

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

DAVID MURPHY,

No. 72103

Appellant,

V.

THE STATE OF NEVADA,

Respondent.

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**APPELLANT’S APPENDIX**

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1 around, there's only three Mendozas on the left side and three  
2 on the Murphy side. Why does that happen?

3 A All right, let me look at these here.

4 Q If you want the actual records in front of you to --

5 A Murphy sent one to Mendoza, Mendoza received it.

6 Murphy sent another one to Mendoza, Mendoza received it.

7 Murphy sent another one to Mendoza, Mendoza sent one to

8 Murphy. Murphy got that one. Yeah, so it's not showing the

9 -- an incoming text to Mendoza from Murphy it looks like.

10 Q Correct. So you are just importing the information  
11 that's provided by the phone company, correct?

12 A Correct.

13 Q It is possible that a phone record from let's say  
14 AT&T or in the case of David Murphy, T-Mobile or Metro PCS  
15 doesn't necessarily show all the information that is coming in  
16 from T-Mobile; is that fair?

17 MR. LANDIS: Objection. Leading.

18 THE COURT: Overruled.

19 THE WITNESS: That's fair to say or that the -- if  
20 the phone never actually got the text message, then it  
21 wouldn't show up there either. So that would -- that would --  
22 those are two reasons why that -- that that could happen.

23 BY MR. DiGIACOMO:

24 Q And so you could go through these -- well, let me  
25 ask you this, do they have the same times, both companies

1 necessarily?

2 A No.

3 Q So they may be off in times on their own times,  
4 correct?

5 A Yeah, and usually they are. There's -- it's very  
6 rare that they have the exact same times.

7 Q So there's some limitations as it applies to Pen  
8 Link in the sense that if you really want to know the answer  
9 to the question, you got to go to the original records?

10 A Correct.

11 Q Now, we've talked about with several witnesses that  
12 in order to actually find the location of a cell tower, you  
13 could put a GPS location into Google Maps and you will get  
14 certain maps; is that fair?

15 A Correct.

16 Q Okay. And did you review maps of the Las Vegas  
17 valley that contained towers hit by those phones during  
18 September 21st of 2014?

19 A Yes.

20 MR. DiGIACOMO: May I approach, Judge?

21 THE COURT: Yes.

22 BY MR. DiGIACOMO:

23 Q Showing you what's been marked as State's Proposed  
24 Exhibits 315 through 321 --

25 A Yes.

1           Q     -- were you provided those maps and asked to confirm  
2     that the tower locations have been accurately placed from  
3     these records on to those maps?

4           A     Yes.

5           Q     And do they fairly and accurately depict the  
6     location of records of towers on these records on September  
7     21st of 2014?

8           A     Yes.

9           MR. DiGIACOMO: Move to admit 315 through 321.

10          MR. LANDIS: No further objections.

11          MS. McNEILL: Nothing -- I'll agree with Mr. Landis,  
12     no further objections.

13          MR. WOLFBRANDT: Subject to what we objected to and  
14     discussed earlier.

15          THE COURT: Those will be admitted.

16                 (State's Exhibits 315 to 321 admitted)

17     BY MR. DiGIACOMO:

18          Q     Now, sir, I'm going to put up I think maybe just a  
19     couple of these. If I were to put up 315 to start with, can  
20     you sort of describe to the ladies and gentlemen what we're  
21     looking at.

22          A     The pinpoints would be the -- the latitude/longitude  
23     GPS location of the cell tower from T-Mobile towers.

24          Q     And in reading those cell towers, the first number,  
25     so it says T-Mobile tower -- if I go to the top one, let's

1 say. If I go to the one -- let's start with that one. The  
2 one up above --

3 A Okay.

4 Q -- my line there. It's T-Mobile tower and then  
5 there's a number followed by a slash. That first number, what  
6 is that?

7 A That's the LAC.

8 Q So when I went -- or when someone goes to those  
9 records, they pull that number for the LAC --

10 A Yes.

11 Q -- it could be area code? And then the number  
12 that's after the slash, there's in this one four digits and a  
13 star. Did you see that?

14 A Yes.

15 Q The first four digits that are there, what is that?

16 A The CID or the cell site ID.

17 Q And the star at the end there is reflective of what?

18 A That would be the sector denotation of that cell ID.

19 Q So if you were to look at the LAC for two 24597 and  
20 you were to go to 5033, you might see 50331 through 8 and any  
21 one of those you could then know it's that tower?

22 A Correct.

23 Q And then if you wanted to, you knew the sector of  
24 that tower, you could then take 120 degrees pi and figure out  
25 which side of that tower the person's hitting?

1 A Correct.

2 Q Now I want to put up maybe one representative  
3 example, so I guess, I'll do 316. And this is page 1 of 316,  
4 and I don't know if you can read it, but jump down here to the  
5 page 1 of 316. That little line on Google Earth is sort of  
6 what?

7 A That would be the legend that gives distance -- the  
8 distance on the map per that amount of --

9 Q Altitude?

10 A -- distance. Yeah, correct.

11 Q So this line represents 1373 feet?

12 A Yeah, it's kind -- it's cut off on mine, but 372  
13 something. I -- I don't know if it's feet or meters.

14 Q Okay. And then that's the distance you could use if  
15 you wanted to know the distance of a particular location on  
16 that particular map?

17 A Correct.

18 Q And then if you do 316-B, as you get farther out, I  
19 think I can catch the feet this time.

20 A Yeah.

21 Q Now it's approximately, a half mile of 2621 feet?

22 A Correct.

23 Q And then you back out a little farther 316, now  
24 we're looking at towers on -- at 5258 feet or close to a mile?

25 A Correct.

1           Q     And 316-D.  If I were to jump first down to the  
2 bottom so that the jury knows it -- that's basically what  
3 looks like it's the legend's at two miles.

4           A     Correct.

5           Q     And 316-E.  I don't know if you can read, but that's  
6 what -- can you read it down there at the bottom of three --  
7 three miles?

8           A     Yes, three miles.

9           Q     Looking at 316-E -- or 316, or the last page of 316  
10 as we stapled those exhibits together, those towers are the  
11 towers hit by the various phones during September 21st of  
12 2014, you previous testified.

13          A     Yes.

14          Q     Those aren't all the towers that are in that area  
15 that's covered, is it?

16          A     No, they're not.

17          Q     The tower list is 275, is the enormous, correct?

18          A     Correct.

19          Q     And if you really wanted to find out how many towers  
20 there were in any particular region, you could plot all of  
21 these tower locations?

22          A     Correct.

23          Q     Did you also review a Power Point presentation of  
24 various relevant call records with tower information and then  
25 plot it by sector and time?



1           A     Yes.

2                   MR. DiGIACOMO: May I approach, Judge?

3                   THE COURT: Yes.

4 BY MR. DiGIACOMO:

5           Q     I'm showing you what's been marked as State's  
6 Proposed Exhibit No. 324.

7           A     Yes.

8           Q     Do you recognize that document?

9           A     Yes, I do.

10          Q     And what is it?

11          A     It's a Power Point presentation that plots various  
12 cell towers connected to the numbers that I was asked to go  
13 through. And also has some more specific sector information  
14 on it.

15          Q     And were you asked to go through and confirm that  
16 that information is accurate demonstrative evidence of what  
17 the phone records that you --

18          A     Yes.

19          Q     -- reviewed showed?

20          A     Yes.

21          Q     And that appears to be an accurate rendition of what  
22 is contained within the phone records that you previously  
23 looked at?

24          A     Yes.

25                   MR. DiGIACOMO: Move to admit 324.

1 MR. LANDIS: No further objections.

2 MS. McNEILL: No further objections.

3 MR. WOLFBRANDT: No further objections.

4 THE COURT: That's admitted.

5 (State's Exhibit 324 admitted)

6 MR. DiGIACOMO: And if the Court would just give me  
7 one second to pull this up.

8 BY MR. DiGIACOMO:

9 Q You have the pages in front of you in case you can't  
10 see those records real good. But the first record we're going  
11 to talk about is the Maria Sandoval phone, the 702-242-8981,  
12 correct?

13 A Yeah, 542-8981, yes.

14 Q And on September 21st of 2014, between 6:54 a.m. and  
15 8:29 a.m., those are the towers that that phone was hitting?

16 A Correct.

17 Q And all of those towers are located where the  
18 valley?

19 A Looks like the east -- east of 215. Or east of  
20 I-15, sorry.

21 Q So east of the I-15, which is running up there?

22 A Correct.

23 Q The next phone is Jorge -- the Jorge Mendoza phone,  
24 the 702-666-4948?

25 A Correct.

1           Q     Now, on this first slide, the Mr. Mendoza tower, the  
2 3:31 a.m., each one of these sector circles are filled in; is  
3 that a fair characterization of the slide?

4           A     Yes.

5           Q     Okay. The tower record, it says 24593/625 star and  
6 5251 star and 146/6251 star.

7           A     Correct.

8           Q     Do we have any sector location information for those  
9 LACs?

10          A     No.

11          Q     And thus, you can't determine which side of the  
12 tower Mr. Mendoza's phone was connecting to at 3:30 in the  
13 morning?

14          A     Correct.

15          Q     At 7:22 a.m., Mr. Mendoza's phone connected to a  
16 tower with LAC 24599-6247 star and 5247 star?

17          A     Correct.

18          Q     And that is an azimuth that points generally in the  
19 north of the valley?

20          A     Correct.

21          Q     And thus, it was on the north side of that tower?

22          A     Correct.

23          Q     Then at 10:33 he's connected to T-Mobile tower  
24 24594/5110 then there's a star, but when you plotted the  
25 actual -- or when the actual LAC is plotted, he's now hitting

1 off the southeast sector of that tower; is that correct?

2 A Correct.

3 Q And between 4:21 p.m. and 5:19 p.m., he is now -- or  
4 his phone is now hitting on a tower that services his address?

5 A Correct.

6 Q The 1219 Westlund Drive, Mendoza residence?

7 MR. LANDIS: I'd object to foundation as to how that  
8 cell tower services that -- his address based on the testimony  
9 we've received.

10 MS. McNEILL: I would join in that objection.

11 THE COURT: Response?

12 MR. DiGIACOMO: Well, I thought that's what he did  
13 testify to, but I'll ask it that way.

14 BY MR. DiGIACOMO:

15 Q Does that phone service --

16 THE COURT: You can ask him that.

17 BY MR. DiGIACOMO:

18 Q -- the pin that's placed there in reference to 1219  
19 Westlund Drive Mendoza residence?

20 A If -- if the phone was at 1219 Westlund Drive, the  
21 tower would most likely hit would be that tower that's  
22 denoted.

23 Q It's within the cone area or the -- the sector area  
24 of that particular tower?

25 A Correct.

1 Q And then at 6:42 p.m., is -- Mr. Mendoza's phone is  
2 hitting off the T-Mobile tower 24594/63 -- 6437 star, which is  
3 generally northeast or north/northeast of that particular  
4 tower?

5 A Correct.

6 Q And the last location information that's contained  
7 on Mr. Mendoza's records at 7:29 p.m., shows him back on that  
8 tower from earlier near an address, the 3668 Lucky Horseshoe  
9 address hitting off the north side of the tower?

10 A Correct.

11 Q Mr. Figueroa's phone, 702-241-1051, he's -- his  
12 phone at 7:44 a.m., is hitting off AT&T tower 36982/04362  
13 and/or 34362, and that sector is plotted in a location that  
14 has it heading to the northwest, which is near Mr. Figueroa --  
15 or the residence that's identified on this record as 3252  
16 Casey Drive?

17 MR. LANDIS: Objection. Leading, compound question.

18 MR. DiGIACOMO: I'm asking about an exhibit much  
19 that's not leading.

20 THE COURT: All right. If you could just tell us  
21 what this exhibit depicts, that would be good.

22 THE WITNESS: It depicts that sector on that cell  
23 tower and an address with a yellow pin that falls within the  
24 footprint of that sector.

25 BY MR. DiGIACOMO:

1 Q At 9:26 a.m., if you could tell us is -- well,  
2 first, I don't know, maybe I can read this. AT&T tower  
3 36998/01307 is the tower that's reflected there?

4 A Yes.

5 Q And the address that's reflected in the yellow is at  
6 3668 Lucky Horseshoe?

7 A Correct.

8 Q And what is depicted in the photograph?

9 A It's depicting that sector and then the address of  
10 -- address of 3668 Lucky Horseshoe, Laguna's residence within  
11 the footprint of that tower.

12 Q And Mr. Figueroa's phone at 8:10 p.m. all the way to  
13 6:09 a.m. -- or yeah, 6:09 a.m. on the 22nd, is he hitting off  
14 -- or is his phone hitting off a tower referenced in this  
15 photograph?

16 A Yes.

17 Q And I don't know if you can read the address of that  
18 little yellow pin down there, but can you read it?

19 A 1661 Broadmere Street.

20 Q Between -- or at 6:26 -- sorry, 2:26 p.m. and 6:43  
21 p.m., at that same day on the 21st, is his phone hitting on a  
22 tower near his residence?

23 A Yes.

24 Q Sorry, that one apparently is slightly out of order.  
25 Joseph Laguna's phone, the 702-762-1584 phone, between 6:30

1 a.m. and 7:24 a.m., is his phone hitting off a sector of a  
2 tower, which is within the footprint of the 3668 Lucky  
3 Horseshoe?

4 A Yes.

5 Q At 7:46 a.m., is his phone hitting off a tower near  
6 a location, or a location whose footprint and the location is  
7 3258 -- or sorry, 3252 Casey Drive, Figueroa residence. Is  
8 his phone hitting off a tower that is -- that location is  
9 within the footprint of?

10 A Yes.

11 Q At 8:55 a.m., is Mr. Laguna's phone hitting a tower  
12 that is just south of 215 and Jones?

13 A Yes.

14 Q At 10:40 a.m. to 12:14 p.m. and then between 6:10  
15 p.m. and 7:02 p.m., is Mr. Laguna's phone hitting off a tower  
16 where his residence is within the footprint?

17 A Yes.

18 Q Okay. At 8:10 p.m., is -- does Mr. Laguna's phone  
19 hit off a tower that services sort of the neighborhood just to  
20 the east of that pin 1661 Broadmere Street?

21 A Yes.

22 Q And then 9:09 p.m., his phone is hitting off a tower  
23 that services -- or his address is within the footprint of  
24 that particular tower?

25 A Yes.

1 Q Let's talk about David Murphy's phone, 702-542-1558.  
2 Between 5:05 a.m. and 5:14 a.m., is his phone hitting off a  
3 tower that is servicing an area near 215 and Jones?

4 A Yes.

5 Q And between 7:00 a.m. and 7:22 a.m., is his phone  
6 hitting off two towers that the 3668 Lucky Horseshoe address  
7 is within the footprint of?

8 A Yes.

9 Q And then from 8:55 to 8:59 a.m., is his phone back  
10 on the tower previously referenced near 215 and Jones?

11 A Yes.

12 Q And then at 9:13 a.m., is his phone hitting off a  
13 tower that services Lucky Horseshoe?

14 A Yes.

15 Q At 7:29 to 7:37 p.m., is he on a different tower  
16 that services Lucky Horseshoe?

17 A Yes.

18 Q And at 8:06 p.m., on September 21st of 2014, is his  
19 phone hitting off a tower that services or is within the  
20 footprint of 1661 Broadmere Street?

21 A Yes.

22 Q At 8:40 to 8:45 p.m., is his phone back at a tower,  
23 or on the tower that the Laguna residence services?

24 A Yes.

25 Q And then at 10 -- or 12:23 a.m. to 12:25 a.m., is



1 his phone hitting that tower that is near the 1219 Westlund  
2 address, the Mendoza residence?

3 A Yes.

4 Q At 12:54 a.m., is his phone back in the area of the  
5 3668 Lucky Horseshoe address?

6 A Yes.

7 Q On the Amanda Mendoza phone, the 702-750-8111 phone.  
8 Between 11:30 p.m. on the 21st and 12:18 a.m. on the 22nd, is  
9 her phone on a tower near the Mendoza residence at 1219  
10 Westlund Drive?

11 A Yes.

12 Q At 12:50 a.m. on the 22nd, is her phone now hitting  
13 off a tower that the Laguna residence is within the footprint  
14 of on the 22nd?

15 A Yes.

16 Q And by 1:19 a.m., she is back on the tower -- or her  
17 phone is back on the tower that services or that her phone --  
18 that her home is within the footprint of?

19 A Yes.

20 Q Thank you, sir.

21 MR. DiGIACOMO: I'd pass the witness.

22 THE COURT: Approach.

23 (Off-record bench conference)

24 THE COURT: Ladies and gentlemen -- excuse me, this  
25 wind is getting to me. All right. We're going to take our

1 lunch recess now. I'm going to give you an hour and a half  
2 today so that we can facilitate witness schedules and whatnot.

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

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

12 THE MARSHAL: All rise for the jury, please.

13 (Jury recessed at 11:56 a.m.)

14 THE COURT: And the record will reflect that the  
15 jury has departed the courtroom. Any matters outside the  
16 presence?

17 MR. DiGIACOMO: Just one thing from the State.

18 THE COURT: All right. You can be seated.

19 MR. DiGIACOMO: I didn't fully understand the nature  
20 of the objection until I got the objection during the  
21 testimony of Detective Gandy about the nature of what was and  
22 was not discovered. So I went back to check to make sure this  
23 is true because it happens in every single case.

24 Everything he said on the stand is provided in  
25 instructions on how to read these records in the discovery.

1 They provide the "how to" instructions, some of which have  
2 been admitted into evidence here. So the thing like the  
3 Lucent and you need to subtract all that, all of that is  
4 within the records. Whether or not they understood the  
5 meaning of that information, I don't know, but just so the  
6 record is absolutely clear, he said nothing from the stand  
7 that is not contained within the "how to" instructions  
8 previously provided.

9 MR. LANDIS: Instead of arguing that to the extent I  
10 disagree, I intend to bring it up in cross. It is what it is.

11 THE COURT: All right. Thank you very much. I'll  
12 see you at 1:30.

13 MR. DiGIACOMO: Thank you.

14 (Court recessed at 11:57 a.m. until 1:46 p.m.)

15 (Outside the presence of the jury)

16 THE COURT: All right. We are back on the record.  
17 We're currently outside the presence. The defendants are  
18 present with their respective counsel, the Chief Deputies  
19 District Attorney prosecuting the case are present as are all  
20 officers of the court. Anything outside the presence before  
21 we bring the jury in?

22 MR. DiGIACOMO: Not from the State.

23 MS. McNEILL: No, Your Honor.

24 MR. WOLFBRANDT: No.

25 THE COURT: All right. Let's bring them in.

1 THE MARSHAL: All rise for the jury, please.

2 (Jury reconvened at 1:47 p.m.)

3 THE MARSHAL: Your Honor, all members of the jury  
4 and the three alternates are present.

5 THE COURT: Thank you. Please be seated. And  
6 Mr. Gandy is still on the stand, and I'll just remind you that  
7 you're still under oath. As well. Mr. Landis, cross.

8 CROSS-EXAMINATION

9 BY MR. LANDIS:

10 Q Understanding that you work for the Las Vegas  
11 Metropolitan Police Department, would you be considered a  
12 police officer in your current role?

13 A Yes.

14 Q TASS officer, is that what -- they refer you --

15 A Our -- our unit's called TASS, the technical and  
16 surveillance section is what the acronym stands for.

17 Q How many people at Metro perform your exact duties?

18 A Exact ones? Right now there's two of us. We had  
19 three, but one retired recently.

20 Q Getting into those duties, and please correct me if  
21 I'm wrong, it sounds like some of it's kind of an  
22 administrative side where you're getting records, making sure  
23 records are requested --

24 A Correct.

25 Q -- things of that sort?

1           A     Correct, yes.

2           Q     Other side of it is more of a technical analyzing  
3 the records, using software, things you testified to on  
4 direct?

5           A     Correct.

6           Q     Of all the cell phone records you've looked at in  
7 this case today in court, absent the maps, so just the phone  
8 records themselves, the subscriber information, the cell tower  
9 list, just those text documents such as that, is that clear?

10          A     Yes.

11          Q     Could you and I take those, go to a field with no  
12 computers, no WIFI and figure out cell phone locations?

13          A     Based on those documents, yes.

14          Q     How would we do that?

15          A     So we would take the -- the sheet that the phone  
16 company supplies that has the cell tower on it, depending what  
17 company. Like the AT&T actually gives you the GPS location of  
18 the -- of that -- well, I guess, you would need something to  
19 -- to get you to a lat and longitude on a map. You could  
20 technically do that without a computer if you were pretty  
21 savvy.

22                   But yeah, there's also addresses on most of those  
23 site lists also that give you a hard address of the cell  
24 tower.

25          Q     And when an address is provided, not as precise as a

1 latitude/longitude, right?

2 A Correct.

3 Q Especially if it's a big address in terms of  
4 property?

5 A Correct.

6 Q Unless we're able to figure out the  
7 latitude/longitude, though, we're not going to get the same  
8 information that were on those maps today --

9 A Correct.

10 Q -- without a computer?

11 A Correct.

12 Q This software that you tend to use for this  
13 analysis, you refer to it as what?

14 A Pen Link.

15 Q And is that the brand, the company?

16 A Yes, yes.

17 Q Is that something I could go buy a copy of tonight?

18 A I don't know if they'll sell it to non-law  
19 enforcement. I know there are products out there that do, but  
20 I don't know if they will.

21 Q Could you do your job of analyzing records,  
22 determining tower locations without Pen Link or some similar  
23 software?

24 A Yes.

25 Q And how would you do that?

1           A     I would hand -- hand map them out on -- on Google  
2 Earth, which we do sometimes. We do actually do that, if it's  
3 a smaller period of time and less phones because it -- it can  
4 be time consuming. But we would actually import all of the  
5 cell towers into Google -- Google Earth Pro, and put them all  
6 on a map, and then we hand plot the towers and then look at  
7 the azimuth and rotate those degrees using Google Earth Pro  
8 and -- and match the towers up that way.

9           Q     Probably take a little bit longer than it would if  
10 we had --

11          A     Yeah.

12          Q     -- Pen Link?

13          A     Considerably, yes.

14          Q     Either way, it seems like a beginning element we  
15 need to start an analysis of this sort location of cell phone  
16 towers?

