stop or did you
19 automatically just continue in pursuit east?

20 A I may have slowed slightly or at least let off the gas, but I didn't stop.

21 Q Okay. And then is there any point where you -- I saw in the video -- we
22 see that you kind of lose sight of the car that's in front of you. Where did that take
23 place, that you recall?

24 A That was at Lamb because I had to stop for the red light and he had
25 gone through, so it created quite a bit of distance between us at that point.

1 Q So right here to here you have to slow down, he just blast through.
2 A Yes.
3 Q Okay. And so this car goes through and you kind of lose -- do you lose
4 sight of the car at that point?
5 A No, I could still see it but it was off in the distance.
6 Q When the car kind of pulls over here, are you -- do you see the like I
7 guess you'd describe it as a crash or a bump onto the curb. Could you see that
8 from your vehicle?
9 A Yes.
10 Q Okay. Could you -- at this point you said that you saw -- did you hear
11 shots again?
12 A As I passed through Lamb --
13 Q From the individual you said was on foot, yeah, at this point.
14 A I'm sorry, can you repeat your question?
15 Q When you're over here at Dolly --
16 A Uh-huh.
17 Q -- and Carey and the -- you said that a person exited that vehicle, is that
18 correct?
19 A Yes.
20 Q And you could see that person exiting the vehicle.
21 A Yes.
22 Q And where are you located when you see that at first?
23 A I'm on Carey and approaching Dolly, but I'm still a ways away from
24 Dolly.
25 Q And where are you? Can you point on the map? Let me zoom it in a

1 little here.

2 A Approximately here. Not where the mark is showing up, but --

3 Q A little bit before that.

4 A If you can see where -- if anybody else can see, yes, it's --

5 Q Okay.

6 A I would say about 50 yards west of Dolly on Carey.

7 Q Okay. And this is red writing here and it says Dolly. This is Dolly, is
8 that correct?

9 A Yes.

10 Q Okay. And so are you indicating -- I'm going to put my pen there. Right
11 about here?

12 A A little further to the left.

13 Q Right here?

14 A Yeah right --

15 Q Where your arrow is?

16 A Right where the lowest mark is.

17 Q Okay.

18 A That's approximately where I saw the vehicle. I don't know what it had
19 gone over. Later I saw it was a curb. But where it had gone over and I saw some
20 dust or dirt kick up.

21 Q Okay. And then where was it that you heard shot -- did you hear shots?

22 A Yes.

23 Q Okay. And this time over here -- so we have the shot up into the air, is
24 that correct?

25 A Yes. As he ran around the --

1 Q Before Judson or around Judson --

2 A Well no he didn't --

3 Q -- and Walnut.

4 A he didn't shoot up into the air at that point. He was -- ran around the

5 trunk and then held the gun up. I thought what is he going to shoot in the air again,

6 but he actually shot at me because --

7 Q Oh, you're talking about over here. I'm sorry about that.

8 A When you say shot in the air. There was only one shot in the air and it

9 was way back on Walnut.

10 Q That's what I'm saying. On Walnut and Judson, the shot in the air,

11 okay?

12 A Yes.

13 Q These two shots over here --

14 A I'm sorry what are you --

15 Q -- off of Walnut --

16 A I can't see you --

17 Q Oh, I'm not on the thing. Look at that. Okay. I apologize.

18 A No problem.

19 Q Okay. So let me start over. This is Walnut?

20 A Yes.

21 Q Judson, shot in the air, is that correct?

22 A Yes. One shot.

23 Q Okay. The two shots over here, you didn't actually see the gun, is that

24 correct?

25 A Correct.

1 Q And you heard what you thought was a bullet and two shots, is that
2 correct?

3 A Yes.

4 Q Okay. And that was right here.

5 A Correct.

6 Q But no witnessing of any firearm?

7 A I didn't see it.

8 Q And cars are still moving at all of these locations?

9 A Yes.

10 Q Okay. And then the next time that you hear a shot and see a shot is
11 over here, is that correct?

12 A No. We skipped one. As I passed through Lamb I heard two more
13 shots, but there was quite a bit of distance and I didn't see if they were shot at me or
14 in the air because it was -- he was so far away from me. But I heard two more shots
15 as I passed through Lamb.

16 Q Okay. So at Lamb and Carey -- and this is the intersection where you
17 had to kind of slow down, is that correct?

18 A That's right. Uh-huh.

19 Q Okay. Where -- did you hear these shots in the distance before Lamb
20 or after Lamb?

21 A Right as I'm passing through the intersection.

22 Q Okay. So right at this area. But you don't see any guns at that point?

23 A No.

24 Q Okay. And you don't know where it's coming from, is that correct?

25 A I believed it was coming from the suspect, but I didn't -- I couldn't tell --

1 Q Okay.

2 A -- if it was --

3 Q You didn't see any muzzle --

4 A Yeah.

5 Q -- like muzzle sparks or --

6 A No.

7 Q -- anything?

8 A No.

9 Q Okay.

10 A Just heard.

11 Q And you don't know if the shots were up into the air or were in your

12 direction at that time?

13 A That's correct.

14 Q And then when you get here to Dolly and Carey, that's where you

15 indicated that you saw a suspect holding a gun, is that correct?

16 A Yes.

17 Q Okay. And they weren't holding it like this, is that correct, in front of

18 them? They were holding it, I think you said gangster style?

19 A He was holding it in his right hand only --

20 Q Okay.

21 A -- and raised it up towards me, but like up in the air, as I'm still rolling in

22 my car. And I was thinking is he going to shoot in the air. And that's when he fired.

23 I heard it and saw the muzzle flash. But I was expecting it to go up in the air

24 because it looked like he was pointing in the air. But it didn't go in the air, it came

25 towards me. And I realized he just fired gangster style with his wrist bent --

1 Q Okay.

2 A -- at me.

3 Q And then that is when you shot back, is that correct?

4 A Yes. I had stopped my car shortly after and jumped and returned fire.

5 Q You had indicated several times on that -- I'm sure you had the

6 opportunity to review the body cam video, is that correct?

7 A Yes, ma'am.

8 Q Okay. This isn't the first time that you've seen that?

9 A No, ma'am

10 Q Probably not the second time either.

11 A I've seen it about ten times.

12 Q Okay. And you recall that multiple times that you indicated that you

13 couldn't really get a good look at the individual. You just knew they were heavy-set

14 and wearing a white t-shirt, is that correct?

15 A No. I got a good look at him at the corner.

16 Q Okay. Do you remember hearing on the body camera video that you

17 said that you didn't get a good look at him and that you just a white shirt?

18 A I remember giving out his -- hearing that I gave out his description and

19 then a white shirt -- I think I may have said I didn't get a good look at him. That's

20 overall like from beginning to end. But I definitely saw him pointing a gun at me, at

21 the corner under the light, and I recognize him here today.

22 Q Okay. And a part of your training is to give out as much detailed

23 descriptions of suspects as possible, is that correct, Officer?

24 A Yes, ma'am.

25 Q Okay. And you do that so your fellow officers can respond and help try

1 to locate any potential suspects, is that correct?

2 A Yes.

3 Q Okay. And you're trained to give as much description as possible, is
4 that correct?

5 A Yes.

6 Q Okay. You just kind of heard some of the body cam audio, is that
7 correct?

8 A Yes.

9 Q Okay. Were you listening to yourself on that as well?

10 A Yes.

11 Q Okay. Do you -- you didn't ever give any description of the individuals
12 hair, is that correct?

13 A No, I did not.

14 Q Okay. You didn't indicate that he had dark hair?

15 A No, I didn't.

16 Q You didn't indicate that he had long hair?

17 A No, I didn't.

18 Q You didn't indicate that -- you did indicate that he had a white shirt on,
19 is that correct?

20 A Yes.

21 Q Okay. You indicated that you believed that he was Hispanic, is that
22 correct?

23 A Yes.

24 Q Okay. Did you give any description of his eye color?

25 A No.

1 Q Okay. Did you give any description of facial hair?

2 A No.

3 Q Okay. Did you give any description of height?

4 A No.

5 Q Okay. Did you indicate if he was six-feet tall?

6 A No.

7 Q Did you indicate if he was five-feet tall?

8 A No.

9 Q Okay. Did you give any general descriptions? Short, tall, medium
10 build?

11 A I said heavy build.

12 Q Okay. Did you give any descriptions generally of his height?

13 A No.

14 Q Okay. And then you indicated that the person that ultimately they -- you
15 saw being arrested that person was in handcuffs at that time, is that correct?

16 A Yes.

17 Q Okay. And you could hear on the, I guess, the callouts from the other
18 officers that they had apprehended a suspect, is that correct?

19 A Yes.

20 Q Okay. And you were aware of that because your radio was on, is that
21 correct?

22 A Yes.

23 Q Okay. And there were officers that were coming and talking with you?

24 A Yes.

25 Q Okay. And so you knew that they had apprehended a suspect, is that

1 correct?

2 A Yes.

3 Q Okay. And were there any other potential suspects that you saw in
4 handcuffs that night?

5 A No, there were no other suspects at all.

6 Q Okay. But you are aware that they were looking for a potential second
7 suspect, is that correct?

8 A No. There was no second suspect to look for.

9 Q Okay.

10 A I only saw one suspect that night.

11 Q Were your fellow officers looking for another potential suspect?

12 A They set up a perimeter to make sure that there wasn't someone else,
13 yes.

14 Q Okay. And that's standard, is that correct?

15 A Yes.

16 Q Okay. And they had in fact received a call that there was potentially
17 another person banging on a backyard door on Carey I believe it was.

18 A Yes.

19 Q Okay. They didn't make any arrests that you're aware of --

20 A No. ma'am.

21 Q -- with respect to that --

22 A No.

23 Q -- that knocking on the backyard?

24 A No.

25 Q Okay. Is it fair to say that your adrenaline was rushing at that time?

1 A Definitely, yes.

2 Q Okay. And that was pretty eventful evening, is that correct?

3 A Yeah, it was very dynamic.

4 Q Okay. And in fact I think you testified on direct that some things you

5 couldn't remember accurately because your adrenaline was rushing at that time, is

6 that correct?

7 A Right. Right after the incident, yes, as you -- on video. Yes.

8 Q Okay. With respect to the body camera, back in 2014 you had

9 indicated you had only had it for about seven or eight months, is that correct?

10 A Seven or eight weeks.

11 Q Weeks, I'm sorry. Seven or eight weeks./ And you had indicated on

12 direct that you turned it on and turned it off as you were making stops or you were

13 approaching scenes. Were you given any training as to when you should use that

14 discretion?

15 A I wasn't actually provided any training, no.

16 Q Okay. So you were just given a body camera?

17 A Yes.

18 Q Okay. But no --

19 A Well --

20 Q -- training as to how to use it?

21 A There -- no, I did get training on how to turn it on and off.

22 Q Okay. Did you receive any additional training regarding the body

23 camera?

24 A No, I didn't.

25 Q Okay. Were you told if you were supposed to include it in police

1 reports?

2 A Yes, there is policy on it, but I didn't receive like a formal class on it.

3 Q How did you learn of the policy regarding body cameras?

4 A I was told that it had come out, it was new policy, and it was
5 changing -- constantly in flux and adding things to it, because it was all new to
6 everybody.

7 Q Okay. So at the time on this day, it was discretionary as to when you
8 turned on the body camera, is that correct?

9 A No. It was still -- it was clear from -- if I recall correctly that you turn it
10 on for calls for service -- you know, as you're arriving on a call for service or a
11 vehicle stop, a person stop, you turn it on as you're initiating those.

12 Q When you were investigating the abandoned Honda, did you turn on the
13 body camera as a part of that investigation?

14 A I don't remember.

15 Q Okay. Would that have been your policy at the time to do so?

16 A Yes, I probably did, but I really don't remember.

17 Q And when was it your policy to turn off that body camera?

18 A After the -- after it's over and taken care of. Or in that case there's --
19 once I see that there's no person there -- like there's no occupant of the vehicle,
20 there's no reason to have it on any longer.

21 Q Okay. So doesn't running 24-hours a day or --

22 A No.

23 Q -- throughout your entire shift?

24 A No.

25 Q Okay. Do you have to do anything with that body camera to download

1 it or preserve any of the information that's included on it?

2 A Yes. At the end of the shift you take the actual camera and the battery
3 and you put them on the docking station that are at each Area Command and it
4 recharges the battery and it uploads all of the video to *evidence.com*.

5 Q Okay. And --

6 A But prior to doing that I flag things. Like if you make an arrest or issue
7 a citation, you flag it so it's saved for a certain number of years.

8 Q Do you -- were you given any instruction on where you're supposed to
9 wear that body camera on your body?

10 A I was given the choice of either lapel -- either one of my lapels or on
11 glasses.

12 Q Okay. And you chose the lapel?

13 A Yes.

14 Q Okay. When you had those pictures taken after this incident -- those
15 pictures that we showed you of yourself, were those taken on the date of this
16 incident?

17 A Yes

18 Q Okay. And you had --

19 A Well it was later --

20 Q -- indicated that the --

21 A -- that night.

22 Q -- body camera had been removed. Did you remove it?

23 A Yes, I believe I did.

24 Q Okay.

25 A And I turned it over to a sergeant who was on the scene.

1 Q And that was the last time you saw the actual physical device?

2 A Yes, that night.

3 Q Was the device returned to you when you came back to work?

4 A Yes, it was.

5 Q Okay.

6 MS. NGUYEN: Court's indulgence, just for a moment.

7 [Colloquy between Counsel and the Defendant]

8 BY MS. NGUYEN:

9 Q You had indicated on direct that you were about 30 to 40 yards from the
10 suspect, is that correct?

11 A I believe I said 35 to 40.

12 Q 35 to 40?

13 A At what point are you referring to?

14 Q I believe -- is that when you said you saw the shadowy figure?

15 A No.

16 Q When was that that you --

17 A That was at --

18 Q -- or approximately --

19 A I was at the corner of Carey and Dolly when I actually fired my first
20 volley of shots, it was approximately 35 to 40 yards is what I estimate he was away
21 from he.

22 Q Okay. We watched and heard the body camera video. The first 30
23 seconds of it there is no sounds, is that correct?

24 A Yes.

25 Q Okay. And so you aren't able to hear any of the initial sounds, either

1 that you're making or that you're possibly hearing, is that correct?

2 A Yes.

3 Q And you had indicated that your window was rolled halfway down?

4 A Yes, both of my front windows.

5 Q And that was for you to be able to hear, is that correct?

6 A Yes.

7 Q Okay. And in fact, once the sound did turn on, you could hear activity
8 and things on the outside, is that correct?

9 A Yes.

10 Q including your own siren?

11 A Yes.

12 Q Okay. And is it fair to say that you can't hear the shots that were shot
13 at you on that body camera?

14 A On the video, no, I didn't hear the shots, as I reviewed the video.

15 Q Okay. And in reviewing that video, is it fair to say --

16 A Well, I heard my shots, but I --

17 Q You heard your shots.

18 A -- didn't hear his shots, yes.

19 Q Okay. But you couldn't hear the other shots.

20 A No.

21 Q And it's fair to say you couldn't see anything whizzing by the left side of
22 your car, is that correct?

23 A The bullet?

24 Q Yes.

25 A No, I didn't see the bullet.

1 Q Okay. And nothing struck your car, is that correct?

2 A It -- I thought it may have but they examined my car later and they said
3 they didn't find that it had made contact with the car. The bullet.

4 Q When you initially got out, was your car -- you were rolling to a stop
5 here towards Dolly off of Carey, is that correct?

6 A Yes.

7 Q Okay. Did you put your car in park?

8 A When I stopped, yes.

9 Q And then you opened your door, is that correct?

10 A Yes.

11 Q And at that point how -- approximately how far away do you think your
12 car was in relation to the suspect that you saw pointing the gun at you?

13 A 35 to 40 yards.

14 Q 35 to 40 yards. Okay. When that individual you said you could see the
15 individual also kind of underneath the street light there?

16 A Yes.

17 Q At that same corner. When did you lose sight of that individual?

18 A After I fired my rounds, I saw that he ran south on Dolly and that was
19 around the fence there so I couldn't see any longer because there was a -- I couldn't
20 see him. I lost sight because of the cinder block fence.

21 Q Did you see the suspect turn on to El Tovar?

22 A Yes.

23 Q Okay. And then once the suspect went down El Tovar, could you see
24 anything at that point?

25 A No, not until I was down on the corner and all I saw was a shadow

1 crossing over to my right, over the sidewalk.

2 Q Okay. And that area off of El Tovar and Dolly, is that a residential
3 area?

4 A Yes.

5 Q Okay. So there are multiple homes, is that correct?

6 A Yes.

7 Q Okay. And in fact just down the street, kind of kitty-corner from that
8 corner, there's an apartment complex, is that correct?

9 A Yes.

10 Q Okay. Did you see any other cars or any other individuals at that time?

11 A At what time?

12 Q When you were down at the corner of Dolly and El Tovar?

13 A When I was at Dolly and El Tovar? Are you talking about for -- I saw a
14 line of cars on El Tovar going west --

15 Q Did you see any people?

16 A No.

17 Q Okay. Did you see any cars that were driving?

18 A No.

19 Q Throughout the course of that video you saw -- I guess there was one
20 neighbor that came out. Did you see that individual?

21 A I saw three or four neighbors that had walked out right together on the
22 video.

23 Q From your independent recollection, do you recall any neighbors or
24 people leaving their homes and coming out to the street to see what was going on?

25 A Just at the corner of -- yes. Yes, I do.

1 Q Okay. Did you see other officers trying to like make that area secure
2 and telling people to go back into their homes at that point?

3 A I saw a bunch of officers, I didn't hear what they were saying to citizens.

4 Q Would that have been part of your training and experience to have
5 citizens go back into their homes in a situation like this?

6 A Sometimes, yes.

7 Q You had indicated when you first shot down here -- when you
8 discharged your weapon that this area was kind of empty, so you felt it was a safe
9 place to shoot into, is that correct?

10 A Yes.

11 Q Okay. Did you have those same feelings as you turn the corner
12 towards El Tovar and Dolly?

13 A Yes. It wasn't as obvious to me, but I didn't see any people or vehicles
14 beyond where the suspect was when I fired at him, the second volley.

15 Q And at that point the only thing you could see was a shadowy figure, is
16 that correct?

17 A No, I saw his silhouette.

18 Q Okay. His silhouette.

19 A Yes.

20 Q Okay. Was he facing you or was he behind -- turned around?

21 A I couldn't tell.

22 Q You just saw the silhouette of a person, is that correct?

23 A Right. And I wasn't going to wait for more shots to be fired at me.

24 Q Okay.

25 MS. NGUYEN: Nothing further.

1 **REDIRECT EXAMINATION**

2 BY MS. THOMSON:

3 Q You were asked some questions about what you can hear and what
4 you could see on the video. Fair to say that the camera and the microphone from
5 the body camera are not nearly as good as your ears and eyes?

6 A Absolutely.

7 Q And that is to be expected because unless one's spending several
8 thousand dollars on a piece of equipment, our bodies, we respond better in the
9 moment than a piece of equipment, is that fair?

10 A Yes.

11 Q Now, do you know the speed limit on Carey?

12 A I believe --

13 Q And specifically between Walnut and Dolly.

14 A I think it's 35. It might be 40.

15 Q During the car pursuit there were five shots fired out of the maroon
16 vehicle by the Defendant, correct?

17 A Yes.

18 Q And there was one shot at the end of the car pursuit fired outside of the
19 vehicle at you, correct?

20 A Yes.

21 Q That's a total of six?

22 A Yes.

23 Q You were asked some questions about how many suspects there were
24 and if you knew if other officers were looking for another individual. Do you recall
25 those questions?

1 A Yes.

2 Q Okay. Now to your knowledge, was there anyone else located within
3 that perimeter?

4 A Yes, there was not anyone else located.

5 Q Okay. You do know that there was not anyone else located, is that
6 what you're saying?

7 A Correct.

8 Q Okay. And that perimeter was set up virtually immediately, is that fair?

9 A Yes

10 Q Okay. You indicated that you turned over the body camera, I believe to
11 a sergeant?

12 A Yes.

13 Q Did you turn over any other equipment to anyone else on scene or
14 shortly thereafter at station?

15 A Yes, they took my handgun and my magazines later on and I was
16 interviewed at headquarters.

17 Q And do you recall who it was who physically took those from you?

18 A I believe it was Detective Jaeger.

19 Q And that was maybe not the best phrase. You voluntarily give it to them
20 when they ask for it. It's not that they're physically taking it from you, right?

21 A Right.

22 Q Okay. And did those get impounded and you didn't get them back for
23 several months?

24 A Correct.

25 MS. THOMSON: Pass the witness.

1 MS. NGUYEN: Court's indulgence just for a moment.

2 **RECROSS-EXAMINATION**

3 BY MS. NGUYEN:

4 Q You had indicated that it was very dark. You thought possibly one of
5 the street lights was out. Where was that location that it was dark?

6 A At Dolly and El Tovar. I remember feeling that it got really dark really
7 quick at that corner.

8 Q Okay.

9 MS. NGUYEN: Nothing further.

10 MS. THOMSON: Nothing further.

11 THE COURT: The jury have any questions of this officer?

12 **EXAMINATION BY THE COURT (JURY QUESTIONS)**

13 BY THE COURT:

14 Q When the suspect was on El Tovar, do you recall if he pointed a gun at
15 you?

16 A No, I could not tell if he was facing me or -- faced at me or away from
17 me when he was at the corner of El Tovar and Dolly. So, no, at that point I didn't
18 see the gun pointed at me again.

19 THE COURT: Questions --

20 MS. THOMSON: Thank you.

21 **FOLLOW-UP EXAMINATION**

22 BY MS. THOMSON:

23 Q And then when you were on the corner of El Tovar and Dolly and you
24 saw the shadow on El Tovar, could you see where that shadow was facing?

25 A No.

1 MS. THOMSON: Okay.

2 THE COURT: Defense?

3 MS. NGUYEN: Nothing further.

4 THE COURT: Thank you, Detective -- or Officer. You can go.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: Call your next witness, State.

7 MR. FATTIG: Peter Ferranti.

8 **PETER FERRANTI**

9 [having been called as a witness and being first duly sworn, testified as follows:]

10 THE CLERK: Thank you. Please be seated. State your full name, spelling
11 your first and last name for the record, please.

12 THE WITNESS: Sure. My name is Peter Ferranti. P-E-T-E-R,
13 F-E-R-R-A-N-T-I.

14 **DIRECT EXAMINATION**

15 BY MR. FATTIG:

16 Q Sir, how are you employed?

17 A I'm a sergeant with the Las Vegas Metropolitan Police Department.

18 Q And what is your current assignment?

19 A I am the sergeant in charge of the body-worn camera detail.

20 Q And these would be body cameras that patrol officers, Metro employees
21 wear, correct?

22 A Yes, sir.

23 Q And how long have you been in charge of that detail?

24 A I started the program 20 months ago.

25 Q So the program started -- I went to law school so I'm not good with

1 numbers. 20 months would be early of '14?

2 A Yes, March of '14 is when we issued out our first cameras.

3 Q Okay. And initially in the spring of 2014, approximately how many
4 officers got body cameras?

5 A Our initial deployment was 200 cameras.

6 Q And are you aware of an incident involving Ryan -- Officer Ryan
7 McNabb on June 26th of 2014?

8 A Yes, I am.

9 Q Officer McNabb received his camera during the spring rollout that year
10 of 2014, fair to say?

11 A Yes, I believe it was --

12 Q Some --

13 A -- April.

14 Q Okay. At some point before June.

15 A Yes.

16 Q Okay. And can you describe the body camera system and how it's
17 designed to be worn by the officer?

18 A Sure. And I brought one with me.

19 Q You did, okay.

20 A If you want me to demonstrate it.

21 Q Yes. For demonstrative purposes.

22 A Of course.

23 Q Would this be the same system that Officer McNabb would have used?

24 A Exactly.

25 Q Okay.

1 A Yes. We only have one system and we only have one camera.
2 Basically it's a three-part system. It has the camera and DVR recorder and
3 everything is in here. It records the video and the audio on this device. This is
4 connected by a cord through -- to the battery controller. And then the controller also
5 acts as a start/stop with this round button that is lit up with the green.

6 So when it's all connected the officers wear them on their uniform. The
7 controller device can be put in a pocket or on a uniform, anywhere on the belt if they
8 have room. And then it's wired up anywhere they have it in their uniform, comes
9 out -- primarily almost all officers are wearing them on collar mounts, but we also
10 have optional glasses mounts and optional head mounts so that the camera sits
11 here.

12 And then when they want to utilize it and make recordings they press on
13 that round button to start and stop the camera for making recordings.

