

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 V

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1 Q There's a lot of items related to child or children in the car, fair to say?

2 A Yes, sir.

3 Q Other than the firearms?

4 A Yes, sir.

5 Q 138?

6 A This is going to be the front passenger side seat and floor area.

7 Q 139?

8 A The black bag that was on that front passenger seat floor area.

9 Q 140?

10 A A firearm -- you can see part of a firearm is inside the bag.

11 Q 141?

12 A That's the Colt .25 caliber firearm that was recovered from the black

13 bag.

14 Q On the front passenger floorboard?

15 A Yes, sir.

16 Q 142?

17 A The other side of the same firearm.

18 Q 143?

19 A That's the magazine that was inside the firearm and the contents of the

20 magazine.

21 Q There were four unfired cartridges in that magazine in the .25 Colt?

22 THE COURT: I count five.

23 BY MR. FATTIG:

24 A Five, sir.

25 Q I apologize. Five.

1 A Yes, sir.

2 Q Once again, I went to law school. 144, what are we looking at there?

3 A This is a rifle magazine that was recovered and the contents of that
4 magazine.

5 Q And where was the magazine recovered from?

6 A May I refer to my report?

7 Q Yes.

8 A The rifle magazine was also in that black bag on the front passenger
9 side floorboard.

10 Q And these are unfired cartridges in that same magazine?

11 A Yes, sir.

12 Q And 145 is a picture of the magazine that was loaded?

13 A Yes, sir.

14 Q Is that fully-loaded? Do you remember?

15 A I don't remember, sir.

16 Q Do -- did you document how many are there because I don't want to
17 count them?

18 A I believe there were 30 cartridges.

19 Q So the magazine was in the front in the black bag. The rifle was in the
20 back seat.

21 A Yes, sir.

22 Q 146?

23 A More photos of the items that we removed from the vehicle with the
24 labeled paper.

25 Q Okay. And that's labeled rear seat?

1 A Yes, sir.

2 Q And there is -- appears to be an orange folder with the name Joshua on
3 it?

4 A Yes, sir.

5 Q On that is on the section marked driver's seat floorboard, if you can
6 read it?

7 A Yes, sir.

8 Q 147, this would be more items found -- this is DF --

9 A Oh --

10 Q -- seat/floorboard?

11 A Sorry that previous photo, I was confused, it was actually driver's rear
12 floorboard.

13 Q Okay.

14 A That's why it says DR.

15 Q DF --

16 A In this case you see D -- so driver's front floorboard.

17 Q And there was a -- mail from US Bank?

18 A Yes, sir.

19 Q And I see two different cartridges here?

20 A Yes, sir.

21 Q And these were both unfired?

22 A Yes, they were.

23 Q Those were both recovered from that driver front seat/floorboard area?

24 A Yes, sir, they were.

25 Q Were -- do you remember the head stamp and/or -- of those? The

1 markings -- and I'll show you 150. Is that a picture of those?

2 A Yes, sir. The head stamp is SPEER 45 AUTO.

3 Q Zooming out showing State's 148, correct?

4 A Yes, sir. Just a closer view of those items.

5 Q Of some of those items. And 149 is a close-up of that US Bank
6 document?

7 A Yes, sir.

8 Q And it's addressed to Joshua Bacharach?

9 A Yes, sir, it is.

10 Q There's some -- a vehicle registration that was found in the car as well?

11 A Yes, sir.

12 Q And that is 153 under Eufrosia Nazaroff?

13 A Yes, sir.

14 Q There is some additional mail found in the car, correct?

15 A Yes, sir.

16 Q In the name Susanna Bacharach?

17 A Yes.

18 Q That is 154 which we're looking at, correct?

19 A Yes, sir, it is.

20 Q 155, there's some additional mail in the name Jordan Nazaroff
21 Bacharach?

22 A Yes, sir.

23 Q Showing you --

24 MR. FATTIG: May I approach the witness?

25 THE COURT: Yes.

1 BY MR. FATTIG:

2 Q 195. And this is an envelope that we opened over the lunch hour in
3 front of Ms. Nguyen?

4 A Yes, sir.

5 Q Can you pull out any documents inside of this? What are we looking at
6 here?

7 A This is the US Bank card addressed to Joshua Bacharach and a Clark
8 County School District individualized education program information in the name of
9 Joshua W. Nazaroff Bacharach.

10 Q Okay. And these were items found inside the car?

11 A Yes, sir.

12 MR. FATTIG: Move to admit 195, as well as 195a and 195b.

13 MS. NGUYEN: No objection.

14 THE COURT: They'll be admitted.

15 **[STATE'S EXHIBITS 129 through 146 ADMITTED]**

16 BY MR. FATTIG:

17 Q Showing you 196 -- Proposed 196. What are we looking at here?

18 A This is another evidence envelope in which I impounded the two
19 cartridges from the driver's side floorboard.

20 Q And these are in substantially the same condition from when you
21 impounded them in June of 2014?

22 A Yes, sir.

23 Q And these were not accessed by the firearms examiner, correct?

24 A No, sir, they were not.

25 MR. FATTIG: Move to admit 196, as well as 196a, which is the baggie with

1 the two cartridges in it.