17          A     Correct.

18          Q     Software like Pen Link, does that self populate that  
19 information?

20          A     It accesses the -- a database that's maintained by  
21 the FBI that's populated by the cell phone companies on a  
22 weekly basis.

23          Q     So it updates?

24          A     Every time it query's a cell site, it actually goes  
25 out to that database that's in Virginia and queries a location

1 on the cell tower.

2 Q So if your computer was in front of us right now,  
3 when we were using Pen Link, we can assume the tower  
4 information that's there is very recent?

5 A Yes.

6 Q Can I use Pen Link and say show me the towers at  
7 whatever year, whatever month?

8 A No. And that's another reason we'd go back when we  
9 hand plot because which actually use the tower list from --  
10 from that time period. So there's an archival database.  
11 Under a lot of cases, the phone company actually sends us  
12 those tower lists, or again, in AT&T's case, they'll give us  
13 the latitude and longitudes and some of those. But we always  
14 use that to do the plotting, we use the -- the closest time  
15 period cell tower database to that -- to that time just in  
16 case there is a deviation.

17 There's -- there's not a lot of deviation, but there  
18 can be deviation over the years.

19 Q Towers move sometimes, technology changes --

20 A Yeah, correct.

21 Q -- things like that? Another variable that's very  
22 hard to pin down, the functioning of the towers at the given  
23 time, right?

24 A As far as if they're working or not?

25 Q Working, working properly --



1 A Yes.

2 Q -- getting fixed?

3 A Yes.

4 Q Sometimes they actually do maintenance and --

5 A Yes.

6 Q -- the tower's just inactive --

7 A Correct.

8 Q -- correct? Which looking at a map and assuming all  
9 the towers are working could lead to a bad determination if a  
10 tower tends to be out?

11 A It's a possibility, yes.

12 Q And you don't get that information from Pen Link or  
13 the cell phone companies?

14 A Yes.

15 Q Such as we were doing maintenance on this tower from  
16 yada yada to yada yada?

17 A No.

18 Q And the cell phone somewhere in its computer is  
19 actively taking the different signals from different towers  
20 that are in its radius, right?

21 A Correct.

22 Q And its job is to determine what signal is best and  
23 jump to that tower?

24 A Correct, yes.

25 Q That assumes to a certain extent that the cell

1 phone's functioning perfectly?

2 A Correct, yes.

3 Q Sometimes cell phones get old and they may not  
4 switch as well as we would hope?

5 A I -- I would assume. I -- I don't know as far as  
6 that goes, but yeah.

7 Q Or, I mean, the technology of the cell phone itself  
8 can be old, too, right?

9 A Yes.

10 Q And we've heard some testimony before you testified  
11 about changes in technology within cell phone companies and  
12 how certain technology equals we use certain towers and  
13 different technology --

14 A Correct.

15 Q -- equals certain towers?

16 A Correct.

17 Q How are you able to make those determinations from  
18 looking at call detail records?

19 A Normally, on an AT&T phone, there's actually -- or  
20 AT&T and T-Mobile phones the LAC will tell you what technology  
21 that those phones are on. So in the case of these records,  
22 some of the LACs are in the 24 to 24, 5 thousand range and  
23 that's on 3D -- on 3G -- 3G what everyone knows, but UMTS  
24 technology.

25 The ones that have a 146 LAC on them are on -- below

1 3G technology. And then as it goes into the 4Gs you'll get  
2 LACs in like the 65,000 range and there's -- there's a way to  
3 analyze it.

4 Q Let me ask you, when you use T-Mobile, is it fair to  
5 assume you mean T-Mobile and Metro PCS?

6 A Yes. In fact, I think within months of when these  
7 records were analyzed, Metro PCS actually was a CDMA company,  
8 which had records like Sprint and Verizon. And then when AT&T  
9 bought them, they actually shut down the Metro PCS network.  
10 It -- it actually ceases to exist, and so Metro PCS phones use  
11 the T-Mobile network.

12 Q And the Metro PCS records you looked at in this  
13 case, you were able to determine they were on the newer T-  
14 Mobile?

15 A Yes, yes.

16 Q And how --

17 A Their -- their towers coincide exactly with T-Mobile  
18 towers.

19 Q And what allows you to make that determination?

20 A They'll have the same -- the same CID and LAC  
21 configuration as the T-Mobile towers along with the -- the  
22 locations. And prior to the merge, all of their towers  
23 weren't in a CID and LAC format. They were in the -- the CDMA  
24 format of the tower number dash sector number.

25 Q To the best of your memory, when was it that you

1 first got involved in this case?

2 A I did some initial work for the detectives right  
3 around the time of the crime, as in they had sent us some of  
4 the call detail records that they had ascertained. So I did  
5 some initial work for them to get those imported into Pen Link  
6 and put those in so they could do some analysis. And then for  
7 this court case, I -- it's been roughly about a month or so,  
8 four to five weeks, I think.

9 Q Would you characterize that initial work you were  
10 doing at the request of the detectives the administrative side  
11 or the technical side of your job?

12 A That was -- well, a little bit of both. When they  
13 get records and they ask us to put -- to put them in, we do  
14 look at them and we make sure that our time -- you know, our  
15 times are right, our sectors are right, all that's right  
16 during the import to make sure that the -- the stuff's valid.

17 But then that goes to a different unit in our  
18 department who does the initial -- the day-to-day analysis on  
19 the records.

20 Q How many sets of cell phone records do you think you  
21 analyze in a year, let me ask you that or calls, if you want  
22 to do it that way?

23 A We do roughly about 300 -- I'd say about 300  
24 intercepts, give or take, and anymore, I'd say 90 percent of  
25 those or more involve some type of call detail records. And

1 then I get more in depth on those records if they're for --  
2 depending if they're trying to locate people or if it's a  
3 missing persons case and those sort of things where we'll  
4 delve even more into actually trying to find phones within  
5 those cell tower footprints and things like that.

6 Q The call detail records, the phone records, they  
7 also don't provide much information about the functioning of  
8 the cell phone itself in relation to its tower --

9 A No.

10 Q -- switching?

11 A No.

12 Q The maps you've been shown today, quite a few, most  
13 of them had pinpoints, needles on them?

14 A Correct.

15 Q You created none of those --

16 A Correct.

17 Q -- correct? But you were asked to look at them and  
18 see if they jived with the cell phone data --

19 A Correct.

20 Q -- as far as latitude and longitude?

21 A Correct.

22 Q Can I assume then that Pen Link was uninvolved in  
23 that analysis?

24 A Pen Link was involved in that analysis because I had  
25 made those reports that kind of made everything match up and

1 that I actually used a Google mapping software off of Pen Link  
2 to -- to help me -- to assist me in checking those also.

3 Q Let me talk about what you just were talking about,  
4 which was the input and the harmonization of the different  
5 records you had. Sounds to me like once they're in the Pen  
6 Link system, Pen Link does most of the work.

7 A Yes.

8 Q How do you load them in?

9 A So I'll take -- I'll take the records from whichever  
10 company it is and then I'll take -- figure out what company  
11 that is, what time zones the times are supposed to be in, if  
12 there needs to be any kind of offset variations and such  
13 things. And then we actually -- there's a phone company load  
14 button and it takes the Excel or typed documents in and it  
15 brings it all in front of us. And then we check to -- and  
16 then we bring it in under a case and then we deviate and then  
17 we do a time adjustment on the records.

18 And then I'll go back and check the records that I  
19 just did to make sure that all, you know, the time adjustments  
20 were correct on it and that everything got -- got shifted  
21 right.

22 The other thing I may do sometimes is with that  
23 switch identifier number, sometimes we have to make a slight  
24 change to that one and put it in a format that the FBI  
25 database can read the way that the switch name is versus the

1 switch name that's reported on the record. It's usually --  
2 there's usually some dashes in there or some other things we  
3 have to deviate, but those are the only two things we deviate  
4 on the records would be the time and some of that.

5 Q You more or less answered this question, but just  
6 let me make sure it's clear. So Pen Link's not smart enough  
7 to say oh, they just uploaded T-Mobile records, I need to  
8 offset by this much, yada, yada, yada?

9 A No, because the -- there -- no, no, it's not.

10 Q Does it try in the over --

11 A It -- it -- it could. Example of a T-Mobile record  
12 is there can be records in there, depending -- at any given  
13 call on their network can actually originate out of a switch  
14 at any -- any of their switches within the country because  
15 everything runs on a like an Internet based data network. So  
16 your time variabilities there could come from -- the call  
17 could show on that sheet as even though it says it's Las  
18 Vegas, it could show a time from Texas, it could show a time  
19 from Atlanta, show a time from all these different things.

20 So yeah, Pen Link's scripts to import those in.  
21 That's why we -- we do it by hand. And if there's multiple  
22 time zones involved, we'll actually breakdown -- we'll  
23 breakdown those records and then shift based on those time  
24 zones when we're importing.

25 Q And the information that you use to do that, to

1 input into Pen Link the time adjustments, et cetera, you glean  
2 that information from where?

3 A The phone companies.

4 Q Specifically, what do they give you?

5 A So they'll give us -- in the case of T-Mobile,  
6 they'll actually -- they give us a form that tells us the  
7 switch code is in this time zone, the switch code's in this  
8 time zone. The other -- some of the other records, it's T-  
9 Mobile has the differences in the switches. Cricket, which we  
10 did here, even though all these records -- this again, was  
11 during the merge of Cricket with AT&T so their records were  
12 all in UTC for this. So there's also -- was some variability  
13 in Cricket time zone issues because they're in Phoenix and  
14 we're here and we have different time zones different times of  
15 the year.

16 So they have a -- like a how to read CER sheet also  
17 that gives you instructions on making those adjustments. And  
18 then if we have questions at any -- if we have any questions  
19 about time zones variabilities, we call the phone companies  
20 directly and -- and talk to their -- a legal analyst there  
21 about, you know, what we have to do for those.

22 Q And those cell phone data sheets or interpretation  
23 sheets, whatever you want to call them, are those things that  
24 you guys got for every cell phone company ten years ago and  
25 you still use the same ones?



1           A     No, they -- they send them with -- normally, they'll  
2     send a packet when you do a request on a court order and it  
3     will have one of those sheets inside of there. So it will  
4     have the how to read and the subpoena and the return of the  
5     court order and --

6           Q     And based on your experience, those keys change over  
7     time so it's --

8           A     Yes.

9           Q     -- good to have one that's concurrent with the  
10    records you're looking at?

11          A     Yes. They should be, yeah.

12          Q     Let me ask you some questions about what cell phone  
13    records reflect depending on when you actually subpoena and  
14    obtain them. Do cell phone records, no matter if you subpoena  
15    them the month after the records or ten years after the  
16    records assuming they still exist, the information you  
17    actually get on the call detail records is going to remain the  
18    same?

19          A     No.

20          Q     How does that change?

21          A     So the -- the phone companies retain their data,  
22    based on their own schedules. And so if you go out -- for  
23    each -- each company has its own retention schedules. So as  
24    you go out farther, some companies will retain cell site  
25    information to a certain point and then they'll purge that

1 out. And then if you have to go beyond that point, then  
2 they'll hit their billing -- their billing department's  
3 records of calls, which keeps information longer.

4 And so those don't have cell phone information -- or  
5 location information on them because those -- those would be  
6 consistent with -- with a bill you would get on your cell  
7 phone that has those -- all those call transactions on them.

8 Q Please correct me if you don't agree with this  
9 characterization. The tower location, as well as adjusting  
10 the time listed on the car detail records, two important first  
11 steps in this process?

12 A Yes.

13 Q You're not going to get reliable results if you  
14 don't have those two things firm?

15 A Correct.

16 MR. LANDIS: Permission to approach the clerk?

17 THE COURT: Granted.

18 MR. LANDIS: Permission to publish 275, State's 275?

19 THE COURT: It's admitted so --

20 MR. LANDIS: It is.

21 THE COURT: -- you can publish it, yeah.

22 BY MR. LANDIS:

23 Q Zoom that out and step back with technology with  
24 this for our technology talk today. You saw that document  
25 today, yes?

1 A Yes.

2 Q Could you remind me what it was.

3 A Those are the cell site lists for T-Mobile in the  
4 Las Vegas area. I believe it's -- yeah, it should be T-  
5 Mobile.

6 Q Understanding that you didn't obtain that document  
7 from the phone company, those are the cell phone towers as of  
8 when?

9 A I believe, those were September -- they were in  
10 September 2014.

11 Q How do you know that?

12 A At some point. That -- those were -- oh, if I did  
13 not obtain them? Oh, I --

14 Q Oh, maybe you did. I don't --

15 A I don't know.

16 Q -- want to put words in your mouth. Did you obtain  
17 that?

18 A Well, I didn't obtain -- I obtained a list that's  
19 identical from this from -- from a database I had, yes.

20 Q How did you know it was identical?

21 A Well, it -- it -- it appeared to be identical, yeah.

22 Q Your belief then is they gave this to whoever  
23 subpoenaed it in 2014?

24 A That's a possibility, yes.

25 Q Don't know for sure?

1           A     Yeah, I don't know for sure.

2           Q     When a cell phone company sends you guys a list like  
3 this, and I'll just use all cell phone companies, and please  
4 tell me if they differ, do they tell you these are the cell  
5 phone towers as of this date?

6           A     Well, a lot of times they'll -- the name of the  
7 actual computer file will have the -- will have the date in  
8 it.

9           Q     To your memory, and I can approach if you want to  
10 see it, does this hard copy document have a date such as that?

11          A     I -- I don't know. No, I -- I don't think so unless  
12 it's on a bottom header. I'm not -- or a footer.

13               MR. LANDIS: Just to be safe, can I approach?

14               THE COURT: Sure.

15 BY MR. LANDIS:

16          Q     Looking at it may refresh your memory. Just --

17               MR. LANDIS: May I approach the Clerk?

18               THE COURT: Yes, you may.

19               THE WITNESS: No, it doesn't.

20               MR. LANDIS: Can I approach the witness?

21               THE COURT: You may.

22 BY MR. LANDIS:

23          Q     Besides looking at the call detail entry specific to  
24 the maps that you verified -- does that make sense?

25          A     I think so. Keep going.

1 Q Did you look at the cell phone records as a whole  
2 that were available in this case, such as the whole month of  
3 September for one of the numbers?

4 A No, I had access to them, but I was only looking at  
5 the -- at the 21st.

6 Q Are you familiar with a scenario where there's a  
7 call detail entry for a call or missed call or whatever it  
8 might be and there's no cell tower listed and no  
9 latitude/longitude listed?

10 A Normally, for an SMS message that's possible, or if  
11 the phone wasn't on -- if the -- or if the phone was off  
12 network and most SMS messages don't have location information  
13 either.

14 Q Off network, SMS, phone powered down; is that one as  
15 well or no?

16 A Yes. Yeah, so -- yeah. For -- for any reason if  
17 the phone was off the network, which typically powered down or  
18 out of cell site area or, you know, something to that effect.

19 Q To the best of your knowledge, no other situations  
20 could lead to that?

21 A For the cell phone not registering a cell site at  
22 all or the latitude and longitude not being on the record? I  
23 guess --

24 Q Both.

25 A If the -- if the -- if those record -- I believe,

1 there may be some T-Mobile ones in there that don't have a  
2 latitude and longitude on them but do have a cell tower  
3 number.

4 Q Let's start with that.

5 A And -- okay.

6 Q What would you -- how would you explain that?

7 A That that list that you have there is the same list  
8 that the T-Mobiles computers query to put that latitude and  
9 longitude in there. So if there wasn't anything in that  
10 database at T-Mobile and when they did their records, it tried  
11 to query the location of that cell site that it had got off of  
12 the cell tower, then it would populate nothing in that field  
13 because that would be the database that it's trying to  
14 populate that information from.

15 Q I think we heard a little bit about this earlier  
16 this week, but just to make sure, does that potentially mean  
17 the tower's new and they just haven't got the  
18 latitude/longitude in the system?

19 A Yes.

20 Q Is that the only explanation you're aware of?

21 A That it wouldn't in there or if there was an error  
22 on the sheet or in T-Mobile's database.

23 Q Are there situations where we could see a latitude  
24 and longitude but no cell tower?

25 A On a record from the phone company?

1 Q Indeed.

2 A Yes, but I don't believe any of that is involved in  
3 this case. There -- there is such a thing of a -- where they  
4 do an estimated GPS distance to tower report that sometimes --  
5 actually, that has a cell tower on it, too, but no, with the  
6 exception of precision location information that I spoke to  
7 earlier, there should be a tower number or name on there  
8 unless the phone's off the network.

9 Q That precision location information, it's something  
10 you've obtained before?

11 A Yes.

12 Q To your knowledge, was any of it obtained in this  
13 case?

14 A Not by my -- not by my unit.

15 Q Did you say on direct that there's different  
16 standards to get that information versus --

17 A Yes.

18 Q What do you mean by that?

19 A That would be a -- so a normal pin register would be  
20 relevance -- relevance to a case, which means basically,  
21 there's just a connection to some type of case. Precision  
22 location information -- well, there's not exact statutes about  
23 it. There's a lot of case law involving it now.

24 So our department probably four or five years ago  
25 went with the highest standard that we could find for that,

1 which for location type information. So we went with a  
2 probable cause based court order in order to obtain that -- to  
3 obtain that information.

4 We weren't forced to by any decision to do that, but  
5 we did that to try to protect ourselves legally in the future.

6 Q If we could put it this way, the law's not the most  
7 settled yet so --

8 A Correct.

9 Q -- better safe than sorry?

10 A Correct, yes.

11 Q To breakdown what you were just saying there a  
12 little bit, you guys sometimes use court orders to get things,  
13 right?

14 A Well, all the -- well, yeah, so we use a court  
15 document to get it always, some type of document.

16 Q A subpoena?

17 A Yeah, yeah, yeah. Or a subpoena or a court order or  
18 higher.

19 Q A court order requires review and approval by a  
20 judge, right?

21 A Correct.

22 Q A subpoena's a little easier for you guys to issue?

23 A Correct.

24 Q Court order's always for the exact -- the pinpoint  
25 location data?



1 A Correct, yes.

2 Q Sometimes subpoenas for the call detail records with  
3 normal location data?

4 A Grand jury subpoena, yes.

5 Q In this case, to the best of your memory, were court  
6 orders obtained for any of the records that are relevant to us  
7 here? And if you don't know, I understand.

8 A I -- I did see court order -- yes, I -- yes. I  
9 believe, they were search warrants but --

10 Q If we could turn to footprints of cell towers using  
11 a term you guys used a little bit on direct.

12 A Yes.

13 Q What would be your best definition of what that  
14 means exactly?

15 A So the cell -- the cell phone companies, when they  
16 design these networks, they have to use different frequencies  
17 on all these different radios so they don't interfere with  
18 each other. So what they try to do is where they have signals  
19 that should be -- would be overlapping each other, they  
20 attempt to tune those radios and point them kind of in a  
21 downward direction also towards where the people are at, but  
22 they try to do them with a slight overlap across the areas of  
23 the -- of -- of that footprint, we would call it, of that  
24 sector so that if you're right in between two towers, it's not  
25 going to be fighting too bad between the two. They're going

1 to have a similar signal, but it will go one to the other so  
2 -- because you don't want dead space in between them. So you  
3 definitely need some type of overlap so you don't lose -- so  
4 you don't lose calls.

5 So the -- the footprint would be characterized as  
6 the area underneath a given tower where the phone would most  
7 likely be talking to -- to that tower.

8 Q And possible to know the actual radius for a variety  
9 of different reason, absent going out there with some special  
10 equipment?

11 A Correct. And each -- and each distance can actually  
12 be variable between sectors also.

13 Q So if I show you one of these pictures on the  
14 State's admitted 324, you remember looking at that, right?

15 A Yes.

16 Q And you didn't create that map, but you identified  
17 that green area as a footprint?

18 A Correct.

19 Q Which in your opinion means the cell phone was  
20 somewhere in there?

21 A That if the cell phone were somewhere in that area,  
22 there was a good possibility of it, you know, communicating  
23 with that tower, yes.

24 Q And this particular one is one of the --

25 MR. LANDIS: this is the Jorge Mendoza 3:31 a.m.

1 tower, for the record.

2 BY MR. LANDIS:

3 Q You weren't able to determine the sector for this  
4 one, right?

5 A I believe, no. Yeah, that was the issue on this  
6 one, yes. Yeah, it was a 593 LAC, yeah, so no. No sector.

7 Q What's that caused by?

8 A I'd have to look at the record again for it.

9 MR. LANDIS: May I approach the clerk?

10 THE COURT: Yes.

11 MR. LANDIS: May I approach the witness?

12 THE COURT: Yes, you may.

13 BY MR. LANDIS:

14 Q I'm hoping I grabbed the right thing. Showing  
15 you --

16 A Let's see.

17 Q -- 300, 298. Does that look about right?

18 A Okay. Let's see. Yes. I'm just trying to find the  
19 exact one here. I think -- I believe, this is the right list,  
20 though. It's just hard to read.

21 Q I believe it was on 2.

22 A Could be.

23 Q If I could pause your review just for a sec. I was  
24 sitting in a quiet courtroom and everyone was waiting for me  
25 to talk the other day. I know it's nervous. Let me just ask

1 it this way, then.

2 A Okay. I think I might have found it, but go ahead.

3 Q Oh, if you got it, let's hear it.

4 A I think might have.

5 Q I'd be happy to.

6 A It should be 24593, 52519, but believe on that cell  
7 tower list that you have the other exhibit, there is no sector  
8 information relating to that CID.

9 Q Which means what?

10 A That we don't know what -- what -- what side the --  
11 the phone was on.

12 Q Is that a failure of --

13 A We're using that -- using that -- that cell list  
14 from that time period. There was nothing populated on that  
15 list to say what -- what sector that that CID's on.

16 Q Can we still assume, though, that it is a three  
17 sector or 360 degree situation?

18 A Yes.

19 Q How?

20 A Well, I guess, technically, no. Technically, no on  
21 that CID. We could assume it somewhere on that tower.

22 Q In your experience, not talking specifically about  
23 those records, do you know situations where they just failed  
24 to record sector?