14 Q And the start/stop button, is that kept on their belts or where, normally?

15 A We give the officer choices in the training, wherever they want to wear
16 it. Some drop it in the pocket, I wear mine on my inside strap of my bullet-proof
17 vest, other officers wear it on their exterior on the belt and they just can -- they can
18 see and press it. It has a nice raised feature so you can feel it. So even though it's
19 inside a piece of clothing you can feel it and realize where it is and press the button
20 and turn it on. So it's up to the officer.

21 Q And how do you turn it on? Is it just one press?

22 A The start button is -- it's a double press. So you press it two times and
23 you can feel it and then hear it. And then it also audio-activates in your ear that it's
24 turning on. And then when you're done with the recording of whatever the incident
25 is you're recording, you press and hold for three seconds. A loud, long tone in your

1 ear indicating that it's turning itself off and going back into the standby mode.

2 Q Okay. You mentioned there -- obviously there's a camera there. Are
3 there megapixels associated with that camera?

4 A Yes. This is a basic standard eight megapixel camera. It has a built-in
5 microphone in it. It doesn't do anything better than the normal human eye. It
6 doesn't have any zoom or infrared or anything specialized like that. We wanted to
7 get a product that was not any better than the officers eyes -- and our eyes are
8 actually even better. But we wanted a good quality and this is a good quality, eight
9 megapixel basic camera.

10 Q Yeah. But -- you say basic, it's not hi-def. It's going to cover the
11 basics. Eight --

12 A Correct.

13 Q Eight megapixels.

14 A Correct.

15 Q Okay. And then there's also sound that's part of this camera, correct?

16 A Yes.

17 Q Where is -- is there a microphone?

18 A There's nothing that comes out. It's actually built inside the unit and
19 there's just a small crevice opening that you can't even visually see it and it just lets
20 the sounds go into the microphone inside the camera.

21 Q And for the record, that's on top of the camera?

22 A Yes.

23 Q Okay. So if an officer is wearing it on his lapel, like his shoulder area,
24 the microphone -- and if that officer was seated in a patrol car, the microphone
25 would be pointed towards the roof of the patrol carol, fair to say?

1 A Correct.

2 Q Okay. And is there any specialty with the microphone in the system on
3 the body camera in terms of picking up sound, closer, farther away, et cetera?

4 A It's a digital recording device and as Taser taught me is that it tries to
5 pick up what's close --

6 Q When you Taser, what -- who is Taser?

7 A Oh, I'm sorry. This is a Taser product. Taser that we all know is the
8 electronic weapons that officer's carry. This is their body camera product that they
9 sell. We chose this after testing out various companies across the country. We
10 tested about five different products and we chose this product from Taser. Sorry,
11 they're the --

12 Q Taser is the --

13 A -- manufacturers.

14 Q -- name of the company.

15 A Yes.

16 Q The manufacturer of the system.

17 A Yes.

18 Q Okay. I'm sorry, I interrupted you. If you could go back to the -- my
19 original question regarding the sound, in terms of the microphone.

20 A So when we bought the cameras from Taser they came out and trained
21 me -- train the trainer sort of thing so that I could then reduce that training to get the
22 officers equipped with the cameras and get them out on the street so that they could
23 utilize them. What they explained to me was that this is a digital recording device,
24 both digital audio and digital video, and that it's built to capture the sounds close to
25 the officer.

1 It's not, you know, a high-end multi-thousand dollar device at all. The
2 entire unit costs under \$500 for us, per officer. And so it has limitations on high of a
3 decibel it will pick up and how low of a decibel it will pick up. And it captures the
4 sounds around the officer in that you know, it's looking for the officer speaking,
5 whoever the officer's speaking with, it's trying to capture radio sounds, if the officer's
6 on his portable radio or even on his car radio. But it's not designed of rang high-end
7 or low-end, or long distance.

8 Q You're familiar with the body camera video that Officer McNabb wore on
9 June 26th of 2014?

10 A Yes, sir.

11 Q Is it fair to say that was either one of the first or perhaps the first officer-
12 involved shooting while the officer involved in the actual incident wore a body
13 camera?

14 A It was our first, but it was one of the first for body cameras all over the
15 country, yes.

16 MS. NGUYEN: We need it switched over.

17 MR. FATTIG: Can I get it switched over to the computer?

18 BY MR. FATTIG:

19 Q I'm going to play a little bit of State's Exhibit 187. And you recognize
20 this still at the beginning --

21 A Yes, sir.

22 Q -- Officer Ferranti? Okay.

23 [Body Cam video playing]

24 BY MR. FATTIG:

25 Q Now, during this portion of the video, on the right portion of the

1 roadway, do you see some dumpsters that are being passed by the vehicles?

2 A Yes.

3 Q Okay. When you look at the -- and this is obviously from Officer
4 McNabb's viewpoint as he sits behind his wheel of his patrol car, correct?

5 A Yes.

6 Q And we see him following another vehicle in front, correct?

7 A Yes.

8 Q Can you see towards the driver's side of that vehicle? Does it appear
9 that it's kind of bleached out by the --

10 MS. NGUYEN: Objection, Your Honor. Leading.

11 THE COURT: Sustained.

12 BY MR. FATTIG:

13 Q Can you describe whether or not you can see the driver's side window
14 area of the vehicle during this portion of the video?

15 A I cannot.

16 Q And why is that?

17 A Appears to be the glare from the street lights.

18 [Body Cam video continues playing]

19 BY MR. FATTIG:

20 Q Now we see him going through the stop sign. We see Officer McNabb
21 turning on to Carey. And again, at this portion of the video, Officer Ferranti, can you
22 see the driver's side or driver area of the video?

23 A Not clearly.

24 [Body Cam video continues playing]

25 BY MR. FATTIG:

1 Q Now we -- I stopped at 30 seconds and we just heard audio for the first
2 time, correct?

3 A Yes, sir.

4 Q What does that indicate to you regarding the sys?

5 A Well I have to explain how the system works. Two reasons -- the main
6 reasons we bought this product from Taser and we utilize it is number one, it has a
7 separate camera from the battery unit and instead of being worn in the chest area,
8 we can put it up on our collars or up higher. And the reason for that is exactly what
9 you see here, it gives us the availability to act kind of like a dash camera where we
10 can see through the windshield of what the officer's seeing. And then when the
11 officer steps out it goes with the officer and we can see the rest of what the officer's
12 doing. So that's one of the first reasons.

13 The other reason is there's an option on this system where you can set
14 the camera to be in a standby mode. And when it's in a standby and the officer's,
15 you know, sitting in a room or whatever he or she's doing, it's continuously recording
16 in a 30 second loop. And it's recording that loop with video only, no audio. So it
17 does that and then what I said 30 minutes ago, if this was on, it would have already
18 overridden and kept recording.

19 So it continuously records in that loop until you press the button twice
20 and turn it on. And when it does that, then it captures audio and video and grabs
21 the previous 30 seconds and attaches that video. So all our videos that we have in
22 our system have the first 30 seconds of silence, video only, and then it goes into
23 audio. And what that means is that when the audio starts is the moment that the
24 officer presses the button and turns it on and is grabbing that previous 30 seconds.

25 Q Okay. So we know that at the 30 second mark is the point in time

1 where Officer McNabb actually hit the button twice and activated the camera?

2 A Yes, sir.

3 MR. FATTIG: I have nothing further.

4 **CROSS-EXAMINATION**

5 BY MS. NGUYEN:

6 Q Sergeant, were you involved in any of the training of the individuals that
7 received these body cameras?

8 A Yes.

9 Q Okay. So they did receive training?

10 A Yes.

11 Q And what type of training did they receive?

12 A In the beginning initial outlay of the 200 cameras we're talking about,
13 the training we got was basic operation of the camera, our first policy and we've
14 gone through a few revisions since then, and it was approximately 45 minutes to an
15 hour worth of training to get them the functionality of the system and how it works,
16 and how to plug it in at the end of the shift, and upload the videos to the cloud
17 storage that we use. And just instructions on how the basic operation would occur.

18 Q Okay. So the training really involved actually using the device, is that
19 correct?

20 A Yes.

21 Q Okay. Was there any training that was conducted regarding the
22 policies behind when you activate the device, how frequently you download the
23 device or upload the device, any of that type of training?

24 A There was some brief training about that, yes.

25 Q Okay. And were you a part of that training?

1 A Yes, I was.

2 Q Okay. And did you train Officer McNabb as he was one of the first
3 initial 200 to receive this?

4 A Yes.

5 Q Okay. And back in June of 2014, do you recall what the policy was on
6 when you activate the device?

7 A That part of the policy hasn't changed, but, yes, I do recall.

8 Q And what was that policy at that time?

9 A That you're supposed to activate the device when you can activate it
10 and it's when you have interaction with citizens; when you're going to be dealing
11 with citizens on a car stop, on a person stop, or a call for service --

12 Q Okay.

13 A -- are like the basic reasons.

14 Q Is it somewhat discretionary then for the officer to determine when
15 they're going to turn it on?

16 A Discretionary about the time of turning it on, yes, but on the nature of
17 when you're going to turn it on, you're told to turn it on for those incidents I
18 mentioned.

19 Q Okay. You said that you were a part of the, I guess, was it a team or
20 was it just you that decided who was going -- what cameras you were going to
21 select?

22 A The testing and the choice of the cameras was done prior to me
23 volunteering to start up the program. When I showed up the cameras were on the
24 shelf, the policy was in place, and we were ready to issue out training and issue out
25 the cameras.

1 Q Okay. And body cameras for law enforcement is not a new thing, is
2 that correct?

3 A No. they've been around for years. It's new for Metro to go this far, but
4 we've been testing them since back in 2012.

5 Q Okay. And you said that you had -- or you and a group of
6 people had determined that this camera -- you like it because it was eight
7 megapixels, is that correct? And some of the other various features that you had
8 indicated.

9 A That was one of the factors, yes.

10 Q Okay. Where it's located?

11 A Was one of the factors, yes.

12 Q On the different options on where officers have to place that body
13 camera, is there a reason why those are the particular areas that the camera should
14 be located?

15 A What I didn't bring are the various mounts that are available. There's a
16 collar mount and the side of this camera has a small magnetic piece and it locks in
17 and sticks into your collar mount. The glasses mount also has magnetic -- a metal
18 piece and this magnet sticks in there. And the head mount is the same way.

19 So those are your three options. Excuse me, there's a fourth option.
20 Our uniforms have small cloth epaulettes and a mount sits there and you can also
21 put it up into that piece of metal and it sticks there.

22 Q Okay. And those four potential locations are probably there -- are they
23 suggested? Could you choose a different mount if you wanted? Could you put it on
24 your wrist?

25 A No.

1 Q Okay. Could you --

2 A You have to use one of --

3 Q -- get a selfie stick and walk --

4 A You have to use one of those --

5 Q -- around with it?

6 A -- mounts. Although there are other mounts coming out for other parts
7 of the department.

8 Q Okay. And the reason that those are probably the mounts, is it your
9 understanding, because those capture, I guess, the most complete picture of what
10 that officer is viewing?

11 A Correct.

12 Q Okay. We had watched some of that video and you had indicated that
13 there was some glare that you could see, is that correct?

14 A Yes.

15 Q Okay. And is that glare because the camera's made of glass? It has a
16 glass lens?

17 A I don't know what causes glare, I'm not a -- I mean, I see glare when a
18 light shines in my face, a headlight's coming towards me while I'm driving. That's
19 what I call glare.

20 Q Okay. And do you witness that glare just in your driving?

21 A Sure.

22 Q Okay. Are -- have you ever worn glasses?

23 A Yes, I have magnifying glasses for --

24 Q Okay.

25 A -- computer screens right now.

1 Q Okay.

2 A But I'm not -- don't wear prescriptions.

3 Q If you wear glasses outside do you experience that same glare as well?

4 A It's -- potentially yes that you could experience glare.

5 Q Okay. When you were examining and selecting the cameras for Metro,
6 were there cameras that had increased megapixels?

7 A I was not involved in any of the planning and selecting. When I
8 volunteered to become a part of it they were bought and paid for and sitting on the
9 shelf and I was involved in all the training and deployment.

10 Q Okay. During the course of, I guess, your involvement with body
11 cameras -- and you're still involved, is that correct?

12 A Yes.

13 Q Okay. Are you constantly trying out and testing new technology?

14 A We've committed to this technology and we're utilizing this. What we've
15 done now is we now have more cameras and we're getting more cameras out on to
16 the street.

17 Q Okay. And do they still have the same specs as the camera that was
18 utilized by Officer McNabb in 2014?

19 A Yes.

20 Q Okay. Is it fair to say that Metro likely, or the County has a contract
21 where they've committed to this company and this device?

22 A We are under contract with them, yes.

23 Q Okay. And so there's never been an opportunity for Metro or the
24 County, or yourself to look at better cameras?

25 A Not that I know of.

1 Q Okay. And the eight megapixels, are you familiar with -- is that similar to
2 like say someone would have on like a iPhone?

3 A I believe there are eight megapixel iPhone, yes.

4 MS. NGUYEN: Okay. Nothing further.

5 **REDIRECT EXAMINATION**

6 BY MR. FATTIG:

7 Q In terms of some of the policy as of the spring of 2014 when this
8 incident occurred, regarding turning on the body camera during a traffic stop, what
9 was the procedure?

10 A The procedure was that when ye going to have -- the training was that
11 when you're going to have interaction with a citizen, whatever you're doing, a call for
12 service or a traffic stop or something like that, when you have the interaction we
13 wanted you to turn it on as the interaction was starting.

14 Now that could be -- if you had -- were able to project a stop and be
15 able to have time to plan I'm going to go into this parking lot and that, sometimes
16 that can happen and it's smooth. Other times when you project a stop it varies and
17 changes and you don't end up where you initially thought you would end up. The
18 policy was just whenever you're going to make contact with a citizen, get it turned on
19 by then.

20 We also realized that being a new technology we told the officers you're
21 going to have to remember this. This is like, you know, turning on your portable
22 radio when you step out of your car. Do you turn it on when you're still driving, do
23 you turn it as you're stepping out, or you turn it on when you're finally contacting
24 somebody and you're out of the car away from your car radio?

25 You're kind of -- you have that option to turn it on in any one of those

1 points in there and we were just telling them since it's new, start getting used to it
2 and turn it on when you can remember to turn it on. And so the policy says to turn it
3 on, but it doesn't say specifically at this point or this point. It just says get it on
4 before you have the actual interaction with the person.

5 Q Interaction with the citizen?

6 A With the citizen, yes.

7 Q Okay. So in a traffic stop scenario would that be when you exit your car
8 to approach the car?

9 A It could be when you get up to the car door, it could be as you're
10 approaching up to the car door, it could be as you're opening your door and getting
11 out. You -- we're leaving it up to the officers to make that decision along the way.

12 Q But not during the drive to make the stop necessarily?

13 A No you're already busy driving and turning on your lights and sirens to
14 activate to pull someone over. You've already also had to put in there that you're
15 going to have to give out radio traffic if you can to tell dispatch you're pulling a car
16 over. There's lots of other things to be done before the camera gets turned on.

17 Q You've -- you're obviously familiar with the full body cam video in this
18 particular case?

19 A Yes, sir.

20 Q During the audio portion after the 30 second portion to the end, you
21 would agree with me that you don't hear any gunshots coming at Officer McNabb?

22 A Correct.

23 Q Does that surprise you at all?

24 A No.

25 Q Okay. Why is that?

1 A You're inside the car and at some point Officer McNabb rolls up the
2 window. At some point he has his lights and sirens on, so you hear the siren.
3 There's radio traffic coming into the car radio. There's radio traffic going out from
4 his voice. And the system is designed to pick up those close sounds and try to
5 record them on the video as best they can within the limitations of the system.

6 Something occurring outside the car at any distance is not going to be
7 picked up by the system, either audio or video, once it gets far enough away.

8 MR. FATTIG: Nothing further.

9 MS. NGUYEN: Just briefly.

10 **RECROSS-EXAMINATION**

11 BY MS. NGUYEN:

12 Q So are you telling me that the audio equipment is sophisticated enough
13 that it filters or are you just pointing out that things that are closer are going to be
14 captured --

15 A I don't think I have --

16 Q -- louder?

17 A -- the expertise to really explain that. As they instruct -- they taught me
18 from Taser was that sounds or analog -- this is a digital system. It grabs the sounds
19 around the camera, close by. If it's really, really low, it will try to enhance them a
20 little bit. If they're really, really high it'll reduce them a little bit. Once you go outside
21 those parameters it will not pick them up; too low or too high.

22 And then -- so they explained that all the sounds you're hearing in the
23 car and around the car are what it's going to pick up. For our distant sounds or
24 videos, you're not going to catch on the camera or with the microphone.

25 Q So is it your understanding that there's potentially things that are going

1 on that might be filtered out automatically by this system?

2 A If they reach those high or low ends of -- again, I'm getting past the
3 expertise I don't have of audio sound and video distance.

4 Q I'm just curious what your understanding of this device is.

5 A That it pictures -- it picks up what is nearby the officer and around the
6 officer to the limitations of its design.

7 Q But you're not aware if somehow the device itself artificially manipulates
8 the sound?

9 A I'm not aware, no.

10 Q Okay. Or that it artificially manipulate any video?

11 A I'm not aware, no.

12 Q Okay.

13 MS. NGUYEN: Nothing further.

14 MR. FATTIG: Nothing further.

15 THE COURT: The jury have any questions of this officer.

16 If you guys need to stand you can stand up.

17 [Pause in proceedings while the Court and Counsel discuss jury questions]

18 THE COURT: All right. Detective, you're free to go. Thank you.

19 Call your next witness, State.

20 MS. THOMSON: Judge, the State calls Gloria Guillen.

21 MR. FATTIG: She's putting money in the parking meter, Your Honor, so we'll
22 call a different witness.

23 THE COURT: Okay. That's fine. Who are you calling? Who are you calling?

24 MR. FATTIG: Officer Morgan. Ernie Morgan.

25 **ERNEST MORGAN**

1 [having been called as a witness and being first duly sworn, testified as follows:]

2 THE CLERK: Thank you. Please be seated. State your full name, spelling
3 your first and last name for the record, please.

4 THE WITNESS: Ernest Morgan. E-R-N-E-S-T, M-O-R-G-A-N.

5 **DIRECT EXAMINATION**

6 BY MR. FATTIG:

7 Q Sir, how are you employed?

8 A I'm a K9 Handler with the Las Vegas Metropolitan Police Department.

9 Q And how long have you been with Metro?

10 A Almost 18 years.

11 Q And how long have you been a K9 Handler?

12 A A little over five years.

13 Q And were you in any law enforcement before Metro? Before the 18
14 years?

15 A I was.

16 Q And where was that?

17 A I worked for the uniformed secret service for four years and then a
18 police department in New Mexico.

19 Q And how long were you in New Mexico?

20 A Four years.

21 Q Did you do any work with -- K9 work before you were with Metro?

22 A I did.

23 Q And how long did you do K9 work before?

24 A About three years.

25 Q Was that in New Mexico?

1 A It was.

2 Q Okay. So you've been a K9 Officer for about seven years between the
3 two departments?

4 A Yes, sir.

5 Q And the four years of Metro that was since 2011-ish?

6 A 2010.

7 Q 2010.

8 A Yeah.

9 Q Okay. Currently you have -- you're a K9 Officer, you have a dog
10 assigned to you?

11 A I do.

12 Q Is that how it works?

13 A It does. We have two dogs assigned to us.

14 Q You have two at all times assigned to you?

15 A Yes, sir.

16 Q Do you go through training with them?

17 A I do.

18 Q Can you talk a little bit about the training that you go through with your
19 dog before you go out into the field?

20 A We have a training course. It's about two to three months long
21 depending on the time of year or the dog. And we have head trainers that are
22 assigned to us, but we go through the training with our dogs to build that bonding.
23 We have certain criteria that Metro requires us to be able to do and we train them
24 through to learn how to hunt, to find people, to find evidence, those sort of things
25 throughout that time.

1 Q Okay. And when you say learn how to hunt, train, are they trained to
2 attempt to pick up human scent?

3 A Yes, sir.

4 Q Okay. Are there certain -- as part of the training certain examples you
5 can give to the jury in terms of how they try to train the animals?

6 A What we'll do is we will hide people in all sorts of different scenarios;
7 whether in buildings, in outside open areas where the dog has to go in and locate
8 that human odor, take us to that human odor. Whether they can get to it or not -- if
9 they can't get to it they usually bark. If they can get to it, if it's a scenario that we
10 want them to then they do apprehend the guy by biting him - the person by biting
11 them.

12 Q Specifically I'm going to direct your attention to June 26th of 2014. Were
13 on duty the evening hour?

14 A I was.

15 Q And approximately 10:45 to 11:00 p.m., did you have occasion to hear
16 of a call for assistance in the area of Carey and Dolly?

17 A I did.

18 Q And where were you when you got the call?

19 A When I got the call I was at Cheyenne and Lamb.

20 Q And what do you do on a normal -- were you working a swing shift?

21 A Yes, I work in a 3:00 evening until 1:00 in the morning.

22 Q Now this was the Northeast Area Command part of the city, correct?

23 A Yes, sir.

24 Q Are you assigned to the Northeast Area Command during your shift?

25 A No, we roam throughout the city.

1 Q The K9 Officers.

2 A We do.

3 Q Okay.

4 A As the K9 Officers there's a -- there's so few of us that we roam
5 throughout the city wherever we might be able to be helpful. And I just happened to
6 be there. I was clear, just roaming, listening to the radio.

7 Q When you say clear you weren't assigned to a particular call?

8 A Yes, sir. Yes.

9 Q You're roaming, listening to the radio, and if need of K9, you respond?

10 A Yes, sir.

11 Q Okay. And so it was fortuitous that you were in the area of Cheyenne
12 and Lamb when you heard the call?

13 A Yes, sir.

14 Q And so you started driving to the area.

15 A I did.

16 Q And what were you hearing over the radio?

17 A First I heard was an individual making a traffic stop and moments later
18 said that there had been shots fired. And that the car continued up to Carey. I can't
19 remember where they started, but went to Carey and began going eastbound on
20 Carey. And the radio traffic was a little tough to understand, but I did know that
21 shots had been fired and the individual was fleeing from the officers. So I headed to
22 that area which I was very close to.

23 Q Okay.

24 A Figured I'd intercept them about Lamb and Carey.

25 Q And Cheyenne as opposed to Carey would be just north of Carey?

1 A Just north.

2 Q So you were within a couple miles?

3 A Yes, sir.

4 Q Now what kind of vehicle are you driving?

5 A I have a Ford Expedition SUV, fully marked.

6 Q Fully -- K9 Unit kind of on the side?

7 A Just K9 Unit, black and white with a Metro star and lights on top.

8 Q And how many dogs do you have? Two or one?

9 A I do have two.

10 Q Okay. And this particular night, how many dogs did you use?

11 A I used one.

12 Q Okay. And what was the name of the dog?

13 A Claymore.

14 MR. FATTIG: And Your Honor, pursuant to stipulation a picture of the dog is
15 State's Exhibit 116. I believe it's been admitted.

16 MS. NGUYEN: That's correct.

17 THE COURT: All right. That will be the order.

18 MR. FATTIG: Thank you.

19 BY MR. FATTIG:

20 Q And what kind of dog is Claymore?

21 A He's a Dutch Shepard.

22 Q And this would be a picture of Claymore?

23 A That is.

24 Q Now how did you get to the -- you ended up on El Tovar and Dolly or
25 near there?

1 A I did.

2 Q How did you get to El Tovar?

3 A I came to -- I came southbound on Lamb to Carey. I could see the
4 lights of the patrol unit to the east, which was Dolly. And I drove to that location and
5 I could actually see people on Dolly running. So I turned down Dolly, turned
6 westbound on El Tovar where the last -- where there was an officer there.

7 Q And you noticed out on Carey, a patrol car sitting there with lights on --

8 A Yes, yes.

9 Q -- that was seemingly abandoned basically?

10 A Yes.

11 Q Okay. When you got down to El Tovar, were you the first officer or
12 second or third?

13 A I think I was one of the first. I know another officer came from my south
14 and got here about the same time as I did. I'm not exactly sure. I know there was
15 the one officer right there on the corner that was -- had been involved and that was
16 it.

17 Q On foot at that point.

18 A On foot, yeah.

19 Q Okay. And do you remember, you got out of the car?

20 A I did.

21 Q And did you get the dog immediately or what did you do?

22 A No, I expected to encounter the subject right there because he said I
23 saw him, this was the last place I saw him. I expected to encounter him right there
24 as I turned the corner and got out of my vehicle. I did a bit of a scan, I didn't see
25 him. So I began getting my dog out, which he's on the passenger side. I have to

1 open the passenger door -- rear passenger door to get him out.

2 As I started to get him out is when the officer started -- one of the other
3 officers started showing up. So I had him go west on El Tovar to start setting up a
4 perimeter so I could begin searching.

5 Q Okay. And then what happened after that?

6 A And then as I brought Claymore out of the car the house was almost
7 directly in front of -- a lady exited that residence and told me that the guy was in her
8 backyard.