2 MS. NGUYEN: No objection.

3 THE COURT: It'll be admitted.

4 **[STATE'S EXHIBITS 196 and 196a ADMITTED]**

5 [Colloquy between Counsel]

6 [Colloquy between the Clerk and Counsel]

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

8 THE COURT: Yes.

9 BY MR. FATTIG:

10 Q Mr. Albert, showing you 197 first of all. What are we looking at there?

11 A So this is the rifle magazine that we've previously seen.

12 Q From the black bag?

13 A Yes, sir.

14 Q And is this in -- still in a sealed condition?

15 A Yes, sir, it is.

16 Q So we didn't have a chance to open this over the lunch hour?

17 A No, we did not.

18 Q Can you open it on a side that has not been disturbed if possible?

19 A [No audible response - opening package].

20 Q This is the magazine that we saw in the photograph?

21 A Yes, sir.

22 Q And then is there anything else in this package?

23 A No, sir.

24 Q Is this in substantially the same condition as when you impounded it?

25 A Yes, save for the sticker.

1 Q Sticker from the --

2 A From the forensic lab.

3 Q Okay.

4 MR. FATTIG: Move to admit 197 and I would ask the clerk to mark the
5 magazine as 197a and move to admit that.

6 THE COURT: That'll be the order.

7 MS. NGUYEN: Submit.

8 **[STATE'S EXHIBITS 197 & 197a ADMITTED]**

9 BY MR. FATTIG:

10 Q Showing you what's been marked as 198. Do you recognize that?

11 A Yes, sir. This is the package with the small Colt .25 caliber handgun.

12 Q It was found in that same black bag.

13 A Yes, sir.

14 Q Does this appear to still be in a sealed condition?

15 A Yes, sir.

16 Q Can you open this box?

17 A Yes, sir, I can.

18 THE COURT: Tom needs to check that.

19 THE WITNESS: Yes, sir.

20 BY MR. FATTIG:

21 Q So we're looking at the Colt .25?

22 A Yes, sir.

23 Q As well as the magazine?

24 A Yes, sir.

25 Q It appears to be more brown, more rusted than it was in the photos.

1 A Yes, sir.

2 Q Okay. Other than that is it in substantially the same condition as when
3 you impounded that?

4 A Yes, sir, it is.

5 MR. FATTIG: I would move to admit 198 and move to mark the firearm as
6 198a, and the magazine as 198b.

7 MS. NGUYEN: Submit.

8 THE COURT: That'll be the order.

9 **[STATE'S EXHIBITS 198, 198a & 198b ADMITTED]**

10 BY MR. FATTIG:

11 Q Showing you 199. This is another evidence bag.

12 A Yes, sir.

13 Q And can you -- does this appear to still be in a sealed condition?

14 A Yes, sir, it is.

15 Q And the firearms expert did not examine this -- these items, correct?

16 A No, sir.

17 Q Could you please open up this bag?

18 A Yes, sir.

19 Q So what do we have here?

20 A These are the 30 cartridges that were removed from the rifle magazine
21 and the five cartridges from the magazine of the Colt .25 and one cartridge from the
22 chamber of that weapon.

23 Q So there was one in the chamber when you found it in the black bag?

24 A Yes, sir.

25 Q Are these in substantially the same condition as when you found them

1 after you took them out of the magazines?

2 A Yes, sir, they are.

3 MR. FATTIG: Move to admit 199, as well as the 30 cartridges of ammunition
4 as 199a, and the five --

5 THE WITNESS: Six.

6 MR. FATTIG: Six as 199b.

7 THE COURT: Okay. That'll be the order.

8 **[STATE'S EXHIBITS 199, 199a, & 199b ADMITTED]**

9 BY MR. FATTIG:

10 Q Showing you what has been marked as State's Proposed 200, a long
11 box.

12 A Yes, sir.

13 Q Do you recognize this?

14 A Yes, sir.

15 Q And how do you recognize this?

16 A This is the box containing the rifle from the box sheet of the vehicle.

17 Q Does this appear to be in substantially the same condition?

18 A Save for the seals placed by our forensic lab, yes.

19 Q Okay. Can you unseal this particular box?

20 A Yes, sir.

21 Q And then we'll have the bailiff inspect the [indiscernible].

22 BY MR. FATTIG:

23 Q Can you turn this around and show the jury?

24 A Yes.

25 Q This appears to be in substantially condition, absent of course the

1 addition of the sticker and the orange ties?

2 A Yes, sir.

3 Q Placed by the forensic expert.

4 A Yes, sir. Again, just like the other -- the black straps are what I would
5 have used to secure it. The orange straps are what they would use after when they
6 repackaged it.

7 Q Now, in terms of the fingerprints -- excuse me. Did you process this
8 particular gun for fingerprints?

9 A Yes, sir, I did.

10 Q And did you have any particular luck?

11 A Yes, sir.

12 Q What -- how did you process it? Was it as similar as you used on the
13 earlier weapon found underneath the white truck?

14 A Yes, sir, it is. The same process.

15 Q Okay. And did you discover any prints on this guy?

16 A Yes, sir. I developed one fingerprint on this.

17 MR. FATTIG: Parties are stipulating to 177 and 178.

18 MS. NGUYEN: That's correct.

19 THE COURT: They'll be admitted.

20 **[STATE'S EXHIBITS 177 & 178 ADMITTED]**

21 BY MR. FATTIG:

22 Q 177 is a photograph of that same gun that --

23 A Yes, sir.

24 Q Correct?

25 178. What are we looking at here?

1 A That's a photo of the fingerprint that was developed on the firearm.
2 Q And can you point out where the fingerprint is located actually on the
3 gun?
4 A May I refer to my notes?
5 Q Absolutely.
6 A It's on the charging handle, which is going to be -- this will be the
7 charging handle here. This whole piece, that's where we developed the print.
8 Q So actually off of the piece that's sticking out from the rifle?
9 A Yes, sir.
10 Q And when you say charging handle, what do you use that for?
11 A That's -- when you have a magazine in the -- inserted in the firearm
12 where you pull --
13 MS. NGUYEN: Objection, Your Honor, foundation.
14 MR. FATTIG: I'll move on.
15 THE COURT: All right.
16 MR. FATTIG: We're going to have somebody else testify.
17 THE COURT: Sustained.
18 BY MR. FATTIG:
19 Q Did you find any ammunition in this rifle when it was in the back seat of
20 the car?
21 A No, sir.
22 MR. FATTIG: Move to admit 200, Your Honor. And 200a being the firearm.
23 THE COURT: Hearing no objection. It'll be admitted.
24 MS. NGUYEN: No.