25 A Record sector or the -- no. The -- the -- speaking

1 to any of these -- to any of these companies at this time,  
2 there were some older records for some companies that did not  
3 report sector at all on those. That would have been Cricket,  
4 but that was quite a few years ago. The LAC and the CID is on  
5 a GSM phone like these should denote a -- a sector because  
6 that CID actually ties to an actual radio on the actual tower.

7 Q From looking at these records, any of the records  
8 you've looked at in court today, let's stay with Cricket. You  
9 talked about them changing technology from CDMA?

10 A Correct.

11 Q How is that determined from the records?

12 A The Cricket records we did here were still in CDMA.  
13 Those were -- those were still CDMA. They hadn't transferred  
14 over to the AT&T. They were in the middle of their  
15 transition. Prior to the transition, they ran their records  
16 different. They came in a different format.

17 Q And the four out in the field in the tent, how would  
18 you show that to me on the records?

19 A If they were in -- on AT&T's network or in they were  
20 on Cricket's network?

21 Q Yes, sir.

22 A If they were on AT&T's network, they would look like  
23 the T-Mobile. You'd have a LAC and a CID for their -- for  
24 their location, and those records are still on the actual  
25 tower number, which is like a 325 or -- or whatever and then a

1 sector. The variation came that they actually ran those  
2 records in UTC time and the format of the sheet that they were  
3 ran on was during that transitional period.

4 But the records were still -- and the Phoenix 2  
5 switch identifier because that's where Cricket's switch was  
6 at, that's -- that is a Cricket switch, it's Phoenix 2. There  
7 was also one other switch code in there that -- that  
8 identifies -- that shows that it was on Cricket's network  
9 prior to them shutting down the network.

10 Q When we're dealing with these switches, and let's  
11 stay with that Phoenix switch, sometimes we're on the same  
12 time as Phoenix, sometimes we're not, yes?

13 A Correct, correct.

14 Q So sometimes that switch could matter, other times  
15 it doesn't?

16 A And it did prior to AT&T taking over. So the  
17 records -- and that was one close thing I looked at in this  
18 case when I did get these records was to make sure -- and it  
19 denotes on those records that those records were given to us  
20 in UTC time.

21 So prior to AT&T running the records like that,  
22 after they bought Cricket, we would have gotten those records  
23 in switch time, which is Phoenix time. So we definitely --  
24 then at that point, any time we would input Cricket records,  
25 we'd have to look at what the dates were for daylight savings

1 time and actually if it crossed over, we'd deviate whether it  
2 was a negative 7 or a negative 8 on the time zone.

3 Q We've heard some information that it seems like all  
4 of the cellular companies, or at least most of them, are  
5 headed towards a UTC?

6 A Correct, yes. Yes.

7 Q Obviously, though, over the past year is a lot of  
8 them are not in that format?

9 A Correct, yes.

10 Q So let's imagine a scenario where two months ago  
11 past today, a cell phone company made that switch to UTC.

12 A Correct.

13 Q But their cell phone records from 2014 are in  
14 Pacific time.

15 A Correct.

16 Q If I subpoena the records today, what are my records  
17 for 2014 going to look like?

18 A They should be in the time format that the phone  
19 company tells you that they'd given to you in.

20 Q Meaning on the records themselves they should say?

21 A They -- they should say somewhere.

22 Q Either there or maybe the key?

23 A Yeah, yeah. There or the key. If they don't say  
24 anything, then -- if they don't say anything on them, then we  
25 have to reach out and ask them, you know, if they were --

1 Q Let me ask you another question about that. So  
2 let's assume we've got these records from 2014, we've got the  
3 switch to UTC two months ago. I subpoena those records in  
4 2014 and obtain them.

5 A Okay.

6 Q And I subpoenaed them again yesterday.

7 A Yeah.

8 Q Do you think my records are going to look the same?

9 A Probably not.

10 Q The times are going to have been converted?

11 A They -- yes, there -- there's a possibility. Yes.  
12 And the reason I say a possibility, we get variability within  
13 the companies themselves depending on who runs the records and  
14 typically, it will say if they're in UTC or not in UTC. If it  
15 doesn't say they're in UTC, then typically, they're in switch  
16 time. But they'll tell us if -- if they've moved them over to  
17 UTC or not.

18 Q Have you experienced times where they inaccurately  
19 tell you what they are on the call detail records?

20 A Yes.

21 Q Certain companies bigger culprits than others?

22 A Yes.

23 Q Could you name the culprits?

24 A T-Mobile.

25 Q Omni antennas, is that a fair way to --



1 A Yes.

2 Q I think you testified something about Cricket using  
3 them, right?

4 A Metro PCS was a big user of them. Yeah, Cricket had  
5 some. It was more of the -- the company Lucent itself uses it  
6 to -- to denote -- as a manufacturer uses it to denote that --  
7 that type of antenna.

8 Q Is that a newer technology or a getting phased out  
9 type technology?

10 A The that would be a -- yeah, that's a older --  
11 that's old -- even though they have deployed it in newer type  
12 situations, too, but yeah, it's an older -- it's an older type  
13 technology.

14 Q When you talked about companies that used those omni  
15 towers, it changes the way you look at their sector --

16 A Correct.

17 Q -- detail, right?

18 A Correct, yes.

19 Q Because the omni tower kind of comes one?

20 A Yes, it's just a big -- yes.

21 Q Do those records also sometimes show sector zero?

22 A On a Lucent switch, no. It could be a possibility  
23 if it was an other company than Lucent. I'd have to see,  
24 again, what switch manufacturer that was because they actually  
25 make the -- the denotation. So I couldn't say for sure, but I

1 -- that -- yeah, that's a possibility depending what type of  
2 phone switch it was and I don't think any of that would relate  
3 to any of these records in this case, though.

4 Q Let me --

5 MR. LANDIS: May I approach?

6 THE COURT: Yes.

7 BY MR. LANDIS:

8 Q Showing you admitted State's 305. Do those appear  
9 to be Metro PCS records (inaudible)?

10 A Oh, yes. Yeah, sorry.

11 Q Does the switch matter to me with those records?

12 A This -- let me see. This -- yeah, these were on T-  
13 Mobile. These records were on T-Mobile's network. They were  
14 -- it was a Metro PCS phone on T-Mobile's network. So the MSC  
15 name for phone calls on this are T-Mobile MCSs.

16 Q If you answered my question, it was above my head  
17 so.

18 A Oh, it -- yes, it does matter. Yes, the switch  
19 field does matter so you know what company the records were  
20 on.

21 Q And from that document, you determine the switch by  
22 what? Are they named?

23 A There's a MSC name at the end, which for the phone  
24 calls denotes I -- IEMSS 341. So I -- I -- from our list,  
25 that's the Inland Empire T-Mobile switch that those --

1 Q And --

2 A -- calls were coming off of.

3 Q Sorry to cut you off. Take a different document,  
4 you use that code that identifies the switch?

5 A Correct, yes.

6 Q Identifies the maker of the switch such as Lucent?

7 A T-Mobile -- T-Mobile doesn't use CDMA Lucent  
8 switches. So we don't have the issue with -- with that --  
9 with what kind of antenna it is because they use the -- the  
10 LAC and the CID to denote the -- the -- the antenna and that  
11 takes it directly to an antenna on a tower so each -- each CID  
12 has its own azimuth and -- and everything on it.

13 Q If it was Cricket, for example, then -- and we were  
14 looking at that sheet, taking the code, determining the  
15 switch, it would then tell us what kind of switch it was?

16 A It's not on this -- there is another document for  
17 the -- for the Cricket records. There is a -- yeah, there's  
18 an another document that Cricket supplies that -- it's in  
19 their how to read I believe, actually, and then it will tell  
20 you if -- which switch is and what their manufacturers were  
21 and if you have to do the sector offsets and that sort of  
22 thing.

23 Q And you'd agree with me skipping that step is a  
24 problem?

25 A Yes.

1 MR. LANDIS: Court's brief indulgence. Can I  
2 approach the clerk?

3 THE COURT: You may.

4 BY MR. LANDIS:

5 Q Publishing State's 322, which is something you've  
6 already looked at today, right?

7 A Yes.

8 Q I know it's really small on there, but that's a  
9 spreadsheet, a combined harmonized spreadsheet?

10 A Correct.

11 Q That you've seen before but you didn't make it?

12 A I made -- this one's the one I made.

13 Q And you did that using Pen Link?

14 A Correct, yes.

15 Q When, to the best of your memory, did you do so?

16 A I think two weeks ago, maybe.

17 Q And showing you 323 now, State's 323, that's the  
18 same document with just some stuff changed, as you already  
19 testified to?

20 A Correct.

21 Q Some names are put in place --

22 A Yes, the names are in place of numbers, correct.

23 Q You didn't make that one; is that what you're  
24 testifying to?

25 A I did not.

1 Q Do you know who did?

2 A I believe, the District Attorney's Office made it.

3 Q Before court today, did you see it?

4 A Yes, I did.

5 Q Did you analyze its accuracy?

6 A I -- I look at it. I didn't look at every single  
7 record, no. I looked at it and looked at -- you know,  
8 compared it to mine and it looked fairly close, yeah.

9 Q Let me ask you this, I think it was when you were  
10 talk being these documents on -- these particular documents on  
11 direct examination. You talked about cellular phone times  
12 being off. In other words, call detail records being off from  
13 company to company.

14 A Yes.

15 Q So in other words, I could call you right now and  
16 we're on different providers and our cell phones might show  
17 those calls at somewhat different times?

18 A Yeah, usually within seconds, but yes. They're not  
19 exact, typically.

20 Q What causes that?

21 A So there's a few things that can cause that. The  
22 first obvious thing is that their -- their networks are synced  
23 up or their switches that are reporting the records aren't  
24 synced up to the exact second, even though they should be, but  
25 they're not.

1           So you'll get a variation there. There's another  
2 thing called set-up time between calls. So if I hit -- dial  
3 on my phone and it takes however many seconds, which is  
4 actually reported on an AT&T records, there's a seizure time  
5 field there, you'll actually -- then there's that variability  
6 between when I hit send in my records went that I just made a  
7 call and the call was actually received by the other network  
8 as an incoming call. So you're going to get variation on --  
9 on times there also.

10           Those -- those would be the two -- the two main  
11 reasons.

12           Q     And -- the seizure time you speak of, those phone  
13 calls where I dial it, it's on my ear and I'm like why isn't  
14 it ringing?

15           A     Yeah, correct, correct.

16           Q     The switches, they're the ones ultimately  
17 responsible for recording the time of the calls?

18           A     In net -- I can't testify to that exactly. As a  
19 general rule, yes. I mean, there's very complicated computer  
20 networks that run the -- the cell phone networks and have all  
21 kinds of interfacing things, but I guess, as a general, you  
22 could say yes the -- the phone switch.

23           Q     And this might be --

24           A     Has a -- has a part in that, yeah.

25           Q     This might be an impossible question, but just

1 ballpark, how many switches would a company like AT&T have in  
2 the continental United States?

3 A I've seen the spreadsheets, but --

4 Q You don't recall, I -- don't worry about it.

5 A No, well, you know, like we don't even have one in  
6 Las Vegas. They're in like California. I mean, I'd say --  
7 oh, well, you know what, I -- I'd say, just a ballpark, I  
8 could be off, but it's in the -- it's in the hundreds  
9 probably. Maybe 200, you know. It's -- it's a number in that  
10 variable range, something like that.

11 Q And just because I'm in Las Vegas when I make a  
12 phone call or receive a phone call, whatever, doesn't mean I'm  
13 necessarily going to have my information go to the closest  
14 geographical switch?

15 A No, and that's -- that's what happens with T-Mobile  
16 calls.

17 Q And why is that?

18 A They load balance their network so to -- to keep the  
19 traffic moving. So those -- those calls that -- that come in,  
20 they'll -- they'll hit the switch first because those cell  
21 towers are -- are -- well, actually, no, that's not the case.  
22 So what happens is the -- when the -- when the phone talks to  
23 the cell tower, the cell tower's connected to some type of a  
24 computer, whether it be a -- directly to a phone switch which  
25 is how the original architecture of the cell network was, but

1 in any -- in anymore because of the complication of and the  
2 high use of data within the networks, they'll branch those  
3 off.

4 So T-Mobile's -- T-Mobile's the one that takes that  
5 traffic and then kind of loads it across, switches across the  
6 entire country and that's why we see different phone switches  
7 processing phone calls for T-Mobile calls.

8 Q So I could have -- I could make three phone calls in  
9 ten minutes from standing in the same place and could see  
10 different switches?

11 A Correct.

12 Q You talked about cell towers themselves  
13 malfunctioning or breaking down or getting repaired. Do  
14 switches do the same thing?

15 A I would say in T-Mobile's case that -- it could be a  
16 possibility because the way that their network is distributed.  
17 In the other companies, I've never seen it happen. It's --  
18 their -- it's a major data -- data center building. If it --  
19 if the -- if the switch went down, I guess, they would need to  
20 load the -- load the -- I don't know. I guess it's a  
21 possibility if they had a back-up, but I've never seen it  
22 happen.

23 Q If a switch was down, maybe a power outage, who  
24 knows, but what that mean I make no calls or it probably just  
25 means I get routed elsewhere?



1           A     I would assume the phone companies have -- I don't  
2 know. They -- I would assume they have a back-up if a -- if a  
3 switch went down that they could flip the traffic to somewhere  
4 else.

5           Q     Showing you 322 again, State's 322, I'll zoom in if  
6 it's too hard to see, but one of the columns you talked about  
7 on direct, the title of it is record source.

8           A     Yes.

9           Q     There's a few different ones listed even on this  
10 first page such as toll unknown switch, yes?

11          A     Yes.

12          Q     What's that mean?

13          A     So that -- that field is actually generated by me  
14 when we -- when we put the records in there. And it's a field  
15 that I can select to tell me where the records came from. So  
16 sometimes, which I actually did with these records, is I'll  
17 change variability between records. You'll see some that say  
18 unknown and some that say switch. I did this in this case for  
19 like the blue records, so I knew the ones that were coming off  
20 the Inland Empire switch. So I knew whether I had to adjust  
21 times once they were imported.

22                It's a way we can flag when we import to -- to just  
23 kind of know.

24          Q     So when you say you added it, that means you're  
25 typing toll for the first line, you're typing toll for the

1 second line?

2 A No, there's a -- when we do the import, it asks us  
3 what the record source is. A lot of times on a standard  
4 record we'll put CDR toll for everything. If we're going to  
5 do any time manipulation on -- on the records and they're in  
6 the same case, like this one is, where we're actually running  
7 a report with multiple numbers in it, we'll switch what it  
8 says so that we can tell the records that we just imported  
9 when we go back and run the -- run the -- there's a -- there's  
10 drop down boxes. We can pick where the records came from for  
11 the --

12 Q And a switch means it's a company that uses  
13 switches?

14 A Yeah, correct, correct.

15 Q What's toll mean?

16 A Toll -- toll would mean toll records that we got  
17 from the phone company.

18 Q What's that mean?

19 A That would be ones that were sent in. These are all  
20 actually toll records that are in this -- that are in this  
21 report.

22 Q So toll means no switch kind of?

23 A Toll means that it came from -- well, yeah, toll --  
24 toll records would mean that they came from the phone company.

25 Q So all the switch records are also toll records?

1 A In this report?

2 Q Yeah.

3 A Yeah.

4 Q Like the toll records --

5 A All of these records came from CDR tolls.

6 Q But the records listed as tolls, no switches?

7 A No, they're all the same. I -- I selected switch on  
8 this one so I knew the difference between -- so I knew the  
9 difference between them when I was running this report. When  
10 I put them all under that case number.

11 Q Let me ask it this way, and I'll try to zoom it in  
12 close enough for the jury. Probably not. The very first  
13 entry on this sheet, and please let me know if you can't see  
14 it well enough, the target number is 762-1584, yes?

15 A Yes.

16 Q It shows record source toll?

17 A Correct.

18 Q If I'm looking at that and I want to know if you  
19 adjusted it for a switch or a time zone or whatever, how would  
20 I know?

21 A On this report you don't.

22 Q What report would I know that on?

23 A You would take and look at that record and compare  
24 it to the hard copy on the -- from the phone company. That's  
25 how you could tell if I had adjusted it that way. And that

1 one was a -- yeah, I did because that's a -- that would be a  
2 Cricket record.

3 Q And you would know --

4 A 4923, so that one should have been adjusted negative  
5 7.

6 Q And you would know you adjusted a Cricket record  
7 because?

8 A Just because I had -- because I had done it for this  
9 case.

10 Q And it's a Cricket record from at least that time  
11 period --

12 A Yeah.

13 Q -- that's getting adjusted?

14 A Yeah, it should be.

15 Q Just let me go to the first unknown, which is the  
16 third entry on the sheet. The target number is 542-1558?

17 A Correct.

18 Q And the record source is unknown?

19 A Correct.

20 Q What should I determine about the time change on  
21 that one?

22 A That one was an -- no, it's a -- that's a T-Mobile.  
23 That one was a T mobile, and it can't be inferred from this --  
24 from this report what that switch was.

25 Q And then just going to the first switch and then

1 I'll be done with this, which I think is the very next entry.

2 A I mean, I can tell you any -- any of these that have  
3 LACs and CIDs that have that IEP system identity on them, I  
4 believe came off the Carolina switch and I did a three hour --  
5 three hour adjustment on those from the original records.

6 Q That might be the answer to this question, then,  
7 too. That -- that first entry that does list switch, which is  
8 the fourth entry from the top, 542-1558, for the record source  
9 it says switch.

10 A Correct.

11 Q Time change on that one?

12 A That one was -- IM LAC and CID and yeah, it should  
13 have been.

14 Q A 7 or a --

15 A That one's --

16 Q I wasn't trying to take it out of your eyesight.

17 A No, that's fine. Yeah, that one should have been a  
18 7. I believe for that number I imported two different -- two  
19 different record sets for that one. One that had SMSs in it  
20 and one that did not. That's how I denoted them different in  
21 that record -- in that record field. But all the calls on  
22 this report should have been adjusted if they needed to be.

23 MR. LANDIS: May I approach the clerk?

24 THE COURT: Yes.

25 BY MR. LANDIS:

1 Q If I can show you again State's 324, a few pages in.  
2 Generally, it's -- you recall looking at that, yes?

3 A Yeah, um-h'm. Yes.

4 Q During your direct examination, the State zeroed in  
5 on a measurement to help you determine lengths, right, on a  
6 few of these?

7 A Yes.

8 Q I can't even tell you this was exactly one. And for  
9 the record this is a Mendoza tower 7:22 a.m., so it's  
10 somewhere around there, right?

11 A Yes.

12 Q If you know, what's that symbol under the  
13 measurement guide?

14 A That's the date that the graphical satellite map  
15 picture was taken in Google Earth, I believe.

16 Q So if it said 2002, 2002?

17 A That would mean that the aerial photo -- I -- I  
18 believe, that that's what that means. Yeah, I'm not 100  
19 percent sure, but --

20 Q And that would -- understanding you didn't make  
21 those, I'm not necessarily --

22 A Correct.

23 Q -- expecting you to know. I appreciate that. Last  
24 thing I just want to talk to you about, if you're trying to  
25 estimate somebody's location based on a cell tower, it's

1 relevant to know what other cell towers are around?

2 A Correct.

3 Q And why is that so?

4 A So that you can judge how far you think the phone  
5 would have gone from one cell tower, you know, to another cell  
6 tower without handing off to that other cell tower.

7 Q And for instance, where we're standing here in the  
8 Regional Justice Center, let's imagine cell provider has a  
9 cell tower that faces this direction on Fremont Street. It's  
10 possible that might be where I connect?

11 A Yes.

12 Q But it's also possible there's four closer towers?

13 A Possible, yes.

14 Q And whether or not those closer towers exist could  
15 impact your best estimate as to my location?

16 A Correct.

17 Q In this case, did you do any analysis of that type?

18 A I looked -- I -- I actually did compare -- it's not  
19 in the record -- on these maps to some of the maps that I was  
20 doing when I was comparing to my -- to my data and I actually  
21 did have all of the towers on there and they were -- they were  
22 roughly, you know, pretty -- pretty close when it comes to the  
23 -- nothing that was way beyond that I wouldn't say that it  
24 could, you know, attach to that tower or not attach to that  
25 tower.

1           Q     And to return this conversation to the footprint  
2 talk, would your opinion about the footprint of a tower change  
3 depending on other towers nearby or no?

4           A     Yes, yes.

5           Q     How would it change?

6           A     So it's typically you get that crossover area  
7 between and it's -- you know, each company's a little bit  
8 different, but you'll get at that cross over between. So the  
9 more -- the more cell towers you have in an area, the less  
10 that those cell towers are tuned out to -- to go or as far as  
11 distances go. So they don't interfere with the other cell  
12 towers.

13          Q     So the footprint's smaller?

14          A     Yeah, correct.

15          Q     And the footprints, the green kind of circles we saw  
16 on all these pictures, are estimates?

17          A     Yes.

18          Q     And they're estimates based on what?

19          A     Based on -- based on location in the areas of the --  
20 the towers, based on other -- other cell towers in the area.

21          Q     Let me just get specific on one of those really  
22 quick. If I could just zoom out a little bit. Showing you  
23 again State's 324, the Mendoza tower of 3:31 a.m., do you know  
24 the radius of the green circle we see on this?

25          A     No.



1 Q Do you have an estimate?

2 A I would say based on the distance -- well, yeah, on  
3 the distance thing down below, it's probably about a half  
4 mile.

5 Q And the tower company we're dealing with with this  
6 particular circle is what?

7 A T-Mobile.

8 Q I see a couple other T-Mobile towers on this map,  
9 yes?

10 A Yes.

11 Q Can you tell me if all of the T-Mobile maps that  
12 exist in this geographical area are displayed on this map?

13 A I do not know.

14 Q Without that information, is it difficult for us to  
15 say what the footprint is?

16 A Without me knowing whether they're all on there or  
17 not, yes.

18 Q And for instance, and I'll use my pen, let's say I'm  
19 there close to the end of what this green circle is, your  
20 prediction as to whether or not standing there I would use  
21 that tower -- and for the record it's tower 6251, T-Mobile --  
22 would depend a lot on what other towers were closer to me?