9 [Colloquy between Counsel]

10 MS. NGUYEN: Your Honor, I'd stipulate to the admittance of Exhibits --

11 MR. FATTIG: These will be 111 through 115.

12 THE COURT: They'll be admitted.

13 MR. FATTIG: Thank you.

14 **[STATE'S EXHIBITS 111 THROUGH 115 ADMITTED]**

15 BY MR. FATTIG:

16 Q Officer Morgan, showing you 111 first. Do you recognize that
17 photograph?

18 A Yes.

19 Q And is that the front of a home?

20 A That's the front of the home that I was -- I was parked nearly in front of
21 it, yes.

22 Q Okay. And this is the second home on the north side of El Tovar, is that
23 fair to say?

24 A Yes.

25 Q And you were parking in the street in your SUV --

1 A Yes.

2 Q -- out in front of this area?

3 A I was.

4 Q And you indicated a neighbor in the area came out?

5 A Someone come from that residence.

6 Q from this --

7 A From that residence come out to me.

8 Q Okay. Was it a female?

9 A Yes, it was.

10 Q Okay. And what did she indicate?

11 A She told me that somebody had jumped her fence just to this east

12 side -- jumped her fence and was in her backyard at that current time?

13 Q Was she speaking in Spanish or broken English?

14 A Yeah, kind of broken English. It was hard for me to understand all of it

15 but I did get the gist.

16 Q You got the gist that somebody is in her backyard that shouldn't be.

17 A Somebody was there and she was afraid.

18 Q Okay. What did you do upon hearing this?

19 A I --

20 Q Well I'm going to stop you there. I'm sorry. How much time had gone

21 by from the point in time when you got there, you got the dog out, and then you

22 heard from this lady?

23 A It had only been within a couple minutes.

24 Q Okay. And then what did you do after you heard that information?

25 A I tried to get her to stay outside of the house and bring anybody else

1 out, but she indicated in a way that there were children inside the residence and she
2 ran back into the house.

3 Q And then what did you do?

4 A So I got another couple of officers with me, one to be on the west side
5 of the house, other one to be on the east side of the house, and one to go with me.
6 We went to the house to see if I could get permission to come through because
7 what I was worried about is if someone may be desperate enough maybe to come in
8 with children and I didn't want anything bad to happen.

9 So we -- they let me go through the front door with another officer with
10 me and my K9 partner.

11 Q You were concerned that perhaps whoever was in the backyard might
12 try to run into the house?

13 A Exactly. Yeah, because there was enough officers starting to show up
14 you could hear the sirens and so forth.

15 Q How was your dog reacting at this point?

16 A Very excited as always. But -- yeah, he was very excited at the time
17 because he knew we were going to work.

18 Q Did you get permission to go into the home there?

19 A I did.

20 Q And that is 4586 El Tovar for the record, correct? Does that sound
21 right?

22 A Sounds right to me.

23 Q Okay. And when you went into the home, did you have any other
24 officers besides Claymore?

25 A I had my -- one of my back-up officers, Karl Huysentruyt.

1 Q He was with you and you're armed as well, correct?

2 A I am.

3 Q Okay. And what was the plan as you entered into that home?

4 A I wanted to get to the backyard and search for this individual that was in

5 there; make sure he didn't come in or leave from there because she said he was

6 right there. So I wanted to get in and go to their backyard tot reasonably to get him

7 in custody.

8 Q So the occupants directed you to the back door?

9 A They did.

10 Q Okay.

11 A And it kind of went in and went towards the west. We exited out kind of

12 the west side of the residence.

13 Q I'm going to show you State's Exhibit 113. Do you recognize what this

14 shows?

15 A That shows the door that we came out of, to the west side of the house.

16 Q Is it on this side of the home?

17 A Yes.

18 Q Okay. So this is a picture taken from the backyard and there's a back

19 patio area on the west side of the rear of the home?

20 A Yes.

21 Q Number 114. Do you recognize where that perspective was taken?

22 A That should be to the eastern side of the backyard.

23 Q This is -- is this from the patio area --

24 A Yes.

25 Q -- cover? Okay. And State's Exhibit 115. Do you recognize this?

1 A Yes. So that's the entire backyard.

2 Q And so the area -- can you mark on the monitor approximately where
3 you came out, if you see it on there?

4 A I came out right over here. Oops.

5 Q I realize it's not calibrated exactly. But it was on the right portion of
6 the --

7 A Yeah.

8 Q -- building?

9 A Yes.

10 Q Okay. Is it fair to say that the patio, it's like an indentation to the back of
11 the house?

12 A It is. There's a little indentation from this portion over to here.

13 Q So you, Claymore, and Officer Huysentruyt came out to that patio area
14 initially?

15 A Yes.

16 Q What happened?

17 A As I come out my dog -- they do different indications. And this
18 indication when he's in to a strong odor is he pulls really hard. And you can tell he's
19 pretty big and so he pulls really hard. So as soon as I come out this side he just
20 began pulling me, trying to wrap me around the side of the house.

21 Q If somebody is involved in a stressful situation and is involved in
22 perhaps running from an area and involved in hiding in an area, would that add to
23 the ability of the dog to perhaps locate that person?

24 A Absolutely. It makes it much, much easier.

25 Q Okay.

1 A To locate somebody that's been running and hiding and the endorphins
2 and all the adrenaline --

3 Q Sweat.

4 A -- and sweat and stuff, it makes it very easy. Because in our training
5 usually our people aren't afraid. So it's a little bit harder. But when you're in a real-
6 life situation it seems to be very easy for the dog to locate them.

7 Q Now is the dog barking at this point?

8 A No. He's just pulling very -- really hard.

9 Q And what do you do with -- along with Claymore and Officer
10 Huysentruyt, where do you go, what do you do there?

11 A So we stop at the edge. I don't want to come around because there
12 had been indications that shots had already been fired so I didn't want to come and
13 expose myself to the edge. I came right to the edge of this. Knowing this part was
14 clear, I came right to the edge of the residence there.

15 Q Mark on there what edge you're talking about.

16 A Just touch it. And so right --

17 THE COURT: Or you can circle it.

18 BY MR. FATTIG:

19 A Right there. Well, closer though. I mean, it --

20 Q Closer to the edge --

21 A I'm trying to --

22 Q -- of that corner.

23 A Right to the edge. I didn't come out on the edge of it so clear up here.

24 Q No when you're in that area initially are you -- you're obviously scanning
25 the backyard. Do you see anything at that point?

1 A I don't.

2 Q Okay. You don't hear any noises?

3 A No.

4 Q So you're going to the edge and are you trying to peek around the
5 corner or what?

6 A Yeah, I did. I put my dog down so his head was down on the edge of
7 the residence. I was peeking around and he was just trying to pull to take me
8 completely around there. He knew somebody was there.

9 Q Okay. And when you peeked around were you able to see anyone?

10 A I could see some legs.

11 Q And where did you see the legs?

12 A At the edge of the house over here.

13 Q Okay. So you're indicating, for the record that would be the east side of
14 the rear of the home?

15 A Yes.

16 Q And you say legs. Were they standing up legs? Were they what?

17 A No. Laying down. Laying down and the feet were heading towards the
18 backyard.

19 Q What did you do at that point?

20 A I gave announcements to see his hands as I -- you know, I'm sure they
21 could already -- probably already could hear my dog because he makes so much --
22 not barking, but so much grunting noises that I knew he knew we were probably
23 there. So I began giving the announcement to show me your hands or I was going
24 to send my dog and let him bite him.

25 Q Okay.

1 A And I did.

2 Q Now when you saw the legs of this person, did you at some point look
3 to see if you could see his hands?

4 A Yeah, I could not.

5 Q Okay. And could you tell how the person was laying? Were they laying
6 on their stomach? On their back?

7 A Yes. It appeared to me laying on his stomach with his head facing
8 towards that front part of the house.

9 Q Okay. Did it appear that he was on the side so he could view the left
10 portion of that back -- that rear yard?

11 A Yes.

12 Q And just again, looking at State's Exhibit 115. Looking -- he -- did you
13 feel he was at a position where he could look down this way?

14 A Yes.

15 Q Okay. Did you notice eventually after you got around, was his head
16 tucked behind the wall or was it front of this back wall of the home? Or was he right
17 on the corner?

18 A I think he would probably have to be right on the corner because I
19 couldn't really see it and I didn't light up with my flashlight as much.

20 Q Was it fairly dark?

21 A It was fairly dark but there was ambient light to where I could see that.
22 But that's from -- the movement from where when Claymore engaged to where he
23 pulled out would have probably been where he moved from.

24 Q Okay. Did the individual ever indicate orally anything?

25 A No.

1 Q When you yelled out show me your hands did he ever show his hands?
2 A No.
3 Q How many times do you think you yelled that out?
4 A At least twice when I let him off.
5 Q Okay. And when you say you let him off who did -- what are you --
6 A I unleashed the leash and let Claymore run free.
7 Q And that's part of your training?
8 A Yes.
9 Q And why are you letting off Claymore at this point?
10 A Because of the seriousness of this crime and the person that we're
11 attempting to take into custody without getting any verbal indication from him that
12 he's submitting to me, I let my dog go to apprehend because it's the safest for all
13 around. And a lot of times that dog is able to intervene where no other use of force
14 is needed.
15 Q You know that he has been armed, correct?
16 A Yes.
17 Q He's been shooting at another patrol officer?
18 A Yes.
19 Q And he's not acknowledging you?
20 A No.
21 Q You don't know if he's armed at that point?
22 A I do not.
23 Q Okay. What does Claymore do when he's released by you?
24 A He runs directly towards the individual and bites him in the lower part of
25 his leg.

1 Q And is that part of his training?

2 A Yes, he'll bite wherever he could get ahold of.

3 Q And did you follow him over there?

4 A Yes. Once he did get ahold of him then I did go and took him off the
5 bite.

6 Q And the other officer s were there?

7 A Other officers too. Once the other two officers -- or at least two officers
8 came up, I took him off so that they could place handcuffs on him.

9 Q And then you were kind of responsible for securing the dog?

10 A Yes, yes, my job.

11 Q And they secured the suspect?

12 A They secured him, yes.

13 Q Okay. Do you see the suspect that was bitten by Claymore and laying
14 in the backyard today here in court?

15 A I do.

16 Q Could you please point to him and identify a piece of clothing he's
17 wearing?

18 A Sitting here at the Defendant's table with a light green shirt and a yellow
19 tie.

20 MR. FATTIG: May the record reflect the identification of the Defendant.

21 THE COURT: It will.

22 BY MR. FATTIG:

23 Q Now after the Defendant was secure in the backyard, did you continue
24 to us Claymore at that scene?

25 A I did.

1 Q What did you do?

2 A I continued -- I went at least one house to the west, one house to the
3 north -- or two houses to the north and the other -- just to make sure there was
4 nothing else there I went and did kind of a house to each side of the one where he
5 was taken into custody. Just to make sure there was nothing else or maybe
6 evidence or anything that I might have missed.

7 Q Let me show you a couple of photos. This has already been admitted
8 as State's 15. Officer Morgan, do you recognize this as the house --

9 A Yes.

10 Q -- you were in the backyard of?

11 A Yes.

12 Q This is El Tovar and Dolly. So you indicated to the house to the west?

13 A Yes.

14 Q You looked in that?

15 A I did.

16 Q That backyard there?

17 A I did.

18 Q Did you look in the house --

19 A I did that one also.

20 Q -- to the east? And the houses on Carey?

21 A And those two. Yeah, and those two off of Carey.

22 Q Off of Carey.

23 A Yes.

24 Q And again, you're looking for possible other people --

25 A Absolutely.

1 Q -- shouldn't be around? Or evidence?
2 A Or evidence, yes.
3 Q So items that might have the human scent on them still?
4 A Yes.
5 Q And did you find anything?
6 A No.
7 Q Okay. Were you aware that any other suspects were found in the
8 area?
9 A No.
10 Q Were you aware that any other evidence was found in the area?
11 A Yes.
12 Q Besides the truck -- the white truck?
13 A Yes, they -- when I came back out, they indicated there was a gun
14 outside under one of the vehicles.
15 Q Okay. But you weren't involved in that?
16 A No, not at all.
17 [Colloquy between Counsel]
18 MR. FATTIG:
19 Q When you saw the Defendant laying in the backyard on his stomach,
20 can you describe -- you indicated you didn't see his hands, correct?
21 A I did not.
22 Q Can you describe why you didn't see his hands? I mean, could tell
23 eventually where his hands were at?
24 A Well I believe they were up under his chest. I don't know for sure
25 because once I went there Claymore was kind of pulling on him, so his hands

1 started coming out, but they looked at me like they were kind of under him and he
2 was facing more towards that gate on the east side of the house where the lady had
3 indicated he jumped.

4 Q Okay.

5 MR. FATTIG: I have nothing further.

6 **CROSS-EXAMINATION**

7 BY MS. NGUYEN:

8 Q When you arrived at the scene Officer Morgan you were aware that
9 there had been a shooting, is that correct?

10 A Yes.

11 Q And that there was an officer involved in that shooting --

12 A Yes, ma'am.

13 Q -- is that correct?

14 A Yes, ma'am.

15 Q Were you aware that the officer had discharged his firearm as well at
16 that time?

17 A Not for a few minutes because of our radio traffic, but I didn't know for
18 sure.

19 Q When you had arrived on the scene and you had exited your car with
20 Claymore, did you know at that time?

21 A I think so, yes.

22 Q Okay. And did you have any description of a suspect that you were
23 looking for at that time?

24 A There was a description out. I'm not exactly sure what it was.

25 Q Were you -- oh, wait.

1 A No, I'm sorry.

2 Q Okay.

3 A Go ahead

4 Q Were you aware of that description when you exited your vehicle with
5 your dog?

6 A Yes.

7 Q And do you recall what that description was at that time?

8 A I do not.

9 Q Okay. So you have a general description of what the suspect looked
10 like, is that correct?

11 A That is correct.

12 Q Okay. You had indicated that you had a general direction too that you
13 were beginning your search in?

14 A Yes, ma'am.

15 Q And this was a residential area?

16 A Yes.

17 Q Okay. In fact here were several houses on that street?

18 A Yes.

19 Q And are you aware that there was an apartment complex pretty close
20 by as well? Like a smaller apartment complex?

21 A Okay. I'm not sure. No.

22 Q Okay. But you're aware it's a residential area?

23 A I am.

24 Q Okay. There weren't huge street lights so it was kind of dark in that
25 area, is that --

1 A Yes.

2 Q -- fair to say? Okay. Did you have any kind of flashlight or anything to
3 help illuminate the area you were searching?

4 A I do have flashlights.

5 Q Okay. And how exactly were you carrying that at the time?

6 A At the end of my gun.

7 Q Okay. And so did you have your gun drawn this entire time?

8 A The entire time from -- I didn't have it drawn when I walked through the
9 residence, but as soon as I got outside the residence I drew my gun.

10 Q Okay. And what hand are you holding that gun with?

11 A Right hand.

12 Q Okay. And what type of gun are you holding?

13 A A Glock.

14 Q Is that a semi-automatic gun?

15 A Semi -- I'm sorry. Yes, ma'am. Semi-automatic pistol. Yeah.

16 Q Okay. And you're holding that with your right hand?

17 A Yes, ma'am.

18 Q Okay. And you're also securing your -- the canine, is that correct?

19 A Yes, ma'am.

20 Q And what hand are you using to --

21 A My left hand.

22 Q Okay. SO you've got your gun in one hand with a flashlight on it --

23 A Yes, ma'am.

24 Q -- is that correct? And then you have -- you're securing your dog with
25 the other hand, is that correct?

1 A Yes, ma'am.

2 Q Okay. You had indicated that a woman came out of the home and that

3 you were able to communicate with her?

4 A Yes.

5 Q Okay. But she did not speak English --

6 A Very well.

7 Q -- as her primary language?

8 A Probably not.

9 Q Okay. And do you speak Spanish?

10 A I do not.

11 Q Okay. Were you engaging in a broken English conversation there?

12 A Yes, ma'am.

13 Q Okay. You indicated that you could tell that there was someone in the

14 backyard or there was someone -- something that she was fearful of?

15 A Yes.

16 Q And that you could gage that there were children --

17 A In here residence, yes.

18 Q -- in the house? Okay. Were you able to communicate anything much

19 more than that?

20 A Not much more.

21 Q Okay. So she wasn't able to give you a description of the individual?

22 A No.

23 Q Was she able to tell you if it was a male or a female?

24 A [No audible response].

25 Q Was she able to give you any other identifying description?

1 A No.

2 Q But she did allow you to come through the house?

3 A Yes, ma'am.

4 Q And how did she communicate that to you exactly?

5 A Just to come home. I asked her can I come into your residence; go in.

6 Yes, come in.

7 Q Did she turn on the lights in the backyard?

8 A I don't know.

9 Q Were there any lights on in the backyard?

10 A You know, I'm not sure.

11 Q Okay. You said there was ambient light. What was that --

12 A From the moon and stars and other lights?

13 Q Okay.

14 A Yeah.

15 Q Okay. So there wasn't any kind of --

16 A Enough that--

17 Q --like spotlights or any brighter lights I should say.

18 A I don't think so, no.

19 Q When you entered the backyard, who was along -- who was there with

20 you at that time?

21 A Officer Huysentruyt.

22 Q Okay. And Claymore?

23 A And Claymore.

24 Q Okay. You had indicated that your dog -- and did you train Claymore?

25 A I did. With him. I trained with him.

1 Q With him, okay.

2 A Yes.

3 Q And you had indicated that Claymore's trained to detect human odor?

4 A Yes, ma'am.

5 Q And you said that that's easier to detect when people are under stress,
6 they're sweating I believe, they were running. Is that correct?

7 A It's correct.

8 Q Okay. Since this is a residential area, what kind of training goes in to
9 distinguish between a suspect and just a -- like a citizen that's not anything involved
10 with a situation?

11 A Usually compliance.

12 Q Okay. So in this case, the dog is reacting to any human odor?

13 A Any human odor.

14 Q Okay. So any human odor in this backyard would -- Claymore would
15 signal by tugging or pulling on --

16 A Yes, ma'am.

17 Q Okay. And then you said that you saw an individual and was that
18 person moving?

19 A Didn't appear to be.

20 Q Okay. Was there any movement at all by the person lying on the
21 ground?

22 A No.

23 Q Okay. And you had indicated that your verbal commands, there was no
24 reaction --

25 A No.

1 Q -- is that correct?

2 A That's correct.

3 Q Okay. And that you had indicated at least I believe twice that -- to show
4 your hands?

5 A Yes.

6 Q Okay. Did you indicate that in Spanish at all?

7 A No. I don't speak Spanish.

8 Q Okay. Were you aware during the initial description that the person
9 was described as possibly Hispanic?

10 A Could be, yes. I don't remember.

11 Q How long have you been an officer?

12 A 18 years.

13 Q Okay. Do you know -- and you've worked in areas with populations of
14 Spanish speakers, is that correct?

15 A That's correct.

16 Q Both here and in New Mexico.

17 A Yes.

18 Q Are you familiar with any basic verbal commands that you would be
19 able to give in Spanish?

20 A Maybe if I thought about it, but not under stress really well.

21 Q Okay. So that's not something that you would ever think of like show
22 me your hands that you would be able to say in Spanish --

23 A No.

24 Q -- in the situation like this?

25 A Not myself, no.

1 Q Okay. Do you know if the officer that was with you was able to do that
2 as well?

3 A I do not.

4 Q Okay. Do you recall him making any commands or speaking in
5 Spanish at all?

6 A No. Usually when I'm there with the dog I give the command so that
7 the dog doesn't start indicating on someone else. So I do all the verbal warnings
8 and so forth.

9 Q Okay. You had indicated that you released the -- your canine partner
10 as opposed to using a lethal force?

11 A Any other force.

12 Q Any other force.

13 A Yes.

14 Q Okay. Claymore's force could be lethal, is that correct?

15 A No, it's not indicated as lethal force, no.

16 Q Okay.

17 A It's less than lethal.

18 Q Could it cause fatal injuries?

19 A I suppose it could.

20 Q Okay. And you said that -- is Claymore trained to I guess bit on to a
21 specific area or just any available area?

22 A Any available area.

23 Q Okay. So if the dog was able to like I guess bite on to someone's neck
24 that could potentially fatal, is that correct?

25 A It could be.

1 Q Or any major arteries in a leg or an arm, is that correct?

2 A That's correct.

3 Q Okay. And he's not able to distinguish between the areas on a human

4 body, is that correct?

5 A What do you mean? I don't understand --

6 Q As to where to --

7 A Where to and where not to?

8 Q Yes.

9 A No.

10 Q During this incident were you wearing a body camera?

11 A No, ma'am.

12 Q Okay. Do you wear a body camera now?

13 A I do not.

14 Q Okay.

15 MS. NGUYEN: Nothing further.

16 MR. FATTIG: Nothing further.

17 THE COURT: The jury have any questions of this witness? We're going to

18 take our lunch break so tell your witness that --

19 MS. THOMSON: We have one witness who has an --

20 MR. FATTIG: With an interpreter.

21 MS. THOMSON: -- interpreter because -- and it'll be a quick one.

22 THE COURT: All right.

23 **EXAMINATION BY THE COURT (JURY QUESTIONS)**

24 BY THE COURT:

25 Q Does the dog wear a bullet-proof vest?

1 A No, he does not.

2 THE COURT: Questions by the State?

3 MR. FATTIG: No.

4 MS. NGUYEN: No.

5 THE COURT: All right. Thank you. You're free to go.

6 THE WITNESS: Thank you, sir.

7 MS. THOMSON: Your Honor, the State calls Gloria Guillen.

8 THE COURT: I would just remind you -- this is the same interpreter that we

9 had before?

10 THE MARSHAL: Yes, it is.

11 MS. THOMSON: Uh-huh.

12 THE COURT: Okay. You're still under oath to interpret correctly.

13 THE INTERPRETER: Yes, sir.

14 THE COURT: Thank you.

15 **GLORIA GUILLEN**

16 [having been called as a witness and being first duly sworn, testified through

17 the interpreter as follows:]

18 THE CLERK: Thank you. Please be seated. Please state your full name,

19 spelling your first and last name for the record.

20 THE WITNESS: My name is Gloria Guillen, G-L-O-R-I-A, G-U-I-L-L-E-N.

21 MS. THOMSON: May I proceed?

22 THE COURT: Yes.

23 MS. THOMSON: Thank you, Your Honor.

24 **DIRECT EXAMINATION**

25 BY MS. THOMSON:

1 Q Good afternoon, ma'am. I'm going to direct your attention back to June
2 26th of 2014. On that date, were you living on El Tovar?

3 A Yes.

4 Q And showing what's been marked as State's Exhibit 12 up on the
5 screen. Do you see your house on this map?

6 A Yes.

7 Q And if you'll touch the screen and mark which house is your house.

8 A [No audible response - marking on monitor].

9 Q Okay. And that's the second house in, off of El Tovar, correct?

10 A Yes.

11 Q And showing you what's been marked as State's Exhibit 111. IS this
12 the outside of your house?

13 A Yes.

14 Q And on June 26th at approximately 11:00 at night, were you at home?

15 A Yes.

16 Q And did you hear something that caught your attention?

17 A Yes.

18 Q What did you hear?

19 A I heard gunshots.

20 Q Okay. How many did you hear?

21 A Four, six.

22 Q When you heard those, what did you do?

23 A I got scared. I told my children to go inside their bedroom and to lay
24 down on the floor.

25 Q And what did you do?

1 A After that I went to talk to my husband and I asked if I -- if he heard
2 anything.

3 Q And where was your husband?

4 A In his bedroom. He was laying down.

5 Q Where had you been when you heard those gunshots?

6 A I was cleaning the living room.

7 Q And what direction did it sound like the gunshots came from?

8 A From behind the house.

9 Q Showing you what's been marked as State's Exhibit 1. And we see on
10 the map Carey and El Tovar. Can you demonstrate by touching the screen, making
11 a circle, the area where it sounded like the gunshots were coming from?

12 A Like about here.

13 Q So the area of Dolly just east of Carey -- west -- west of Carey? South.
14 South of Carey. South. South of Carey.

15 A Well behind the house from -- coming from Carey.

16 Q And when you went in to ask your husband if he had heard anything,
17 was he awake?

18 A No, he was asleep.

19 Q And did you wake him up?

20 A Yes. And he said he didn't hear anything. But while we were talking
21 we heard more gunshots.

22 Q Okay. How many more did you hear?

23 A Like four more I believe.

24 Q Okay. And did they sound like they were coming from the same area or
25 a different area?

1 A No, the same.

2 Q And about how long had it been between when you heard the first set of
3 gunshots and the second set?

4 A I don't know. A minute, a minute and a half. It was fast.

5 Q When you went in and woke your husband and you heard those
6 gunshots, what, if anything, did you have him do?

7 A I've tried telling them that. He said look, listen, there it goes again.
8 Then he got up and he said you're right. Then I went out to see if the children were
9 still in there. So when I went out to the hallway I saw some police lights. And told
10 him see, the police are already here, love. So he peeked out the window and he
11 saw a man standing by the window.