25 **[STATE'S EXHIBITS 200 & 200a ADMITTED]**

1 BY MR. FATTIG:

2 Q Just as with the other firearm that you testified to, you did some DNA
3 swabs off of that rifle?

4 A Yes, sir.

5 Q Showing you State's 201. Is this a package of the swabs?

6 A Yes, sir.

7 Q And there are three different swabs in this particular evidence
8 envelope?

9 A Yes, sir. In this case, this is -- these are swabs from the Colt .25
10 handgun --

11 Q Oh, okay.

12 A -- as well as the magazine. And a swab from the rifle.

13 Q So these contain swabs from both of those guns that were found in the
14 car?

15 A Yes, sir.

16 Q Okay. And the blue indicates that someone in the forensic lab
17 examined those swabs?

18 A Yes, sir.

19 MR. FATTIG: Okay. Move to admit 201 without opening it.

20 MS. NGUYEN: No objection.

21 THE COURT: It'll be admitted.

22 **[STATE'S EXHIBITS 201 ADMITTED]**

23 [Colloquy between Counsel]

24 MR. FATTIG: No other questions.

25 THE COURT: Cross?

1 MS. NGUYEN: Yes.

2 Does anyone need a break?

3 UNIDENTIFIED SPEAKER: Yes.

4 MS. NGUYEN: Just making sure.

5 MS. THOMSON: Rochelle, you got a yes.

6 UNIDENTIFIED SPEAKER: Yes.

7 MS. NGUYEN: Oh you did get a yes.

8 THE COURT: The jury need a break? Somebody does. All right. We'll take
9 a five-minute recess. During the recess you're admonished not to talk or converse
10 among yourselves or with anyone else on any subject connected with the trial. Or
11 read or watch or listen to any report of or commentary on the trial or anyone who
12 has anything to do with the trial by any medium of information including, without
13 limitation, newspapers, television, the radio, or the internet. Or form or express an
14 opinion on any subject connected with the trial until the case is finally submitted to
15 you.

16 Take five minutes, please.

17 [Outside the presence of the jury]

18 THE COURT: You might as well send your other witnesses home, we're
19 not -- Megan?

20 MS. THOMSON: I'm sorry.

21 THE COURT: Send your other witnesses. We're not going to get done by
22 5:00.

23 [Recess taken at 4:22 p.m.]

24 [Trial resumed at 4:29 p.m.]

25 [In the presence of the jury]

1 THE MARSHAL: And be seated.

2 THE COURT: All right. I'd just remind you you're still under oath.

3 THE WITNESS: Yes, sir.

4 THE COURT: Go ahead.

5 **CROSS-EXAMINATION**

6 BY MS. NGUYEN:

7 Q When you arrived at the scene, was it already -- were things already
8 marked out for you?

9 A I believe some things were. Oftentimes the first officers on scene, if
10 they come across --

11 MS. NGUYEN: Your Honor, I'd stipulate to the presence of the jury. I'm
12 sorry.

13 THE COURT: Pardon?

14 MS. NGUYEN: Stipulate to the --

15 THE COURT: Oh, yes.

16 MS. NGUYEN: -- presence of the jury.

17 THE COURT: Sorry.

18 MS. NGUYEN: Sorry.

19 MR. FATTIG: Yes.

20 MS. NGUYEN: We have a juror standing. Are you okay?

21 THE COURT: It's okay.

22 MS. NGUYEN: Okay. Okay.

23 THE COURT: They all can stand.

24 MS. NGUYEN: Okay. I understand.

25 BY MS. NGUYEN:

1 Q I'm sorry. When you arrived at the scene, there were already officers
2 there, is that correct?

3 A Yes, ma'am.

4 Q Okay. And had the area been kind of, I guess, like quarantined off at
5 that point?

6 A Yes, ma'am.

7 Q Okay. And had cars been removed from the crime scene areas?

8 A I believe that there were police vehicles that were removed.

9 Q Okay.

10 A To my knowledge, yes.

11 Q Was there crime scene tape up, blocking off areas?

12 A Yes, ma'am.

13 Q Okay. Were there cones or certain areas of interest where other
14 officers had located things they thought might be of evidentiary value?

15 A I don't recall, but typically if -- on scenes such as this if an officer initially
16 comes across items like cartridge cases or cartridges, being that they're small and
17 sometimes hard to see, they'll mark them so that they don't get kicked, they don't get
18 moved. So they'll mark them for us so that nobody else disturbs them before we get
19 to our markings.

20 Q And this was an office-involved shooting so there were quite a few
21 police officers there, is that correct?

22 A Yes, ma'am.

23 Q And there were quite a few of you there, is that correct?

24 A Yes, ma'am.

25 Q There were four of you, is that correct?

1 A Yes, ma'am.

2 Q Okay. And prior to any of your -- I guess your team divvying of the
3 work, did you guys meet?

4 A Yes, ma'am.

5 Q Okay. And was there someone that was like supervising or directing or
6 delegating?

7 A We had both our director, Randy McLaughlin and my direct supervisor,
8 Shayla Joseph both on scene.

9 Q Okay. And that's unusual, is that correct?

10 A For this type of scene it's not unusual.

11 Q Okay. It's unusual for any other type of scene, is that correct?

12 A Yes. Oftentimes we're on scenes by ourselves without direct
13 supervision.

14 Q Okay. And as far as making a determination of what area you're going
15 to go and process, who makes that determination?