23 A Yes.

24 Q And it also depends on, I think you testified about  
25 this, traffic of the towers?

1           A     On the initial beginning call. It shouldn't really  
2 depend on that.

3           Q     If I'm in an urban area where there's a lot of  
4 towers that potentially I could connect to, let's say I'm just  
5 in my bed all day and I make ten phone calls, could I hit off  
6 different towers --

7           A     Yes.

8           Q     -- or would I always hit off the same tower?

9           A     No, you could hit different --

10          Q     And what --

11          A     -- different towers.

12          Q     Sorry to cut you off. What would cause that?

13          A     So even looking at this map right here, if you can  
14 see there's -- we have a tower to the west of the tower that  
15 has the circle around it. That -- that other tower there, if  
16 you were somewhere between kind of in the middle part of those  
17 two towers, you could hit them both. You could still -- you  
18 could even hit both of those towers, any of these green towers  
19 if you were in the footprint between those towers, for -- for  
20 variability reasons.

21                 So if you were even at -- you know, if you were at  
22 -- there's a tower lower here, too, also --

23          Q     Right.

24          A     -- the one that's lower. So if you were in the  
25 footprint of the northern tower, you could still hit the -- or

1 I'm sorry, of the -- yeah, of the northern tower facing south,  
2 you could still hit the footprint of the tower that's south  
3 facing north. So we try not to make calls to exact -- you  
4 know, we could say it could hit any of those towers right  
5 there within that footprint because -- because we've seen  
6 that.

7 But I wouldn't say it wouldn't hit one that's, you  
8 know, two miles down the road --

9 Q Right.

10 A -- with a bunch of other towers in between there.

11 Q It sounds to me like the sectors and towers you talk  
12 about, can we anticipate a 360 degree coverage on every tower?

13 A Not on every single tower, but on most towers, yes.  
14 I -- sometimes if there's -- if they're on buildings, no. If  
15 in -- in large urban areas, no, or in there's mountains on the  
16 sides of them, they don't put them. But 80 percent of them  
17 have three sides on --

18 Q How would I determine that? How would I find that  
19 out looking at a detail record?

20 A You could look at -- you would you look at the map  
21 from the -- from the company and you would look at that LAC  
22 and those CIDs -- the cell ID, the first part of the cell ID  
23 and then you'll see the CIDs that are in sequential order at  
24 that same GPS location. And then you can do down and you'll  
25 see azimuths at, you know, zero degrees, 120 degrees, 240.

1 That -- that sort of thing and then you can see that you have  
2 that -- that type of coverage.

3 Q And if I see a record that shows a sector 1 and  
4 let's just assume we're dealing with a three sector 120 degree  
5 tower, can I assume sector 1 points due north similar to what  
6 I'm showing you right now on the overhead?

7 A No, no.

8 Q And to determine that I do what?

9 A You use the cell phone -- the cell site list from  
10 the phone company and then it will tell you which direction  
11 that it was facing.

12 Q Not safe to probably make any assumptions, then,  
13 to --

14 A Not at all on these, no.

15 Q Referring to what's on the screen in front of you  
16 right now, which is Mendoza tower 7:22 a.m., it appears that  
17 this would be a call detail record where there was a sector  
18 provided?

19 A Yes.

20 Q And a sector that points?

21 A Zero degrees north.

22 Q Due north, right?

23 A Due north, yes.

24 Q Based on your experience, if I was standing where  
25 the word Mendoza is on the map, am I in play to be on that

1 sector of that cell phone tower?

2 A It's -- it's -- at that really close distance, it's  
3 a possibility, but most likely no, you'd be on sector 3 on  
4 that tower.

5 Q So if you're close enough to be nearly under or so  
6 of the tower --

7 A That is a possibility, but at that -- even at that  
8 distance where it says Mendoza, you would -- if -- if -- if  
9 you were standing there at that intersection, you would most  
10 likely be on sector -- yeah, sector -- sector 3. It's kind of  
11 close to sector 2, too, but yeah, sector 3.

12 Q If I was let's just say 100 feet behind that tower,  
13 is that far enough for you to comfortably say I wouldn't be on  
14 sector 1?

15 A Yeah, most likely.

16 Q And I'm not faulting you for this, but because it's  
17 technology, because it's computers, there's a lot of most  
18 likely in this field?

19 A Yeah, it's radio waves, correct, yes.

20 Q Because it's predicting exactly what computers are  
21 going to do every time is --

22 A Yeah.

23 Q -- a dangerous business, right?

24 A Yeah, radio waves, yes. Yeah, that --

25 Q And I'm almost done.

1 MR. LANDIS: Court's brief indulgence. I have no  
2 further questions. Thank you, sir.

3 MS. McNEILL: Thank you, Your Honor.

4 MR. LANDIS: Can I approach the witness and the  
5 clerk to return the --

6 THE COURT: Yes, of course.

7 MR. LANDIS: Thank you, sir.

8 THE WITNESS: There you go.

9 CROSS-EXAMINATION

10 BY MS. McNEILL:

11 Q My questions are going to be a lot less technical  
12 than Mr. Landis'.

13 A Okay.

14 Q So, bear with me. You indicated when you were  
15 looking at State's 322, when he was asking you about the  
16 record source and you said the toll records in this case just  
17 meant that the records came from the telephone company, right?

18 A All -- all of these records came from the -- from  
19 the phone --

20 Q Okay.

21 A -- company, from CDRs.

22 Q Sorry, I didn't mean to talk over you.

23 A Oh, that's fine.

24 Q Versus where else would they come from?

25 A Oh, live intercepts.

1           Q     Okay. So in this case, these were records that you  
2 put in after getting them from the phone company?

3           A     Correct.

4           Q     Okay.

5           A     Correct.

6           Q     So the live intercept I wanted to talk to you about  
7 that because I think Mr. DiGiacomo asked you some questions  
8 about the radius and the physical locations from the towers  
9 when you're doing that live intercept. When you're doing the  
10 live intercept, what that means is you've gotten permission to  
11 actually get people's tower information as they're making the  
12 calls --

13          A     Correct.

14          Q     -- in real time?

15          A     Correct, yes.

16          Q     Okay. And when you're doing that, are you  
17 transmitting that information to officers who are on the  
18 streets?

19          A     For the tower information, no. Typically, we're --  
20 if fact, all the time, we're -- we're watching the computers,  
21 the people in -- in our office. If we're looking to do that  
22 live, we're the ones analyzing that data live as it's coming  
23 in and then kind of feeding them that information.

24          Q     Feeding it to an officer on the treat street?

25          A     Correct, yes.

1 Q Okay. And I guess, I asked my question poorly  
2 because that's what I meant so --

3 A Oh, okay. Yeah, yeah, no, we -- I mean, we don't  
4 give them to -- we don't give it to them. When I said feeding  
5 it to them, we -- we just tell them on the phone --

6 Q Right.

7 A -- where -- where we think it is and -- and we do it  
8 that way. We don't actually give them like a photo of a cell  
9 tower that says hey, it's here, it's here, it's here, it's  
10 here type thing. We analyze it live for them.

11 Q Right. So you're actually giving them a physical  
12 location where that tower is and they're --

13 A Correct.

14 Q -- able to physically get themselves in their police  
15 car to that --

16 A Correct.

17 Q -- location? Okay.

18 A Correct.

19 Q So when Mr. DiGiacomo said when you find -- when the  
20 officers find these people, they're generally in a radius  
21 that's less than that two, two and a half mile radius from the  
22 tower, correct?

23 A Correct, yeah.

24 Q And would you agree with me that might be you know  
25 that because you're able to actually physically track those



1 people?

2 A That -- that leads into a lot of the knowledge on  
3 how these work because we've tracked a lot of -- yeah, found a  
4 lot of people.

5 Q Okay.

6 A Specifically, missing people is --

7 Q When you are not doing it live, when you're doing it  
8 after getting the phone records, you really have no way of  
9 knowing where the person is within that radius --

10 A Correct.

11 Q -- because you're getting it after the fact?

12 A Correct.

13 Q Okay. So for example, on State's 324, you have  
14 these pinpoints for these tower locations. All you know about  
15 this person's phone is that it was hitting off those towers?

16 A Correct.

17 Q So you have no way of knowing where in relation to  
18 those towers this person was at any of these times?

19 A No, just in a general area of them, that's it.

20 Q And, in fact, this map doesn't actually indicate  
21 what time any of these towers were hit, correct?

22 A Correct.

23 Q It's just a general time frame from over 12 hours,  
24 right?

25 A Correct.

1           Q     And so we don't know if this person was traveling  
2 north, south, east, west, just at some point throughout this  
3 over 12-hour period, these towers were hit?

4           A     Correct.

5           Q     Okay. The precise location information  
6 Mr. DiGiacomo asked you about, you said that was similar to a  
7 ping and that will give you an actual location, correct?

8           A     Correct.

9           Q     Okay. So if you pinged my cell phone, it would tell  
10 you, I guess, the GPS coordinate that would indicate I was in  
11 the courthouse?

12          A     It would -- yeah, it would give us a coordinate and  
13 then it gives us a -- a range of how big that is, depending  
14 how good the signal was.

15          Q     And that is obviously, much more precise in locating  
16 someone than cell tower information?

17          A     Most of the time.

18          Q     Okay. What do you mean by that?

19          A     Well, sometimes -- sometimes the ping radius is  
20 actually larger than the cell tower range that the phone would  
21 be in so you could get a hit that has 25,000 meter range in  
22 the entire Las Vegas valley --

23          Q     Okay.

24          A     -- but at that point, you would look at the -- the  
25 cell site and know that, okay, but he's on this cell site so

1 that's -- we can get a better location off a cell site than we  
2 can off --

3 Q Okay.

4 A -- off a ping.

5 Q And so if you get a ping data that has that large  
6 radius, you would then want to go to other information --

7 A Correct.

8 Q -- to narrow that down?

9 A Correct.

10 Q And you weren't given -- I think you've already  
11 testified, you weren't -- you didn't do any precision location  
12 information in this case?

13 A Correct.

14 Q Right? Okay. When Metro -- you indicated that can  
15 utilize other task force units to do that for you?

16 A Correct.

17 Q When do you decide to use someone else to do it  
18 instead of doing it yourself?

19 A That's usually up to -- whatever the investigative  
20 unit that's doing it does it, they'll use those other units.  
21 So a lot of times they'll use the CAT's team because they do  
22 apprehensions and our unit doesn't do apprehensions.

23 Q Okay.

24 A So that's -- that's usually the main decider is  
25 whether they're actually going to be bringing someone into

1 custody or not --

2 Q Okay.

3 A -- if we're going to do it or not.

4 Q So your understanding is that Metro will have say, I  
5 think, the CAT team, which is criminal apprehension team --

6 A Correct.

7 Q -- is that through the FBI?

8 A It is a task force, yeah, that has the FBI agents  
9 connected to it.

10 Q Okay. They'll utilize that when they say hey, when  
11 you get there location, go arrest the person?

12 A Correct.

13 Q Okay. Are you involved in that process at all?

14 A Sometimes we are and be sometimes we aren't.

15 Q Okay. I want to talk a little bit about Cricket  
16 phones. So you said in 2014, they were CDMA technology?

17 A During the -- yes, during -- the records we got  
18 during that time period, they were on CDMA.

19 Q Okay. And forgive me for my ignorance, but what is  
20 that?

21 A So there's -- there were two main deviations of cell  
22 technology. So you had GSM phones and be CDMA phones. It's  
23 just the -- the way that the radios and the cell phones  
24 communicated with the phones.

25 Q Okay. And does that affect the -- your ability to

1 look at the records in any way?

2 A The records are different.

3 Q Okay.

4 A But they're -- they give you fairly the same amount  
5 of information just it's presented in a different way.

6 Q Okay. When did Cricket switch from that technology?

7 A I believe, it was pretty close to after that.

8 Q Okay. So pretty close to after --

9 A If I --

10 Q -- that you mean --

11 A -- remember right.

12 Q -- the date of these records?

13 A Correct.

14 Q Okay. So maybe after September 21st of 2014?

15 A I -- yeah, I -- I -- I know based on these records  
16 that we -- that we have there, that they were run by AT&T so  
17 I'm assuming it was -- it's been within the last two years  
18 that that switch happened so --

19 Q Okay.

20 A -- it was closer to 2014 than it was to today, I  
21 guess, would be the best way to say that.

22 Q Okay. Obviously, cell phones have changed quite a  
23 bit in the last few years --

24 A Yes.

25 Q -- right? We went from having flip phones to smart

1 phones?

2 A Yes.

3 Q Is there any difference in the accuracy of cell  
4 tower information between a flip phone and a smart phone?

5 A Not really, no.

6 Q Okay. When you -- so you said that the Cricket  
7 records were run. Do you know when those Cricket records were  
8 run?

9 A No, I don't.

10 Q Okay. And if I could -- let me find it.

11 MS. McNEILL: May I approach your clerk?

12 THE COURT: You may.

13 MS. McNEILL: Thank you. May I approach the  
14 (inaudible).

15 BY MS. McNEILL:

16 Q Showing you State's Exhibit 310, this is the Cricket  
17 tower key, correct?

18 A Correct.

19 Q And there's nowhere on there it reflects the date it  
20 was run, right?

21 A Correct.

22 Q And you didn't run this?

23 A No, I did not.

24 Q Okay.

25 A Not this one.

1 Q So we don't know if this is accurate for today,  
2 right?

3 A Correct.

4 Q Okay. And we don't know if it was accurate for  
5 September 2014?

6 A That -- that -- no, no, not that -- yeah, that  
7 specific one, no.

8 Q Okay. And this switch over from the technology  
9 would mean that Cricket may have had some changes in their  
10 tower location?

11 A They actually, their network doesn't actually exist  
12 anymore.

13 Q Okay. So --

14 A You can still by a Cricket phone, but it -- that --  
15 that network that's on that sheet doesn't exist.

16 Q Doesn't exist?

17 A No.

18 Q So the towers and again, forgive me for my  
19 ignorance, the towers that would have -- Cricket would have  
20 used in 2014, say July, for their CDMA just don't exist  
21 anymore?

22 A The records, I believe, are still held by AT&T.

23 Q Okay. But the physical towers may not be exist  
24 anymore or may have been converted?

25 A They're probably -- they would have most likely been

1 converted to AT&T --

2 Q Okay.

3 A -- towers.

4 Q And sometimes cell phone companies decommission  
5 towers, correct?

6 A Yeah.

7 Q And that means they just shut it down?

8 A Yes.

9 Q Okay. So sometimes when you have these cell tower  
10 location information is the best way to know if that tower  
11 information is still accurate so to actually go to that  
12 location?

13 A Yes.

14 Q Okay. Did do you that in this case?

15 A No.

16 Q Did you go visit the tower? Okay.

17 A No.

18 Q Just a few more questions. You -- are you familiar  
19 with what a Pinger phone is?

20 A Yes.

21 Q And that's a phone that just uses wireless Internet,  
22 right?

23 A Yeah, it uses the data on the phone to make a phone  
24 call or an SMS text message using the data side of the phone,  
25 not the phone company's phone side of the phone.



1           Q     Okay. So you wouldn't be able to get cell tower  
2 location for that type of phone because it doesn't use a cell  
3 tower?

4           A     You --

5           Q     Right?

6           A     You could.

7           Q     You could, okay. How would that work?

8           A     You -- would you have to get information from Pinger  
9 of what phone that their app was associated with --

10          Q     Okay.

11          A     -- and then could you go back and do a -- and then  
12 find out what -- so you would -- you would give a subpoena to  
13 Pinger, and they would tell you what phone was using the app  
14 and then you could go back and run records on the phone that  
15 was using the app and then run its records that way.

16          Q     Okay. And again, this is just, know, I'm not an  
17 engineer of any sorts. On a Pinger phone, if it was connected  
18 to a wireless network, you may also be able to get IP address  
19 information?

20          A     You can, correct.

21          Q     Okay. And then you could subpoena that and figure  
22 out where that IP address led to?

23          A     Correct, yes.

24          Q     Okay. And you weren't asked to do anything like  
25 that on any Pinger phones in this case?

1 A I don't think so, no.

2 Q Okay. And, in fact, you weren't shown any records  
3 that -- today that would reflect that you did that?

4 A I -- no, I don't think so. I don't think -- none  
5 that I were -- I guess, I had a lot of records here, but no, I  
6 -- none that connected with what I analyzed, no.

7 Q Okay. The --

8 MS. McNEILL: If I may approach the clerk?

9 THE COURT: Yes.

10 BY MS. McNEILL:

11 Q Showing you again, State's 322, this synthesized  
12 sort of spreadsheet that you made. The phone numbers that are  
13 on this sheet are the only phone numbers that you were given  
14 to put into Pen Link to create this document, correct?

15 A Yeah, I was asked to do it based on those four  
16 numbers, correct, yes.

17 Q Okay. Thank you.

18 MS. McNEILL: Court's indulgence. I think that's it  
19 for me. Thank you.

20 THE COURT: Mr. Wolfbrandt.

21 CROSS-EXAMINATION

22 BY MR. WOLFBRANDT:

23 Q Good afternoon.

24 A Hey.

25 Q The best part of going last is the number of

1 questions get smaller and smaller.

2 A Yeah.

3 Q All right, all of that information is just  
4 reflective of phone to phone, not -- in no way can you tell  
5 who was actually operating --

6 A Correct.

7 Q -- any individual phone?

8 A Correct.

9 Q And I believe, you said it's the phones that seek  
10 out the towers?

11 A Correct.

12 Q The tower seeks the phone?

13 A Yeah, the towers are passive. The phones seek them.

14 Q And Mr. Landis asked you a little bit of a question,  
15 I want to kind of follow up just a little bit more. If I'm  
16 standing right here where I am now, initiate a phone call,  
17 it's going to --

18 A Okay.

19 Q -- catch a tower?

20 A Yeah.

21 Q And if I don't move from this spot, will that signal  
22 have a possibility of moving from that first tower to another  
23 tower?

24 A Yes.

25 Q Within that same phone call?

1 A Correct.

2 Q And then perhaps even to a third one?

3 A Correct.

4 Q Does that complicate the -- or compromise, rather,  
5 the footprint pattern for each of those different towers?

6 A It actually makes it smaller sometimes for us. If  
7 -- if it hits multiples, then we can do like a triangulation  
8 almost on the phone.

9 Q But you don't recall any of those occurring with any  
10 of the phone records that you analyzed in this case?

11 A I think there was one. I think there was -- if I  
12 remember right, there was one or two in there that actually  
13 had a -- had a multi-tower hit that -- that the phone was  
14 right in between on the map.

15 Q Would that be in one of those maps where there were  
16 two different --

17 A Where there were two coming right, and there was  
18 crossed --

19 Q Okay.

20 A -- yeah, right -- right in there. That's -- yes.

21 Q All right. I'm most -- probably the least most  
22 technical savvy here so help me out a little bit more  
23 understanding when you get the records from the phone company  
24 that you then are loading into or would you say importing  
25 into --

1           A     Pen Link, yes.

2           Q     -- Pen Link?

3           A     Yes.

4           Q     Okay. When you get that is that in a electronic  
5 format?

6           A     Yes.

7           Q     It's on a disk or do you --

8           A     It's -- it's typically e-mailed in a secure e-mail  
9 from the phone company.

10          Q     Okay. And that's -- it's in a format that you could  
11 open up and manipulate the data?

12          A     Correct. It usually -- well, it's different for  
13 every company so it -- yeah, sometimes it's in an easy to look  
14 at and then an importable format. Each company has their own  
15 way of sending it to us.

16          Q     Well, is it sometimes when it comes from the phone  
17 company in a -- what you say an importable format?

18          A     I -- I guess as an example would be when AT&T gives  
19 it to us, they'll give us a nice PDF spreadsheet that you can  
20 look at and see the things as we looked at in court to  
21 demonstrate what the AT&T records come in. And then they'll  
22 also supply us with a comma delimited just huge text file that  
23 has -- it's the exact same data so that when we import it into  
24 our software, it goes in a little bit cleaner. It can read  
25 that data easier than the PDF sheet.

1           Q     Okay. But, I guess, what I'm getting at is it's --  
2 are they -- no matter which form it comes from whichever  
3 provider, do you still have to adjust say, for instance, the  
4 time or the switch identifier?

5           A     In most cases now, yes, because at least we have to  
6 -- in the least we have to do a UTC negative 7 or negative 8  
7 to bring it back to Pacific time zone.

8           Q     And then once you've made that change on yours, then  
9 you electronically submit that to was it Pen Link?

10          A     Correct. Well, all -- actually, we actually import  
11 it into Pen Link with the times and then we do the time change  
12 in Pen Link.

13          Q     I see, okay.

14          A     And then Pen Link will actually stamp within the  
15 records inside of the database. There actually is a -- there  
16 actually is a stamp that shows that there was a time  
17 adjustment on it -- on -- that it plugs into each record.

18          Q     All right, now, we talked about all these different  
19 cell towers, all right, and you've got maps, we've got lists  
20 of them or whatnot. Are individual towers -- and by that I'm  
21 talking about the contraption we --

22          A     Got ya.

23          Q     -- see that's supposed to look like a palm tree?

24          A     Yes.

25          Q     Are each of those towers unique to a carrier?

1           A     No, not necessarily.

2           Q     Okay. So you can have one physical tower that  
3 has --

4           A     Multiple companies on it, yes.

5           Q     So they have they're, what, receiving whatever it  
6 would be that -- the receiving end for the radio transmission  
7 comes from a particular phone? Whatever, they have their own  
8 software --

9           A     Yeah, they --

10          Q     -- somewhere within the towers?

11          A     -- they put their own radios at the bottom and their  
12 own antennas out there. It's a -- it's a real estate issue  
13 for money. So, if they can get one spot in a certain area or  
14 get permission from the city or county to put a cell tower in  
15 a certain area. Some areas are harder to get permission to  
16 put them in so they'll all share the cost of running that  
17 tower. And then they'll all share -- and you look at them,  
18 you'll see the different tiers of things on there.

19                 And some of those are multiple technologies and then  
20 some of them are different phone companies along with those  
21 multiple technologies on there. They all use the different  
22 frequency patterns that they -- that they own through the FCC  
23 so they can put their antennas close to each other.