12 Q Were you with him when he looked out the window?

13 A Yes, he said there he is. So then he said yes, yes, look and then I
14 peeked and yes, there he was.

15 Q Showing you what's been marked as State's Exhibit 115. Can you see
16 in this photograph the window you were looking out of?

17 A Yes.

18 Q Will you circle that window for us?

19 A [No audible response - marking on monitor].

20 Q Okay. And when you looked out of that window, what did you see?

21 A I saw a man standing like this, leaning against the wall. You could tell
22 that he was very excited.

23 Q How could you tell that he was excited?

24 A Because he was doing like this, you know, turning around looking
25 everywhere, like thinking what he was going to do next.

1 Q Okay. And the movements you just made had your hands sort of in
2 front of your chest, fidgeting?

3 A Yes, that's -- that was he was doing.

4 Q When you looked out, was his back to the window and the house or
5 was his face and chest to the window and house?

6 A He was leaning back like this.

7 Q Okay. So his back was touching the back of your -- or the wall of your
8 house?

9 A Yes

10 Q And he was standing up?

11 A Yes.

12 Q When you saw that individual, could you see any description of him?

13 A He had a very distinctive color shirt. I don't recall if it was like green,
14 like fluorescent green.

15 Q Could you see his hair at that time?

16 A Yes.

17 Q And was there anything notable about his hair?

18 A He had a ponytail.

19 Q Was it a ponytail with just a little bit of hair or a lot of hair, could you
20 tell?

21 A I wouldn't be able to say but it was kind of long like this.

22 Q And when you said like this you moved your hand over your shoulder
23 just now?

24 A Yes, like this.

25 Q Could you tell if he was a thin peroson or a stout person?

1 A He was kind of chubby.

2 Q After you looked out the window and saw him leaning with his back
3 against your house, what did you do?

4 A I was very afraid and I told my husband, you know, I'm going to call the
5 police since I figure since the -- since I heard gunshots I figured that he may have a
6 gun and the kids -- that's where they --

7 MS. NGUYEN: Objection, Your Honor. Speculation.

8 THE WITNESS: -- play -- they go outside and they play.

9 THE COURT: Overruled. I'm going to allow her -- this is an excited moment
10 and she is sensing that at the moment.

11 BY MS. THOMSON:

12 Q So you said you were going to call the police. Did you go back out to
13 the front of the house?

14 A Yes, I went to the front, I opened the door, and I signaled a police
15 officer. So the police officer told me go back inside. So I closed the door, I went
16 back inside, and I told my husband he's telling me to come back inside, maybe he
17 doesn't understand that I want to tell him something. So then he got up, we were
18 just waiting to see what was going to happen next.

19 So then the police officer knocked at the front door and he asked what's
20 going on? That's when I told him there's a man behind the house on the patio.

21 Q Did you tell him that in English or in Spanish or a combination?

22 A Yes, in Spanish and English. I mean, the best I could.

23 Q There -- after that did you allow the officer and his dog to come through
24 the house into your backyard?

25 A Yes, after we talked and I told him that, he asked if we could come in

1 and I said yes and there was a dog. So he waited there and I told my husband to
2 open the door for him because he had a dog. And to tell the officer where he should
3 go to and then I just went back to where the kids were.

4 Q Later on did you see the officers with the individual who had been in
5 your backyard?

6 A Yes.

7 Q And where did you see the officers with that individual?

8 A Well they walked him through the house and they exited the house
9 through the front door.

10 Q Okay. And did recognize the person that they were walking through the
11 house as the same one you'd seen in your backyard?

12 A Yes.

13 Q That night, was there a white truck parked close to in front of your
14 house as shown in State's Exhibit 100?

15 A That's the neighbors.

16 Q And you'd seen that truck outside on more than just that night?

17 A It's always there.

18 MS. THOMSON: Pass the witness.

19 **CROSS-EXAMINATION**

20 BY MS. NGUYEN:

21 Q So the individual that you saw leaning up against your window, you
22 could tell that that person had a distinctive shirt on?

23 A Yes.

24 Q And you had said that that shirt was a fluorescent green?

25 A Yes, it was fluorescent green.

1 Q It wasn't just a little fluorescent green, was it just bright fluorescent
2 green shirt?

3 A Yes, bright, very.

4 Q Okay. And do you remember that because it was so -- I guess the shirt
5 was loud? I guess the color was so bright is the better word.

6 A Yes, I saw him. The shirt was like I just said.

7 MS. NGUYEN: Nothing further.

8 MS. THOMSON: I have no further questions.

9 THE COURT: The jury have any questions? Seeing no hands. Ma'am,
10 you're free to go.

11 We'll take our afternoon recess. During the recess you're admonished
12 not to talk or converse among yourselves or with anyone else on any subject
13 connected with this trial. Or read or watch or listen to any report of or commentary
14 on the trial or any person connected with this trial by any medium of information
15 including, without limitation, newspapers, television, the radio, or the internet. Or
16 form or express an opinion on any subject connected with the trial. Remember no
17 *Facebook, Twitter, Instagram.*

18 And if you talk to anybody in the courthouse, keep your badge on, even
19 during lunch. So that people won't talk to you. Only talk to people with a blue
20 badge on. See you at 1:20.

21 [Outside the presence of the jury]

22 THE COURT: Jury's out. Door is closed. All right. See you back 1:20.
23 What?

24 MR. FATTIG: Can we make a brief record regarding an evidentiary issue?

25 THE COURT: Okay.

1 MR. FATTIG: The crime scene analyst is about to check in the evidence.
2 One of the bags of evidence would be contents from the car, the Dodge Intrepid.
3 Some of those contents -- and we're talking about there's a lot of paperwork and
4 stuff. Some of that paperwork we do not want to admit because it's -- it can be
5 prejudicial. There is some jail visitation paperwork in the name of Joshua
6 Bacharach.

7 MS. NGUYEN: There's some like battery/domestic violence --

8 MR. FATTIG: There's some battery/domestic violence --

9 MS. NGUYEN: -- information cards.

10 MR. FATTIG: -- admonition. There's some of that paperwork that obviously
11 we don't want the jury to see. It is not our intent to admit that particular items. I
12 don't know if we want to open those up and --

13 THE COURT: Why don't both of you come up and open it up and take out --

14 MS. NGUYEN: I'll open it all up right now. That's fine.

15 THE COURT: Take --

16 MR. FATTIG: And we'll remove out what --

17 THE COURT: Take out what you don't want --

18 MR. FATTIG: Okay.

19 THE COURT: -- to go to the jury and we'll mark it as not given. We'll mark it
20 as a court exhibit.

21 MR. FATTIG: Okay.

22 THE COURT: We'll put -- can we get it in one envelope?

23 THE CLERK: We have bags -- we can put it --

24 MR. FATTIG: Okay.

25 THE CLERK: If it's a voluminous amount, we can put it in a bag.

1 THE COURT: All right. Let's see what we got and --
2 MR. FATTIG: Okay.
3 THE COURT: -- the clerk will put it in the bag and keep it safe, but they'll be
4 marked as a court's exhibit not to go back with the jury.
5 MR. FATTIG: Correct. Thank you.
6 THE COURT: Okay. But I want you -- both of you to open the --
7 MR. FATTIG: Yes. We will both open it.
8 THE COURT: And make sure there's a stipulation that are sealed.
9 MR. FATTIG: Yes.
10 [Recess taken at 12:14 p.m.]
11 [Trial resumed at 1:29 p.m.]
12 [Outside the presence of the jury]
13 THE COURT: Do we need to put anything on the record?
14 MR. FATTIG: We can put on the record about opening the stuff.
15 MS. NGUYEN: Oh yeah, that's fine.
16 THE COURT: All right. So as soon as Jill's up and ready -- okay, what do we
17 need to put on the record?
18 MS. NGUYEN: Your Honor, after the first break myself and the District
19 Attorney went through and opened up several of the packages --
20 MR. FATTIG: With the crime scene analyst.
21 MS. NGUYEN: -- with the crime scene analyst.
22 THE COURT: Okay.
23 MS. NGUYEN: And we removed several items that we thought were
24 prejudicial that shouldn't, I think -- actually one item.
25 MR. FATTIG: Just one item.

1 MS. NGUYEN: Just one item.

2 MR. FATTIG: One item was in the paperwork and it was exhibit -- it was
3 going to -- it was marked by the clerk already as Exhibit 195. And from -- and that is
4 Package 8 from Crime scene analyst Joel Albert. And inside that package was
5 some miscellaneous paperwork found inside the car with Joshua Bacharach's name
6 on it. One of those items dealt with a visitation log to a detention facility with his
7 name. So we obviously took that out. We have separated that from that particular
8 evidence bag. So.

9 THE COURT: And you're satisfied that everything's out that needs to out?

10 MS. NGUYEN: Yes. There were four items that we didn't have time to or
11 didn't get to, but we'll just do those --

12 MR. FATTIG: That we didn't open. But those are separate evidence.

13 THE COURT: Okay.

14 MR. FATTIG: But the other items that were in the paperwork envelope in that
15 particular exhibit, 195, Ms. Nguyen inspected and did not have any objection to
16 them. They have Mr. Bacharach's name on them.

17 THE COURT: You need to lead them through it so that -- sometimes we have
18 to lead -- like we should have lead that young lady a little more --

19 MS. THOMSON: I don't think anyone could have see that coming. I'm just --

20 THE COURT: No, I know.

21 MS. THOMSON: Particularly since it wasn't true.

22 THE COURT: I know.

23 MS. NGUYEN: I think we're fine. The one thing is I know that Tom wanted to
24 inspect. I think there's a couple more firearms that are in there and I don't know if
25 he wants inspect them.

1 THE MARSHAL: I inspected the one.

2 MS. NGUYEN: There's a couple more that --

3 THE COURT: Just make sure that --

4 MR. FATTIG: I think we haven't opened them all yet.

5 MS. NGUYEN: -- we haven't opened yet. We haven't opened them yet, Tom.

6 THE MARSHAL: Oh, you haven't?

7 MS. NGUYEN: No.

8 THE COURT: Before they go -- well, they won't go back to the jury. You

9 know, I had problems when I was a prosecutor. We had a jury that was an attempt

10 murder and they went back and pulled the trigger at each other. She said there's no

11 way they could have -- she could have missed because she was only ten feet away.

12 MS. THOMSON: You know, I have no problem with that as long as they do it

13 very realistically.

14 THE COURT: Yeah, well, just as long as the cartridges don't go back with the

15 guns. All right. So are we ready to bring the jury in?

16 MS. NGUYEN: Yes. I believe so.

17 THE COURT: Bring them in.

18 And so how many more witnesses do you got today?

19 MS. THOMSON: Four.

20 THE COURT: Four?

21 MS. THOMSON: Six? Five.

22 MR. FATTIG: Five or six.

23 MS. THOMSON: Six.

24 THE COURT: And the Detective's going on quickly?

25 [In the presence of the jury]

1 THE MARSHAL: All rise.

2 MR. FATTIG: Yeah, very quickly.

3 THE MARSHAL: And be seated.

4 THE COURT: Stipulate to the presence of the jury.

5 MS. THOMSON: Yes, Your Honor.

6 THE COURT: All right. Call your next witness.

7 MS. THOMSON: Thank you, Your Honor. We'd briefly recall Officer McNabb.

8 **RYAN McNABB**

9 [recalled to the stand, previously sworn, testified as follows:]

10 THE COURT: I'd just remind you, Officer, you're still under oath to tell the

11 truth.

12 THE WITNESS: Yes.

13 THE COURT: Thanks. Go ahead.

14 MS. THOMSON: Thank you, Your Honor.

15 **FURTHER REDIRECT EXAMINATION**

16 BY MS. THOMSON:

17 Q You had testified earlier today that when you received your body

18 camera, you did not receive training with it, is that fair?

19 A Yes.

20 Q Okay. Do you remember how it occurred that you got the body

21 camera?

22 A Yes, it was at headquarters and I went to the body camera office and it

23 was provided to me.

24 Q And were you on the initial list to get a body camera?

25 A No, I was not.

1 Q Okay. When you got the body camera, do you recall if Peter Ferranti
2 was in the office that day?

3 A It was not. It was one of his staff that had given it to me.

4 Q And they walked you through what to press, how to put it on, that kind
5 of stuff?

6 A Yes.

7 Q Where -- when you got the body camera, had you just come back to
8 patrol?

9 A Yes.

10 Q And from what section had you come to patrol?

11 A I had been in Internal Affairs as a detective.

12 Q And was that why you wanted a body camera?

13 A Yes.

14 Q Okay. And as part of Internal Affairs, you were hypersensitive to
15 policies of the department and complying with those?

16 A Yes.

17 Q And you were aware that there were policies associated to the body
18 camera?

19 A Yes.

20 Q And when you received the body camera and the direction of how to
21 use it, did you go and review those policies and continued to review them as they
22 have changed and updated?

23 A Yes.

24 Q You -- getting the body camera specifically recall that you were not part
25 of the training class, is that fair?

1 A Correct.

2 Q Okay.

3 MS. THOMSON: Pass the witness.

4 MS. NGUYEN: No questions.

5 THE COURT: The jury have any further questions of this Officer? Thanks.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Thanks for coming back in.

8 MR. FATTIG: Anthony Garbutt.

9 **ANTHONY GARBUTT**

10 [having been called as a witness and being first duly sworn, testified as follows:]

11 THE CLERK: Thank you. Please be seated. State your full name, spelling
12 your first and last name for the record, please.

13 THE WITNESS: My name is Anthony Garbutt. Anthony, A-N-T-H-O-N-Y.
14 Garbutt, G-A-R-B-U-T-T.

15 **DIRECT EXAMINATION**

16 BY MR. FATTIG:

17 Q Sir, how are you employed?

18 A With the Las Vegas Metropolitan Police Department.

19 Q How long have you been with Metro?

20 A Just over 14 years.

21 Q And what is your current assignment?

22 A Patrol activities.

23 Q For a particular part of the city?

24 A Yes, Northeast Area Command.

25 Q Were you under that same assignment in that part of the city as of June

1 26th, 2014?

2 A Yes, I was.

3 Q Do you have occasion to remember going out to the scene near Dolly
4 and El Tovar that evening just before 11:00 p.m.?

5 A Yes.

6 Q How did you first learn of that particular call?

7 A Over the radio. I was at the substation at the time.

8 Q And what substation were you at when you heard the call?

9 A The Northeast Area Command, 3750 Cecile.

10 Q And wehre is that generally in relation to the area of El Tovar and
11 Dolly?

12 A It's just northwest of there, approximately a couple miles away.

13 Q And what information did you hear while you were at the Area
14 Command?

15 A That another officer was being shot at.

16 Q What were you doing at the Area Command at the time?

17 A Just finishing up lunch.

18 Q Okay. And were you working swing shift, graveyard?

19 A Yes, swing shift.

20 Q Swing shift. And did you get a direction of travel and where that event
21 was occurring over the radio?

22 A Yes, I did.

23 Q And did you ask to be assigned to that particular call and go to assist?

24 A Yes.

25 Q How -- about how long did it take you to get down to El Tovar and

1 Dolly?

2 A Probably right around five minutes, maybe a little bit less.

3 Q Fair to say you were driving fairly quickly?

4 A Yes.

5 Q You're in a marked patrol car?

6 A Yes.

7 Q How did you get to that area? What streets did you take?

8 A I took Cecile to Walnut and then I took Walnut north to Cheyenne. And
9 then from Cheyanne I went eastbound on Cheyenne towards Lamb.

10 Q Okay.

11 A And then from Lamb I went southbound on Lamb to Carey.

12 Q And then Carey eastbound to Dolly?

13 A Yes.

14 Q Fair to say that would be the most likely route different patrol or
15 personnel from Metro would have arrived on to that scene from Carey?

16 A Similar, yes.

17 Q Now when you arrived there, how many other officers were on scene if
18 you can estimate?

19 A Oh, I would have to say at least approximately six to right, if not more.

20 Q Fair to say you were one of the first, but not the first.

21 A Correct.

22 Q Now when you arrived there were different officers on El Tovar?

23 A Yes.

24 Q Do you notice some officers out on Carey?

25 A Yes.

1 Q When you get to El Tovar, what do you do? Do you park on El Tovar?

2 A Yes, I do.

3 Q What do you do?

4 A I parked my patrol vehicle kind of blocking traffic in case a vehicle came
5 from the south, so they couldn't turn on El Tovar. So I parked my patrol vehicle
6 there and then I got out and met up with other officers.

7 Q Okay. And then what did you do?

8 A Pretty much got a plan together to check El Tovar, going westbound on
9 El Tovar, because due to the last -- the information that we had that a possible
10 subject was going westbound on El Tovar.

11 Q I'm going to show you --

12 [Colloquy between Counsel]

13 MR. FATTIG: Your Honor, it's my understanding the Defense will stipulate
14 with the State that State's Exhibit 16 and 17 will be admitted.

15 MS. NGUYEN: That's correct.

16 THE COURT: They'll be admitted.

17 **[STATE'S EXHIBITS 16 and 17 ADMITTED]**

18 BY MR. FATTIG:

19 Q Officer, I'm going to show you State's 16 first. DO you recognize this?
20 This would be an aerial photograph.

21 A Yes, I do.

22 Q Is this El Tovar?

23 A Yes, it is.

24 Q 17. And this would be taken from the north to the south. And 17 is
25 taken from the south to the north.

1 A Yes.

2 Q Is that fair to say?

3 A Yes.

4 Q Okay. Let me go back to 16. So you park your patrol car, you get out
5 on foot, and you talk with other officers about looking farther west on El Tovar?

6 A Yes.

7 Q What occurs?

8 A We received information that a subject possibly went west on El Tovar.
9 While out there I was with a few other officers and somebody came out and stated
10 that a subject ran through their yard and went into their yard.

11 Q Okay. And do you remember about where that occurred?

12 A Yes.

13 Q What yard you're talking about?

14 A It's the second one on the right.

15 Q Can you mark it on the screen? If you touch the screen it'll mark onto
16 the --

17 A Yep. It was this residence right here.

18 Q Okay. So the green house, second house in from Dolly.

19 A Yes.

20 Q And so what did you do when you heard that information?

21 A I got together with a K9 Officer and another officer from my squad,
22 Officer Huysentruyt and we set up a plan to check the backyard.

23 Q Showing you State's Exhibit 111, is that the front of that house?

24 A Yes.

25 Q Okay. And what was your role in checking the yard?

1 A I covered the west side of the yard, which would be between that one
2 and the third house.

3 Q And when you say covered it, what area were you positioned at?

4 A Right between the houses. I walked up the gangway in between.

5 Q Okay. Can you mark that on that diagram that's State's 1 --

6 A Pretty much -- oops, sorry about that. Pretty much came right in this
7 area right there.

8 Q Okay. So just to the east of the third home?

9 A Yes.

10 Q Of this --

11 A Just to the east, yes.

12 Q -- third home from Dolly?

13 A Yes.

14 Q Just to the east this way.

15 A Yes.

16 Q Okay. So what was your goal by being in that position?

17 A Well I could watch the yard on the west and also the target residence at
18 the same time.

19 Q Okay. And why were you concerned about the yard on the west?

20 A Initially on our approach I notice a chair sitting in the backyard of the
21 target residence, which led to the yard on the west.

22 Q Showing you what has already been admitted as State's 112. Do you
23 recognize this photograph?

24 A Yes, that's the west side of the target house.

25 Q And is this the chair that you were talking about? Do you see it there?

1 A Yes.

2 Q Can you mark that for the record?

3 A [No audible response - marking on monitor].

4 Q So there appears to be a chair up against the fence that if somebody

5 were to climb over it that would be the third house over from Dolly; that west

6 backyard?

7 A Yes.

8 Q Now what is the lighting conditions as you're in this back area here?

9 A It's pretty dark. Not pitch-black dark because just beyond that is Carey,

10 so you do get a little bit of the street light glare. But otherwise, with the bushing,

11 when you -- the further you go into the backyard, the darker it gets.

12 Q Did you see anything as you were looking at this area?

13 A No, I did not.

14 Q Did you hear anyone back there?

15 A No, I did not.

16 Q Did you notice Officer -- the K9 Officer and the officer Huysentruyt, is it?

17 A Huysentruyt.

18 Q Huysentruyt. Do you notice them coming in the yard?

19 A Yes, I did.

20 Q And do they come of this door here?

21 A Yes.

22 Q In State's Exhibit 122, for the record. What happened? What did you

23 see?

24 A They exited. As soon as they exited they started walking towards --

25 they started walking more towards the backyard. Once they did that I focused on

1 the yard to the west. The majority of my attention was there. Moments later they
2 walk in and probably couldn't be less than a minute, I just start hearing verbal
3 commands being given.

4 Q Okay. By who?

5 A Officer Huysentruyt and the K9 Officer.

6 Q Okay. And what kind of commands did you hear?

7 A Pretty much show me your hands.

8 Q And at this point -- you're saying when they initially get out there you're
9 kind of watching the yard to the west?

10 A Yes.

11 Q Is that basically to cover that?

12 A Yes.

13 MS. NGUYEN: Objection, Your Honor. Leading.

14 THE COURT: Overruled.

15 BY MR. FATTIG:

16 Q Once you start hearing them giving commands, does your focus -- does
17 your attention focus somewhere else?

18 A Yes, it focuses on that yard -- the target yard now.

19 Q With the green house?

20 A Yes.

21 Q Okay. And then what do you do?

22 A I complete going over the fence and I immediately go to Officer
23 Huysentruyt and the K9 Officer's location.

24 Q Okay. What happens next?

25 A While there I see a subject laying on the ground on his belly, hands are

1 kind of like up close, almost like in a push-up position. In which case verbal
2 commands are still being given to show me your hands at which case I notice the K9
3 dog had a grip on the subject that was laying down. At the same time they were
4 also telling them to stop resisting.

5 Q Did you ever hear the subject that was laying in the backyard of that
6 green house every verbally indicate anything to anyone -- any of the officers?

7 A During that incident, no.

8 Q In terms of -- and what I'm talking about is okay, I give up, you got me,
9 nag like that?

10 A No, nothing like that.

11 Q Or I'll show you my hands?

12 MS. NGUYEN: Objection, Your Honor, leading.

13 THE COURT: Sustained.

14 BY MR. FATTIG:

15 Q You didn't hear him say anything?

16 A No, I did not.

17 Q Did you ever see him make any movements to where he is showing
18 your -- showing you or the other officers his hands?

19 A Not in this -- not immediately, no. He kept them up close constantly, at
20 which point they kept continuously telling him to show them his hands and he
21 wasn't.

22 Q And for the record you're indicating close to the top portion of his chest
23 is where his hands were?

24 A Just inner shoulders -- just inside the shoulders.

25 Q Inner shoulders.

1 A Yes.

2 Q And the dog was released and did you see the dog bite the man?

3 A Yes.

4 Q And when that occurred, did you go over to where he was at?

5 A Yes, I did.

6 Q And -- along with the officers?

7 A Yes.

8 Q And was he taken into custody?

9 A Eventually, yes.

10 Q How did that work?

11 A As I approached I advised Officer Huysentruyt and the K9 Officer that I

12 was going to be on lethal, which would mean I was going to be on-gun because we

13 could not see his hands.

14 Q What did that mean?

15 A Basically -- on-gun is basically -- just letting the other officers know that

16 they can resort to other things such as going hands-on or using a tool to get his

17 hands out or where he does eventually submit his hands they can put hands on to

18 place him into custody in the handcuffs.

19 Q On-gun means you have a gun pointed at him.

20 A Yes.

21 Q Okay. And did they do that after you indicated to them that you had

22 lethal, you were on-gun?

23 A After a -- still a -- we -- they still had to give verbal commands to show

24 his hands because he didn't do it immediately. Another officer, Officer Kelly came.

25 He also was on-gun. And after a few more verbal commands, eventually the hands

1 came out, yes.

2 Q So was that time period when you were saying he wasn't complying
3 with commands, was that after the dog had already bitten him?

4 A Yes.

5 Q Eventually were they able to get him in handcuffs?

6 A Yes.

7 Q The man say anything during that time period?

8 A Not during the handcuffing, no.

9 Q Okay. Do you see the individual that was handcuffed and bit by the dog
10 in court today?

11 A Yes, I do.

12 Q Can you please point to him and identify a piece of clothing he's
13 wearing today?

14 A It's the gentleman sitting right there at the table on the right, black hair,
15 appears to be in a ponytail, and looks like a grayish-green shirt with a yellowish tie.