16 A It's collective -- it's usually a collective discussion between us. If
17 there's -- we usually split up. We'll have somebody that does photography and
18 report writing and then somebody that does diagram and evidence as I did in this
19 case. Usually it's just everybody -- we get together and decide who's going to what.
20 There's no particular rhyme or reason behind it.

21 Q Okay. In this case we looked at several photographs. Did you actually
22 photograph those or did someone else photograph those?

23 A CSA Stephanie Thi did the photography on this scene.

24 Q Okay. So you didn't do any photography on this particular scene?

25 A Only the photography back at the office on the items that I processed.

1 Q Okay. But at the scene, you did not do any of that photography?

2 A No, ma'am.

3 Q Okay. Were you working together with that other CSA?

4 A Yes, I was.

5 Q Okay. So you guys were working in tandem throughout the entire
6 scene?

7 A Yes, sir. Yes, ma'am.

8 Q Do you know what type of camera you used to process that scene?

9 A I don't know specifically what camera she had at the time. We change
10 from time to time. I don't know which model she had.

11 Q Okay. Do you know approximately how many megapixels are on the
12 cameras that you use?

13 A I don't -- again, I don't know which camera she was using and I don't
14 know -- I don't particular know the specifics.

15 Q The camera that you used when you processed things and took
16 photographs back at your --

17 A I don't know off the top --

18 Q -- base --

19 A -- of my head what it is.

20 Q You don't know? Okay. Who informed you of information or details
21 about the incident or what's been, you know, recovered at that time?

22 A So what happens when we -- when we all get there we'll all briefed by
23 the officers on scene. It's usually sergeants or lieutenants. We'll get together and
24 gather information. They'll present to us, as well as the investigators, the detectives,
25 that are also arriving later after the initial officers.

1 Q Okay. Was there any one particular person or were there multiple
2 people that were directing you in different places?

3 A I don't recall -- usually it's one specific person that gives the briefing. I
4 don't recall the name of the officer that gave the briefing.

5 Q in this case we saw some pictures that you did with a perspective view.
6 I think that's what you called it?

7 A Yes, ma'am.

8 Q Did you meet with Officer McNabb to -- in order to gain his perspective?

9 A I did not -- we did not meet with Officer McNabb directly. We were
10 given that information by the investigators on the scene.

11 Q Okay. So when you labeled Officer McNabb's perspective or suspect
12 perspective that was information that was given to you third hand, is that correct?

13 A Yes, ma'am.

14 Q Okay. You didn't ever speak with Officer McNabb?

15 A No, I did not.

16 Q you didn't view his body camera?

17 A Not that I recall.

18 Q Okay. Did you review any of the surveillance video that was recovered
19 from this crime --

20 A I did not.

21 Q -- scene?

22 A I did not.

23 Q Okay. And so this was just given to you third hand, not through the
24 particular officer, is that correct?

25 A Yes, ma'am.

1 Q Okay. Is it possible it was given to you even more far removed from
2 that?

3 A No. I believe we were -- when we're briefed on it by the investigators.

4 Q Okay. When you were determining the perspective for Officer McNabb,
5 specifically how you had the paper bag place behind the patrol car door open --

6 A Yes.

7 Q -- that area right there, did you determine how tall Officer McNabb was
8 in determining where you would take those pictures from?

9 A Yes. We try to take a -- make it at least a rough estimate of the height.
10 That's why we used the tripod as opposed to just standing or setting the camera on
11 something. We set it to a height that was at least, you know, and estimate of his
12 height --

13 Q And did you --

14 A -- from the information --

15 Q -- know how tall Officer McNabb was?

16 A I don't recall what that information was.

17 Q Okay. Is that something that you set up the tripod with those kind of
18 measurements in mind?

19 A I did not personally set up the tripod. That would have been -- again,
20 Stephanie was doing the photography, so she would have set up her tripod.

21 Q Okay. So those perspective photos you did not take?

22 A No, ma'am.

23 Q Okay. And you did not set up?

24 A No, ma'am.

25 Q And you did not have any input as to the height of the tripod?

1 A I may have assisted her. I don't remember having any direct
2 involvement in the photography.

3 Q Do you remember speaking with the investigators or detectives on the
4 scene about Officer McNabb's height?

5 A I don't recall specifically, no.

6 Q With respect to the perspective photo that was taken over behind like a
7 fence on that corner, how did you obtain that information?

8 A Again, it was from the investigators.

9 Q Okay. So there was no reviewing of any kind of body cameras?

10 A I believe that they had prior to, but no, I did not.

11 Q Okay. But you did not -- you said you believe. Did they tell you that
12 they had?

13 A Yes, ma'am.

14 Q But you don't remember who told you that?

15 A No, ma'am.

16 Q And it's fair to say there were multiple people giving you information?

17 A Yes, ma'am.

18 Q And was this kind of like an evolving process, as information came you
19 would be given more information?

20 A Yes.

21 Q Okay. When you -- let me get that --

22 [Colloquy between Counsel]

23 BY MS. NGUYEN:

24 Q This is the crime scene diagram that we had talked about before.

25 A Yes, ma'am.

1 Q And this was the Dodge Intrepid, is that correct?

2 A Yes.

3 Q Okay. And you have indicated that 11, 12, and 10 that there were three
4 .45 cartridges, is that correct?

5 A Yes.

6 Q And you impounded those, is that correct?

7 A Yes, I did.

8 Q And those were not expended from a firearm, is that correct?

9 A No, ma'am, they were not fired.

10 Q They had not been used.

11 A No.

12 Q Okay. So in this scene, I'm assuming that this area was all thoroughly
13 searched?

14 A Yes, ma'am.

15 Q Okay. And these items right here, 10, 11, and 12, did you locate those
16 items or were they previously marked when you arrived?