24          Q     Okay. And so that they try not to interfere with  
25 each other's signals?

1 A Yes.

2 Q All right. But there are occasions where they do,  
3 in fact, interfere?

4 A Well, I -- I couldn't speak to that. I -- I -- they  
5 spend billions for those frequencies. I don't know if they  
6 do. I -- I guess, I -- I -- yeah, I can't speak to that one  
7 at all.

8 Q Okay. Would you agree it's probably not fool proof?

9 A As far as interference goes?

10 Q Right.

11 A I don't know. Normally, the companies run fairly  
12 sophisticated software that looks at frequencies and things  
13 like that. So if there was a frequency issue between them and  
14 another company with a co-located tower, they'd probably take  
15 care of that pretty quick.

16 Q Well, I'm sure they'd find it, but it has to occur  
17 for them to find it?

18 A Sure, yes.

19 Q Okay. All right, so when you talk about a  
20 decommissioned tower, is that just where a company just -- it  
21 takes their equipment off of a particular tower?

22 A Yes.

23 Q Okay. And the questions about the Pinger phone were  
24 already asked, so thank you.

25 A Yeah.



1 Q That's all I have.

2 THE COURT: Redirect?

3 MR. DiGIACOMO: Yes.

4 (Mr. DiGiacomo/Clerk conferring)

5 REDIRECT EXAMINATION

6 BY MR. DiGIACOMO:

7 Q Officer Gandy, let me start with sort of Mr. Landis'  
8 cross-examination and ask you some questions relative to a  
9 number of things he asked you. There was a lot of questions  
10 about variables related to what tower's on, what tower's off,  
11 you know, how strong the phone is, how big the footprint's  
12 set, all those various things. Do you remember all those  
13 questions?

14 A Yes.

15 Q My question is this; at the end of the day, if you  
16 have a tower record showing that a phone connected to a  
17 particular sector on that tower, does that mean that that  
18 tower had to be on and that phone had to be within the  
19 footprint of that tower to connect to it?

20 A Yes.

21 Q So all of these variables out there at the end of  
22 the day, for example, what I have up here, the Mendoza tower  
23 that said zero degrees at 7:22 a.m., that phone had to be  
24 within the footprint of that tower to connect to it at 7:22  
25 a.m.?

1           A     Correct.

2           Q     There was a number of questions being asked of you  
3 about the Pen Link document that you created; do you remember  
4 that?

5           A     Yes.

6           Q     And there was a whole lot of questions about a  
7 couple of columns there about stuff you put in there to kind  
8 of figure out which record was which records so that you could  
9 normalize the information, correct?

10          A     Correct, yes.

11          Q     At the end of the day, is that a compilation of  
12 records or is that an independent piece of evidence that you  
13 can go look at and use for something?

14          A     Those columns?

15          Q     No, all of the -- the entire document, 322.

16          A     I -- 322 was just to help show the data and show  
17 its, you know, relevance to the phone calls between -- between  
18 those -- between those phones. I guess, the hard data would  
19 be on the CDRs themselves.

20          Q     So if there's some dispute or if there's some -- and  
21 I got to put this down because I'm looking right at it.  
22 (inaudible) drop this for a second. If there is some  
23 discrepancy between the Pen Link and/or the phone records, the  
24 phone record is a piece of evidence, the Pen Link is something  
25 to assist them in looking at the evidence to --

1 A Correct.

2 Q -- figure out what it means?

3 A Correct.

4 Q Okay. So let's talk about some of the questions  
5 Mr. Landis asked about sort of -- or maybe it was Ms. McNeill.  
6 In -- when the case is being investigated, there's court  
7 orders sent and you receive the information or Metro does at  
8 some point receives the information --

9 A Yes.

10 Q -- correct? And that information is provided  
11 electronically, but then also printed as a hard copy to  
12 maintain what information you receive, correct?

13 A Correct, yes.

14 Q And the information you get is as of 2014, correct?

15 A Correct.

16 Q Okay. If you get something in 2016, that is  
17 downloading information from 2014, it should still be the 2014  
18 information that T-Mobile has provided us?

19 A Correct.

20 MR. LANDIS: Objection. Leading.

21 THE COURT: Overruled.

22 BY MR. DIGIACOMO:

23 Q Now, Mr. Landis asked a lot of questions about a  
24 particular LAC, and I believe it's the LAC that's associated  
25 with the Mendoza home. So if you give me just a moment, I

1 think I can jump back there.

2 The LAC, and if I read this correctly, is the 24593  
3 LAC; is that correct?

4 A Correct.

5 Q Now, in this particular case, item 275 was provided.  
6 Looking at 275. Do you recognize that as a list of cell  
7 towers here in Las Vegas for T-Mobile?

8 A Yes.

9 Q Now, 275, there is the LAC 25493 on there, but  
10 there's no GPS or sector location, correct?

11 MS. McNEILL: Objection. Leading.

12 THE COURT: Overruled.

13 THE WITNESS: Correct.

14 BY MR. DiGIACOMO:

15 Q Do you have the ability to go in and find where --  
16 where in September of 2014 those cell towers -- those sectors  
17 were?

18 A Yes.

19 Q And so the documents that are created here are based  
20 on the records here, not necessarily on everything you could  
21 possibly go find?

22 A Correct.

23 Q In fact, on two days ago did you and I go into the  
24 FBI database and look to see if we could back up until before  
25 those towers are dropped?

1           A     Yes.

2                   MR. LANDIS:  Objection.  Undisclosed investigation,  
3 and expert testimony.

4                   MS. McNEILL:  And assumes fact not in evidence.

5                   MR. DiGIACOMO:  Well, it doesn't assume a fact not  
6 in evidence.

7                   THE COURT:  Overruled.

8 BY MR. DiGIACOMO:

9           Q     And so while that information's accessible, it  
10 certainly isn't something that was discovered in case, and  
11 thus, that's why we had this information?

12           A     Correct.

13           Q     Mr. Landis or maybe it was Ms. McNeill talked a  
14 little bit about there having to be court orders for all of  
15 this information, correct?

16           A     There's some type of legal process, yes.

17           Q     Now, there are exceptions in certain emergency  
18 situations; would that be fair?

19           A     Yes.

20           Q     Okay.  Where potentially, you get the information  
21 before there's any sort of legal process or legal  
22 determination about it, correct?

23           A     Correct.

24           Q     And so there is a way for that to happen?

25           A     Correct, yes.

1 Q And have you ever done those before?

2 A Yes.

3 Q And what are they called?

4 A We call them exigent -- an exigent declaration.

5 Q And what is the -- well, I guess, there's probably  
6 more than one, but at least as it relates to Metro, what is  
7 the one exigency where you do them?

8 A The -- the immediate -- immediate eminent threat of  
9 bodily harm or injury.

10 Q And thus, in a situation where there was a phone  
11 outstanding, and you knew that you had a heavily bleeding  
12 individual, would that be a situation where an emergency might  
13 be declared?

14 A Yes.

15 Q The last thing I want to do is sort of jump to the  
16 one example that Mr. Landis first put up, which is this 3:31  
17 a.m., and you were looking at the particular record. Do you  
18 still have the record in front of you?

19 A I don't believe so.

20 Q I should have brought my glasses how small the  
21 originals are. Here you go.

22 A I think it was on --

23 Q And I'm going to --

24 A Yeah, it was on this one.

25 Q -- refer you to page 2 and then essentially, 135, so

1 I think it's probably halfway --

2 A Okay.

3 Q -- down the page. And so I'm going to first drop  
4 this picture down and I'm going to put up -- the exhibit  
5 number on the back of that, can you tell me what that is?

6 A 298.

7 Q And then I'm going to jump down to an entry --

8 THE COURT: Do you need a magnifying glass? I have  
9 one.

10 MR. DiGIACOMO: No, I --

11 THE WITNESS: No -- no, I'm good. I think -- think  
12 once he zooms it, I -- yeah, okay, that works.

13 BY MR. DiGIACOMO:

14 Q I'm trying to see if I can even read the date on  
15 this one. This is 9/20 so that's not it yet. So let me back  
16 out and do -- and jump down to -- down here and see if we're  
17 jet at the location where I'm supposed to be. The 9/21 and  
18 I'm just off a little bit. Yeah, these are hard.

19 If I just grab a little bit here, we'll be able to  
20 tell. I might just have you read it into us, to be honest  
21 with you.

22 THE COURT: Yeah, you want the magnifier?

23 THE WITNESS: Please.

24 BY MR. DiGIACOMO:

25 Q I'm looking for the A.M. Will you tell me where it

1 is on that document that the 6:31 a.m. on 9/21 is.

2 A There we go. It's about dead middle. It's that one  
3 right there that you're going to see the --

4 Q Okay.

5 A -- the phone manufacturer on.

6 Q So now I want you to slide across that. So that  
7 says 9/21/2014, it says it's 6:31 a.m., correct?

8 A Correct.

9 Q So if you would slide all the way over to the right  
10 on that, can you tell me what the MSC location is for that  
11 particular record?

12 A It was CRM, SS 345.

13 Q And thus, how many hours do you subtract from the  
14 number?

15 A Three hours.

16 Q So now we're at 3:31 a.m., correct?

17 A Correct. The Carolina switch.

18 Q And then is there a tower number there?

19 A Yes. It's -- the LAC is 24593 and the CID is 52519.

20 Q On that record, is the sector identified?

21 A Yes.

22 Q Is the -- okay, what's the sector?

23 A It's 5251, sector 9.

24 Q Okay. Is the azimuth for that sector identified?

25 A On --



1 Q I can help you out.

2 A I don't think -- no, I don't think it is.

3 Q In fact, the azimuth isn't on that record at all,  
4 correct?

5 A No, the azimuth isn't on these records. You have to  
6 cross reference the --

7 Q And if you want to figure out what the azimuth is of  
8 that particular tower, you'd have to go to this one --

9 A Correct.

10 Q -- correct?

11 A Correct.

12 Q And because it's 24593, do we have an azimuth?

13 A No.

14 Q Hence, why it is we're not sure which side of that  
15 tower that phone was hitting, but it had to be within the  
16 footprint of some sector on that tower; is that fair?

17 A Yes.

18 Q And that's what you would do with each one the  
19 records that we've talked about here from the original?

20 A Correct.

21 Q And if you were to do t, you could then plot each  
22 one of these phones as to which tower footprint they were in  
23 at any given time that you have tower information for the  
24 phone?

25 A Correct.

1           Q     And that's all you did -- or that's all we've done  
2 here, correct?

3           A     Yes, correct.

4           Q     Mr. Landis also suggested that if you need Pen Link  
5 in order to figure out what these records mean, correct?

6           A     Correct.

7           Q     To your knowledge, does the DA's Office have Pen  
8 Link?

9           A     No.

10          Q     So from looking at these records, do you know --  
11 well, I think you've already said this. It's a Google Earth  
12 image, correct?

13          A     Correct.

14          Q     And there's a distance on the bottom so you can  
15 know, sort of, how far out the footprint was set, correct?

16          A     Correct.

17          Q     And then Mr. Landis suggested, well, what if I don't  
18 even have a computer? I mean, latitude and longitude's been  
19 around for substantially longer than computers; would you  
20 agree?

21          A     Correct.

22          Q     And so even if you just had a piece of -- a pencil  
23 and these records, you could figure out this information?

24          A     With a good map, yes.

25          Q     Thank you.

1 MR. DiGIACOMO: I have nothing further.

2 MR. LANDIS: For the record, when Mr. DiGiacomo was  
3 close to the witness, he said then you'd have to go here, what  
4 was that second document you referred to?

5 MR. DiGIACOMO: I'm sorry, it was Exhibit 275.

6 MR. LANDIS: Okay. Very briefly, if I can?

7 THE COURT: Of course.

8 RECROSS-EXAMINATION

9 BY MR. LANDIS:

10 Q The call detail records we've seen in this case  
11 contain incoming/outgoing calls?

12 A Correct.

13 Q Incoming/outgoing text messages?

14 A Most of them, I think, yes.

15 Q That's not the only time cell phones communicate  
16 with towers, though, correct?

17 A Correct.

18 Q They also just check to see if maybe I have a new  
19 e-mail?

20 A Yeah, correct.

21 Q Or there's a new Groupon --

22 A Data -- data transmissions, yes.

23 Q Why aren't those on these records?

24 A So there were, especially in 2014, there were very  
25 serious time discrepancies over the networks with their data

1 transmissions. Some networks wouldn't even give you the  
2 information, but other networks had serious time reliability  
3 issues with those records.

4 Q Something that's improved, it sounds like?

5 A Yes.

6 Q Thank you, sir.

7 MS. McNEILL: Just briefly, Your Honor.

8 RECROSS-EXAMINATION

9 BY MS. McNEILL:

10 Q You indicated that there were the time discrepancies  
11 of the data transfer. I think you testified that the cell  
12 phone records from the company, they don't keep for Metro or  
13 for any law enforcement agency, right?

14 A Correct, no.

15 Q They keep them for their own records, for their own  
16 whatever they need that information for?

17 A Well, yes. Well, I guess, from a global sense they  
18 do keep some for law enforcement, but they don't change the  
19 format, I guess, that they're in. But they do -- actually,  
20 the main reason they do keep them is -- is for us, the stuff  
21 with the cell towers.

22 Q Well, that they keep them, but they don't --

23 A Yeah.

24 Q -- collect that data for you guys?

25 A No.

1 Q They collect that data for their own business --

2 A Correct, correct.

3 Q -- purposes? Okay. And so the reliability of those  
4 records that you get from the phone company is really based on  
5 the reliability of the phone company keeping the records?

6 A Correct.

7 Q Okay. And then you testified a little bit about  
8 this exigent declaration, and Mr. DiGiacomo asked you if  
9 someone was bleeding and you needed to access his phone for  
10 whatever reason, correct?

11 A Correct.

12 Q Okay. Are you aware if that happened in this case?

13 A I am not.

14 Q Okay. And then you testified that you went into  
15 some sort of FBI database with Mr. DiGiacomo.

16 A Correct.

17 Q When was that?

18 A I think, a couple days ago.

19 Q Did you -- was there any type of information that  
20 you gleaned from that?

21 A The LAC and the CID off of that -- the -- the  
22 location of -- the location of that LAC and CID from that  
23 call.

24 Q Okay. So prior to doing that, going into that  
25 database, that information was not in any of these records?

1 A No.

2 Q Okay.

3 A I don't believe so, no.

4 Q You indicated that -- and correct me if I'm wrong,  
5 it's been -- I know you've been here a long time.

6 A No, it's fine.

7 Q You said when you were putting this stuff into Pen  
8 Link, you had to kind of go back and check all of these  
9 different things to make sure that it had been input  
10 accurately?

11 A Correct.

12 Q And you had created some of your own documents to do  
13 that, correct?

14 A That -- that field that we were speaking about  
15 earlier is the field that we use to denote sometimes the  
16 differences, if we have different times in the same record  
17 sheet.

18 Q Okay.

19 A And so that way we know that when I imported this  
20 set of data, it was slightly different than the other set of  
21 data. So yeah, it's -- it's for our own note-keeping more  
22 than anything --

23 Q Okay.

24 A -- to know that we lined everything up right.

25 Q And I thought you also said that you had created

1 some of your own cell tower maps to go in and make sure that  
2 they're --

3 A Yes.

4 Q -- because these maps only show certain cell towers,  
5 right?

6 A Correct.

7 Q Did you keep those maps that you created?

8 A I -- I didn't print them out as such. I load all  
9 the -- the cell site -- what I do is to check things is I'll  
10 -- I'll actually go out to the cell site database, I find the  
11 records from that date period from the phone companies, I load  
12 all those records from that date period into Google Earth Pro,  
13 and so I have a overlay of all the cell -- the cell sites of  
14 all of them. There's a lot. Thousands of them. And -- and  
15 then -- and then I go in and then I'll -- I actually can  
16 create a Pen Link report that I can click on and it gives me  
17 map variability.

18 So I can -- I can check what I've imported based on  
19 what was hand done by another person.

20 Q Okay. And in any of those maps or reports or  
21 anything, did you keep those?

22 A I -- no, because I was clicking through and -- and  
23 checking --

24 Q Okay.

25 A -- but there -- there's no definitive report of

1 that.

2 Q Okay. So it's not something that you would have  
3 printed out?

4 A No, no.

5 Q And one last set of questions.

6 MS. McNEILL: If I may approach the clerk?

7 THE COURT: Yes.

8 (Ms. McNeill/Mr. DiGiacomo conferring)

9 BY MS. McNEILL:

10 Q So looking at this document that's up here, which is  
11 State's -- sorry --

12 MR. DiGIACOMO: 324.

13 BY MS. McNEILL:

14 Q -- 324. The address that's on there in yellow --

15 A Yes.

16 Q -- you didn't put that on there, correct?

17 A No.

18 Q Okay. And you didn't say okay, this is the address  
19 I know this phone was at so I'm going to put that on this map?

20 A No. Yeah, I didn't generate this map, no.

21 MS. McNEILL: Nothing further.

22 THE COURT: Thank you. All right. May this witness  
23 be excused? Wait, we've got questions? We've got a question,  
24 looks like.

25 (Off-record bench conference)



1           THE COURT: So here's the question. I'm going to  
2 read it just as it is. Does -- well, do you -- does the  
3 witness know what percentage variable the inactive or down  
4 cell towers would affect the outcome of the phone  
5 records/details that have been reviewed and further more so in  
6 relation to finding the area the phone was in? Do you  
7 understand the question?

8           THE WITNESS: Yeah, I understand.

9           THE COURT: Okay.

10          THE WITNESS: I think. I -- I would say that in 15  
11 years with the unit, I've -- I've personally never seen that  
12 be the case, they're negligible as far as my experience goes.

13          MR. DiGIACOMO: Thank you. I have nothing to follow  
14 up on.

15          MR. LANDIS: No follow up.

16          MS. McNEILL: Nothing, Your Honor.

17          MR. WOLFBRANDT: Nothing.

18          THE COURT: May this witness now be excused?

19          MR. DiGIACOMO: Yes.

20          MR. LANDIS: Yes.

21          THE COURT: Thank you very much.

22          THE WITNESS: Thanks.

23          THE COURT: Ready for a break? All right. So  
24 ladies and gentlemen, we're going to take a 15-minute break.  
25 During this recess, it is your duty not to converse among

1 yourselves or with anyone else on any subject connected with  
2 the trial or to read, watch or listen to any report of or  
3 commentary on the trial by person connected with the trial or  
4 by any medium of information, including without limitation,  
5 newspaper, television, radio or Internet. You're not to form  
6 or express an opinion on any subject connected with this case  
7 until it's finally submitted to you. We'll be in recess until  
8 10 minutes until 4:00.

9 THE MARSHAL: Rise for the jury, please.

10 (Jury recessed at 3:32 p.m.)

11 THE COURT: And the record will reflect the jury has  
12 departed the courtroom. Any matters outside the presence?

13 MR. DiGIACOMO: Not from the State.

14 THE COURT: Defense, any matters?

15 MS. McNEILL: No, Your Honor.

16 MR. LANDIS: No.

17 THE COURT: All right. We'll be in recess.

18 (Court recessed at 3:33 p.m. until 3:51 p.m.)

19 (Outside the presence of the jury)

20 THE COURT: All right. We're back on the record.  
21 We're outside the presence of the jury. Record will reflect  
22 the presence of all three defendants with their respective  
23 counsel, the Chief Deputies District Attorney prosecuting the  
24 case are present as are all officers of the court. And your  
25 next witness is?

1 MS. LEXIS: Robert Figueroa.

2 THE COURT: And did you want to make some  
3 representations about admonishments or --

4 MR. DiGIACOMO: Actually, as we discussed earlier,  
5 much like Ms. Larsen, we'd ask the Court to admonish him.  
6 He's been admonished that he's not supposed to bring up the  
7 gang affiliations of these two -- or of two of the  
8 individuals. He doesn't really know much about Mr. Mendoza.  
9 Or any prior criminal history of those individuals. Either.

10 MR. LANDIS: Prison time.

11 MS. McNEILL: Or that they're cellies.

12 MS. LEXIS: And also -- yes, --

13 MR. DiGIACOMO: Or that they met as -- yeah, that's  
14 right.

15 MS. LEXIS: Yeah.

16 THE COURT: Or that they were cell mates or --

17 MS. LEXIS: He won't mention that they were cellies,  
18 but rather, that they were roommates for nine months.

19 THE COURT: I will do that. We'll pause for a  
20 moment while they bring the witness in.

21 (Off the record at 3:53 p.m. until 3:53 p.m.)

22 (Outside the presence of the jury)

23 THE COURT: All right. We are back on the record  
24 still outside the presence of the jury. Mr. Figueroa has now  
25 been seated in the witness stand. And before you were sworn,

1 Mr. Figueroa, I just wanted -- I know that you've already  
2 discussed this with the District Attorney and they've  
3 admonished you, but I just want to make clear that during your  
4 testimony in the presence of the jury, it's very important  
5 that you don't mention certain things; any gang affiliation  
6 references concerning the defendants, and also any knowledge  
7 you might have of prior criminal records they might have, or  
8 that you were a cell mate with any of the defendants, anything  
9 like that.

10 THE WITNESS: Yes, ma'am.

11 THE COURT: All right, thank you. And so we'll  
12 bring the jury in and then we'll have him sworn.

13 THE MARSHAL: All rise for the jury, please.

14 (Jury reconvened at 3:55 p.m.)

15 THE MARSHAL: Your Honor, all members of the jury  
16 and the three alternates are present.

17 THE COURT: Thank you. Please be seated. And the  
18 record will reflect the presence of all 12 members of the jury  
19 as well as the three alternates and the State has called its  
20 next witness. And for the record?