16 THE COURT: Record will reflect he's identified the Defendant.

17 MR. FATTIG: Thank you.

18 BY MR. FATTIG:

19 Q Now after -- upon discovering Mr. Bacharach in the backyard, is it fair to
20 say that prior to going in the backyard you had a very generally description of who
21 guys were looking for?

22 A Yes.

23 Q Do you remember generally what that description was?

24 A The description I remember was a Hispanic male, dark hair, and white
25 t-shirt -- or white shirt.

1 Q Now when you discovered Mr. Bacharach in the backyard and you had
2 him in custody, did he seem to fit that description?

3 A Not 100 percent, no.

4 Q Okay. What parts did not fit the description?

5 A Just the shirt.

6 Q Okay. What color shirt did Mr. Bacharach have on?

7 A It was like a neon green, glow-in-the-dark green.

8 Q Like a highlighter-type?

9 A Yes.

10 Q And the description was a white shirt, correct?

11 A Yes.

12 Q What about the other parts of MR. Bacharach, did he seem to fit the
13 description?

14 A Initially that I can remember, no, not off the top of my head.

15 Q You had very general, basic knowledge?

16 A Yes.

17 Q Okay. Were you aware that there -- that the report was -- it was a
18 Hispanic male?

19 MS. NGUYEN: Objection, Your Honor, leading.

20 THE COURT: Sustained.

21 BY MR. FATTIG:

22 Q Were you aware of the race of the individual that was reported?

23 MS. NGUYEN: Asked and answered, Your Honor.

24 THE COURT: Overruled.

25 BY MR. FATTIG:

1 A Yes, a possible Hispanic male.

2 Q Okay. Did Mr. Bacharach appear to fit that description?

3 A That description, yes.

4 Q Upon that discovery was Mr. Bacharach taken out of the backyard area
5 to the street?

6 A Yes, he was.

7 Q Is it fair to say during that time period there was a continuation of an
8 assessment of whether or not there was any other individuals that could have been
9 the suspect in the area?

10 A Yes, there was. I gave the information to Officer Huysentruyt that it's
11 not confirmed that he is still the person that we were looking for at the time. Se he
12 reiterated over the radio we do have somebody in custody but it's not confirmed that
13 it's the same subject.

14 Q And that's because Officer McNabb wasn't in that area, correct?

15 A Correct.

16 Q he was out on the street somewhere?

17 A Yes.

18 Q So eventually that did get confirmed?

19 A Yes. Minutes later, yes.

20 Q Yes. The area -- in that area it was searched for possible other people,
21 correct?

22 A Yes.

23 Q Are you aware that any other people were found?

24 A No, none.

25 Q Okay. Was there a point in time when you were out on the street after

1 this occurred, out on El Tovar?

2 A Oh, yes, initially. Because then Officer Huysentruyt walked the subject
3 over, they were going to have medical take a look at him, in which case it still wasn't
4 confirmed. And so I still kept my alertness down westbound El Tovar. At that --
5 which I was trying to find another officer to go with me to walk down El Tovar to
6 continue the search for the subject.

7 Q Okay. For possible suspects?

8 A Yes.

9 Q Was there a point in time when -- where your attention got brought to
10 some evidence in the area?

11 A Yes, there was.

12 Q And when was that during this period? Was it close in time to this time
13 period?

14 A Yes, it was -- I want to say it was just right about the same time of the
15 confirmation that came out over the radio. I was advised by Officer Stearns that
16 there was something underneath the pickup truck. We both looked underneath the
17 pickup truck, I saw what was a white -- a ballistic with a white cover and also a semi-
18 automatic handgun sitting on top of it.

19 Q Now when -- a minute ago you just said confirmation came over the
20 radio. What are you talking about? What confirmation?

21 A That the subject that Officer Huysentruyt had handcuffed was the
22 subject.

23 MS. NGUYEN: Objection, Your Honor, hearsay.

24 THE COURT: Pretty excited times. Lots of action with cops talking on radios
25 and things.

1 THE WITNESS: Yes.

2 THE COURT: Overruled.

3 BY MR. FATTIG:

4 Q Showing -- so --

5 THE COURT: What is a ballistic vest?

6 THE WITNESS: A ballistic vest is what appears to be a bullet-proof vest.

7 BY MR. FATTIG:

8 Q Showing you what's been admitted as State's 100. Do you recognize
9 what's shown there?

10 A Yes.

11 Q And what is that?

12 A It's the white truck where the vest and the firearm was located under.

13 Q And it's parked pretty much in front of the green house?

14 A Yes.

15 Q Okay. And this is -- 101 would be the front of the truck?

16 A Yes.

17 Q 102, a little bit better angle of the vest and gun?

18 A Yes.

19 [Colloquy between Counsel]

20 MR. FATTIG: It's my understanding, Your Honor, that the parties are
21 stipulating to the admission of 103, 104, and 105.

22 MS. NGUYEN: No objection.

23 THE COURT: They'll be admitted.

24 **[STATE'S EXHIBITS 103, 104, and 105 ADMITTED]**

25 BY MR. FATTIG:

1 Q 10 --

2 THE COURT: Is 102 admitted?

3 MR. FATTIG: I believe it was. 102?

4 MS. NGUYEN: Just now?

5 MR. FATTIG: I don't know.

6 MS. NGUYEN: I don't think it had been prior --

7 MR. FATTIG: Okay. My apologies.

8 MS. NGUYEN: That's okay.

9 MR. FATTIG: No objection to 102.

10 THE COURT: It'll be admitted.

11 MR. FATTIG: Thank you.

12 **[STATE'S EXHIBIT 102 ADMITTED]**

13 [Colloquy between Counsel]

14 BY MR. FATTIG:

15 Q Officer, showing you 104. That would be a close-up of where it was
16 found underneath the front of that white truck?

17 A Yes.

18 Q And so the firearm, can you describe what you appeared to observe
19 about the firearm?

20 A Magazine is still inserted and the slide itself is locked back.

21 Q And what is the slide?

22 A The slide is the top part of the weapon itself where it -- it slides back
23 to -- so another round can chamber into the chamber.

24 Q Okay. 105. Does that appear to be after the vest and the gun have
25 pulled out of the -- the un -- from underneath the truck?

1 A Yes.

2 Q Do you remember seeing a juvenile male out on the street, a neighbor?

3 A Yes, I did.

4 Q And did he provide some information about the suspect and the white

5 truck?

6 A Yes.

7 Q What time does the graveyard shift start?

8 A They start at 10:00 p.m.

9 Q Okay. And what time does swing shift go from?

10 A Midnight-thirty.

11 Q It goes until 12:30?

12 A 12:30 a.m., yes.

13 Q So during this time period of this event there are officers from both

14 graveyard and swing involved?

15 A Yes.

16 Q So fair to say there were a lot of officers that came out to the scene that

17 night?

18 A Yes.

19 Q A lot of different patrol cars, undercover cars, et cetera?

20 A Yes.

21 Q Okay.

22 MR. FATTIG: I have no other questions at this time.

23 **CROSS-EXAMINATION**

24 BY MS. NGUYEN:

25 Q You described the individual that was on the ground in the backyard of

1 that green house as wearing -- that it didn't exactly fit the description that you were
2 given, is that correct?

3 A Clothing, no.

4 Q Okay. And the clothing that he was wearing, you describe as a glow-
5 in-the-dark-type neon green shirt, is that correct?

6 A Yes.

7 Q Okay. Could you see that shirt when you were in the backyard?

8 A Initially when I turned the corner, I eventually saw it, yes.

9 Q Okay. And it was a brightly colored shirt?

10 A Yes.

11 Q Okay. And once you were able to see him and see the shirt, was that
12 because there was light being shown on him? Or could you see it under just the
13 natural -- or the --

14 A Yes, flashlights, yes.

15 Q Flashlights, okay.

16 A Yes.

17 Q When you pulled your weapon, did you have a flashlight turned on as a
18 part of --

19 A Initially, yes, I had my flashlight out the entire time.

20 Q Okay. And did other officers have their flashlights out?

21 A I believe so, believe I remember I saw another light. I can't say exactly
22 whose light it might have been because I know there's at least three other officers
23 back there at that time.

24 Q And those three officers that were back there with you, were -- did
25 everyone have guns drawn?

1 A When I walked up there, no, they did not, because eventually I went on-
2 gun. I believe it was Officer Kelly, he was the second officer on-gun. And we were
3 letting them know that. But initially, when I first got back there, everybody was -- did
4 have their guns out.

5 Q Okay. And there was also the K9 there, correct?

6 A Yes.

7 Q He didn't have a gun did he?

8 A I didn't look at him, yeah.

9 Q When you said that -- you described the person on the ground in a
10 push-up position I think you said --

11 A Yes.

12 Q -- is that correct?

13 A Yes.

14 Q I'm not putting words in your mouth, you described it that way, is that
15 correct?

16 A Yes.

17 Q Okay. And could you see the person's hands like down, were they like
18 pushing up or were they just kind of laying on their hands?

19 A Laying on them.

20 Q But you could the hands underneath their body like that, to know they
21 were in that position?

22 A They were tucked underneath, so I could not see his hands, no.

23 Q Okay. SO the hands could have been liked this?

24 A It looked more because of the way the elbows were out --

25 Q Okay.

1 A Kind of how his elbows were, it looked like they were more almost like
2 this underneath him.

3 Q So you could see enough detail that you could see the elbows and kind
4 of get a --

5 A Yeah, from the shape of the elbows.

6 Q -- representation of where his arms --

7 A Yeah, because --

8 Q -- were in location?

9 A Yeah, because the elbows necessarily weren't tucked.

10 Q Okay.

11 A So it was more like their elbows were almost like pointed out. And
12 when you're in that position they kind of stick out a little bit, to where as if you tuck
13 underneath they're also in the body, so they're -- it's almost like it's --

14 Q And could you see this person's face?

15 A No, I did not. No.

16 Q Could you see their hair?

17 A Yes, I saw the hair.

18 Q Could you see their hair color?

19 A Yes.

20 Q Okay. But you couldn't see a face?

21 A At that time, no.

22 Q Okay. Could you tell if it was a man or a woman?

23 A No.

24 Q Okay. So at that time you didn't know if it was a man or a woman?

25 A No.

1 Q It was just a heavier-set individual?

2 A Yes.

3 Q And you could see long hair?

4 A Yes.

5 Q And the bright neon shirt?

6 A Yes.

7 Q Okay. When you came -- when you saw those items in there -- in front
8 of the truck area, were they in the position as they were photographed?

9 A From the first couple photographs, yes.

10 Q Okay.

11 A I think one of the last ones, I think it was either pulled out and they took
12 an aerial of it.

13 Q I'm showing you State's Exhibit 101. Is this how you saw these items?

14 A In that photo, yes, that's what appeared -- what I saw, yes.

15 Q This is how the items were located when you saw them?

16 A When I saw them, yes, that's what they looked like.

17 Q And this -- had they been moved at this point or is this just a different
18 view?

19 A When it -- once it was brought to my attention that they were there and I
20 saw them, they weren't moved from the time I was there, no.

21 Q Okay. Were you present when crime scene analysts came out to
22 photograph this?

23 A No, I was not.

24 Q Were you there -- or were you there directing people towards this
25 evidence?

1 A Yeah, I passed the word on. I believe another officer was staying there
2 at that area -- at that immediate area. And then I went to go let someone else know
3 what was found underneath because I think it was broadcast over the radio also.

4 Q And at this time there were lots of officers?

5 A Yes.

6 Q There were officers from two different shifts?

7 A Yes.

8 Q Okay. And there was, you know, everyone was aware that there was
9 an officer-involved shooting, is that correct?

10 A Yes.

11 Q So there were probably more officers than there would be if it was
12 another type of shooting, is that correct?

13 A Probably, yes.

14 Q And there were multiple patrol cars?

15 A Yes.

16 Q Okay. Motorcycle cops as well?

17 A I didn't see any motorcycle officers.

18 Q Do you remember approximately how many vehicles were there?

19 A When I first got there, in the Dolly and El Tovar area, I'd say probably
20 about three.

21 Q Okay.

22 A But as far as Carey and Lamb, because the perimeter was already
23 being set up, there was a lot more.

24 Q And the perimeter, where did it start?

25 A From my understanding it was Carey and Lamb, going down Lamb to

1 Judson, possibly. But I knew Carey and Lamb definitely was that area and it went
2 all the way down to Dolly. After that point I stopped. But as far as what radio
3 traffic -- how far they want to send it down, I couldn't remember exactly how far east
4 they went.

5 Q It was a pretty large perimeter, is that correct?

6 A Yes.

7 Q And there were at least three patrol cars in that area that you recall?

8 A Yes.

9 Q There was yours?

10 A Yes.

11 Q Was there the K9 Officer Morgan?

12 A Yes.

13 Q Okay. And do you recall who the third one possibly belonged to?

14 A I have no idea who the third one belonged to.

15 Q Could there have been more?

16 A In that immediate area, no, because there was actually room for me to
17 park my car, so a lot of times if it's something big like this, I'll park further away and
18 walk up. But there was actually enough space for me to pull that far up to actually El
19 Tovar itself.

20 Q And there were other cars because this is a residential area, is that
21 correct?

22 A Yes.

23 Q And there were residents that were kind of coming out of their homes, is
24 that correct?

25 A Yes.

1 Q Okay. And you made contact with several of them?

2 A Yes.

3 Q In fact, you went in to one of them -- one of their homes, is that correct?

4 A I don't know if -- I can't remember if I actually went inside, but I made

5 contact with two residents only.

6 Q Okay.

7 A Actually three total with the target residence.

8 Q Okay. So there were plenty of people -- and then in addition to the

9 three cars and the residents in the neighborhood, were there other officers that

10 didn't have vehicles there that were in that area; either securing the area, looking for

11 a suspect, or collecting evidence?

12 A Initially going west on Tovar, no. The majority of people were on Dolly

13 itself.

14 Q Okay.

15 A Because El Tovar is like a cul-de-sac so the majority of officers

16 themselves were on Dolly, and then a few of us started working west.

17 Q Were they at that corner of Dolly and El Tovar?

18 A There and just a little bit north of there, towards Carey.

19 Q And how many officers do you recall seeing in that general vicinity?

20 A Probably like -- at least in that immediate area, probably easily half a

21 dozen.

22 Q Okay.

23 A Six.

24 Q In addition to officers, were there supervising officers and other

25 members of Metro?

1 Q Until a crime scene analyst comes and documents it, correct?

2 A Yes.

3 Q A crime scene analyst then would move it, collect it, et cetera?

4 A Yes.

5 Q And the same rules would apply if a patrol officer was out on the street
6 and saw a cartridge casing laying in the road, correct?

7 A Correct. Yes.

8 Q They would identify it, but not touch it?

9 A Correct.

10 Q Thank you.

11 MR. FATTIG: Nothing further.

12 MS. NGUYEN: Just a couple follow-ups.

13 **RECROSS-EXAMINATION**

14 BY MS. NGUYEN:

15 Q When you're driving in the car and you drove into the scene, did you
16 drive off of Dolly?

17 A Eventually I came on Dolly because El Tovar crosses with Dolly, yes.

18 Q Okay.

19 A It's the only way to get in because it's a cul-de-sac.

20 Q Okay. So you -- I think we all know that. When you came in you came
21 in off of -- how did you arrive?

22 A I came off of Carey. I came from the west on Carey.

23 Q Okay.

24 A I drove east on Carey, arrived on Dolly, then from Dolly I went south on
25 Dolly, to El Tovar.

1 Q Okay. And then you went to El Tovar and then you turned down El
2 Tovar?

3 A No. I didn't turn down it, I pretty much parked right on the corner.

4 Q Okay. So you parked on the corner of Dolly and El Tovar?

5 A Yes.

6 Q Okay. Were there other -- was there any other patrol cars that had
7 pulled down El Tovar?

8 A No, not down El Tovar. I believe -- if I'm not mistaken, mine might have
9 been the furthest one down at that time.

10 [Colloquy between Counsel]

11 BY MS. NGUYEN:

12 Q Where did you park on this map?

13 A When I pulled in I pretty much parked right like this on an angle.

14 Q And where did you notice other vehicles?

15 A I know there was one down here and then --

16 Q Sorry.

17 A Oh. Right in this area --

18 Q Okay.

19 A -- blocking traffic. And then I want to say there might have been one
20 right in this area.

21 Q Were there any vehicles in this area that you recall?

22 A When I arrived, no.

23 Q Okay. When you came out later, were there any vehicles out in that
24 area?

25 A After everything was static, there could have been, yes.

1 Q Okay. After everything was what?

2 A Static. It's basically when -- it's when it's no longer hostile or
3 everything's calmed down. Basically we found the person we were looking for or we
4 found the items we were looking for. Basically we just shut down the area and we
5 make it static. So now it's -- if other people need to come in and do something, take
6 photos or relieve other officers and stuff like that, now that can happen.

7 Q Were there any officers parked around this area?

8 A There could have been, yes.

9 Q But there were no vehicles at all in this area, is that correct?

10 A Not when I arrived, no.

11 Q Okay. There wasn't a K9 Unit that pulled up in this area at all?

12 A Not that I saw initially, no.

13 Q But you don't recall seeing anything at that time?

14 A No.

15 Q And then even when the scene was static, it was -- you didn't recall
16 seeing any cars in there?

17 A Initially, no. Not initially when we came from the yard, I don't remember
18 seeing anybody there initially.

19 MS. NGUYEN: No further questions.

20 MR. FATTIG: Nothing further.

21 THE COURT: The jury have any questions of this officer? Seeing no hands.
22 Sir, you're free to go.

23 Call your next witness, State.

24 MR. FATTIG: Brenda Vaandering.

25 **BRENDA VAANDERING**

1 [having been called as a witness and being first duly sworn, testified as follows:]

2 THE CLERK: Thank you. Please be seated. State your full name, spelling
3 your first and last name for the record, please.

4 THE WITNESS: Brenda Vaandering. B-R-E-N-D-A, V-A-A-N-D-E-R-I-N-G.

5 **DIRECT EXAMINATION**

6 BY MR. FATTIG:

7 Q Ma'am, how are you employed?

8 A I'm employed as a senior crime scene analyst with the Las Vegas
9 Metropolitan Police Department.

10 Q And how long have you been with Metro?

11 A For seven years.

12 Q And how long have you been a crime scene analyst?

13 A For seven years.

14 Q And what are the duties of a crime scene analyst?

15 A As a crime scene analyst it's our job to document the crimes scene.
16 We do this through note taking, report writing, diagraming, photography, the
17 development and recovery of latent fingerprints, as well as the collection and
18 preservation of any evidence.

19 Q Do you receive specialized training or education in order to get that
20 position?

21 A Yes, we do. I have a Bachelor's degree in forensic chemistry. Once I
22 was hired with Metro I successfully completed a ten-week academy which was all
23 classroom training, which was then followed by twelve weeks of field training where I
24 was in the field being trained by a senior crime scene analyst. Since then I've
25 completed over 500 hours of additional training in different areas of crimes scene

1 investigation.

2 Q Continuing education to stay abreast of all the developments?

3 A That's correct.

4 Q Okay. Directing your attention to June 26th of 2014, were you on duty
5 that evening?

6 A Yes, I was.

7 Q Did you have occasion to respond to the area of East Carey and Dolly
8 Lane here in Las Vegas --

9 A Yes, I did.

10 Q -- about midnight or so?

11 A Right after midnight, yes.

12 Q Okay. And when you went out there, did you go out there by yourself
13 as a crime scene analyst or with other crime scene analysts?

14 A There were other crime scene analysts with me.

15 Q How many other crime scene analysts were there?

16 A There were two other crime scene analysts, as well as a crime scene
17 analyst supervisor.

18 Q And who were they? Were they -- go ahead.

19 A Joel Albert was out there, as well as Stephanie Thi. Shayla Joseph
20 was the supervisor.

21 Q And how do you go about, the four of you, documenting that crime
22 scene, preserving it, et cetera?

23 A It really just depends on the scene. For that scene there were several
24 outside peripheral scenes and I went and documented those scenes. And
25 Stephanie Thi and Joel Albert did the main scene.

1 Q Okay. So basically splitting up the assignments in order to get all the
2 work done?

3 A That's correct.

4 Q In the end about how long were you out there at the various scenes?
5 When did you leave?

6 A It was well into the morning. I'd say probably 6:00 or 7:00. I'm sure
7 exactly the time we cleared.

8 Q Do you remember the sun was up?

9 A Yes, the sun was coming up.

10 Q Okay. So you were out there a number of hours?

11 A That's correct.

12 Q The various duties? Okay. Do you remember -- so your assignment
13 partly was to go to these outside scenes?

14 A That's correct.

15 Q Was one of those scenes Lake Mead and Walnut?

16 A Yes, it was.

17 Q Showing you what's been admitted as State's 18. What are we looking
18 at here?

19 A This was a vehicle that was parked on the shoulder of Walnut Road,
20 just north of Lake Mead Boulevard.

21 Q And you were informed that that had some relevance to this event?

22 A That's correct.

23 Q So you went and took the photo of the car and 19 would be a close-up
24 of the car?

25 A That's correct.

1 Q Did you have occasion to then at some point go farther north on
2 Walnut?

3 A Yes.

4 Q And specifically I'm going to refer you to 2354 North Walnut that area,
5 does that have some significance?

6 A Yes. There was a cartridge case located in the northbound lanes of
7 Walnut Road, just west of that address.

8 Q Okay. When you went farther north on Walnut, did you notice if the
9 area was preserved by any other employees of Metro?

10 A Yes. All the area that I was in was preserved by the police officers.

11 Q Okay. So what was happening near 2354 North Walnut? I mean, what
12 drew you over there?

13 A A cartridge case had been located on a street.

14 MR. FATTIG: Your Honor, I believe the parties are stipulating to the
15 admission of State's Exhibit 2, which is an aerial map of the area.

16 MS. NGUYEN: That's correct.

17 THE COURT: It'll be admitted.

18 **[STATE'S EXHIBIT 2 ADMITTED]**

19 BY MR. FATTIG:

20 Q Ma'am, does this appear to be a map of the streets that we were talking
21 about?

22 A Yes, it is.

23 Q So 2354 North Walnut would be approximately in this area and this is
24 Carey here?

25 A That's correct.

1 Q Correct? Okay.

2 MR. FATTIG: It's my understanding, Your Honor, State's Exhibit 6 is being
3 admitted via stipulation.

4 MS. NGUYEN: That's correct.

5 THE COURT: It'll be admitted.

6 **[STATE'S EXHIBIT 6 ADMITTED]**

7 BY MR. FATTIG:

8 Q Were you familiar with some photo -- from aerial photography that was
9 taken that morning of June 27th from a helicopter over the various streets?

10 A Yes.

11 Q And State's Exhibit Number 6, does this show North Walnut here and
12 Carey running all the way down the left portion?

13 A I couldn't see where North Walnut was. I don't --

14 Q Oh, I'm -- I apologize.

15 A I think it's zoomed it.

16 Q I need to zoom out. Does this show North Walnut here running down
17 the bottom of the picture and Carey running along the top of the left center?

18 A Yes, that's correct.

19 Q Okay.

20 MR. FATTIG: Your Honor, it's my understanding that State's Exhibits 20
21 through 24 are being admitted via stipulation.

22 THE COURT: Is that correct?

23 MS. NGUYEN: That's correct. I'm sorry.

24 THE COURT: They'll be admitted.

25 **[STATE'S EXHIBITS 20 through 24 ADMITTED]**

1 BY MR. FATTIG:

2 Q State's 20, is that just a picture of the address sign outside the
3 residence of 2354?

4 A Yes, it is.

5 Q Okay. State's 21, what are we looking at here?

6 A That's -- the cone is marking where the cartridge case is located on the
7 street.

8 Q Can you mark on the screen where the cone is? I know it's not
9 calibrated exactly.

10 A It's not. It's right there.

11 Q Right there. Okay. Thank you. 22. Is that kind of a close-up of the
12 cone?

13 A Yes, that's a closer-up of the cone.

14 Q And the address number, is that on the far right portion --

15 A That's correct.

16 Q -- of that picture? And does it appear to be a dumpster to the north and
17 east of where the cone is?

18 A Yes.

19 Q Okay. State's 23. That is a close-up of it?

20 A A close-up of the cartridge case, yes.

21 Q And State's 24. This is after you have moved the casing to look at it?

22 A Right. To photograph the head stamp.

23 Q And what is a head stamp?

24 A The head stamp is on the cartridge of every cartridge has a head stamp
25 and that's on the top of the cartridge case and it lists typically the maker and then

1 the caliber as well.

2 Q And what does this read? This particular cartridge case.

3 A This reads SPEER 45 AUTO.

4 Q Now when you arrived was -- there was a patrol officer there with a
5 cone just kind of watching it, correct?

6 A I believe so, yes.

7 Q And you documented it before you moved it?

8 A That's correct.

9 Q And then did you end up collecting the cartridge casing?

10 A I collected it, yes.

11 Q Okay. Going back -- this has been admitted as State's 5. Can you
12 approximate on this map where on North Walnut that casing was? If you can?