17 A It was a group -- the search was a group effort between all of us. I don't
18 recall which ones I specifically came across. But it was -- it would be a group effort
19 and they'd be marked.

20 Q Okay. So a group effort, is that amongst all the CSAs or the CSAs and
21 the officers or --

22 A Once we arrived, it's -- the search is on -- is our responsibility. Like I
23 said previously the officers -- the initial officers on scene, they may not be searching
24 for things but sometimes they'll see items and they'll mark them with a cone or
25 something so that other people know they're there and it doesn't get disturbed. But

1 beyond that yes, the search it conducted by us.

2 Q Okay. So if you're informed that this is a general area that shots were
3 fired from, this is an area you would concentrate your search on, is that correct?

4 A Yes, ma'am.

5 Q Okay. Do you have any special technique or is it just kind of walking
6 and looking around or do you have like a special technique to make sure you cover
7 all the area?

8 A We usually just do it as a group, but usually we'll walk in straight lines in
9 multiple directions, just making sure we cove the whole area. Oftentimes I might
10 search an area and then have another CSA come in and search the same area just
11 to make sure, you know, maybe they catch something that I didn't see. Obviously
12 these are small items so we do pay a lot of attention and check and double-check
13 the area to make sure we didn't miss anything.

14 Q And you knew that off -- like shots had fired in this area, is that correct?

15 A Yes, ma'am.

16 Q Okay. So you knew that it was extra important to collect any forensic
17 evidence that would -- could be used, is that correct?

18 A Yes.

19 Q Is it fair to say that that's kind of what you were looking for specifically,
20 in this area, is anything to do with firearms?

21 A Yes, ma'am.

22 Q Okay. Did you find any -- with the exception of the 9 mm cartridge
23 cases, did you find any .45 cartridge cases?

24 A No, ma'am.

25 Q Okay. Did you find any 25 mm cartridge cases?

1 A No, ma'am.

2 Q Okay. And the big gun, do you remember what the caliber of that one
3 was?

4 A I believe it was 7.62 by 35, if I remember correctly.

5 Q And did you find any of those?

6 A No, ma'am.

7 Q Did you find any bullets in this area that were like this, just the
8 cartridges, not the expended cartridge cases?

9 A No. Just the cartridges, ma'am.

10 Q Just the cartridges. And just for those .45s, is that correct?

11 A Yes, ma'am.

12 Q Did you look anywhere else? Did you look down -- further down on
13 Dolly closer to Tolvar?

14 A Yes, ma'am. We would -- we would have searched the whole area in
15 north and south and east and west.

16 Q Okay. And this was an important case, is that correct?

17 A Yes, ma'am.

18 Q Okay. Is it possible you missed any of those things?

19 A I wouldn't say that it's impossible. Like I said, a thorough search was
20 conducted. One issue with firearms evidence, they're just small. Bullets travel long
21 distances so sometimes we just -- they don't get found. I don't know what -- I can't
22 speak for exactly what cars came and went before my arrival. But no -- I mean, to
23 the best of our ability the area was thoroughly searched.

24 Q Okay. So you did a thorough job?

25 A Yes, ma'am.

1 Q Okay. And it wasn't just you. There were multiple people double-
2 checking and going through this area --

3 A Yes, ma'am.

4 Q -- is that correct? Okay.

5 Over here you were able to recover several spent cartridge cases, is
6 that correct?

7 A Yes, ma'am.

8 Q Okay. And that was the three located here next to where you were
9 informed Officer McNabb was, is that correct?

10 A Yes, ma'am.

11 Q And you were also able to find the 1, 2, 3, 4, 5 over here, is that
12 correct?

13 A Yes, ma'am.

14 Q Okay. And those were all spent cartridge cases, is that correct?

15 A Yes, they were.

16 Q I'm going to put this other part of the map up here. This is down on El
17 Tovar, is that correct?

18 A Yes.

19 Q So this entire area, did you search this entire area down on Dolly?

20 A Yes, ma'am.

21 Q And perhaps other officers and other CSAs also backtracked around
22 this area, is that correct?

23 A Yes, ma'am.

24 Q And you didn't locate anything in this area, is that correct?

25 A No, we did not.

1 Q In this area down on El Tovar -- on this corner of Dolly and El Tovar, did
2 you see anything there?

3 A No, ma'am.

4 Q Okay. There was a vehicle, this truck -- this white truck?

5 A Yes, ma'am.

6 Q Were there any expended shell casings around this area?

7 A No, there were not.

8 Q Okay. Were you informed that possibly there was some sort of
9 shooting or discharging of firearm in this area?

10 A Not that we were given any indication of, but with the recovery of the
11 evidence that was under the truck, we did search the area.

12 Q Okay. And you didn't locate anything in that area?

13 A No, ma'am.

14 Q Okay. And the gun that was recovered here was a Colt, is that correct?

15 A Yes, ma'am.

16 Q And you indicated there were not bullets in that Colt when you
17 recovered it.

18 A No, there were not.

19 Q Okay. There were none loaded in the -- there was nothing in that
20 firearm at all?

21 A No, ma'am.

22 Q Okay. We saw those boxes with all the firearms and you had indicated
23 in the picture that several of the guns were found either wrapped in a white shirt or
24 sheet or black bag, is that correct?

25 A Yes, ma'am.

1 Q What happened to those things?

2 A Those items were left -- we went through the -- the shirt was left -- there
3 was no direct evidentiary value to the shirt, as was the bag. The bag had other
4 items. We searched through the bag, impounded several items, including the
5 firearm.