21 MS. LEXIS: Robert Figueroa.

22 THE COURT: All right. The clerk will swear the  
23 witness.

24 THE CLERK: Please stand and raise your right hand.

25

1 ROBERT FIGUEROA, STATE'S WITNESS, SWORN

2 THE CLERK: Please be seated and then please state  
3 and spell your first and last name for the record.

4 THE WITNESS: Robert Figueroa, R-o-b-e-r-t.  
5 Figueroa, F-i-g-u-e-r-o-a.

6 THE CLERK: Thank you.

7 THE COURT: You may proceed.

8 MS. LEXIS: Thank you.

9 DIRECT EXAMINATION

10 BY MS. LEXIS:

11 Q Good afternoon, Mr. Figueroa.

12 A Yes.

13 Q Sir, do you have a criminal history?

14 A Yes, ma'am.

15 Q Are you a convicted felon?

16 A Yes, ma'am.

17 Q What are your felony convictions?

18 A Two burglaries and a possession with intent to sell.

19 Q Okay. Do you remember one of the burglary  
20 convictions to be from 2009?

21 A I believe so.

22 Q And --

23 A Yes, ma'am.

24 Q -- the other burglary conviction to have been from  
25 2010?

1 A Yes, ma'am.

2 Q And you indicated also a possession of controlled  
3 substance with intent to sell?

4 A Yes, ma'am.

5 Q Okay. Do you remember that also being around 2009?

6 A Yes, ma'am.

7 Q Mr. Figueroa, I'd like to go through or start out  
8 our talk with kind of a timeline of the events that led you to  
9 be here right now, okay?

10 A Okay.

11 Q All right. So you were arrested for murder with use  
12 of a deadly weapon along with robbery with use of a deadly  
13 weapon and conspiracy to commit robbery back on October 20th,  
14 2014; is that right?

15 A Yes, ma'am.

16 Q And the day that you were arrested, October 20th,  
17 you were interviewed by detectives from the homicide division  
18 of the Las Vegas Metropolitan Police Department; is that  
19 right?

20 A Yes, ma'am.

21 Q At that time --

22 THE COURT: What year was that? I'm sorry to  
23 interrupt you, but you didn't say the year. Was it still '14?

24 MS. LEXIS: Yes, Your Honor.

25 THE COURT: Thank you.

1 MS. LEXIS: 2014.

2 BY MS. LEXIS:

3 Q When you spoke with detectives on that particular  
4 day, you had been taken into custody; is that right?

5 A Yes, ma'am.

6 Q Okay. You chose to speak with them?

7 A Yes, ma'am.

8 Q Did you tell the detectives the truth of what  
9 happened on September 21st, 2014 when you spoke to them the  
10 day you were arrested?

11 A No, ma'am.

12 Q After you were taken into custody, you were booked  
13 into the Clark County Detention Center; is that right?

14 A Yes, ma'am.

15 Q Okay. And as of today you're still in the Clark  
16 County Detention Center?

17 A Yes, ma'am.

18 Q After you were arrested and taken into the detention  
19 center, did you appear in court a few days later?

20 A Yes, ma'am.

21 Q At the time, were you aware of the charges that you  
22 were facing?

23 A Yes, the day of court, yes. Well, also before that  
24 on -- on my booking sheet.

25 Q At the time that you appeared in court, sir, were

1 you aware of who else had been charged with the same offenses?

2 A At that time?

3 Q Correct.

4 A Based on news reports, all I knew of was Mendoza  
5 being, you know --

6 Q Okay. You pointed --

7 A Being involved in the --

8 Q -- to an individual --

9 A -- situation. Huh?

10 Q You kind of gestured towards an individual when you  
11 said Mendoza.

12 A Yes.

13 Q Do you see an individual today here in court that  
14 you know as -- do you know the first name of Mr. Mendoza?

15 A Jose.

16 Q Do you see an individual you know as Jose Mendoza  
17 here in court?

18 A The gentleman on the far right.

19 Q In the first or second row?

20 A Well, behind his lawyer, I -- I'm assuming.

21 Q Okay.

22 A Second row.

23 MS. LEXIS: Your Honor, please let the record  
24 reflect identification of Jorge Mendoza.

25 THE COURT: It will.



1 MS. LEXIS: Thank you.

2 BY MS. LEXIS:

3 Q And so you appeared in court. After your first  
4 appearance in court, did you indicate to some of the  
5 correction officers that you wanted to speak to homicide  
6 detectives?

7 A Yes, ma'am.

8 Q That same day, as your first appearance, did  
9 homicide detectives, in fact, show up at the Clark County  
10 Detention Center to speak with you?

11 A Yes, ma'am.

12 Q At that time, did you fully speak with detectives?

13 A No, ma'am.

14 Q As of the time that the detectives showed up at the  
15 Clark County Detention Center, had you met your lawyer?

16 A Briefly for the first initial court date, he came  
17 in, gave me his card and that was basically it.

18 Q Okay. That initial court date was the same date,  
19 right?

20 A Yes.

21 Q Okay. Had you had discovery? Had you received  
22 discovery on your case?

23 A No, ma'am.

24 Q That same day, did you indicate to detectives that  
25 you wanted to speak to them; however, you wanted an attorney

1 present?

2 A Yes, ma'am.

3 Q And did you, in fact -- did the detectives leave?

4 A Yes.

5 Q And did you speak with your attorney that night?

6 A The following day I had spoke with him.

7 Q Okay. And so the following day, did Las Vegas  
8 Metropolitan Police homicide detectives show back up at the  
9 Clark County Detention Center to speak with you?

10 A Yes, ma'am.

11 Q And by this time, do you recall that date to be  
12 October 24th, 2014?

13 A I believe so.

14 Q At that time, sir, was your lawyer present?

15 A Yes, ma'am.

16 Q And I mean during the interview with detectives?

17 A Yes, ma'am.

18 Q And that interview was recorded, correct?

19 A Yes, ma'am.

20 Q On October 24th, 2014, you gave a statement to  
21 police?

22 A Yes, ma'am.

23 Q Okay. At that time, did your story change from the  
24 story that you told them on October 20th, 2014?

25 MR. LANDIS: Objection. Can we approach?

1 THE COURT: Yes.

2 (Off-record bench conference)

3 THE COURT: All right. Is the objection withdrawn  
4 given our conference?

5 MR. LANDIS: It is.

6 THE COURT: Thank you.

7 BY MS. LEXIS:

8 Q So sir, did your story that you told detectives on  
9 October 24th, 2014 change from what you told them when you  
10 were arrested on October 20th, 2014?

11 A Yes, ma'am.

12 Q At that point, or after that meeting, a few weeks  
13 later, did you enter into an agreement with the State of  
14 Nevada?

15 A Yes, ma'am.

16 Q After you entered into that agreement, did you, in  
17 fact, speak with Las Vegas Metropolitan Police Detective Barry  
18 Jensen and myself on January 25th, 2015 at the Clark County  
19 Detention Center?

20 A Yes, ma'am.

21 Q And that was the first time you had spoken with a  
22 prosecutor, correct?

23 A Yes, ma'am.

24 Q Four days later, January 29th, 2015, sir, did you  
25 testify before the Grand Jury?

1 A Yes, ma'am.

2 Q And during that time, you told the Grand Jury what  
3 happened on January 21st, 2014?

4 A Yes, ma'am.

5 Q After you testified before the Grand Jury on January  
6 25th, 2015, were you, in fact, indicted for murder with use of  
7 a deadly weapon, robbery with use of a deadly weapon,  
8 conspiracy to commit robbery, along with four other -- or  
9 three other defendants?

10 A Yes, ma'am.

11 Q Do you recall those other defendants being  
12 Mr. Mendoza, an individual by the name of Summer Larsen, an  
13 individual by the name of David Murphy?

14 A Yes, ma'am.

15 Q About three weeks later, did you, in fact, enter a  
16 guilty plea on February 18th, 2015?

17 A Yes, ma'am.

18 Q And sir, what did you plead guilty to?

19 A To robbery with the use and conspiracy.

20 Q Conspiracy to commit robbery?

21 A Yes, ma'am.

22 Q As you sit here today, sir, you have not yet been  
23 sentenced; is that right?

24 A Yes, ma'am.

25 Q And do you recall what the terms of the negotiations

1 were that you entered into with the State of Nevada?

2 A Basically, just robbery with the use and conspiracy  
3 and that's it.

4 Q Okay want?

5 A It was an open-end.

6 Q Okay. Do you recall what position the State of  
7 Nevada could take at sentencing?

8 A They could -- they -- they retained the right to  
9 argue. They --

10 Q What do you understand? What do you say or what do  
11 you understand the term "right to argue" to mean?

12 A They could give me any amount of time that they wish  
13 to.

14 Q Okay. Do you understand that it is -- who  
15 determines your sentence; do you know?

16 A Your Honor.

17 Q Okay. And certainly, Mr. DiGiacomo nor myself have  
18 made any promises?

19 A No, ma'am.

20 Q And it's Judge Ellsworth's sole discretion, correct?

21 A Yes, ma'am.

22 Q Sir, pursuant to your guilty plea, did you also  
23 enter into an Agreement to Testify?

24 A Yes, ma'am.

25 Q And you're here today pursuant to that agreement; is

1 that right?

2 A Yes, ma'am.

3 Q Mr. Figueroa, I'd like to turn your attention to  
4 September 21st, 2014, during the early morning hours -- or the  
5 morning, okay?

6 A Yes, ma'am.

7 Q Did you get a call that morning from someone you  
8 knew?

9 A Yes, ma'am.

10 Q What did you get a call from?

11 A Joey Laguna.

12 Q You pointed or gestured towards an individual when  
13 you said Joey Laguna. Could you please, again, point to that  
14 person and describe something they're wearing or where they're  
15 sitting?

16 A The gentleman in -- in the center row or in the  
17 center, second row, black shirt, gray tie.

18 MS. LEXIS: Your Honor, please let the record  
19 reflect identification of Joey Laguna.

20 THE COURT: It will.

21 BY MS. LEXIS:

22 Q Did you know Mr. Laguna -- or did you call him by  
23 his name or do you know him by a nickname?

24 MS. McNEILL: Objection. Can we approach?

25 THE COURT: Sure.

1 (Off-record bench conference)

2 THE COURT: Okay. So ladies and gentlemen, you're  
3 about to hear evidence of a nickname, and it's for purposes of  
4 identification only. You're not to draw any inference from  
5 that nickname other than it's for purposes of identification.  
6 Proceed.

7 MS. LEXIS: Thank you.

8 BY MS. LEXIS:

9 Q Mr. Figueroa, do you know Mr. Laguna by a nickname?

10 A Yes, ma'am.

11 Q What's his nickname?

12 A Montone (phonetic).

13 Q And is that what you called him or what you used to  
14 refer to him as?

15 A Yes, ma'am.

16 Q Approximately, what time did you receive this call  
17 from Mr. Laguna?

18 A Probably around 6:00, 6:30, maybe 7:00.

19 Q Let me back up a little bit. How do you know  
20 Mr. Laguna?

21 A He was my roommate.

22 Q How long was he your roommate?

23 A About eight, nine months.

24 Q And when was he your roommate? Do you recall the  
25 year?

1 A Around, what, 2012, I believe.

2 Q After -- at some point you stopped being roommates?

3 A Yes, ma'am.

4 Q Do you maintain contact with Mr. Laguna?

5 A Yes, ma'am.

6 Q And did you develop a friendship with him?

7 A Yes, ma'am.

8 Q How often would you and Montone talk?

9 A About every two to three weeks.

10 Q Would he call you or would you call him?

11 A Mainly, I believe, he would call me.

12 Q So when he called, what time did you say, on  
13 September 21st, 2014?

14 A Around 6:30. In between 6:00 and 7:00.

15 Q What is it that Montone said when he called you?

16 A Basically, he gets a lick lined up.

17 Q Okay. What's a lick?

18 A A robbery.

19 Q Okay. Did he tell you anything else about this lick  
20 that he had lined up?

21 A At the time, he -- he gave me a real brief quick  
22 rundown basically, saying, you know, some -- some marijuana,  
23 some weed, and basically, yeah, and whatever else is in -- you  
24 know, whatever else is in the house.

25 Q Okay. Did he tell you where it was? So it was a



1 house that he said he had planned to rob along with you?

2 A Yes.

3 Q So during this conversation, did he ask you to take  
4 part in this lick or this robbery that he had planned?

5 A Yes.

6 Q Did he indicate to you who else was going to be  
7 taking part in this robbery?

8 A Duboy.

9 MR. LANDIS: Objection. Can we approach? I'm  
10 sorry.

11 (Off-record bench conference)

12 THE COURT: Overruled. You may proceed.

13 BY MS. LEXIS:

14 Q Sir, we left off with you saying that Mr. Laguna and  
15 yourself were planning to commit a robbery.

16 A Yes, ma'am.

17 Q And the last question I asked you was did Mr. Laguna  
18 or Montone tell you who else was going to be taking part of in  
19 robbery?

20 THE COURT: If anyone.

21 BY MS. LEXIS:

22 Q If anyone.

23 A Yes.

24 Q And you --

25 A Duboy.

1 Q -- indicated Duboy?

2 A Yes, ma'am.

3 Q Okay. Do you see Duboy here in court today?

4 A Yes, the gentleman with the white shirt. White  
5 button-up behind his lawyer, second row.

6 Q Thank you.

7 MS. LEXIS: Your Honor, please let the record  
8 reflect identification of David Murphy.

9 THE COURT: It will.

10 MS. LEXIS: Thank you.

11 BY MS. LEXIS:

12 Q What else -- I mean, so he indicated that Duboy was  
13 also going to take part in this robbery. What happens next?  
14 What's the conversation about?

15 A Basically, just he -- he gives me a quick rundown of  
16 what's -- what's going to be there.

17 Q And what did he say was going to be there?

18 A Marijuana. And basically, whatever -- whatever else  
19 is in the house at the time, and -- and basically, he'll be  
20 coming to get me shortly.

21 Q Okay. Did he indicate to you how much marijuana it  
22 was that he anticipated being at this house?

23 A The -- about a hundred or two pounds.

24 Q A hundred or 200 or --

25 A Yes.

1 Q -- a hundred and two?

2 A A hundred or 200 pounds.

3 Q Of marijuana?

4 A Yes, ma'am.

5 Q And so after he tells you this plan, after he tells  
6 you what it is that he hoped to find there, what happens next?

7 A They -- they come pick me up.

8 Q When you say "they", who do you mean?

9 A Montone and Mendoza.

10 Q Do you have a car?

11 A No, ma'am.

12 Q Okay. Did you have one at that time?

13 A No, ma'am.

14 Q So approximately, what time is it that they pick you  
15 up?

16 A Around -- I would say around 7:30.

17 Q A.M.?

18 A Yes, ma'am.

19 Q And how is it -- or how many -- you indicated that  
20 Montone called you once to tell you about this robbery or this  
21 lick that was being planned. Did he call you again prior to  
22 them picking you up?

23 A Basically, to let me know that they were there  
24 waiting for me to come outside.

25 Q So once you get that call, what do you do?

1 A I -- I go -- I go to the car.

2 Q And once you get to the car, what happens?

3 A I get in the car and it's Montone and Mendoza at the  
4 time.

5 Q Who's driving?

6 A Mendoza.

7 Q And where is Montone sitting?

8 A In the passenger seat.

9 Q What type of vehicle are they in?

10 A Like a Toyota type of -- Honda, older model.

11 Q What color?

12 A It's like a light brown, kind of champagne color.

13 Q Had you seen Mr. Mendoza before that particular  
14 time?

15 A No, ma'am.

16 Q Did you know his name?

17 A No, ma'am.

18 Q Never met him before?

19 A No, ma'am.

20 Q How about Duboy? You mentioned Duboy a little while  
21 ago. Did you know Duboy's real name at that time?

22 A At that time, no, ma'am.

23 Q So do you get in the car?

24 A Yes, ma'am.

25 Q Once you get in the car, what happens next?

1           A     We start driving down to -- to the location.

2           Q     Where was this location that you were driving  
3 towards?

4           A     Basically, the north -- northwest.

5           Q     Northwest part of Las Vegas?

6           A     Yes, ma'am.

7           Q     Okay. Do you recall anything else about the  
8 direction or where this particular location is?

9           A     No, ma'am. I was -- I was in the back seat.

10          Q     Okay. Where were you sitting?

11          A     In the -- at this time, I was -- I believe, I was  
12 behind the driver's seat at this time.

13          Q     What sort of -- were there any conversations on the  
14 drive over to this house that you all were going to rob?

15          A     Basically, Duboy, he'll be there with a truck  
16 waiting around the corner to pick up the marijuana after we  
17 robbed that house.

18          Q     About how long does it take for you to get -- after  
19 they pick you up from your house, to get to the robbery  
20 location?

21          A     I would say about an hour.

22          Q     And so once you get to this particular location,  
23 what happens?

24          A     Duboy's girlfriend, she's driving the car. She's  
25 driving the car, and --

1 Q Which car?

2 A Mendoza's.

3 Q Let me ask you this; on your way to the robbery  
4 location, was Duboy's girlfriend with you in the car that  
5 Mendoza was driving?

6 A No, ma'am.

7 Q How is it that she then gets into your car or  
8 Mendoza's car?

9 A We stopped and they switch out. Basically, Duboy  
10 pulls up in his truck and she gets out. She gets out, and she  
11 hops in, and Mendoza gets in the back seat behind the  
12 passenger.

13 Q Okay. So Mendoza's name in the back seat with you?

14 A Yes, ma'am.

15 Q Okay. Can you describe Duboy's girlfriend?

16 A Mexican girl, dark hair, tattoos on her arm.

17 Q Okay. And the truck that Duboy was in, what kind of  
18 truck was it?

19 A Ford Ranger, white.

20 Q When they pull up next to the car that you were in,  
21 the one that Mendoza was initially driving, where were you in  
22 the neighborhood or where were you in relation to the house  
23 that you all were supposed to rob?

24 A Couple blocks down the street right -- basically,  
25 right around the corner from it.

1 Q Okay. So once Duboy's girlfriend gets into the  
2 driver's seat of the car that you were in, what happens?

3 A We drive down to the location to where -- where the  
4 house is at. We kind of do like a quick little drive-by, then  
5 we park, then we, you know, do -- do a little turnaround and  
6 we park, and basically, there was a lot of people outside.  
7 There was people mowing the grass, and there was just a lot of  
8 movement -- a lot of movement outside and --

9 Q So what do you all do upon seeing that?

10 A Once we see that, Mendoza, he's like no, we're not  
11 doing this.

12 Q Okay. Did anyone else in the car say anything?

13 A At that time, no. No, ma'am.

14 Q Do you recall, you just testified that you all did a  
15 quick drive-by at this particular street --

16 A Yes, ma'am.

17 Q -- and then kind of turned around --

18 A And went -- yeah. Yes, and went -- went into the  
19 cul-de-sac area where this house was located.

20 Q Okay. So it was in a cul-de-sac?

21 A Yes, ma'am.

22 Q It wasn't just like a straight street?

23 A No, ma'am.

24 Q Okay. And so Mendoza says, let's not do this. What  
25 happens?

1           A     We drive away and we regroup at Montone's house.

2           Q     About what time is it, you think, that you make it  
3 back to Montone's house?

4           A     Around 10:00. In between 10:00 and 11:00.

5           Q     Okay. And I forgot to ask you, as the car that you  
6 were in, okay, was driving around or driving past that cul-de-  
7 sac, past that house --

8           A     Yes, ma'am.

9           Q     -- where was Duboy?

10          A     He was waiting around the corner in the white --  
11 white pick up truck.

12          Q     Okay. The corner -- can you tell me in relation to  
13 -- where was this corner in relation to the house that was  
14 supposed to be robbed?

15          A     The house was at the end of the cul-de-sac, and he  
16 was basically at the end of the street just riding around the  
17 corner right there.

18          Q     Was -- which part of Duboy's truck was facing the  
19 house, if it was, in fact, facing the house?

20          A     The -- at the first initial house, he was -- really,  
21 I couldn't tell you because, like I said, the -- the house was  
22 at the end of the cul-de-sac, and he was up the street and  
23 parked right around the corner. So whichever way he was  
24 facing, I was not completely aware.

25          Q     Did Duboy tell you why it was that he was going to



1 be parked at that corner?

2 A So we could load the truck up with marijuana.

3 Q When you all arrived or when you got into the car  
4 being driven by Mr. Mendoza, when they picked you up at your  
5 house, were you armed?

6 A Yes, ma'am.

7 Q Okay. What did you have with you?

8 A A Ruger .40.

9 Q Is that a handgun?

10 A Yes, ma'am.

11 Q Did you see anyone else in your vehicle with  
12 weapons?

13 A At the initial house, no, ma'am.

14 Q On the drive to that particular robbery location,  
15 were there any phone calls that you know of between anyone in  
16 the car that you were in and Duboy?

17 A I'm -- really, I'm not sure, but like I said, he --  
18 he pulled up right beside us and we done a little swap around.

19 Q How is it that you and Mendoza and Montone and  
20 Duboy's girlfriend know -- or how is it that you all identify  
21 the house that's going to be robbed?

22 A Basically, from what -- from what Montone initially  
23 told me that Duboy had the -- you know, it was through Duboy  
24 that he knew of -- of the source. You know, he knew where  
25 this house was and --

1 Q Once you got to that neighborhood, did Duboy point  
2 out that house?

3 A Point out the house? I believe, his -- I believe,  
4 him, his girlfriend and Mendoza all knew where that house was.

5 Q Prior to you arriving at that particular robbery  
6 location in that cul-de-sac that you were talking about, did  
7 you have any knowledge or indication that Duboy was already at  
8 that location, essentially scoping it out?

9 A Yes.

10 Q Okay. What information did you have?

11 A Basically, that him and Mendoza, they -- they were  
12 there just kind of scoping out the house throughout, you know,  
13 the early hours of the night leading into the morning.

14 Q Okay. And so Mendoza was there with him prior to  
15 Mendoza picking you up?

16 A Yes, ma'am.

17 Q And then bringing you back to that location?

18 A Yes, ma'am.

19 Q And so you said there was a lot of activity at that  
20 house?

21 A Yes, ma'am.

22 Q Okay. What do you recall seeing?

23 A There was basically, people outside mowing the  
24 grass. There was basically, a truck within the cul-de-sac,  
25 you know, parked outside that house just waiting. Then as we

1 pulled up and parked, there was actually another car coming up  
2 the street and, you know, they kind of seen us and done a  
3 u-turn and kind of left.

4 Q Okay. And how did that -- well, how did that make  
5 you feel in terms of, you know, carrying out the robbery at  
6 that time?