13 A Yes.

14 Q And I know it's not calibrated exactly --

15 A I believe it's --

16 Q -- the teleprompter.

17 A -- about -- a little bit further --

18 Q Okay.

19 A -- than right there.

20 Q In the area near the church?

21 A That's correct.

22 Q Okay. Is it fair to say that the casing was in the north travel lanes --

23 A It was in the --

24 Q -- of Walnut?

25 A -- northbound travel lane, yes.

1 Q Okay. And that's -- State's 21 shows that pretty well, correct?

2 A That's correct.

3 Q Okay.

4 MR. FATTIG: Your Honor, in the interest of saving some time, during the
5 lunch hour, the parties, along with the crime scene analyst Joel Albert opened up
6 several sealed envelopes with Ms. Nguyen and the State present in an effort to try
7 to expedite some of this today. And I believe Ms. Nguyen is stipulating to the chain
8 of custody in terms of them being in a sealed condition.

9 THE COURT: The ones that are opened.

10 MR. FATTIG: The ones that are opened. We didn't get to all of them, but we
11 got to several of them, including --

12 MS. NGUYEN: That's correct.

13 THE COURT: Is that right? Okay.

14 MR. FATTIG: Including State's 193.

15 THE COURT: All right.

16 BY MR. FATTIG:

17 Q Ma'am, you're the unlucky crime scene analyst that gets to testify first.
18 So I get to ask you about how you collect and impound evidence, okay?

19 A Okay.

20 MR. FATTIG: If I could approach the witness, Your Honor?

21 THE COURT: Yes.

22 BY MR. FATTIG:

23 Q Ma'am, I'm going to show you State's 193, which is an evidence
24 envelope, correct?

25 A That's correct.

1 Q Evidence envelopes come in all sorts of shapes and sizes depending
2 on the evidence you're collecting?

3 A That's correct.

4 Q How do you go about impounding a piece of evidence from a crime
5 scene and documenting it?

6 A So each item is typically marked with the item number, as well as your
7 initials and P-number, along with the date it was collected and the event number.
8 It's then packaged inside the package and on the outside of the package labeled
9 stating each item that's in it, the date, the time of arrival at the scene, the event
10 number, as well as your P-number and initials, and your signature, and the address
11 of the location, and the type of call.

12 Q And there's a Las Vegas Metropolitan Police event number also
13 associated with the package, correct?

14 A That's correct.

15 Q Now event numbers are unique to every single call Metro goes on,
16 correct?

17 A That is correct.

18 Q This particular event number is on the package as 140626-4091,
19 correct?

20 A That's correct.

21 Q And that means that this is an event that occurred -- initiated on June
22 26th, 2014, correct?

23 A That's correct.

24 Q And it's four thousandth and ninety first call that the Las Vegas
25 Metropolitan Police Department went on, on June 26th of 2014, correct?

1 A That is correct.

2 Q Okay. So that's a way to track evidence to make sure it goes to the
3 same scene you think it does?

4 A Right.

5 Q Now these particular items of evidence, you did not impounded these,
6 correct?

7 A I did not impounded these items.

8 Q And specifically so far we -- we're just talking about the casing found on
9 North Walnut, correct?

10 A That's correct.

11 Q What did you do with the casing found on North Walnut?

12 A I collected it and then I handed it to Joel Albert and he impounded it.

13 Q Crime Scene Analyst Albert actually impounded all of the evidence from
14 all the scenes?

15 A That's correct.

16 Q Was the item of evidence in substantially the same condition when you
17 handed it to Crime Scene Analyst Albert as it was when you recovered it?

18 A Yes.

19 Q Now, when a crime scene analyst impounds it, does it get sealed?

20 A Yes, it does.

21 Q And initialed by the analyst?

22 A Initialed and dated.

23 Q And this would be a red seal. We're looking at the top of the Package
24 193?

25 A That's correct.

1 Q Okay. And what does -- I see another seal at the bottom, a blue seal,
2 what does that indicate to you?

3 A That seal indicates that the lab has processed it and the lab uses blue
4 tape to reseal the package once it's been opened.

5 Q When you say lab, are you talking about a forensic expert of the lab that
6 would have examined this particular evidence?

7 A That's correct.

8 Q And that expert documents that they've gone into the evidence by their
9 signature, P-number, when they went into, et cetera?

10 A That's correct.

11 Q And when -- and then they reseal it with a different colored --

12 A Correct.

13 Q -- seal? Okay. So this was opened up. Now when we go inside
14 marked 193a is a baggie with four different vials in it, correct?

15 A That's correct.

16 Q Now the item of evidence that you collected out of the northbound lane
17 of Walnut, which item of evidence is that? Which vial?

18 A I would have to refer to his report --

19 Q Okay.

20 A -- to determine which --

21 Q Crime Scene Analyst Albert?

22 A Yes.

23 Q Do you have that?

24 A I do have a copy.

25 Q Okay.

1 A Item 15.

2 Q Item 15. So this particular vial would be the same casing that you
3 recovered from the northbound lanes?

4 A 15.

5 Q This one?

6 A Yes. Uh-huh.

7 Q Okay. I'm going to leave this --

8 THE COURT: Do we have the contents marked?

9 MR. FATTIG: Yes. I believe they've already been marked. The bag has
10 been marked as 193a. The baggie inside of the evidence bag.

11 BY MR. FATTIG:

12 Q Ma'am, going back to State's Exhibit Number 2, there is another
13 address delineated on Carey, 3945 East Carey. Does that have significance to
14 you?

15 A Yes, it does.

16 Q And what is significant about that one?

17 A There was a cartridge case located in the eastbound travel lanes of
18 Carey, north of that address.

19 Q Okay. And let's go back to State's Exhibits --

20 [Colloquy between Counsel]

21 MR. FATTIG: Your Honor, it's my understanding the parties are stipulating to
22 the admittance of 25 through 35.

23 MS. NGUYEN: That's correct.

24 THE COURT: They'll be admitted.

25 **[STATE'S EXHIBITS 25 through 35 ADMITTED]**

1 BY MR. FATTIG:

2 Q Ma'am, showing you State's Exhibit 25. What are we looking at here?

3 A This is a view -- a photograph taken of Carey.

4 Q Okay. And is this taken near Walnut looking eastbound down Carey?

5 Or on the Walnut side?

6 A I'm not sure.

7 Q Okay. There is -- I know it's hard to see on the screen.

8 MR. FATTIG: Can I approach the witness, Your Honor?

9 THE COURT: [No audible response].

10 BY MR. FATTIG:

11 A Sorry.

12 Q That's fine.

13 State's 25, there appears to be some old west wagon wheel style

14 material on the right side of the picture?

15 A Yes, there is.

16 Q Is that on the south side of Carey?

17 A Yes, it is.

18 Q Okay. So that's kind of a unique landmark that we can use to help us?

19 A That's correct. This is eastbound down Carey.

20 Q Eastbound on Carey.

21 A Yes.

22 Q Okay. And 26 is another view kind of, of that same old west wagon and

23 the street in front of it?

24 A Yes, it is.

25 Q I know it's kind of see that stuff in the dark on that monitor. So this is 26

1 and what we're talking about is a wagon in that location, correct?

2 A That's correct.

3 Q Okay. And I see two cones here in the street.

4 A Yes.

5 Q Is that correct? Can you --

6 A That's correct.

7 Q -- see those or is it --

8 A Yes, I can see those.

9 Q Okay. This particular cone, what did that signify to you?

10 A There was a crushed shotgun cartridge case located in the roadway as
11 well.

12 Q Now you had a chance to -- and 28 would be kind of an intermediate
13 shot of where that's located?

14 A That's correct.

15 Q And that's in front of the residence which is 3945 East Carey, correct?

16 A Yes.

17 Q And 29 is a closer shot of that?

18 A That's correct.

19 Q And 30 is a close-up of that same shell?

20 A Correct.

21 Q Did that appear to be rather worn, run over?

22 A It appeared that it had been run over several times, yes.

23 Q Did it seem like it might have been related or was related to this
24 incident?

25 A It appeared that it was older and probably was not related to this

1 incident.

2 Q Why was it important to document it and preserve it?

3 A Any sort of firearms evidence that we found was documented because
4 of this event.

5 Q Just in case, right?

6 A Correct.

7 Q And there's a picture of the address 3945, the corner of that house?

8 A That's correct.

9 Q Okay. Now -- and for the record that was State's Exhibit 31. State's
10 Exhibit 32. Is this the cone -- the other cone we were seeing in front of the wagon
11 wheel and the old west stuff?

12 A Yes, it is.

13 Q Okay. And 33, is this another view of the cone?

14 A It's a closer up, yes.

15 Q And do you see a casing near that cone?

16 A Yes, just --

17 Q It's in --

18 A -- right there.

19 Q -- front of it?

20 A Yes.

21 Q Okay. 34, is that the casing?

22 A Yes, it is.

23 Q And 35 is a picture of the head stamp of that casing?

24 A That's correct.

25 Q And that was, again, SPEER 45 AUTO?

1 A Correct.

2 Q The same head stamp as the first one on Walnut?

3 A Yes.

4 Q And you obviously collected those two items, the shotgun shell, and
5 that casing?

6 A Yes, I did.

7 Q And they are in this pack -- in this baggie marked State's Proposed
8 193a?

9 A That's correct.

10 Q And were they in substantially the same condition as when you handed
11 them -- from when you collected them to when you handed them to MR. Albert?

12 A Yes.

13 Q Going back to State's Exhibit 2. This is another address marked 4060
14 East Carey. Does that significance to you?

15 A Yes, that was another address on Carey that I responded to.

16 Q Okay. And what was happening at that address?

17 A There was also a cartridge case located in the north gutter, by that
18 address -- just south of that address.

19 Q Okay. Let me go back just real briefly.

20 [Colloquy between Counsel]

21 MR. FATTIG: I'm not sure if State's 6 was admitted. It's being admitted now
22 via stipulation.

23 MS. NGUYEN: That's correct.

24 THE COURT: State's 6 is admitted.

25 MR. FATTIG: Thank you.

1 THE COURT: It was admitted.

2 MR. FATTIG: It was. Okay.

3 THE CLERK: Earlier --

4 MR. FATTIG: Okay.

5 BY MR. FATTIG:

6 Q Ma'am, can you indicate here -- this is Walnut here and this is Carey.

7 A Correct.

8 Q The second casing, do you see generally that old west kind of area in

9 that picture?

10 A Yes.

11 Q Can you mark it?

12 A I believe it's --

13 Q On the telestrator? Right there.

14 A Yeah.

15 Q Okay. So 3945 is this home?

16 A That's correct.

17 Q And the casing was just to the --

18 A Northeast of it.

19 Q -- northeast of that?

20 A Correct.

21 Q In the eastbound travel lane of Carey?

22 A That's correct.

23 Q Okay. Now go -- moving on to 4060 East Carey, again, that area was

24 cordoned off with a patrol officer and a cone?

25 A Yes, it was.

1 Q Okay. Showing you --

2 [Colloquy between Counsel]

3 MR. FATTIG: Parties are stipulating the admittance of State's 36 through 42.

4 MS. NGUYEN: That's correct.

5 THE COURT: They'll be admitted.

6 [STATE'S EXHIBITS 36 through 42 ADMITTED]

7 BY MR. FATTIG:

8 Q Zoom out. What are we looking at here, ma'am?

9 A This residence here is 4060 and there's actually no cone on this one,
10 but the cartridge case was located just east of that vehicle that's parked on the side
11 of the street.

12 Q Okay. 37.

13 A This is a cone that I placed and it's -- depicts where the cartridge case
14 is.

15 Q Okay. So this would not be a patrolman's cone, which is a bigger cone.
16 This is a smaller cone that belonged to you as a crime scene analyst?

17 A That's correct.

18 Q And this would be a mailbox showing State's 38?

19 A Yes.

20 Q The address, correct?

21 A Correct.

22 Q 39 is another view. 40 is a little closer up --

23 A Correct.

24 Q -- of the back of the car, the cone. And next to the car is 41, a casing?

25 A That's correct.

1 Q And 42 is the casing turned around so you can read the head stamp.
2 And what was that head stamp?

3 A SPEER 45 AUTO.

4 Q 4060 East Carey, going back to State's 2. I'm sorry. Going back to
5 State's 6. Do you see 4060 East Carey in this map, approximately?

6 A I believe it's down in this area. I'm not positive though.

7 Q Was it the north side of the road?

8 A Yes.

9 Q Okay. And State's --

10 [Colloquy between Counsel]

11 MR. FATTIG: Parties are stipulating the admittance of 7.

12 MS. NGUYEN: That's correct.

13 THE COURT: It'll be admitted.

14 [STATE'S EXHIBIT 7 ADMITTED]

15 BY MR. FATTIG:

16 Q I don't know if this is a better view of 4060. I'm sorry, I need to zoom.
17 Is it this residence here where the white car was? Does that look consistent?

18 A Yes, I believe so.

19 Q And the street just to the bottom of this exhibit, being State's 7, that is
20 Gateway, which is one street east of Walnut?

21 A Correct.

22 MR. FATTIG: I would to admit at this time, Your Honor, 193 and 193a, which
23 are the casings --

24 MS. NGUYEN: No objection.

25 MR. FATTIG: -- the shotgun shell.

1 THE COURT: They'll be admitted.

2 [STATE'S EXHIBITS 193 & 193a ADMITTED]

3 BY MR. FATTIG:

4 Q Ma'am, did you also assist in going back to the area at El Tovar and
5 Dolly and taking some of the photos there?

6 A Yes, I did.

7 Q Okay.

8 MR. FATTIG: Court's indulgence. I have no other questions at this time.

9 CROSS-EXAMINATION

10 BY MS. NGUYEN:

11 Q Brenda, when you go out to the scene, did you start at the beginning
12 and walk around with a flashlight looking for evidence?

13 A When I got there I was tasked to go around and do the peripheral
14 scenes.

15 Q Okay.

16 A And in this case, all of the evidence had been located. I do look when I
17 get to the areas. I do a search myself, but the -- all of the items I picked up on this
18 case had already been found by different patrol officers.

19 Q So in this case you're not doing any independent investigation to find
20 anything of forensic or evidentiary value?

21 A I still looked in the area myself to see if I could locate any other
22 cartridge casings.

23 Q Did you walk the whole entire scene from scene to scene or just in the
24 general areas where things had been already located?

25 A In the -- in that area on Walnut and then the area on Carey, yes.

1 Q So by the time that you had arrived -- let's start with the scene that the
2 State had talked to you about at Lake Mead and Walnut, it had already been
3 blocked off, is that correct?

4 A That's correct.

5 Q There were no cars going back and forth on that road at that time?

6 A No, I do not believe so.

7 Q Okay. And there were police officers that had already arrived at that
8 particular scene?

9 A Correct.

10 Q And did they -- the cones that we saw in those pictures, you didn't place
11 those cones, is that correct?

12 A No, I did not.

13 Q Okay. So officers had already kind of scoured that scene and said oh,
14 we think this is important?

15 A That's correct.

16 Q Come and do your work.

17 A Yes.

18 Q Is that what happened?

19 A Yes.

20 Q Do you know what officers or what detectives or what people were
21 interest to direct you to those locations?

22 A I don't know who found the items. I was directed by the detectives at
23 the main scene.

24 Q Okay. So with the exception of kind of looking in the general area of
25 where you were directed on each one of these three scenes, you didn't do any

1 additional, I guess, investigation for evidence throughout the --

2 A No, I mean I --

3 Q -- mile or so?

4 A -- looked in the area where those were collected, but I didn't walk the
5 entire path of --

6 Q Okay.

7 A -- of the incident.

8 Q And when you arrived there, you had a general idea of what you were
9 looking for, is that correct?

10 A That's correct.

11 Q Okay. And then the officers that directed to you -- to these casings
12 here, they were already marked off and they had actually located them, is that
13 correct?

14 A That's correct.

15 Q Okay. You had indicated that one of these -- I think it was -- I'm not
16 sure which one it was. I think it might have just been in the photographs. You said
17 that was -- you had photographed that shell casing, but you believed it wasn't
18 involved in this particular incident, is that correct?

19 A Yes, that was the shotgun cartridge case.

20 Q Okay. And that was just out on the road?

21 A Correct.

22 Q Okay. Did you find any other shell casings or anything else that you
23 didn't believe were involved with this, but you collected or photographed as well?

24 A No.

25 Q Okay. And what was it about that particular casing that made you

1 believe that it was old?

2 A Just that it looked like it had been run over several times.

3 Q Okay. Let's talk about it being run over. There were -- this was a main
4 road, is that correct?

5 A Yes, it's a fairly main road.

6 Q Okay. Or it's a well-traveled road --

7 A Yes.

8 Q -- is that correct?

9 A Yes.

10 Q It's not like a dirt road?

11 A No.

12 Q Okay. Or it's not like a back alley?

13 A No.

14 Q In fact, some of those streets have either stop signs or traffic lights on
15 them?

16 A That's correct.

17 Q Okay. And there were cars that were going back and forth, is that
18 correct?

19 A That's correct.

20 Q Okay. Prior to the scene being locked down.

21 A Correct.

22 Q So you were aware that that street had been opened, even if it was only
23 for a 15 or 20 minutes, it had been opened for a period of time?

24 A That's correct.

25 Q Okay. Do you know how long it had been opened?

1 A I'm not sure how long it had been opened.

2 Q And then there were also police cars, is that correct?

3 A Correct.

4 Q Do you know how many police cars were at each one of these scenes
5 that you were directed towards?

6 A I don't know how many were at each scene. I know they had Carey
7 shut down, so there was probably one at the beginning and end and then any
8 intersection in between is typically how they shut down roads.

9 Q And to get from each location, do you drive to each location, are you
10 skating, are you walking, are you running? How are you getting there?

11 A I drove to the first location on Walnut and then I walked the rest of it.

12 Q And do you remember approximately how many other officers were
13 there just securing that area?

14 A There were at least three or four.

15 Q Was that three or four total or three or four at each particular scene?

16 A Total, to block off the street.

17 Q There are some residents along -- residences along this road or like
18 people that live in this area, is that correct?

19 A That's correct.

20 Q Okay. Were there any people that came out to watch, or gawk, or get
21 in the way?

22 A Not that I recall.

23 Q And those officers that are there, it's their job just to kind of keep that
24 area clear?

25 A That's correct.

1 Q And direct the public away from the area?

2 A Yes.

3 Q Okay. As far as what to collect, who makes that decision as to -- on
4 any particular scene, as to who -- what evidence is going to be collected?

5 A That's our decision.

6 Q So if an officer says I put some cones down here, I think this is
7 important, do you make that decision on whether or not that's ultimately important
8 and whether or not you're going to collect it or photograph it?

9 A Yes.

10 Q Was there any -- is there every times where something is pointed out
11 and you decide not to collect it or not to photograph it?

12 A It happens occasionally, but not very often.

13 Q When you decide not to collect something, do you have -- do you log
14 that or document that?

15 A Typically it would be documented in our notes.

16 Q Is your job primarily in the collection or do you do any kind of testing or
17 anything like that?

18 A Just collection.

19 MS. NGUYEN: Nothing further.

20 **REDIRECT EXAMINATION**

21 BY MR. FATTIG:

22 Q Do you remember if, in terms of you driving to the Walnut/Lake Mead
23 scene from Dolly/Carey area, do you remember how you got there?

24 A I went around the scene. So I did not drive through the scene. I would
25 have gone to Lake Mead and then come around and started that way.

1 Q And started back up north through there?

2 A Correct.

3 Q Okay.

4 MR. FATTIG: No other questions.

5 MS. NGUYEN: Nothing further.

6 THE COURT: Anybody in the -- the jury have any questions of this CSA?

7 Thank you. You're free to go.

8 Call your next witness.

9 MR. FATTIG: Can we approach briefly, Your Honor?

10 THE COURT: Yes.

11 [Bench Conference Begins]

12 MR. FATTIG: Can we have a brief recess to get everything? Because this is
13 the big CSA, so I just want to make sure everything -- it'll be a little quicker if I can
14 get everything --

15 THE COURT: Is this the last witness today?

16 MR. FATTIG: No. But --

17 THE COURT: All right.

18 MR. FATTIG: -- he is going to take a little while.

19 THE COURT: All right.

20 MR. FATTIG: So.

21 [Bench Conference Concludes]

22 THE COURT: We're going to take a five-minute recess. During the recess
23 you're admonished not to talk or converse among yourselves or with anyone else on
24 any subject connected with this trial. Or read or watch or listen to any report of or
25 commentary on the trial or any person connected with this trial by any medium of

1 information including, without limitation, newspapers, television, the radio, or the
2 internet. Or form or express an opinion on any subject connected with the trial until
3 the case is finally submitted to you.

4 Go to the restroom, please.

5 [Outside the presence of the jury]

6 THE COURT: All right. Jury's out. Use the restroom, get ready, we got to
7 go.

8 MS. NGUYEN: Judge, what time do you think we'll start tomorrow? 9:00?

9 THE COURT: Yeah.

10 MS. NGUYEN: Oh, yeah.

11 THE COURT: I have law and motion, but it's only 14 pages. I should be done
12 by 9:00.

13 [Recess taken at 2:42 p.m.]

14 [Trial resumed at 2:54 p.m.]

15 [Outside the presence of the jury]

16 THE COURT: You guys ready?

17 MR. FATTIG: I'm ready.

18 MS. NGUYEN: No.

19 THE COURT: Now are you ready, sort of?

20 MS. NGUYEN: Uh-huh.

21 THE COURT: Okay. Bring them in, Tom.

22 This is a lengthy one?

23 MR. FATTIG: Yeah. We're getting -- admitting all the evidence down. Lots of
24 stuff.

25 [In the presence of the jury]

1 THE MARSHAL: All rise, please.

2 And be seated.

3 THE COURT: Stipulate to the presence of the jury.

4 MS. NGUYEN: Yes, Your Honor.

5 MR. FATTIG: Yes, Your Honor.

6 THE COURT: Go ahead. Call your next --

7 MR. FATTIG: Joel Albert.

8 THE MARSHAL: I'm sorry, the name?

9 MR. FATTIG: Joel Albert.

10 **JOEL ALBERT**

11 [having been called as a witness and being first duly sworn, testified as follows:]

12 THE CLERK: Thank you. Please be seated. State your full name, spelling
13 your first and last name for the record, please.

14 THE WITNESS: My name is Joel Albert. J-O-E-L, A-L-B-E-R-T.

15 THE COURT: Go ahead.

16 **DIRECT EXAMINATION**

17 BY MR. FATTIG:

18 Q Sir, how are you employed?

19 A I'm a senior crime scene analyst with the Las Vegas Metropolitan Police
20 Department.

21 Q And how long have you been with Metro?

22 A I've been with Metro a little over seven and a half years.

23 Q How long have you been a crime scene analyst?

24 A For the same amount of time.

25 Q Did you receive some specialized and/or education in order to get that

1 employment?

2 A Yes, sir, I did.

3 Q What did you get?

4 A I have a Bachelor's of Science in Microbiology and a Master's degree in
5 Forensic Science, as well as completing the Crime Scene Academy and a 12-week
6 field training program.

7 Q And you also received continuing education in the various fields that go
8 with being a CSA?

9 A Yes, sir.

10 Q Were you on duty the evening of June 26th of 2014?

11 A Yes, sir, I was.

12 Q Did you occasion to respond to the area of Carey and Dolly here in Las
13 Vegas?

14 A Yes.

15 Q And were you assigned as part of kind of a team with Stephanie Thi,
16 Brenda Vaandering, as well as a supervisor?

17 A Yes, sir, I was.

18 Q And were the assignments kind of split up?

19 A Yes, they were.

20 Q And what was your assignment?

21 A I was assigned to collect the evidence and complete the crime scene
22 diagram.

23 Q And you were very familiar with where the evidence was and how the
24 scene walked out?

25 A Yes, sir.

1 Q Okay.

2 [Colloquy between Counsel]

3 MR. FATTIG: The parties are stipulating to any exhibits between 43 and 52
4 that were not otherwise admitted. Some of them were and some of them were not.

5 MS. NGUYEN: That's correct, Your Honor.

6 THE COURT: All right. That'll be the order.

7 [STATE'S EXHIBITS 43 through 52 ADMITTED]

8 BY MR. FATTIG:

9 Q Mr. Albert, showing you State's 43. What are we looking at there?

10 A This is a photograph of the intersection of Carey and Dolly, taken from
11 the north side of Carey, just west of Dolly.

12 Q And 44?

13 A This is a photograph taken of the same intersection from the median on
14 the south side of the travel lanes of -- sorry, eastbound Carey.