6 Q Okay. So you believe that was a shirt?

7 A To the best of my recollection, yes.

8 Q Okay. And it was a white shirt?

9 A Yes.

10 Q And you didn't believe it had any evidentiary value?

11 A Not at the time, no.

12 Q Okay. And the black bag, you didn't believe that had any evidentiary
13 value?

14 A Not the bag itself, no.

15 Q If there's clothing that's collected from a suspect or even the officer,
16 would that be collected on the scene as well?

17 A Not at the scene, no.

18 Q Okay. And you said that the -- there was no ammunition in the -- I'm
19 just going to call it the big gun?

20 A Yes, ma'am.

21 Q Okay. And the magazine with the 30 or so bullets that was located in a
22 separate area from the large gun, is that correct?

23 A Yes, ma'am.

24 Q When you go out to a scene you have to -- it's your discretion on
25 whether or not you're going to collect DNA or you're going to collect fingerprints, isn't

1 that correct?

2 A Yes, ma'am, depending on the item.

3 Q Okay. And you use your training and experience to determine whether
4 or not fingerprints are more likely to produce positive results as opposed to DNA?

5 A Yes, ma'am.

6 Q Okay. So for example, if you had something like a glass -- like a glass
7 window --

8 A Uh-huh.

9 Q -- it's probably fingerprints would be more -- would be able to be
10 collected easier on that surface, is that correct?

11 A Yes, ma'am.

12 Q Okay. And I think you indicated on a gun, sometimes it has like a
13 pebbly surface, so collecting fingerprints sometimes is more difficult from that
14 location?

15 A Yes, ma'am. That's why we swab -- like on a gun particularly -- guns
16 normally have textures surfaces and smoother surfaces and that's why we'll swab
17 the textured surfaces and then process -- fingerprint process the firearms with a
18 concentration in the smooth areas.

19 Q And it's true that you can't fingerprints DNA the same area, is that
20 correct?

21 A No, ma'am.

22 Q Because if you were to swab the area you might destroy any
23 fingerprints evidence, is that correct?

24 A Yes, ma'am.

25 Q By either smearing it or erasing it away or anything that --

1 A Yes, ma'am.

2 Q -- in your collection, is that correct?

3 A Yes, it is.

4 Q And in traditional -- I guess I'll call it traditional fingerprint collection, you
5 wouldn't be able to collect DNA after doing fingerprint if you used a dust and you
6 used a brush that had been touched on other like items --

7 A Yes.

8 Q -- would it be contaminated at that time as well?

9 A It would be, yes.

10 Q Okay. And in this case you didn't use the fingerprint dust and tape.

11 You used a different technique, is that correct?

12 A Yes, ma'am.

13 Q Would it have the same problems in destroying any possible DNA that
14 would be on that like area?

15 A It could possibly destroy the DNA. It's not a contamination issue like it
16 would be with the fingerprint powder and brush. It's a chemical process that's
17 applied directly from fresh chemical from a bottle that's been unused and a fuming
18 technique that would not contaminate. But yes, the act of using chemicals could
19 potentially corrupt the DNA.

20 Q Okay. In this case you did swab the firearms?

21 A Yes, I did.

22 Q And did you do that on all three of them?

23 A Yes, I did.

24 Q And did you fingerprint all three of them?

25 A Yes, I did.

1 Q And did you do those in different areas?

2 A We use clean areas -- clean paper. The paper you see -- the paper
3 bags or --

4 Q I'm not sorry. I'm not talking about clean area, like --

5 A Oh, I'm sorry.

6 Q -- your working surface. The area that you swabbed, you did that first,
7 is that correct?

8 A Yes, ma'am.

9 Q Did then -- you then try to fingerprints that same area you swabbed?

10 A Oh, no, ma'am.

11 Q Okay.

12 A The -- now -- like I said, the chemical process is -- yes, the entire gun
13 was treated with the chemicals, so I guess in theory those areas that were swabbed
14 were essentially processed for prints, but we had -- it's more likely to recover DNA
15 from those areas, so that's why they were swabbed first.

16 Q And areas where potentially multiple people touched, it's difficult to
17 collect forensic information like that, is that correct?

18 A It could be. I don't know the specifics of what was found on the --

19 Q Let's say you had a smooth surface like the door over here -- like the
20 metal part of the door.

21 A Yes, ma'am.

22 Q That's an area that arguably lots of people touch when they're walking
23 out, is that correct?

24 A Yes, ma'am.

25 Q Would that be -- even the surface may be an easy area to lift a print, it

1 might be difficult because so many people touch that area?

2 A Yes, ma'am. Possibly even more difficult. The -- our DNA analyst
3 could probably answer that question with their experience better than I could.

4 Q Okay. But you're aware of some of that because you're the one
5 collecting the information for them to analyze, is that correct?

6 A Yes, ma'am.

7 Q So you may not have all the answers that -- but you're familiar with
8 that --

9 A Yes.

10 Q -- is that correct?

11 A Yes.

12 Q When we talked about the trajectory and the markings that you found
13 on the car --

14 A Yes, ma'am.

15 Q -- those markings you said that it was your opinion that four different
16 bullets had hit those areas, is that correct?

17 A Yes, ma'am, from what we could tell.

18 Q Okay. There's no way for you to -- you have some training, obviously,
19 in trajectory, is that correct?

20 A Yes. Yes, ma'am, I do.

21 Q Okay. And you've done that, you said, at least dozens of times?

22 A Yes.

23 Q In real life and also in training, is that correct?

24 A Yes, ma'am.

25 Q There's nothing about that study that is able to date the freshness of

1 those --

2 A No, ma'am.

3 Q -- those things, is that correct?

4 A That's correct.

5 Q So you don't know if those marks were made that night or two months
6 ago?

7 A I do not know.

8 Q And that's the same thing with DNA and fingerprints, is that correct?

9 A Yes, ma'am.

10 Q Okay. So someone could touch something and how long could DNA
11 stay on an item?

12 A DNA can potentially stay on an item for a long period of time if it's -- if
13 it's in a protected area, if it's not handled, if it's not exposed to heat or the elements,
14 it could -- DNA could potentially last quite a long time.