7 A Uncomfortable.

8 Q What was the plan? Was there a plan in terms of how  
9 that particular robbery was going to be carried out?

10 A No, ma'am, just go in through the front door and  
11 basically, just go in through the front door. There wasn't no  
12 plan set in stone or nothing.

13 Q Okay. But certainly, there was a truck waiting so  
14 that you all could load the marijuana that you found in the  
15 house?

16 A Yes, ma'am.

17 Q Okay. And was Duboy's girlfriend, did she remain in  
18 the car, in the gold or champagne colored car or was the plan  
19 for her to remain in that car?

20 A Yes, ma'am.

21 Q Okay. So you go back to Montone's house between  
22 10:00 or 11:00?

23 A Yes, ma'am.

24 Q Where is Montone's house located; do you know?

25 A Off of, what, Cheyenne and Cimarron area.

1           Q     When you say you all regroup there, what is it that  
2 you do?

3           A     We go back to his house and basically, we talk about  
4 what happens a little bit. He -- basically, we decide that,  
5 you know, we'll save that one for later, and Duboy, he brings  
6 up another one -- another house that he knows of.

7           Q     Okay. Was Duboy's girlfriend present during that  
8 conversation?

9           A     No, ma'am. She was -- she got back into the --  
10 Duboy's vehicle, the -- the white truck and she was just  
11 sitting there waiting.

12          Q     Did that white truck have a camper or no?

13          A     No. It -- it just regular, what, white Ford Ranger.

14          Q     Okay. And so who all is present during the  
15 regrouping when Duboy brings up another house to rob?

16          A     Me, Montone, Duboy and Mendoza.

17          Q     When Duboy brings up this other house, what does he  
18 tell you?

19          A     That this house had just -- they're going to be --  
20 they're going to re-up off the original house that we had  
21 planned to rob.

22          Q     Okay. What does re-up mean?

23          A     They're going to buy some -- some marijuana off the  
24 original house.

25          Q     Okay. So the individuals in the second house, you

1 all planned to rob that house because you all knew that the  
2 individuals in the second house had just obtained marijuana  
3 from the first house?

4 A Yes, ma'am.

5 Q And so how much marijuana did you all think or did  
6 Duboy say would have been in the second house?

7 A Basically, anywhere from 30 to 50 pounds.

8 Q And that's of marijuana?

9 A Yes, ma'am.

10 Q During that conversation, do you find out how it is  
11 that Duboy has knowledge of both houses, both the first house  
12 and the second house?

13 A Yes, because I ask him, basically, how do you know  
14 about all these houses? How do you -- and basically, he said  
15 that through -- through a female friend, but through --  
16 through the conversation I got, you know, I got the  
17 impression, you know, it was the guy's -- the guy's girlfriend  
18 or wife who he was getting this information from.

19 Q Okay. When you say it was through a female friend,  
20 were they just friends based on your impression and what Duboy  
21 told you?

22 A No. They -- they were sleeping together.

23 Q Okay. And throughout that conversation, you got the  
24 impression that the girl that Duboy was sleeping with was in a  
25 relationship with the individual who lived at the second house

1 that you all were going to rob?

2 A Yes, ma'am.

3 Q Okay. And does Duboy tell you anything -- what does  
4 Duboy tell you about the relationship between the homeowner of  
5 the second house and the girl that he's sleeping with that led  
6 you to believe that?

7 A Basically, the homeowner of the second house is  
8 having problems with -- with his girlfriend or wife, whatever  
9 she is, and they're -- they're having a lot of issues at that  
10 -- at that time and before that, I believe, and basically,  
11 they're just not doing good at all.

12 Q This September 21st, 2014, do you recall that being  
13 a Sunday?

14 A Yes, ma'am.

15 Q Okay. When Duboy is pointing out, you know, robbing  
16 the first house and also the second house, does it come to  
17 your attention or do you come to find out why it is that the  
18 robberies were planned to occur on that particular day, that  
19 Sunday?

20 A Because the girl knew that the original house had  
21 just picked up some weed and that her boyfriend/husband,  
22 whatever he is, is going to re-up off that house.

23 Q That same day, that Sunday?

24 A That same day, yes, ma'am.

25 Q Okay. And so in terms of when the robbery of the

1 second house was supposed to occur, does Duboy tell you when  
2 you all were supposed to go to that second house?

3 A Yes, he basically says, you know, give it some time,  
4 you know. Let him -- let him re-up first, you know, so we'll  
5 go do it later on that night.

6 Q And during that part of the conversation, did you  
7 have any knowledge at all as to who it was that was living in  
8 that second house?

9 A No, ma'am.

10 Q And certainly, did you know the identity of the girl  
11 that Duboy was sleeping with that had provided him this  
12 information?

13 A At the time, no, ma'am.

14 Q Do you know an individual by the name of Summer Rice  
15 or Summer Larsen?

16 A Through -- through my paperwork, yes, now I do.

17 Q Okay. But at the time, did you know it?

18 A No, ma'am.

19 Q So since the second robbery isn't supposed to happen  
20 until later that night, what happens after you all regroup at  
21 Montone's house?

22 A Mendoza -- Mendoza drops me back off at my house,  
23 and I stay at my house until they pick me up later -- later on  
24 that evening.

25 Q Around what time is it that Mendoza brings you back

1 to your apartment?

2 A What, I would say in the afternoon sometime,  
3 probably 12:00, 12:30.

4 Q And so do you stay at your house -- do you stay at  
5 your house until you leave to commit the second robbery?

6 A Yes, ma'am.

7 Q So between the time, once you get home, do you hear  
8 from either Duboy, Montone or Mendoza?

9 A I -- I hear from Montone throughout that day.

10 Q And what was it that Montone was telling you?

11 A Basically, are you -- are you with it? Are you  
12 going to go? Basically, just checking to make sure that I'm  
13 still going to be participate.

14 Q Okay. You mentioned that with the first robbery --

15 A Um-h'm.

16 Q -- with that house and on the northwest side, you  
17 were the only one that you saw with a weapon.

18 A Yes, ma'am.

19 Q Prior to Mendoza dropping you off at your apartment,  
20 did Montone ask you to bring anything the next time that he  
21 saw you?

22 A Yes, ma'am.

23 Q What did he ask you to bring?

24 A My other gun.

25 Q What type of other gun did you have?



1           A     A .38.

2           Q     And is that a semi-automatic, a revolver, what is  
3 it?

4           A     A .38 snub nose.

5           Q     What's a snub nose?

6           A     It's a -- a short type of gun, revolver.

7           Q     And so when he asked you that, did you, in fact,  
8 once you got home, did you locate that weapon?

9           A     Yes, ma'am.

10          Q     And so Montone calls you. At some point, do they  
11 come and pick you up?

12          A     Yes, ma'am.

13          Q     About what time?

14          A     They come pick me up around about 7:00 o'clock p.m.

15          Q     And who is it that comes and picks you up?

16          A     At this time, it's Mendoza and -- it's Mendoza at  
17 this time, then we go to Montone's house and pick up Montone  
18 and Duboy also.

19          Q     Okay. When you Mendoza picks you up at your house  
20 the second time, what is he driving?

21          A     The same car he was originally driving, the Toyota  
22 type of Honda car, older model.

23          Q     And once he picks you up, do you all go straight to  
24 Montone's house?

25          A     Yes, ma'am.

1 Q And when you get to Montone's house, was Duboy  
2 already there?

3 A Yes, ma'am.

4 Q What happens once you get to Montone's house?

5 A We all -- we all get in the car. I -- I give  
6 Montone my .38 and --

7 Q And at this point, I forgot to ask, did you bring  
8 your .40 caliber Ruger with you this time around?

9 A Yes, ma'am.

10 Q And did you see Mr. Mendoza with a weapon?

11 A He had a nine millimeter rifle.

12 Q What about Duboy?

13 A He was -- he was driving.

14 Q So at some point, Duboy and Mendoza switch who's in  
15 the driver's seat?

16 A Once we got to Montone's house, you know, we pick  
17 them up, Duboy's driving, Montone's in the, what, passenger  
18 seat. I'm behind -- I'm behind passenger seat at this time,  
19 and Mendoza's he's behind the driver's seat.

20 Q At some point, do you all make your way towards the  
21 second location?

22 A Yes, ma'am.

23 Q Okay. What general direction are you all headed  
24 towards?

25 A Charleston and Hualapai area.

1           Q     During the car ride from Montone's house to this  
2 Charleston and Hualapai area, is there conversation in the  
3 car?

4           A     There's a little bit of conversation talking about,  
5 you know, just basically, how many people might be in the  
6 house, what he might have in the house, and just basically,  
7 how we're going to do this.

8           Q     Okay. So let's start with how many people are  
9 supposed to be in the car -- I mean, in the house, sorry.

10          A     In the house, they said the homeowner and maybe one  
11 or two other people.

12          Q     Okay. Did whoever it was -- who said that?

13          A     Duboy.

14          Q     Okay. Did Duboy say whether they were going to be  
15 male or female?

16          A     He was -- male.

17          Q     Okay.

18          A     He said that they should all be male.

19          Q     Okay. And in terms of discussion concerning what  
20 would be found or what you all could take from that second  
21 house, what was it, what was discussed?

22          A     Basically, marijuana. There should be a couple  
23 guns, maybe, and some money.

24          Q     When you are -- when you get into the car, how are  
25 you dressed?

1           A     I'm dressed in a black shoes, dark blue jeans, black  
2 hoodie, then I had some type of little -- little type of black  
3 mask.

4           Q     Okay. That mask that you had, did it cover your  
5 entire face or what part of your face did it cover?

6           A     It covered the lower half.

7           Q     Okay. So like your nose down?

8           A     Yes, ma'am.

9           Q     And what color was this particular half mask or --

10          A     Black.

11          Q     Did you see how everyone else was dressed?

12          A     They were all dressed in pretty much regular --  
13 regular clothes.

14          Q     At some point, do you make it to the area of  
15 Charleston and Hualapai?

16          A     Yes, ma'am.

17          Q     About what time is it that you estimate getting  
18 there?

19          A     Around 8:00 o'clock.

20          Q     What happens once you get to that general area?

21          A     We drive by the house real quick and he points it  
22 out.

23          Q     Okay. When you say "he", who do you mean?

24          A     Duboy.

25          Q     Then what happens?

1           A     He points it out, then we do a little turnaround and  
2     basically, we get out the car, we -- we go up to the front  
3     door, and I -- I hit open the front door with my shoulder, and  
4     basically, as soon as I enter, I got shot in my face, then  
5     that dropped me down be to the ground. I got up, I turned  
6     around trying to run out the door, then I got shot in my side.  
7     Then I kind of, you know, after that I scrambled out the door  
8     and just kept on going -- trying -- trying to run away down  
9     the street.

10          Q     I'm going to publish State's Exhibit No. 6.  
11     Mr. Figueroa, if you look at your screen, and I don't know if  
12     you'll have the ability to kind of use your finger to draw on  
13     parts of the screen, okay, but what we're publishing now is  
14     State's Exhibit No. 6. Do you see on this particular exhibit  
15     a house with a label or a tag that says 1661 Broadmere?

16          A     Yes, ma'am.

17          Q     Okay. Is that the location of the home that Duboy  
18     pointed out for you all to rob the night of September 21st,  
19     2014?

20          A     Yes, ma'am, I believe so.

21          Q     Okay. When you say that Duboy initially -- when you  
22     all get to this particular location, you do a drive by of the  
23     house, which direction are you all coming from?

24          A     I believe, we go up the --

25                 MS. LEXIS: Your Honor, can we approach? I'm sorry,

1 excuse me, Mr. Figueroa.

2 THE WITNESS: Yes.

3 MS. LEXIS: Can we approach?

4 (Off-record bench conference)

5 MS. LEXIS: For the record, we approached and asked  
6 for permission for Mr. Mendoza to have use of one -- or excuse  
7 me, Mr. Figueroa to have use of one of his hands so he may  
8 draw on the exhibit.

9 BY MS. LEXIS:

10 Q Okay. So Mr. Figueroa --

11 A Yes, ma'am.

12 Q -- what direction do you all drive by the house that  
13 you were supposed to rob?

14 A We do -- we do like a -- do a quick drive-by coming  
15 up Broadmere.

16 Q Okay.

17 A Then I believe, he circles around the block -- he  
18 circles around the block and we come right back up and this --  
19 he drops us off right here then right there in front of the  
20 house.

21 Q Okay.

22 A And --

23 Q Do you see where it is that Duboy goes after he  
24 drops you off?

25 A He goes up to the corner right here. He goes up

1 to --

2 Q That corner?

3 A -- to the corner right there and does --

4 Q To the corner of Garamound and Broadmere?

5 A Yes, ma'am. And he does kind of a little u-turn and  
6 faces the house.

7 Q Okay. So the front of that champagne colored car is  
8 now facing 1661 Broadmere?

9 A Yes, ma'am.

10 Q Or would have a view of 1661 Broadmere?

11 A Yes, ma'am.

12 Q Okay. And so you just finished testifying getting  
13 shot going in. Let's just go through that slowly, okay?

14 A Okay.

15 Q So you get dropped off where?

16 A Right in front of the house. Basically, right in  
17 front of the driveway.

18 Q Okay. And who is dropped off at the driveway?

19 A Duboy.

20 Q Duboy drops who off?

21 A Me, Montone and Mendoza.

22 Q At that point, do you already have your mask on?

23 A Yes, ma'am.

24 Q Do you have your weapon out?

25 A No, ma'am, I have a holster.

1 Q So you had your weapon in a holster?

2 A Yes, ma'am.

3 Q At some point, do you draw your weapon?

4 A After -- afterwards, I -- after I get shot and run  
5 -- run out, I grab it because it is bouncing in the holster.  
6 So I grab it and yes --

7 Q Okay.

8 A -- I do have it in my hand.

9 Q How is it decided -- you indicated that you you're  
10 the one who breaks the door or hits the door?

11 A Basically, at the time I -- I was pretty fit, and I  
12 had a little bit of size on me so it -- it would have been, I  
13 guess, easier for me break open the door.

14 Q How many tries does it take you to get the door  
15 open?

16 A Two tries.

17 Q Once it's open, are you the first one in?

18 A Yes, ma'am.

19 Q Who is -- who's behind you?

20 A At this time, because I go in and once I -- once I  
21 take two steps in the house, after hitting open the door,  
22 like, two quick little steps and I'm already getting shot, and  
23 so that kind of -- as far as who was exactly behind me, it --  
24 I couldn't exactly tell you at that time.

25 Q Okay. So you're immediately hit in the face?



1           A     Yeah, immediately.

2           Q     Okay. And where does the bullet strike you on the  
3 face?

4           A     Right below my -- on the -- right below my lip on  
5 the right side.

6           Q     And you indicated that dropped you to the ground?

7           A     Yes, ma'am.

8           Q     Okay. And you're able to get back up?

9           A     Yes, ma'am.

10          Q     And as you turn around you're shot on your side?

11          A     Yes.

12          Q     Okay. Which side does the bullet enter?

13          A     It -- it enters -- it enters on the backside of my  
14 left -- back left side.

15          Q     And where is it -- where are you when you're shot on  
16 the -- on your back? Are you still in the house? Have you  
17 made it outside?

18          A     I'm right in the front entryway of the house trying  
19 to get out the door.

20          Q     And do you eventually make it out the door?

21          A     Yes, ma'am.

22          Q     And what do you do?

23          A     I keep on running straight away from the house,  
24 basically.

25          Q     Can you show us the direction you ran? Okay. So

1 you made a mark coming -- going south on Broadmere and going  
2 east on Long Cattle?

3 A Yes, ma'am.

4 Q Okay. At some point, do you have an opportunity to  
5 look back at what's happening at 1661 Broadmere?

6 A Yes, ma'am. As, basically, I get, you know, a  
7 couple houses down, what is that, Long Cattle, I look back and  
8 Duboy's already driving up and picking up Montone from -- from  
9 the front of the house.

10 Q Okay. And you see this?

11 A Yes, ma'am.

12 Q Okay. As you're running south on Broadmere and  
13 turning onto Long Cattle, are you still hearing gunshots?

14 A Yes, ma'am.

15 Q Do you, when you're looking at 1661 Broadmere, do  
16 you see Mendoza at all?

17 A No, ma'am.

18 Q So at some point, when you stop --

19 A Uh-huh.

20 Q -- and look back at 1661 Broadmere, is that the time  
21 you drew your weapon?

22 A Basically, me trying to get out the house, that's  
23 what I had pulled it out because, like I said, it -- it got to  
24 flopping around a little bit and just basically, when I got  
25 outside the house, I had pulled it out. I -- yeah.

1 Q As you're running away, are you bleeding?

2 A Yes, ma'am.

3 Q So what happens next?

4 A As, you know, I get a couple houses down the way, I  
5 look back, and I see Duboy picking up Montone and then kind of  
6 just driving off, and right then and there I knew well,  
7 basically, you know, just keep on running.

8 Q And so do you keep running?

9 A Yes, ma'am.

10 Q Where do you run?

11 A I -- I continue, what, down Long Cattle over here,  
12 and I end up on Shifting Winds and Homestretch.

13 Q Okay. So you're going east on Long Cattle and then  
14 there's a small side street right here that you go south on  
15 and then you go east towards Ranch Hand and then north on  
16 Shifting Winds; is that right?

17 A Yes, ma'am.

18 Q At some point, do you stop running?

19 A Yes. Once I hit the corner of Homestretch and  
20 Shifting Winds, I -- I stop running and I find a place to  
21 hide.

22 Q Okay. I am going to publish State's Exhibit 7. So  
23 do you find a place to hide near that intersection of Shifting  
24 Winds -- would you say Shifting Winds and pretty much  
25 Homestretch?

1           A     Yes, ma'am.

2           Q     Okay. On this particular map, are you able to see  
3 where it is that you hit or do we need to zoom in?

4           A     I can see where I head -- where I headed. It was a  
5 house right on -- on the corner of Shifting Winds and  
6 Homestretch, the --

7           Q     Okay. Actually, I'm going to ask to go back and  
8 publish State's Exhibit 6. This might be a better picture.  
9 You indicated that you were on Homestretch and Shifting Winds.  
10 Can you see the house where you hit at in this exhibit?

11          A     Yeah, just barely.

12          Q     Okay.

13          A     The very corner house.

14          Q     Okay. And where in that -- where do you hide in  
15 that location?

16          A     In -- in the backyard behind some tall bushes.

17          Q     How do you get to that backyard?

18          A     I hopped the wall.

19          Q     And the bushes that were -- it was in the backyard?

20          A     Yes, ma'am.

21          Q     Is did it butt up against the wall?

22          A     Yes, ma'am.

23          Q     Okay. And do you have your phone with you at that  
24 time?

25          A     Yes, ma'am.

1           Q     Do you remain in this particular hiding location for  
2 a while?

3           A     Yes, about eight to nine hours.

4                   MS. LEXIS: Court's brief indulgence.

5 BY MS. LEXIS:

6           Q     When you first got to this particular hiding spot,  
7 Mr. Figueroa, were you able to assess your injuries?

8           A     Yes, ma'am.

9           Q     Okay. And so what did you see?

10          A     I was missing teeth and my jaw was broken. I  
11 realized that I had been shot in the side. I was bleeding,  
12 pretty much a mess.

13          Q     Okay. And one of the last questions I thought I was  
14 asking was whether you had your phone on you.

15          A     Yes, ma'am.

16          Q     At some point in you're hidden in this particular  
17 backyard, do you call someone?

18          A     I call Montone's number, and keep on, I mean,  
19 calling his number trying to, you know, see what happened, see  
20 where my ride went.

21          Q     Okay. And did Montone ever answer the phone?

22          A     No, ma'am, but I did get another -- I got a incoming  
23 call on a different phone number.

24          Q     Was it a phone number that you recognized?

25          A     No, ma'am.

1           Q     Okay.  You've testified to Montone calling you.  Did  
2 you have Duboy's phone number that day?

3           A     No, ma'am.

4           Q     Okay.  Did you have Mendoza's phone number?

5           A     He -- he had called me to meet him up at the -- the  
6 -- at the second time, Mendoza had called me to come outside,  
7 I'm here, off of his phone.  As for me actually having his  
8 phone number, no.

9           Q     Okay.

10          A     Yeah.

11          Q     So this phone call that you received, did you  
12 recognize the phone number?

13          A     No, ma'am.

14          Q     Okay.  Did you recognize -- did you answer the  
15 phone?

16          A     Yes, ma'am.

17          Q     Did you recognize the voice on the other end?

18          A     Well, it wasn't Montone or Mendoza's.  I believe --  
19 I was assuming it was Duboy.

20          Q     And what did -- what was the context of that  
21 conversation?

22          A     Basically, you know, I need a ride, I'm hurt, I'm  
23 shot, I'm bleeding bad.  And I -- I need a ride, and  
24 basically, he told me that well, his wife is -- his wife or  
25 someone is going to work and has to take the car.

1 Q Okay.

2 A So --

3 MS. LEXIS: This might be a good time to break, Your  
4 Honor.

5 THE COURT: All right. So ladies and gentlemen,  
6 we're going to be recessing. Of course, direct examination is  
7 not concluded and there will be cross, but it's 5:00, and so  
8 this is a stopping point that we'll take.

9 So we're going to be resuming. Remember, we're  
10 taking Monday off. So we won't have court on Monday.  
11 We'll be resuming on Tuesday, that's drug court, so we won't  
12 be able to start until 1:30 on Tuesday.

13 So during this recess, it is your duty not to  
14 converse among ourselves or with anyone else on any subject  
15 connected with the trial or read, watch or listen to any  
16 report of or commentary on the trial by any person connected  
17 with the trial or by any medium of information, including  
18 without limitation, newspaper, television, radio or Internet.  
19 You're not to form or express an opinion on any subject  
20 connected with this case until it's finally submitted to you.

21 I'll see you on Tuesday afternoon.

22 THE MARSHAL: All rise for the jury, please.

23 (Jury recessed at 5:03 p.m.)