15 Q Okay. 46?

16 A This is a photograph from the southeast corner of that same
17 intersection, shooting at a southwest direction.

18 Q 47 is kind of a close-up of the area behind the light pole at the
19 intersection?

20 A Yes, sir.

21 Q 48, is that shooting back -- looking back towards the patrol car?

22 A Yes, sir, it is.

23 Q 52?

24 A This is the maroon-colored Dodge that was located in the southeast
25 corner of the intersection.

1 Q Now the rear passenger tire is depicted in this photograph, correct?

2 A Yes, sir.

3 Q Does it appear to be deflated or damaged at all in that photograph?

4 A It does not.

5 Q Okay. It appears to be operationable [sic]?

6 A Yes, sir.

7 Q Okay.

8 [Colloquy between Counsel]

9 MR. FATTIG: Parties are stipulating to the admittance of State's 53 through
10 58.

11 MS. NGUYEN: That's correct.

12 THE COURT: They'll be admitted.

13 [STATE'S EXHIBITS 53 through 58 ADMITTED]

14 BY MR. FATTIG:

15 Q Showing you State's 53. Mr. Albert, what are we looking at here?

16 A That is the ground and the driver's side of the same vehicle.

17 Q Okay. And I see a yellow placard with the number 12 on it in front of
18 the driver's side of that vehicle?

19 A Yes, sir. WE use those markers to mark items of evidence.

20 Q Okay. And 54 is a close-up of what that evidence is?

21 A Yes, sir.

22 Q And what was that evidence?

23 A That's an unfired .45 caliber cartridge.

24 Q And 55 is the head stamp of that same cartridge?

25 A Yes, sir.

1 Q And what cartridge was it? What was the head stamp?
2 A SPEER 45 AUTO.
3 Q When a cartridge is fired, is it fair to say that a casing gets left behind?
4 A Yes, sir.
5 Q This would be an unfired cartridge?
6 A Yes, sir, it is.
7 Q Okay. 56, what are we looking at here?
8 A This is just to the north of the previous photo. It's towards the rear part
9 of the vehicle.
10 Q Okay. Would this be the driver's side rear of the vehicle?
11 A Yes, sir.
12 Q And I see a placard with a number 11 on the ground --
13 A Yes.
14 Q -- on the right side. And 57 shows what Number 11 is?
15 A Yes, sir.
16 Q And 58 is the head stamp. And what was Number 11 -- Item 11?
17 A It was also a SPEER 45 AUTO cartridge.
18 Q Unfired cartridge?
19 A Unfired.
20 Q Okay. So there were two unfired cartridges sitting on the ground right
21 near the driver's side and/or driver's side rear of that Dodge Intrepid?
22 A Yes, sir.
23 Q Was one of your tasks to do a crime scene diagram?
24 A Yes, sir, it was.
25 Q How do you go about doing that?

1 A On scene we sketch out the scene by hand and then back at the office
2 we use a computer program to generate a finished copy of the diagram.

3 Q What is a reference point?

4 A A reference point is a fixed object within our scene that we use to
5 measure other items off of. The idea is that that item is not going to go anywhere,
6 it's not mobile. If we had to go back to the scene today that -- more than likely that
7 item would still be there.

8 Q And so there's a lot of measurements done?

9 A Yes, sir.

10 Q And a lot of documenting in terms of exactly where things are at?

11 A Yes, sir.

12 Q And did you do that in this particular case?

13 A Yes, I did.

14 Q And you created a crime -- two -- a couple of crime scene diagrams, fair
15 to say?

16 A Yes, sir.

17 Q Okay. One is a close-up of the intersection of Dolly and Carey and one
18 is kind of the general scene, including El Tovar?

19 A Yes, sir.

20 MR. FATTIG: And my understanding, Your Honor, is State Exhibits 172 and
21 173 are being admitted via stipulation.

22 MS. NGUYEN: That's correct.

23 THE COURT: They'll be admitted.

24 **[STATE'S EXHIBITS 172 & 173 ADMITTED]**

25 BY MR. FATTIG:

1 Q Mr. Albert, I'm going to show initially 173. And this would be the crime
2 scene diagram that you created kind of a closer-up of the intersection of Carey and
3 Dolly, correct?

4 A Yes, sir.

5 Q And I see a lot of different numbers. I'm going to zoom in initially to
6 what looks like a block box with the number V1 underneath it. What is V1?

7 A V1, we designated the maroon Dodge as V1 or Vehicle 1, for our
8 documentation purposes.

9 Q Okay. And there is on the right side of this particular exhibit is a key, if
10 you will, of all the items are?

11 A Yes, sir.

12 Q And so next to V1 would be Number 12 and that is where the cartridge
13 casing was found?

14 A The cart -- the unfired cartridge, yes.

15 Q I'm sorry, the unfired cartridge, 45 SPEER AUTO, correct?

16 A Yes, sir.

17 Q And 11 as well is indicated on here?

18 A Yes.

19 Q Now across the way a bit is Item Number 10. And on the key to the
20 right of that particular crime scene diagram it says Item 10 is a .45 cartridge,
21 correct?

22 A Yes, sir.

23 Q Okay. Let me show you a couple of photos.

24 MR. FATTIG: My understanding is, Your Honor, the parties are stipulating to
25 the admittance of State's 83 through 85.

1 MS. NGUYEN: That's correct.

2 THE COURT: They'll be admitted.

3 **[STATE'S EXHIBITS 83 through 85 ADMITTED]**

4 BY MR. FATTIG:

5 Q 83, zooming out, is a photograph of where Number 10 was, correct?

6 A Yes, sir, that's the --

7 Q It was on the sidewalk on the west of Dolly?

8 A Yes, sir.

9 Q Just to the south of the intersection with Carey?

10 A Yes, sir.

11 Q 84 says -- shows what that is?

12 A Yes, sir.

13 Q 85 is a view of the head stamp, correct?

14 A Yes, sir.

15 Q now this head stamp is a little bit different, correct?

16 A Yes, sir.

17 Q What does this head stamp say?

18 A I can't read it real well.

19 Q Okay.

20 A May I refer to my report?

21 Q Or I could approach with the photo?

22 A That'll work too.

23 Q Okay.

24 A This is a -- it says WINCHESTER 45 AUTO.

25 Q Still the same caliber, fair to say?

1 A Yes, sir.

2 Q But a different manufacturer?

3 A Yes.

4 Q And again, that's an unfired cartridge, correct?

5 A Yes.

6 Q Just like the cartridges -- the .45s, Items 11 and 12 by the car?

7 A Yes, sir.

8 Q Okay.

9 [Colloquy between Counsel]

10 MR. FATTIG: May I approach the witness, Your Honor?

11 THE COURT: Yes.

12 BY MR. FATTIG:

13 Q Mr. Albert, showing you what has been marked as State's 190. Do you
14 recognize what this is?

15 A Yes, sir. This is a package that I created with -- containing Items
16 Number 10 and 11 and 12.

17 Q Okay. The items that we just viewed. Did you personally impound
18 those items?

19 A Yes, sir, I did.

20 Q And were they in your sole custody and control from the point of time
21 you picked them up, to the point of time that you impounded them?

22 A Yes, sir.

23 Q And you put them in a sealed envelope?

24 A Yes, I did.

25 MR. FATTIG: And once again, Your Honor, outside the presence of the jury,

1 over the lunch period and in an effort to expedite the process, we had MR. Albert
2 open up the sealed envelope in the process of Ms. Nguyen and myself.

3 MS. NGUYEN: That's correct.

4 BY MR. FATTIG:

5 Q So we opened that up and inside could you pull out whatever we find
6 inside?

7 A Yes, sir.

8 Q And this has been marked for the record as 190a. And this is an
9 evidence baggie with three different canisters, correct?

10 A Yes, sir.

11 Q And they are marked with identification to this particular event, correct?

12 A Yes, sir.

13 Q Via the event number, via your name and your P-number --

14 A Yes, sir.

15 Q -- correct? And they are identified via item numbers?

16 A Yes, they are.

17 Q And on top of the canister you wrote 10, 11, and 12?

18 A Yes, sir.

19 Q Okay. And these would be in substantially the same condition now as
20 they were when you impounded them?

21 A Save for the white labels that are on them that were placed there by our
22 forensic lab.

23 Q Okay. And the forensic lab has inspected and done some testing on
24 this evidence, correct?

25 A Yes, sir.

1 Q And how do we know that just by looking at State's Proposed Exhibit
2 190?

3 A Anytime the forensic lab performs an examination they'll open -- as bet
4 they can they will open the package at a different spot than we labeled -- than we
5 sealed it. So the red seal towards the top of the package is mine, the blue seal at
6 the bottom will be theirs, and then they've filled out the chain of custody information
7 on the label.

8 Q Okay.

9 MR. FATTIG: Move to admit 190 and 190a.

10 MS. NGUYEN: Submit.

11 THE COURT: It'll be admitted.

12 **[STATE'S EXHIBITS 190 & 190a ADMITTED]**

13 BY MR. FATTIG:

14 Q Ms. Vaandering had testified right before you regarding some casings
15 that she found in the street. Did she hand you some casings and some evidence?

16 A Yes, sir.

17 MR. FATTIG: My I approach the witness again?

18 THE COURT: Yes.

19 BY MR. FATTIG:

20 Q Showing you what has been already admitted as 193 and 193a. Do
21 you recognize these items?

22 A Yes, sir. This is another package that I created in the same fashion as
23 the last.

24 Q And these would be cartridge casings that Ms. Vaandering collected at
25 the locations that she informed you of and then you actually took custody of the

1 items and impounded them?

2 A Yes, sir.

3 Q And they were in your custody and control after Ms. Vaandering did, to
4 the point in time when you impounded them in a sealed envelope?

5 A Yes, sir.

6 Q Okay. I'm going to move over to another portion of this same
7 intersection and talk about Patrol Officer McNabb's vehicle, okay?

8 A Yes, sir.

9 Q We have that indicated as V2 next to the car?

10 A Yes, sir.

11 Q On your diagram, correct?

12 A Yes.

13 Q And we have a number of numbers here and they correspond to items
14 of evidence that were marked 1 through 5?

15 A Yes, sir, they do.

16 Q And I also see an O1 or a 01. What is that?

17 A It's a O1. In this case we mark the approximate position of -- that our
18 officer -- that the officer was in at the time of the shooting, based on the information
19 that we had.

20 Q Okay. And looking over I see an O2 near the intersection correct?

21 A Yes, sir.

22 Q And would that indicate the second position the officer was in during the
23 shooting?

24 A Yes, sir, it is.

25 [Colloquy between Counsel]

1 MR. FATTIG: Your Honor, my understanding is the parties are going to
2 stipulate to the admittance of State's 59 through 71.

3 MS. NGUYEN: That's correct.

4 THE COURT: They'll be admitted.

5 **[STATE'S EXHIBITS 59 through 71 ADMITTED]**

6 BY MR. FATTIG:

7 Q 59 is just a close-up of the patrol car with the door open?

8 A Yes, sir.

9 Q Is that how the car was when you arrived out there?

10 A Yes, it was.

11 Q The patrol -- the driver's side door was just left opened?

12 A Yes.

13 Q 60, what do we see here? Let me zoom out here so you can see it
14 better.

15 A This is a photograph from the front of the vehicle. From this
16 perspective you can see Items 1 on the ground on the right side of the photo; Items
17 3 and 4 on the hood of the vehicle; and then Item Number 2 is actually at the far left
18 edge of the photo.

19 Q Okay. So you placed the placards out based upon items of evidence
20 that are significant, correct?

21 A Yes, sir.

22 Q And 61, what is that?

23 A That's going to be an expended cartridge case we labeled as Item
24 Number 1.

25 Q And 62, the cartridge case has been turned over?

1 A Yes, sir, this is the head stamp -- showing the head stamp of the
2 cartridge case.

3 Q What is the head stamp? Again, did you need to look at the
4 photograph?

5 A Yes, sir.

6 Q Okay.

7 A I apologize.

8 MR. FATTIG: May I approach again, Your Honor?

9 THE COURT: Yes.

10 BY MR. FATTIG:

11 A The head stamp is a SPEER 9 mm LUGER +P.

12 Q Does that have any significance to you?

13 A That's the department-issued -- Las Vegas Metropolitan Police
14 Department-issued 9 mm ammunition.

15 Q All Metro employees use the same ammo.

16 A Yes, sir. With varying calibers, but --

17 Q Yes.

18 A Yes.

19 Q Same head stamp, same manufacturer?

20 A Yes, sir.

21 Q Okay. 63 shows the position of the second item, correct?

22 A Yes, sir.

23 Q 64, another cartridge casing.

24 A Yes, sir.

25 Q 65, a casing with the same head stamp.

1 A Yes, sir.

2 Q 66, what are we looking at here?

3 A This is the plastic area at the top of the hood of the vehicle, at the base
4 of the windshield where the windshield wipers are located. There were two -- in this
5 case the markers are up on the hood due to the position of the items, so that they'd
6 be visible for photography.

7 Q So two of Officer McNabb's casings landed right at the base of his
8 windshield by his wipers, basically?

9 A Yes, sir.

10 Q 67 shows the head stamp?

11 A Yes, sir.

12 Q 68, the other one?

13 A Yes, sir.

14 Q Again, the same?

15 A Yes, they are.

16 Q 69, what are we looking at here?

17 A This is the area just inside the driver's door of the patrol car. We
18 located another cartridge case marked Item Number 5 just between the seat and the
19 edge of the door.

20 Q And 70 shows kind of a close-up of that?

21 A Yes, sir.

22 Q And 71, again, the same head stamp?

23 A Yes, it is.

24 Q So five cartridge casings, five fired shots, in and around Officer
25 McNabb's vehicle?

1 A Yes, sir.

2 Q Moving over --

3 [Colloquy between Counsel]

4 BY MR. FATTIG:

5 Q Moving attention back to the middle -- more of the middle of the
6 intersection, Items 6, 7, and 8?

7 A Yes, sir.

8 Q Off of you crime scene diagram, 173.

9 MR. FATTIG: Your Honor, I believe the parties are stipulating the admittance
10 of State's Exhibits 72 through 82.

11 MS. NGUYEN: That's correct.

12 THE COURT: They'll be admitted.

13 **[STATE'S EXHIBITS 72 through 82 ADMITTED]**

14 BY MR. FATTIG:

15 Q 72. Let me zoom out. Can you see the placards 6, 7, 8, and 9 in this
16 picture or is it bleached out too much?

17 A I can see them, sir. They're --

18 Q Okay.

19 A -- a little bleached out, but they're in about the left-hand side of the
20 screen, towards the middle.

21 Q Okay. And 73, perhaps that's a better view?

22 A Yes, sir.

23 Q That shows the position of Items of Evidence 6, 7, and 8, correct?

24 A Yes.

25 Q Okay. 74 is Number 6. Again, let me zoom out. And what was 74?

1 A Another cartridge case.

2 Q 75 is the head stamp?

3 A Yes, sir.

4 Q Consistent with Officer McNabb's ammunition?

5 A Yes, sir.

6 Q 76, another fired cartridge case?

7 A Yes, sir.

8 Q And 77, the same head stamp?

9 A Yes.

10 Q 78 again?

11 A Another cartridge case, yes.

12 Q And 79, the same head stamp?

13 A Yes, sir.

14 Q Okay. Three shots from the center of the street there.

15 A Yes, that's -- three recovered cartridge --

16 Q Three casings?

17 A Yes, sir.

18 Q Number 80?

19 A You can see number -- it's the southwest corner of the intersection

20 again. You see Item Number 9 just to the left side of the photo.

21 Q And 81 is a view -- another view of Item 9 in the street?

22 A Yes, sir.

23 Q And 82?

24 A A close-up photo of a Glock magazine.

25 Q Which was consistent with the firearm used by Officer McNabb?

1 A Yes, sir.

2 Q And Item 9, going back to State's Exhibit 173, is in that position here?

3 A Yes, sir.

4 Q Okay.

5 [Colloquy between Counsel]

6 MR. FATTIG: May I approach the witness, Your Honor?

7 THE COURT: Yes.

8 BY MR. FATTIG:

9 Q Mr. Albert, showing you what has been marked as Proposed 188.

10 What do we have here?

11 A It's another envelope -- evidence envelope that I created containing
12 Items 1 through 8 that we've just discussed.

13 Q Okay. And so you collected those, put them in a sealed envelope?

14 A Yes, sir.

15 Q And over the lunch period and in the presence of Ms. Nguyen we
16 opened that envelope, right?

17 A Yes, we did.

18 Q It was in a sealed condition?

19 A It was.

20 Q Can you pull out any items of evidence inside of this?

21 A [No audible response - pulls items out of envelope].

22 Q And marked as 188a is another evidence baggie with a -- containing
23 carious vials, looks like eight of them, correct?

24 A Yes, sir.

25 Q And these would all be cartridge casings matching the crime scene

1 diagram 1 through 8 --

2 A Yes, sir.

3 Q -- that we've been looking at? Okay. These all have the same head
4 stamps, correct?

5 A Yes, they do.

6 Q Are these in substantially the same condition now as they were when
7 you impounded these items of evidence back on June 26th and/or June 27th of
8 2014?

9 A Yes, sir. Again, other -- like the other items, other than the labels
10 added by our forensic lab, they are relatively the same condition.

11 MR. FATTIG: I would move to admit 188 and 188a.

12 MS. NGUYEN: No objection.

13 THE COURT: They'll be admitted.

14 **[STATE'S EXHIBITS 188 & 188a ADMITTED]**

15 MR. FATTIG: May I approach the witness again?

16 THE COURT: Uh-huh.

17 BY MR. FATTIG:

18 Q Mr. Albert, showing you what has been marked as State's Exhibit 189.
19 Is this another envelope that was sealed until the lunch period?

20 A Yes, sir.

21 Q Can you pull out any items inside of this?

22 A [No audible response - pulls items out of envelope].

23 Q Now what do we have inside?

24 A We have the magazine, Item Number 9 that we discussed and the
25 seven cartridges that I removed from the magazine.

1 Q Okay. Item Number -- the magazine has been marked, for the record,
2 as 189b. And 189a is a baggie containing seven different cartridges, correct?

3 A Yes, sir.

4 Q And these cartridges were loaded in this magazine when you found it?

5 A Yes, they were.

6 Q And this magazine has some writing on it, correct?

7 A Yes, it does.

8 Q What is the writing?

9 A R8399M.

10 Q And does that correspond to Ryan McNabb and his P-number?

11 A Yes, sir.

12 Q Okay. And is -- are these items of evidence in substantially the same
13 condition as you found them that day?

14 A Yes, sir.

15 Q Now this particular magazine, how many does it hold? If you know?

16 A According to the markers on the rear side of the magazine, it appears to
17 hold 17.

18 MR. FATTIG: Move to admit 189, 189a, and 189b.

19 MS. NGUYEN: No objection.

20 THE COURT: It'll be admitted.

21 **[STATE'S EXHIBITS 189, 189a, & 189b ADMITTED]**

22 BY MR. FATTIG:

23 Q The ammunition, those seven cartridges were all head stamped the
24 same as the casings that were found out there, correct?

25 A Yes, sir.

1 Q What are perspective shots?

2 A Perspective shots are photographs we'll take showing what a person's
3 view would have been from a particular location.

4 Q Trying to kind of recreate what they saw the best that you can?

5 A Yes, sir.

6 Q Okay.

7 [Colloquy between Counsel]

8 MR. FATTIG: Parties are stipulating the admittance of 86 through 93 is my
9 understanding.

10 MS. NGUYEN: That's correct, Your Honor.

11 THE COURT: They'll be admitted.

12 [STATE'S EXHIBITS 86 through 93 ADMITTED]

13 BY MR. FATTIG:

14 Q Showing you, Mr. Albert, 86 initially. Zoom out. What are we looking at
15 here?

16 A This is the same patrol car we saw before. Right behind the door we've
17 got a tripod set-up with a paper bag -- a labeled paper bag on top of it.

18 Q Okay. And is there significance why we have a paper bag and a tripod
19 set up right there?

20 A We do that so that we can mark the areas we're going to take
21 perspective photos from. Now obviously in this case, with the door being opened
22 and the car being that way, we have to find some way to mark the location so that
23 we can see what we're -- what the perspective's going to be and where it's going to
24 be from.

25 Q Okay. And 87 is kind of a marker indicating perspective view --

1 A Yes, sir.

2 Q -- of what we're about to see?

3 A Yes, sir.

4 Q Okay. 88, is that one of the perspective shots from that same position?

5 A Yes, sir, it is.

6 Q Inside the door -- driver's side of the patrol car?

7 A Yes, sir.

8 THE COURT: And when you say shots -- that's a pic -- photograph?

9 THE WITNESS: Yes, sir.

10 THE COURT: All right.

11 BY MR. FATTIG:

12 Q 89, is that just turning a little bit to the south --

13 A Yes, sir.

14 Q -- and east from that same open doorway?

15 A Yes, sir.

16 Q If Officer McNabb was standing there firing, that is the view he would

17 have seen?

18 A Correct.

19 Q State's 90. What are we looking at here?

20 A This is going to be -- the cone with the paper bag is going to mark the

21 location. It's in the diagram that we marked as O2, or Officer Position 2, in the

22 middle of the intersection.

23 Q Near 6, 7, and 8?

24 A Yes, sir.

25 Q And this would be information gleaned from Officer McNabb?

1 A Yes, sir.

2 Q 91, again, indicating what the following photo will show?

3 A Yes, sir.

4 Q 92 would be a view of -- from Position Number 2?

5 A Yes, sir.

6 Q Okay. 93. What are we looking at here?

7 A That's another cone with a paper bag marking the subject location that

8 we were provided.

9 Q And that's right behind the light pole? Is that what this is, the light pole?

10 A Yes, sir.

11 Q On the --

12 A That's the light pole at the southwest corner of the intersection.

13 MS. NGUYEN: And Your Honor, I would just object that that's speculation as

14 to positioning of any particular suspect.

15 BY MR. FATTIG:

16 Q It was information you received, right?

17 A Yes, sir, we were just acting on the info --

18 THE COURT: It's information they received. Neither of them were there and

19 so the jurors will just take that into consideration.

20 MR. FATTIG: May I approach the witness, Your Honor?

21 THE COURT: Yes.

22 BY MR. FATTIG:

23 Q Sir, showing you State's Proposed 94 and 95. Do you recognize these

24 photographs?

25 A Yes, sir.

1 Q What is 94?

2 A Again, it's a white card like we saw with the others for the perspective
3 view of the suspect from that location.

4 Q Okay. Just indicating what we're about to see in 95?

5 A Yes, sir.

6 Q Okay. 95, do you recognize what's shown there?

7 A Yes, sir. It's a view through the fence, from that location, towards the
8 patrol car.

9 Q Okay. Is it fair to say that this is a view from a crouched down position
10 behind the chain link fence?

11 A Yes, sir.

12 Q Do these fairly -- does 95 fairly and accurately depict the scene out at
13 Carey and Dolly from that position?

14 A Yes, sir, it does.

15 MR. FATTIG: Move to admit 94 and 95?

16 MS. NGUYEN: Objection, Your Honor. I'd just say there hasn't been a
17 proper foundation for the information obtained to label that as the perspective of any
18 particular suspect.

19 THE COURT: All right. Overruled. I'll allow it in.

20 **[STATE'S EXHIBITS 94 & 95 ADMITTED]**

21 BY MR. FATTIG:

22 Q So 94 just indicates perspective view, correct?

23 A Yes, sir.

24 Q 95 is the photograph you were describing?

25 A Yes, sir, it is.

1 Q So this would be the patrol car? And this would be from a crouched
2 down position in the area behind the lamppost?

3 A Yes

4 Q Or the light pole, right?

5 A Yes, sir.

6 Q Okay. And that is depicted in 173, correct, the crime scene diagram?

7 A Yes, sir.

8 Q Is that the S we're looking at?

9 A Yes, sir, it is.

10 Q Okay. Now you're familiar with the area on El Tovar -- and El Tovar
11 and Dolly, correct?

12 A Yes, sir.

13 Q And you in fact created a crime scene diagram of that entire area. And
14 let me zoom out. This would contain the same information that we saw, as well as
15 additional information south of that position on El Tovar, correct?

16 A Yes, sir.

17 Q It's essentially the exact same information, just more of it.

18 A Yes, sir.

19 Q If we zoom in we're going to see everything we just saw, correct?

20 A Yes, sir. I believe around the patrol car, there was a few numbers that
21 were removed. When we're creating these diagrams, because it's a secondary
22 diagram, the further you zoom out obviously the smaller the numbers and the
23 smaller the symbols become and things become a bit more chaotic. And so
24 sometimes when we'll remove certain things from this particular diagram so that
25 things are more legible.

1 Q Okay. So on this particular diagram it includes -- and let me zoom in
2 towards the El Tovar area -- information regarding Items 13 and 14, correct?