15 Q And you have no way of dating that DNA, is that correct?

16 A No, ma'am.

17 Q Okay. We don't have any magical way, like in the movies, where we
18 can carbon date DNA on things, is that correct?

19 A No, ma'am.

20 Q Not at this time?

21 A Not at this time.

22 Q Okay. And it's the same thing for fingerprints?

23 A Yes.

24 Q You can't date a fingerprint?

25 A No, ma'am.

1 Q And can fingerprints last for a long time?

2 A Yes, they can.

3 Q Okay. Do you know approximately how long?

4 A I don't exactly know.

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

6 BY MS. NGUYEN:

7 Q I'm going to direct your attention, one more thing, to the -- I say one
8 more thing, but I probably have more to say. This diagram that you created.

9 A Yes, ma'am.

10 Q You had indicated that 11 and 12 were .45 or -- .45 caliber of
11 cartridges, is that correct?

12 A Yes, they were.

13 Q Unspent cartridges?

14 A Yes.

15 Q Okay. And this 10 was also a .45 but it was a different manufacturer, is
16 that correct?

17 A Yes, ma'am.

18 Q Okay. There are more than one company that makes ammunition, is
19 that correct?

20 A Yes, ma'am.

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

22 Nothing further.

23 **REDIRECT EXAMINATION**

24 BY MR. FATTIG:

25 Q Going back to Items 10, 11, and 12 on State's 172. The three .45

1 caliber cartridges. What you're saying, Mr. Albert is -- if I understand you right, is
2 these were unfired, correct?

3 A Yes, sir.

4 Q Counsel at one point indicated that they were not expended from a
5 firearm, quote, unquote. You don't know how they got onto the ground, correct?

6 A no, sir.

7 Q You know that they were not fired?

8 A Yes, sir.

9 Q Because they're in there, they're intact?

10 A Yes, sir.

11 Q You would agree with me that cartridges are pretty small?

12 A Yes, sir.

13 Q Depending on the ammunition?

14 A Yes, sir.

15 Q Cartridge casings are even smaller?

16 A Yes, sir.

17 Q Again, depending on the ammunition?

18 A Yes, sir.

19 Q The casing is only part of the cartridge?

20 A Yes, sir.

21 Q The part that gets left behind when it's expended from a semi-automatic
22 weapon?

23 A Yes, sir.

24 Q Ms. Nguyen was asking you about when you arrived and searching that
25 area. You obviously searched it as well as you could, correct?

1 A Yes, sir.

2 Q You arrived a little bit later in the evening, fair to say?

3 A Yes, sir. I believe it was about 12:00.

4 Q And you made a comment, you couldn't speak to the cars that arrived
5 before your arrival and where they drove.

6 A Yes, sir.

7 Q Is there a significance with cars being in the area where cartridge
8 casings may be?

9 A Yes, sir. With the size of them, it would not be -- much like a rock could
10 get stuck in the tread of a tire, it would not be unexplainable to expect a cartridge
11 case could get stuck in the tire of a vehicle.

12 Q In a tire?

13 A Yes, sir.

14 Q It could also be kicked or pushed somewhere?

15 A Yes, sir.

16 Q By cars, vehicles driving through the area?

17 A Yes, sir. That's why -- as I explained earlier, when our officers do come
18 across such evidence they'll mark it usually with cones so that once it's found it
19 doesn't kicked or it doesn't get moved, because yes, it would not be -- you didn't see
20 it there, you didn't know that it was there it would not be difficult.

21 Q Yeah. Going back to the Dodge Intrepid, there were no bullet holes in
22 the car, correct?

23 A The only hole would have been C1.

24 Q Okay. And C1 would have been in the plastic along the side of the car?

25 A Yes.

1 Q The driver's side? Showing you 160. Zoom out. C1 is here?
2 A Yes, sir.
3 Q SO this is the hole you're talking about?
4 A Yes.
5 Q And that hole corresponded with C2?
6 A Yes, sir.
7 Q And C2 is not a hold, it's an indentation, is that fair to say?
8 A Yes, sir.
9 Q And you believe based upon the trajectory rod that these all match the
10 same bullet?
11 A Yes, sir.
12 Q Okay. So there was no holes into the car?
13 A No, sir.
14 Q No bullets found in the car?
15 A No.
16 Q Were there any bullet strikes found in the area overall?
17 A No, sir.
18 Q And I'm talking about the desert area, the area north on Carey --
19 A Not we found --
20 Q -- anything like that?
21 A No.
22 Q It was searched.
23 A Yes, sir.
24 MR. FATTIG: no other questions. Thank you.
25 MS. NGUYEN: Just a couple.

1 **RECROSS-EXAMINATION**

2 BY MS. NGUYEN:

3 Q You did locate all of Officer McNabb's cartridge cases, is that correct?

4 A I -- we recovered eight cartridge cases.

5 Q Okay. Were you aware or were you informed of how many times he
6 believed he fired his gun?

7 A I would have potentially gotten that information after the fact, but I don't
8 recall what I was told.

9 Q Okay. But you did recover eight, is that correct?

10 A Yes, ma'am.

11 Q Okay. And you said that you couldn't -- you didn't know, you know, if
12 the scene had been disrupted, is that correct?