3 A Yes, sir.

4 Q Under an item marked V3?

5 A Yes, sir.

6 Q And that would be a white truck we've been hearing about?

7 A Yes, sir, it is.

8 Q Okay. And you're familiar obviously with that scene as well because
9 you walked down the street?

10 A Yes, I am.

11 Q And 96 shows -- again let me zoom out -- El Tovar and Dolly?

12 A Yes, sir.

13 Q 97 we see the white truck on the right side of the picture, correct?

14 A Yes.

15 Q Now 98, that shows partly the home on the southeast side of that
16 intersection, correct?

17 A Yes, sir.

18 Q And you see an apartment building in the back?

19 A Yes, I do.

20 Q And there appears to be a light on that apartment building, correct?

21 A Yes, sir.

22 Q A fairly bright light?

23 A Yes, sir.

24 Q Going back to 104 which is already admitted. Now did you impound
25 this -- these items of evidence?

1 A Yes, sir, I did.

2 Q And they were found underneath that white truck, correct?

3 A Yes, sir.

4 Q And these are -- this is a picture, 105, of them after they were pulled out
5 from underneath the front of the white truck?

6 A Yes, sir.

7 [Colloquy between Counsel]

8 MR. FATTIG: I believe the parties are stipulating the admittance of 106
9 through 110. One or two of those might have been admitted before.

10 MS. NGUYEN: That's correct.

11 THE COURT: That'll be the order.

12 **[STATE'S EXHIBITS 106 through 110 ADMITTED]**

13 BY MR. FATTIG:

14 Q 106, what are we looking at here, sir?

15 A That's the tag on the inside of a -- the white ballistic vest that was
16 underneath the vehicle.

17 Q It says American Body Armor and Equipment?

18 A Yes, sir.

19 Q And basically generally describes what the vest was?

20 A Yes, sir.

21 Q 107. Is this the gun that was on the vest?

22 A Yes, sir, it is.

23 Q Now this is after the gun has been moved, clearly, right?

24 A Yes, sir.

25 Q It's on like a paper bag or something?

1 A Yes.

2 Q Was this out at the scene still?

3 A I believe that it was.

4 Q Okay. And you documented the condition of the gun kind of as it was
5 found?

6 A Yes, we did.

7 Q Now, is there a magazine in the gun?

8 A Yes, there is.

9 Q Was there any ammunition at all in the gun?

10 A I don't believe so, sir.

11 Q And for the record this documents the serial number of that particular
12 gun?

13 A Yes, sir.

14 Q As CP33432?

15 A Yes.

16 Q And what kind of gun was this?

17 A I believe it was a Colt semi-automatic.

18 Q .45 caliber?

19 A Yes, sir.

20 Q 108. Is this the other side of the gun?

21 A Yes, it is.

22 Q And it's labeled Colt on that side?

23 A Yes, sir.

24 Q M1991A1?

25 A Yes.

1 Q Now this particular magazine, it appears to be an extended magazine?
2 A Yes, sir.
3 Q How many rounds fit in the magazine?
4 A I don't recall.
5 Q Would looking at your report refresh your recollection about that?
6 A I don't believe that that information was specifically documented in the
7 report.
8 Q Would looking at the actual magazine assist in that?
9 A Yes, sir.
10 Q 109, is that a picture of the same gun without the magazine?
11 A Yes, sir.
12 Q And 110 is the other side, correct?
13 A Yes, sir.
14 MS. NGUYEN: And Your Honor, I'd stipulate to opening this.
15 THE COURT: Has Tom checked this gun? Have you check the gun?
16 MS. NGUYEN: I think this is the one that you did check.
17 THE COURT: Make sure.
18 THE MARSHAL: Yes, that's the one I checked, it is.
19 MR. FATTIG: May I approach the witness, Your Honor?
20 BY MR. FATTIG:
21 Q Mr. Albert, showing what has been marked as State's 191. This is a --
22 appears to be a cardboard box, correct?
23 A Yes, sir.
24 Q Is this the typical way you would impound an firearm?
25 A Yes, sir, it is.

1 Q Okay. And you detailed this -- that this was the same gun we're looking
2 at in the photograph on the screen?

3 A Yes, sir, it is.

4 Q And this is the gun underneath the white truck?

5 A Yes, sir.

6 Q Can you open up the box for us?

7 A Yes, sir.

8 Q 191a is the actual firearm, correct?

9 A Yes, sir.

10 Q 191b is the magazine that was taken out of that firearm?

11 A Yes, sir.

12 Q Does looking at 191b assist you in terms of determining how many
13 rounds fit in that magazine?

14 Do we need to take it out of the orange loop there?

15 A Yes, sir.

16 Q Okay. Do we need scissors?

17 A Yes, please.

18 Thank you, sir.

19 There we go. Based on the magazine it looks like it holds -- the
20 magazine is marked with ten. At the top of it, it says .45 ACP, which designates the
21 caliber and has a 13 underneath. I'm not sure. It could be 10 or it could 13. I'm not
22 entirely sure.

23 Q It's marked with ten different numbers next to the holes, correct?

24 A Yes, sir.

25 Q Okay. And the backside you can see all the numbers next to --

1 corresponding to each hole, correct?

2 A Yes, sir.

3 Q So we'll ask the firearms expert about that.

4 A Yes, sir.

5 Q Obviously another forensic person had access to this firearm and did
6 some testing on it, correct?

7 A Yes, sir, they did.

8 Q Because of the blue tape, correct?

9 A Yes.

10 Q Okay. Is this in substantially the same condition as when you
11 impounded from this crime scene back in June of 2014?

12 A Again, other than the blue seals and you can see at this time it's
13 sealed -- it's tied in with orange zip ties. On the back you can see there's black zip
14 ties. I secured it with the black zip ties when I impounded it. Our firearms examiner
15 would have re-secured it with the orange zip ties.

16 Q Other than those changes it's in substantially the same condition as
17 when you found it and took it out from underneath that white truck?

18 A Yes, sir.

19 MR. FATTIG: Move to admit 191, 191a, and 191b.

20 MS. NGUYEN: No objection.

21 THE COURT: They'll be admitted.

22 **[STATE'S EXHIBITS 191, 191a, & 191b ADMITTED]**

23 BY MR. FATTIG:

24 Q Now, did you do any processing of the gun and/or magazine?

25 A Yes, sir, I did.

1 Q Or attempt to collect any evidence from it?

2 A Yes, sir, I did.

3 Q What did you do?

4 A Any time we're going to process a firearm, the first thing we do is we
5 swab it for DNA, prior to processing it for fingerprints. In this case, we'll swab the
6 grip area, which is going to be the area here. It's a textured surface so it's not going
7 to be conducive for latent prints, as well as the serrated area on the slide, and the
8 front face of the trigger. We'll swab those areas for DNA prior to processing for
9 prints.

10 Q Okay. Did you do -- so you swabbed it first, correct?

11 A Yes, sir.

12 Q And then did you do any processing regarding fingerprints?

13 A Yes, sir, we did. Or I did.

14 Q What did you do?

15 A In this case I used superglue fuming which is a technique where
16 superglue is heated to the point where it becomes a gas and then as it cools down it
17 adheres to any oils or moisture that create the fingerprints. So in this case we'll
18 fume it with the superglue and then we'll dye stain it with a dye called Rhodamine
19 6G, which will adhere to the superglue and allow it to be visible -- any prints to be
20 visible under a laser light.

21 Q And obviously this is not something that you're doing out at the corner
22 of El Tovar and Dolly?

23 A No, sir.

24 Q Okay. You would have preserved these items, taken them back to the
25 lab, and done testing on them?

1 A Yes, sir.

2 Q Okay. And then after you did the testing you put it in the box, sealed it,
3 et cetera.

4 A Yes, sir.

5 Q Okay. And did you document the fingerprint -- or first of all, did you
6 have any positive results with regards to the trying to collect prints from that
7 particular gun and/or the magazine?

8 A The gun itself was negative for fingerprints. There was one print
9 developed on the magazine?

10 Q Did it -- in your experience with regards to firearms, is it difficult to lift
11 prints from firearms?

12 A It can be. Unfortunately the -- the reason we swabbed it for DNA is
13 because the areas that are handled a lot that we come in contact with are typically
14 the textured areas; however, it's not impossible. Fingerprints are very -- there's a lot
15 of variables that go into fingerprints, so whether there should or shouldn't be
16 fingerprints there, it's very difficult to determine.

17 [Colloquy between Counsel]

18 MR. FATTIG: May I approach the witness, Your Honor?

19 THE COURT: Yes.

20 BY MR. FATTIG:

21 Q Sir, showing you State's Proposed 194. Are these swabs that you took
22 from that firearm?

23 A Yes, sir.

24 Q And would have -- how do you collect DNA swabs?

25 A It's essentially a cotton swab, moistened with a small amount of distilled

1 and we'll -- again, with the firearm we'll swab the grip, the textured portion of the
2 slide, and the trigger. And the magazine we'll -- or we'll swab the base and the area
3 at the top with the rough edges where the cartridges go in.

4 Q And then you put them in a sealed type of container?

5 A Yes. Each swab will go into its own sealed envelope. So inside this
6 package there would be two sealed envelopes, one containing each swab.

7 Q Both from the gun -- different parts of the gun?

8 A The gun and the magazine, yes.

9 Q And the blue marking would indicate, again, that a DNA expert has
10 examined that evidence?

11 A Yes.

12 MR. FATTIG: Okay. And we're not going to open up this particular evidence,
13 Your Honor, because it contains perhaps biological material. So I would move to
14 admit 194.

15 MS. NGUYEN: I have no objection.

16 THE COURT: It'll be admitted.

17 **[STATE'S EXHIBIT 194 ADMITTED]**

18 BY MR. FATTIG:

19 Q Going back to the fingerprints and the superglue process, did you have
20 any success with the magazine?

21 A Yes, sir.

22 Q And how did you go about documenting that?

23 A In this case, when we're chemically processing for prints, we will
24 document the results with photography.

25 MR. FATTIG: And it's my understanding the parties are stipulating the

1 admittance of 174 through 176.

2 MS. NGUYEN: Yes.

3 THE COURT: It'll be admitted.

4 **[STATE'S EXHIBIT 174 through 176 ADMITTED]**

5 BY MR. FATTIG:

6 Q 174, Mr. Albert, that's a picture of the same magazine that we've been
7 looking at?

8 A Yes, sir.

9 Q 175, what are we looking at here?

10 A That's the same magazine under the laser that I previously mentioned
11 that allows us to view the chemical enhancement.

12 Q And 176?

13 A It's a closer photo of the fingerprint on the side of the magazine.

14 Q One print was recovered?

15 A Yes, sir.

16 Q And you took multiple pictures of it.

17 A Yes, sir.

18 Q This particular print was documented through photography and then the
19 photographs were provided to the fingerprint examiner?

20 A Yes, sir.

21 Q Can you show on the magazine, which I believe is 191b, if I'm not
22 mistaken, where the print was approximately? And if you need to look at the
23 photographs --

24 A Yeah, could you do that, please?

25 MR. FATTIG: May I approach the witness, Your Honor?

1 THE COURT: Yes.

2 BY MR. FATTIG:

3 A The print's going to be on the based -- towards the base on the silver
4 part, on the same side as the sticker. So right in here around where Number 9 and
5 Number 10 are.

6 Q Okay. At the bottom of the --

7 A The metal portion, yes.

8 Q The metal portion. And that's on 191b, for the record.

9 [Colloquy between Counsel]

10 MR. FATTIG: May I approach the witness, Your Honor?

11 THE COURT: Yes.

12 BY MR. FATTIG:

13 Q Sir, showing you what has been marked as 192. Do you recognize
14 what this is?

15 A Yes, sir.

16 Q What is this?

17 A This is the box that I packaged the previously mentioned ballistic vest
18 in.

19 Q Can you pull that out?

20 A Yes, sir.

21 Q And what color is this?

22 A White.

23 Q And it -- how do you wear such a device?

24 A In this case, this is the front and this is the back and this would -- your
25 head would go in between the two straps.

1 Q Okay. Part of it is over the front torso, the other half is at back torso?

2 A Yes, sir.

3 Q Okay. It's fairly heavy?

4 A Yes, sir.

5 Q Is that in substantially the same condition as when you found it
6 underneath that white truck?

7 A Yes, sir.

8 MR. FATTIG: Move to admit 192 and 192a, which is the vest itself.

9 MS. NGUYEN: No objection.

10 THE COURT: It'll be admitted.

11 **[STATE'S EXHIBIT 192 & 192a ADMITTED]**

12 BY MR. FATTIG:

13 Q The maroon Dodge Intrepid, what happened with the car?

14 A We secure the vehicle and we sealed it with orange seals over the
15 doors -- the four doors, the trunk, and the hood and we had it towed back to our CSI
16 section garage for further processing.

17 Q Okay. Showing what's already been admitted as 125. These are the
18 orange seals that were placed on the vehicle?

19 A Yes, sir.

20 Q Now the towing itself, how does that -- does the car -- front end of the
21 car get lifted and the two tires -- rear tires get on -- you know, on the ground as it's
22 towed or is it put on to a truck or maybe you don't know?

23 A I don't remember particularly how this car was loaded.

24 Q Okay. 126, that would be the passenger side of the car, correct?

25 A Yes, sir.

1 Q And this would be early the morning of June 27th because it's -- the sun
2 out?

3 A Yes, sir.

4 Q You're still out at the scene?

5 A Yes, sir.

6 Q How long were you out there?

7 A We arrived on scene at -- I believe I arrived just before midnight.

8 Q And when did you leave?

9 A Well into the morning. I don't remember exactly what time.

10 Q Okay. You were out there a long time?

11 A Yes, sir.

12 Q 127, what are we looking at here?

13 A This is going to be a photo of the rear driver's side door and window of
14 the Dodge Intrepid.

15 Q And this is out at the scene still, right?

16 A Yes, sir.

17 Q You can still see the patrol car of Officer McNabb in the back.

18 A Yes, sir.

19 Q And do you notice -- when you're out at the scene are you noticing
20 some damage to the driver's side of this vehicle?

21 A Yes, sir.

22 Q Can you describe generally what you're noticing?

23 A We see what appear to be multiple apparent bullet strikes to the
24 window --

25 MS. NGUYEN: Objection, Your Honor, speculation.

1 MR. FATTIG: I could lay more foundation if you want.

2 THE COURT: Yeah. Lay a foundation. Sustained.

3 BY MR. FATTIG:

4 Q Are you familiar with bullet strikes to vehicles?

5 A Yes, sir.

6 Q How many times do you think you've gone out to scenes investigating
7 bullet strikes to vehicles and/or at the lab?

8 A To tell you the honest truth I couldn't even give you a number. It's been
9 quite a few as far as scenes I've responded to. We've also had extensive training in
10 shooting scenes, particularly involving vehicles.

11 Q And damage that bullets does?

12 A Yes, sir.

13 Q And was this consistent with that, according to your training and
14 experience?

15 A Yes, sir, it was.

16 Q And you said you can't even estimate it. I mean, are we talking about
17 dozens, are we talking about hundreds?

18 A I'd say dozens probably.

19 Q And this was consistent with that?

20 A Yes, sir.

21 Q Going back to the towing. The car was towed where?

22 A To -- from the scene to our office at 5555 West Badura.

23 Q And that's where you do investigations of physical evidence?

24 A Yes, sir.

25 Q Now 128 shows the vehicle after it's already back at the garage,

1 correct?

2 A Yes, sir.

3 Q At this point the rear passenger tire appears to be deflated, correct?

4 A Yes, sir, it is.

5 Q Okay. Showing you --

6 [Colloquy between Counsel]

7 MR. FATTIG: Your Honor, the parties are stipulating to the admittance of 156
8 through 171.

9 MS. NGUYEN: that's correct.

10 THE COURT: They'll be admitted.

11 **[STATE'S EXHIBITS 156 through 171 ADMITTED]**

12 BY MR. FATTIG:

13 Q Showing you State's Exhibit 156. What are we looking at here?

14 A This is the same rear passenger side -- or I'm sorry, rear driver's side
15 door area of the Dodge Intrepid, after we've marked the apparent bullet strikes to
16 the door and window.

17 Q So the markings here are like bright neon- yellowish green stickers, with
18 some numbers and letters on them?

19 A Yes, sir.

20 Q I know it's blurry. You can't see here, correct?

21 A Yes, sir.

22 Q But there are a series of different areas of damage all on the driver's
23 side of the car, correct?

24 A Yes, sir.

25 Q And in terms of the number of items of areas of damage, I see 1, 2, 3,

1 4, 5, 6 total.

2 A Yes, sir.

3 Q Is that accurate?

4 A Yes, it is.

5 Q Okay. 157. What are we looking at here?

6 A Oh that's a -- that's the first one. It's -- we marked it A. It's to the center
7 left side of that window on the exterior.

8 Q Now I'm going to go back. When you say the first one, are you talking
9 about the one closest to the driver's side?

10 A Yes, sir.

11 Q This one here?

12 A yes.

13 Q Okay. And for the record I was referring to 156, okay? 157 is a close-
14 up of that damage?

15 A Yes, sir.

16 Q And you marked it A0?

17 A Yes, sir.

18 Q And was that consistent with a bullet?

19 A Yes, sir, it was.

20 Q Grazing the -- was it the back passenger -- excuse me. Back seat
21 driver's side window?

22 A Yes, sir.

23 Q 158, what are we looking at here?

24 A This is an impact that we've labeled B. It's on the plastic -- the black
25 plastic piece at the very rear of that window.

1 Q Going back to 156, is that the item that I'm indicating here?

2 A Yes, sir.

3 Q Now why is this B and the first one A? Does that have any
4 significance?

5 A We will only -- the reason it's -- you'll see A0 and B0, if we can relate
6 multiple impacts then we'll refer to them -- successive impacts would therefore be 1,
7 2, and so on. In this case, we had no -- we couldn't determine whether the two were
8 related or not. So if we can't prove that they're related, then we'll treat them as two
9 separate incidents.

10 Q Okay. 159?

11 A You're seeing just below B on the left side of the screen there is C0.
12 And then towards the right side of your screen you're seeing --

13 Q I overdid it. Let me try to find a happy medium on the brightness.
14 Okay.

15 A There you go. In this case we were able to determine that in this case
16 C0 and C1 were related. So the bullet would have struck the window at the location
17 of C0, continued on, striking the plastic --

18 MS. NGUYEN: Objection, Your Honor, foundation.

19 BY MR. FATTIG:

20 Q There was some testing that you did in terms of --

21 THE COURT: Sustained.

22 BY MR. FATTIG:

23 Q -- trajectory --

24 A Yes, sir.

25 Q -- correct? Okay. We'll get into that. Let's look at 160. Is that C0, C1,

1 and C2?

2 A Yes, sir.

3 Q Okay. 165. What are we looking at here?

4 A This is a -- we'll refer to it -- it's a yellow metal rod. We refer to them as
5 trajectory rods. We have at least two points or two areas of impact. We can use the
6 rod to generally determine whether there -- whether the marks are related. In this
7 case we were able to use the metal rod, which is straight and it does line up with all
8 three, C0, C1, and C2.

9 Q And that's based upon the common sense notion that a bullet, once
10 fired, is going to move in a straight line?

11 A Initially, yes, sir.

12 Q At least initially, until it loses speed.

13 A Yes, sir.

14 Q And it could be at an angle up, it could be at an angle down, or
15 straight --

16 A Yes, sir.

17 Q -- perpendicular to the ground, depending on where the gun is pointed,
18 correct?

19 A Yes, sir.

20 Q But initially it's going to be moving in a straight direction?

21 A Yes, sir.

22 Q So the trajectory rod is going to assist when you're looking at different
23 bullet strikes to see if they're on the same plane?

24 A Yes, sir.

25 Q 166, this is a view of that trajectory rod down the driver's side of that

1 vehicle?

2 A Yes, sir.

3 Q 167 is kind of a similar?

4 A Yes, sir.

5 Q 168, that's taken from the perspective of the driver's side?

6 A Yes, sir.

7 Q And 169 as well?

8 A Yes, sir.

9 Q 170 is from the rear of the car?

10 A Yes.

11 Q And I see 171, the rod is going into the hole that's marked C2?

12 A Yes, sir.

13 Q So based upon your training and experience and based upon using the
14 rod and examining this evidence, did you believe that C0, C1, and C2 all -- were all
15 caused by the same bullet?

16 A Yes, sir.

17 Q And I don't think we looked at the close-ups of those. So I'm going to
18 show 161 is C0, correct?

19 A Yes, sir.

20 Q 162 is C1?

21 A Yes, sir.

22 Q Which is -- appears to be -- what are we looking at there?

23 A C1 is actually a bullet hole that goes through into the plastic
24 through/behind the plastic at the rear side of the window.

25 Q 163 is C2?

1 A Yes. C2 is an impact on the other side of that black plastic piece. This
2 is actually -- the bullet would -- this shows the bullet would have ricocheted off. It
3 did not reenter the vehicle.

4 Q 164 is D0, correct?

5 A Yes, sir.

6 Q And going back to 156. Is that the strike towards the rear of the car?

7 A Yes, sir, it is.

8 Q So we have A, B, C, and D, four different letters?

9 A Yes, sir.

10 Q Do you believe that that -- this represents evidence that the vehicle was
11 struck by four different bullets along that driver's side?

12 A From what we can tell, yes.

13 Q Now you obviously documented the inside of the car, correct?

14 A Yes, sir.

15 [Colloquy between Counsel]

16 MR. FATTIG: Parties are stipulating the admittance of 129 through 146.

17 MS. NGUYEN: Yes, that's fine.

18 THE COURT: They'll be admitted.

19 **[STATE'S EXHIBITS 129 through 146 ADMITTED]**

20 BY MR. FATTIG:

21 Q 129. What are we looking at here, sir? Let me see if I can adjust the
22 brightness. This too dark?

23 A This is going to be a photograph from the open driver's side door -- or
24 front driver's side door of the vehicle.

25 Q Okay. 130, is that the floor board of the driver's side?

1 A Yes, sir.

2 Q And what is this object here?

3 A That's an unfired cartridge.

4 Q 131?

5 A That's going to be a photograph into the rear driver's side door of the

6 vehicle.

7 Q 132?

8 A That's an AK-style rifle that's wrapped in a white shirt.

9 MR. FATTIG: Your Honor, it's my understanding the parties are also

10 stipulating the admittance of 147 through 155.

11 MS. NGUYEN: that's correct.

12 THE COURT: They'll be admitted.

13 **[STATE'S EXHIBITS 147 through 155 ADMITTED]**

14 BY MR. FATTIG:

15 Q This is the butt of the rifle --

16 A Yes, sir.

17 Q -- that's barely visible? Okay. 135?

18 A That's the rifle that was in the back seat, laid out on a piece of paper

19 next to a shirt that it was wrapped in.

20 Q That's like a -- was that a white shirt, or a white sheet, or a white --

21 A To my recollection I believe it was a shirt.

22 Q 134?

23 A I believe -- we believe that's the serial number of the rifle.

24 Q And that reads 1983S-AS4608, for record?

25 A Yes, sir.

1 Q 135?

2 A Again, it's -- you -- I believe that's Ewbank Mfg. out of Winslow, AZ.

3 And it's --

4 Q The maker of the gun?

5 A I believe so, sir.

6 Q Okay. And it indicates the 7.62 X 39?

7 A Yes, sir, that's the caliber.

8 Q Okay. 136? Zoom out. Is this the trunk area of the car?

9 A Yes, sir.

10 Q Is it fair to say it was pretty full of various items?

11 A Yes, it was.

12 Q 137. What are we looking at here?

13 A Those are the items that we removed from the trunk so that we could
14 better photograph the contents.

15 Q Now I see some -- a word, trunk written on the brown piece of paper
16 underneath that?

17 A Yes, sir.

18 Q Those items. Is this a way that you can document exactly what's in the
19 car and where you find it?

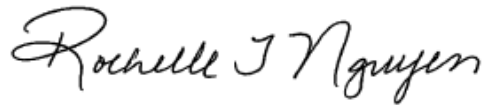
20 A Yes, sir, because oftentimes there will be a number of CSAs and/or
21 detectives that are working together, conducting the search of the vehicle. So what
22 we'll do is we'll lay out paper and label it with each area of the car that we're
23 searching after the initial photos have been taken; that way we can start removing
24 items from the car and placing them on the paper, but we still know where they
25 came from in case we find something of interest.

CERTIFICATE OF ELECTRONIC TRANSMISSION

The undersigned hereby declares that on June 08, 2016, an electronic copy of the foregoing APPELLANT'S FAST TRACK APPENDIX VOLUME IV was sent via the master transmission list with the Nevada Supreme Court to the following:

STEPHEN B. WOLFSON
Clark County District Attorney

ADAM PAUL LAXALT
Nevada Attorney General

A handwritten signature in cursive script that reads "Rochelle T. Nguyen".

ROCHELLE T. NGUYEN, ESQ.
Nevada Bar Identification No. 8205
Nguyen & Lay
732 S. Sixth Street, Suite 102
Las Vegas, Nevada 89101
Telephone: (702) 383-3200