13 A No, ma'am. All I could speak to is the condition when I arrived.

14 Q Okay. And so that goes for any items, is that correct?

15 A Yes, ma'am.

16 Q Okay. Whether it be the vest or any other items of evidentiary value, is
17 that correct?

18 A Yes, ma'am.

19 Q Because there were people coming in and out of this area, many
20 people may have had access to these items, is that correct?

21 A Yes, ma'am.

22 Q Either intentionally or unintentionally?

23 A Yes.

24 Q It was dark outside, is that correct?

25 A Yes, it was.

1 Q Were you like your colleague who was there until the morning hours?

2 A Yes, ma'am.

3 Q Okay. When the sun came out?

4 A Yes.

5 Q Okay. So when the sun came out, did you have a better perspective to

6 be able to process that scene as well?

7 A Yes, ma'am. Oftentimes, in a situation like this, we will re-search the

8 area once the sun comes up because -- I mean, most of us I think would agree that

9 it would be easier to search an area when it's light as opposed to in the middle of

10 the night. So, yes, we did re-search the area.

11 Q Okay. So when it was daylight you did re-search the area to see if you

12 could find any other evidence, is that correct?

13 A Yes, ma'am.

14 Q And you weren't able to find anything other than what you

15 documented --

16 A No, we did not.

17 Q -- in your diagrams and in your reports, is that correct?

18 A Correct.

19 MS. NGUYEN: Nothing further.

20 MR. FATTIG: Nothing further.

21 THE COURT: The jury have any questions of this witness?

22 [Pause in proceedings while the Court and Counsel discuss jury questions]

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

24 BY THE COURT:

25 Q Was the handgun found under the truck found in a jammed condition?

A It was -- to my knowledge it was not jammed. The slide was locked back, but it was not jammed.

THE COURT: State, questions?

MR. FATTIG: No follow-up.

MS. NGUYEN: I don't have any follow-up.

BY THE COURT:

Q Does the vest have any fingerprints or DNA?

A Not that I'm aware of. I know that the box was opened by our forensic lab. I don't know what analysis was done on it.

Q Any gun --

THE COURT: Oh, State?

FOLLOW-UP EXAMINATION

BY MR. FATTIG:

Q Did you do any collection from the vest?

A No, sir.

Q That was somebody else?

A If any was done it would have been done by somebody else, yes.

Q Okay.

MS. NGUYEN: Can I just ask a question?

THE COURT: Defense?

FOLLOW-UP EXAMINATION

BY MS. NGUYEN:

Q You were the first person to collect that, is that correct?

A Yes, ma'am.

Q If you had wanted to, you could have collected DNA from that --

1 A Yes.

2 Q -- is that correct?

3 A Yes, ma'am. Oftentimes if it's a surface like that that's more -- much
4 more conducive to DNA than it would be for fingerprints, we'll just leave the item
5 alone. Based on conversations with our DNA analyst in the forensic lab, they would
6 rather take the swabs themselves. Whereas obviously with a firearm we're
7 fingerprinting it as well, so we have to swab it first, before it can be fingerprinted.

8 Q Okay. Thanks.

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

10 BY THE COURT:

11 Q All right. And any gun powder residue on Defendant's left hand?

12 A I don't know if a gunshot residue test was collected or not. It was not
13 collected by me. IF it was --

14 Q You didn't collect it?

15 A NO, sir.

16 THE COURT: State?

17 MR. FATTIG: No follow-up.

18 THE COURT: Defense?

19 MS. NGUYEN: No follow-up.

20 BY THE COURT:

21 Q Did ballistics match prints to Defendant?

22 A I do not know. That would be a question for our -- the folks from our
23 forensic lab.

24 THE COURT: State?

25 MR. FATTIG: No follow-up.

1 MS. NGUYEN: No follow-up.

2 THE COURT: All right. Thank you. You're free to go.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Ladies and gentlemen, we're going to recess until tomorrow.

5 During the recess you're admonished not to talk or converse among
6 yourselves or with anyone else on any subject connected with this trial. Or read or
7 watch or listen to any report of or commentary on the trial or any person connected
8 with this trial by any medium of information including, without limitation, newspapers,
9 television, the radio, or the internet. Or form or express an opinion on any subject
10 connected with the trial until the case is finally submitted to you. Remember, no
11 social media.

12 See you in the morning. Tom will talk to you out in the hall about a
13 time.

14 [Outside the presence of the jury]

15 THE COURT: All right. The jury is gone. The doors are closed.

16 All right. Tomorrow morning, 9:00. Make sure the jury instructions are
17 done. I have law and motion, but I should be done.

18 MS. NGUYEN: 10:00.

19 THE COURT: No. 9:00 for jury instructions.

20 MS. NGUYEN: Oh yeah. You're right. 9:00 for jury instructions.

21 THE CORRECTIONS OFFICER: So 9:00 a.m. you want him back?

22 THE COURT: Yeah.

23 MR. FATTIG: Witnesses --

24 THE COURT: Well I -- with the understanding you're going to have to take my
25 prisoners back. But I need him back here at 9:00 if you can get him here. But as

1 soon as you guys can get him here.

2 MR. FATTIG: Witnesses at 10:00.

3 THE COURT: Uh-huh.

4 [Evening recess at 5:05 p.m.]

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21 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
22 acknowledge that this is a rough draft transcript, expeditiously prepared, not
proofread, corrected, or certified to be an accurate transcript.

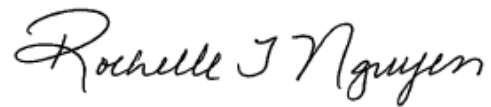
23 
24 _____
Brittany Mangelson
25 Independent Transcriber

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 V was sent via the master transmission list with the Nevada Supreme Court to the following:

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A handwritten signature in cursive script that reads "Rochelle T. Nguyen".

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