24 THE COURT: The record will reflect that the jury  
25 has departed the courtroom, and you may take the witness back.

1 We're done for the day so you can take him.

2 Are there any matters outside the presence?

3 MS. McNEILL: I think from the --

4 MR. DiGIACOMO: Not from State.

5 MS. McNEILL: Well, I think Mr. Landis had one.

6 MR. DiGIACOMO: Oh, he wants to put the objection on  
7 the record.

8 MR. LANDIS: Really quick. I objected to, I think,  
9 the first statement Mr. Figueroa made about Joey Laguna saying  
10 to him that Duboy was going to get involved based on  
11 confrontation clause. Asked to approach, the Court overruled  
12 it as a co-conspirator statement in furtherance of a  
13 conspiracy.

14 MS. LEXIS: Correct.

15 THE COURT: All right, all right. I only had one  
16 inquiry, Ms. McNeill. Your client, I've been noticing that  
17 he's -- seems to be having a hard time to -- am I remembering  
18 that he had -- tried to get him glasses.

19 MS. McNEILL: We had tried to get him glasses but  
20 the process of doing that because of his -- he had corneal  
21 replacement, and there's just a lot going on and it just  
22 didn't work out. So he's doing his best. He can -- I mean,  
23 as long as it's close, he does fairly well.

24 THE COURT: I have like a whole drawer full of  
25 reading glasses, some that are -- will those help?



1 DEFENDANT LAGUNA: Yeah, they won't work.

2 THE COURT: No?

3 MS. McNEILL: Yeah.

4 THE COURT: All right.

5 MS. McNEILL: So --

6 THE COURT: I thought I'd just offer.

7 MS. McNEILL: He's doing his best.

8 THE COURT: All right.

9 MS. McNEILL: He knows that discovery better than me  
10 so --

11 THE COURT: Okay. All right, thank you. Anything  
12 else before we recess for the weekend?

13 MR. LANDIS: No, thank you.

14 MS. McNEILL: No, Your Honor. Thank you.

15 THE COURT: I'll see you on Tuesday afternoon.

16 (Court recessed at 5:05 p.m. until Monday,  
17 September 27, 2016, at 1:39 p.m.)

18 \* \* \* \* \*

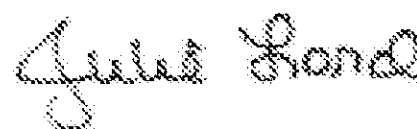
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21 case to the best of my ability.

22

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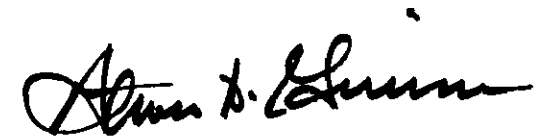
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JULIE LORD, INDEPENDENT TRANSCRIBER



CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

THE STATE OF NEVADA,	.	CASE NO. C-15-303991-1
	.	CASE NO. C-15-303991-4
Plaintiff,	.	CASE NO. C-15-303991-5
	.	
vs.	.	DEPT. V
	.	
JORGE MENDOZA,	.	<b>TRANSCRIPT OF</b>
DAVID MURPHY, a/k/a	.	<b>PROCEEDINGS</b>
DAVID MARK MURPHY,	.	
JOSEPH LAGUNA, a/k/a	.	
JOEY LAGUNA,	.	
Defendants.	.	
. . . . .	.	

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 11**

TUESDAY, SEPTEMBER 27, 2016

APPEARANCES:

FOR THE STATE:	MARC P. DiGIACOMO, ESQ. AGNES M. LEXIS, ESQ.
FOR DEFENDANT MENDOZA:	WILLIAM L. WOLFBRANDT, ESQ.
FOR DEFENDANT MURPHY:	CASEY A. LANDIS, ESQ.
FOR DEFENDANT LAGUNA	MONIQUE A. McNEILL, ESQ.

COURT RECORDER:

LARA CORCORAN  
District Court

TRANSCRIPTION BY:

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1       LAS VEGAS, NEVADA, TUESDAY, SEPTEMBER 27, 2016, 1:39 P.M.

2                   (Outside the presence of the jury)

3           THE COURT:  How you doing?  All right.  We're on the  
4 record outside the presence of the jury.  Three defendants are  
5 present with their respective counsel.  Where did Ms. McNeill  
6 go?

7           MR. LANDIS:  She's over here.

8           MS. McNEILL:  I'm here.  I'm sorry, I was just  
9 trying to get my exhibit.

10          THE COURT:  Oh, there you are.  I'm looking at the  
11 wrong side of the room.  And the Deputies District Attorney  
12 prosecuting the case are present as are all officers of the  
13 court.

14                So exhibits, make a record of the exhibits you've  
15 enlarged, Mr. DiGiacomo.

16          MR. DiGIACOMO:  Exhibits 305, 309, 310, 298 and 300  
17 and 303 have all been placed on larger -- every one of them  
18 with the exception of 308, every single thing on here with the  
19 exception of the pagination is exactly the same.  On 305,  
20 there's one call detail, I think it's the very last one  
21 because when this thing got paginated and printed, it's  
22 9/23/2014; 11:05 p.m. is the last one.  On the other record  
23 it's 11:07 is the last record.  I don't know why it's not on  
24 there, but I did check to confirm that they're accurate and  
25 these are going to be for demonstrative purposes and those are

1 going to be actual records.

2           So if there's any question about that call, which I  
3 don't think any of the parties think is going to be relevant  
4 because that's on the 8981 number. Obviously, the original  
5 exhibits are in there. This is just for the jury to actually  
6 be able to look at.

7           THE COURT: All right. But if the jury's going to  
8 be looking at them, they have to actually be admitted.

9           MR. DiGIACOMO: Right.

10          THE COURT: And so the defense, are you objecting?  
11 Do you want the opportunity to look at them and compare?

12          MR. LANDIS: I presume we don't need them for today?

13          MR. DiGIACOMO: I don't need them for anything. I  
14 just want to make sure they're admitted before we rest, which  
15 will happen after our next witness.

16          MR. LANDIS: Yeah, I'd like to just finger through  
17 them. I mean, you could -- which I'll do before the end of  
18 the day.

19          THE COURT: We'll do that maybe on the break.

20          MS. McNEILL: Right.

21          THE COURT: Okay.

22          MS. McNEILL: Thank you.

23          THE COURT: Otherwise, are we ready to bring the  
24 jury in?

25          MS. McNEILL: Yes, Your Honor.

1 THE COURT: All right.

2 THE CLERK: Ms. Lexis?

3 MS. LEXIS: Yes, thank you.

4 THE COURT: Let's bring them in.

5 THE MARSHAL: All rise for the jury, please.

6 (Jury reconvened at 1:46 p.m.)

7 THE MARSHAL: Your Honor, all members of the jury  
8 and the three alternates are present.

9 THE COURT: Thank you. Please be seated. And the  
10 record will reflect the presence of all 12 members of the jury  
11 as well as the three alternates. And of course, all three  
12 defendants are present with their respective counsel. The  
13 chief Deputies District Attorney prosecuting the case are  
14 present as are all officers of the court. And Mr. Figueroa is  
15 back on the stand. Sir, you're still under oath.

16 THE WITNESS: Yes, ma'am.

17 THE COURT: And you may continue with your direct  
18 examination.

19 MS. LEXIS: Thank you.

20 DIRECT EXAMINATION (RESUMED)

21 BY MS. LEXIS:

22 Q Mr. Figueroa --

23 A Yes, ma'am.

24 Q -- we left off on Friday with you talking about what  
25 happened on September 21st, 2014, the robbery that occurred

1 that night, but I'd like to back up a little bit, okay?

2 A Yes, ma'am.

3 Q On Friday last week, you identified Duboy.

4 A Yes, ma'am.

5 Q As having been with you in the morning robbery and  
6 also -- or attempt robbery, and also the robbery that occurred  
7 that night; is that right?

8 A Yes, ma'am.

9 Q Okay. Duboy, how many times -- had you met him  
10 before that particular day?

11 A Yes, ma'am.

12 Q How many times had you been around him or had you  
13 been with him?

14 A I've -- I've been around him probably on two, three  
15 tops, no more than four occasions before that.

16 Q Okay. And you indicated on Friday also that you had  
17 never met Mr. Mendoza prior to that particular day; is that  
18 right?

19 A Yes, ma'am.

20 Q Okay. As you went through the day, September 21st,  
21 with him, were you able to determine how it is that he was  
22 brought into this particular plan?

23 A Basically, through Montone, Mr. Laguna, basically,  
24 from what I gathered he -- he was the, you know -- you know,  
25 he was pulling people, getting people.

1 Q Okay. So it was your understanding that Montone  
2 pulled Mr. Figueroa in to take part in these robberies?

3 A Mendoza.

4 THE COURT: This is Mr. -- Mr. Figueroa.

5 BY MS. LEXIS:

6 Q I'm sorry, Mr. Mendoza --

7 A Yes, ma'am.

8 Q -- into the robberies; is that right?

9 A Yes, ma'am.

10 Q Okay. When you testified on Friday about running  
11 out of the 1661 Broadmere house, at some point you testified  
12 that you were standing and basically on the intersection of  
13 Broadmere and Long Cattle and you recalled looking back  
14 towards the house.

15 A Yes, ma'am.

16 Q Okay. As you were look being back, Mr. Figueroa,  
17 towards 1661 Broadmere, do you recall still hearing gunshots?

18 A Yes, ma'am.

19 Q As you looked back, you indicated that you saw  
20 Mr. Laguna being picked up by Mr. -- or by Duboy, Mr. Murphy;  
21 is that right?

22 A Yes, ma'am.

23 Q Okay. As you looked back at 1661 Broadmere, at any  
24 point did you see Mr. Mendoza outside of the home?

25 A My main focus was on the vehicle driving away, you



1 know, like yeah, Mendoza, I mean, I wasn't focused on him. I  
2 was looking at the vehicle just Montone hop in the vehicle  
3 and, you know, him and Duboy drive off.

4 Q Where exactly was Montone when the car pulled up and  
5 picked him up?

6 A Basically, right at the end of the driveway where it  
7 meets the street.

8 Q Okay. Okay. You also testified on Friday,  
9 Mr. Figueroa, that you had your .40 caliber Ruger with you; is  
10 that right?

11 A Yes, ma'am.

12 Q Okay. Sir, during what occurred at that home during  
13 the evening hours, the robbery, did you at any time fire your  
14 weapon?

15 A No, ma'am.

16 Q When you stopped and looked when you were on the  
17 intersection of Broadmere and Long Cattle, did you have your  
18 weapon out?

19 A Yes, ma'am.

20 Q Okay. What were you doing with your weapon?

21 A Basically, as I turned around and started running,  
22 it -- it started, you know, kind of flopping around, getting  
23 in my way and I pulled it out, and basically, it -- it was  
24 just basically in my hand, and that's when I was looking back,  
25 looking at the car drive away. Then once it drove away,

1 continued to run down the street.

2 Q At any time while that's happening, do you ever  
3 notice or do you have reason to believe that someone from your  
4 party, meaning either Mr. Laguna or Mr. Mendoza, had fired  
5 back at anyone in that home?

6 A Well, right as I was getting shot, I -- I don't know  
7 exactly what was transpiring. My whole objective was trying  
8 to get out the house and basically, as -- as I ran down the  
9 street and kind of looked back, I heard gunshots, but my main  
10 focus was on the car driving off.

11 Q Okay, okay. On Friday, before we broke --

12 A Um-h'm.

13 Q -- for the weekend, you talked about how you found a  
14 hiding place and you highlighted that particular home for the  
15 jury; do you remember that?

16 A Yes, ma'am.

17 Q Okay. You also testified to making several phone  
18 calls while you were in the backyard hiding; do you remember  
19 that?

20 A Yes, ma'am.

21 Q Okay. You've also already testified that you tried  
22 to call Mr. Laguna several times; is that right?

23 A Yes, ma'am.

24 Q But that you did not call Duboy or Mr. Mendoza  
25 because you didn't have their phone numbers?

1 A Yes, ma'am.

2 Q Okay. But that Mr. Mendoza had called you once  
3 earlier that day to let you know that he was outside picking  
4 you up, was it for the second robbery?

5 A Yes, ma'am.

6 Q Okay. Okay. And then you testified before the jury  
7 that you did receive either was it a text message or a phone  
8 call where -- who you believed to be from Duboy telling you  
9 that they wouldn't be coming to get you?

10 A Yes, a phone call.

11 Q It was a phone call, okay. And it was a number that  
12 you didn't recognize?

13 A Yes, ma'am.

14 Q Okay. At some point, do you call other people?

15 A Yes, ma'am.

16 Q Who else do you call?

17 A Basically, everybody in my phone.

18 Q Did you have roommates at the time?

19 A Yes, ma'am.

20 Q Did you call your roommates?

21 A Yes, ma'am.

22 Q What are their names? What were their names?

23 A Jeff -- Jeff -- I'm -- I'm not sure of his last  
24 name. Then his girlfriend, her name was Cindy.

25 Q Did you have a girlfriend at the time?

1 A Yes, ma'am.

2 Q Okay. What's her name?

3 A Shandalaya (phonetic).

4 Q Did you call Shandalaya?

5 A Yes, ma'am.

6 Q And did anyone respond?

7 A No, ma'am.

8 Q At some point, did you stop making phone calls after  
9 you heard the police sirens and police responding to that  
10 particular location?

11 A Yes, ma'am.

12 Q Okay. And how long are you pretty much silent in  
13 that particular backyard?

14 A Basically, about eight to nine hours.

15 Q Did you have a friend at that time that you often  
16 hung out with by the name of Emanuel Barrientos (phonetic)?

17 A Yes, ma'am.

18 Q Okay. Did you call him while you were in that  
19 backyard?

20 A Yes, ma'am.

21 Q Okay. And did he respond?

22 A He responded to texts, but as far as coming to get  
23 me, no, ma'am.

24 Q Okay. About you made a physical phone call to him?

25 A I had made a -- I believe, a physical phone call and

1 a text.

2 Q Okay. But he never came out to get you?

3 A No, ma'am.

4 Q I'm sorry, how long were you in that backyard hiding  
5 before you were able to get out of your hiding spot?

6 A About eight to nine hours.

7 Q And when is it that you felt it was clear for you to  
8 start making phone calls again?

9 A Basically, when I got away, when I hopped -- you  
10 know, got away from that one spot, hopped a couple walls and  
11 found another vacant house --

12 Q Okay.

13 A -- further away.

14 Q Okay.

15 MS. LEXIS: I am going to ask Mr. DiGiacomo to  
16 publish State's Exhibit 7.

17 BY MS. LEXIS:

18 Q And I know that the street names are a little bit  
19 hard to see. Can you see that, Mr. Figueroa?

20 A Yes, ma'am.

21 Q Okay. Do you see where Shifting Winds is?

22 A Yes, ma'am.

23 Q Okay. And that's this street right here; is that  
24 right?

25 A Yes, ma'am.

1 Q Okay. It's going like north to south. Can you tell  
2 from this particular exhibit where it is that you hop the wall  
3 and where you ended up?

4 A Right -- the back house that I was in is right here.

5 Q You -- okay.

6 A Right there.

7 Q Okay.

8 A Hopped -- I hopped these back walls and ended up in  
9 that house right -- right there.

10 Q Okay. And let me see if I can clear that out. I'm  
11 going to clear that, and it would appear as though you went  
12 into a house labeled on Oedipus Avenue (phonetic); do you see  
13 that? I know it's like in white lettering.

14 A Yes, ma'am.

15 Q Okay. And so once you get to that -- well, first of  
16 all, was that house vacant or was it occupied?

17 A It was vacant.

18 Q Did you call someone or give someone an address to  
19 come and pick you up from that house?

20 A Yes, ma'am.

21 Q And who did you call?

22 A I called my sister.

23 Q How old was your sister at the time?

24 A Twenty.

25 Q And what's her name?

1           A     Elizabeth.

2           Q     Around what time would you estimate it was when you  
3 called Elizabeth and she responded?

4           A     Early in the morning probably around somewhere about  
5 6:00 o'clock.

6           Q     6:00 a.m. and we're now into September 22nd; is that  
7 right?

8           A     Yes, ma'am.

9           Q     Okay. And so does Elizabeth come and pick you up?

10          A     Yes, ma'am.

11          Q     Okay. In a vehicle?

12          A     Yes, ma'am.

13          Q     And so what happens when she gets there?

14          A     I -- she just pulls up, and I hop into the back seat  
15 of the car. I sit down on the floor board and really I didn't  
16 say nothing to her really. I just asked her to take me home.

17          Q     Where was home back on that date?

18          A     It was off of --

19          Q     What were the cross streets; do you recall? How  
20 about 3253 Casey Drive?

21          A     Yes, ma'am.

22          Q     And --

23          A     Yes, ma'am.

24          Q     -- was that an apartment?

25          A     Yes, ma'am.

1 Q Does Apartment 101 sound right?

2 A Yes, ma'am.

3 Q Okay. So Elizabeth brings you to your apartment?

4 A Yes, ma'am.

5 Q At some point, does she see that you're injured?

6 A Yes, ma'am.

7 Q Okay. Were your roommates home?

8 A No, ma'am.

9 Q What happens once you get back to your apartment?

10 A I get back to my apartment, I go to the restroom to  
11 look in the mirror to look at my injuries, and that's when my  
12 little sister kind of realized like, what really happened to  
13 you, and I just told her I -- you know, I've been shot a  
14 couple times and I left it as that.

15 Q At some point, do you get medical attention?

16 A Yes, ma'am.

17 Q Where do you get medical attention?

18 A Loma Linda.

19 Q Where is that located?

20 A In California in, what, Palmdale.

21 Q And that's a hospital?

22 A Yes, ma'am.

23 Q How do you get there?

24 A My roommate, we -- we rented a car, me -- me, my  
25 roommate, Jeff, Dustin and Shandalaya, they drive me to the



1 hospital.

2 Q Who's Dustin?

3 A My cousin's boyfriend.

4 Q And your girlfriend, they all drive you?

5 A To the hospital, yes, ma'am.

6 Q And do you receive medical attention for one or both  
7 of your injuries?

8 A Just -- just for my mouth.

9 Q Was your jaw broken?

10 A Yes, ma'am.

11 Q What about the gunshot wound to your abdomen or to  
12 your side, did you receive medical attention for that?

13 A No, ma'am, but I -- I know at the very end I had  
14 told -- you know, I told the doctor, he kind of looked at it  
15 and kind of just brushed it off like it was nothing. So I  
16 don't think it was in any of the reports or nothing. He just  
17 kind of put a Band-Aid over it and left it as that.

18 Q Okay. Do the police over from California or in  
19 Palmdale respond to the hospital scene?

20 A At the -- at the first initial hospital I went to,  
21 it was in Joshua Tree, and they responded to that. Then from  
22 -- from there I got transferred to Loma Linda to where they  
23 were able to put my jaw back together.

24 Q So over at Joshua Tree, the police department there,  
25 did you tell them what happened to you?

1           A     No, ma'am. I told them that it had ricocheted, hit  
2 my jaw.

3           Q     Okay. Once you get to Loma Linda Hospital and  
4 they're able to give you medical care for the wound to your  
5 jaw --

6           A     Yes.

7           Q     -- were they able to remove a bullet from that  
8 injury?

9           A     No, ma'am. It's -- it's in my neck still.

10          Q     And obviously, the wound to your abdomen was it  
11 through and through?

12          A     Yes, ma'am.

13          Q     On the car ride over to California, you mentioned  
14 you were with Dustin, Jeff, your girlfriend, Shandalaya. Did  
15 you at any point in time tell them how it was that you got  
16 your injuries?

17          A     Just basically, I had got shot. Just a home  
18 invasion that went bad and I left it very brief and vague.

19          Q     How long were you -- or when is it that you got --  
20 that you went to California for medical attention?

21          A     About two to three days later.

22          Q     Two to three days after that robbery?

23          A     Yes, ma'am.

24          Q     The home invasion?

25          A     Yes, ma'am.

1 Q So on October 20th, 2014, were you at your apartment  
2 when police arrived?

3 A Yes, ma'am.

4 Q Tell us about that.

5 A I was at my apartment, and I was walking out my  
6 apartment going up to the gym, and I was waiting for Manny  
7 (phonetic) to come get me and we were just going to go hang  
8 out.

9 Q What happened?

10 A Police, they came and they surrounded me, and  
11 basically, arrested me for -- for -- for this -- for this  
12 case.

13 Q Okay, okay. When they took you into custody, do you  
14 recall them going into your apartment to search?

15 A Yes.

16 Q Okay. And do you recall having some telephones on  
17 you when the police took you into custody?

18 A Yes.

19 Q How many phones did you have with you?

20 A I had two on me at the time, yeah.

21 Q And do you recall who -- who did the phones belong  
22 to? The two phones that you had with you?

23 A One was mine and one I had just got from Shandalaya.

24 Q Do you recall the one -- well, when you were taken  
25 into custody and after you spoke with police on October 24th,

1 2014, did you identify one of those phones as the phone that  
2 you used the night of September 21st, 2014?

3 A Yes, ma'am.

4 Q Okay. And the phone number that you told the police  
5 you were using that particular night, do you recall it being  
6 702-241-1051?

7 A Yes, ma'am.

8 Q And the other phone number was the one that belonged  
9 to Shandalaya; is that right?

10 A Yes, ma'am.

11 MS. LEXIS: Your Honor, may I approach?

12 THE COURT: Yes.

13 MS. LEXIS: I'd like to approach with what's been  
14 previously marked as State's Proposed Exhibit 253 to 259 and  
15 also 260 and 262.

16 THE CLERK: They've already been admitted?

17 MS. LEXIS: Proposed.

18 THE COURT: Proposed.

19 MS. LEXIS: May I approach?

20 THE COURT: Yes.

21 MS. LEXIS: Thank you.

22 BY MS. LEXIS:

23 Q Mr. Figueroa, I'm going to show you State's Proposed  
24 Exhibits 259 -- or excuse me, sorry, 253 to 259 first, okay?  
25 We're just going to thumb through them and take a look. Sir,

1 do you recognize what's been -- or what's depicted in State's  
2 Proposed Exhibits 253 to 259?

3 A Yes.

4 Q What are they, sir?

5 A That's -- that's me during intake.

6 Q Okay.

7 A When they were taking photos of me.

8 Q Okay. Was this back on October 20th, 2014?

9 A Yes, ma'am.

10 Q When you were taken into custody?

11 A Yes, ma'am.

12 Q Do these photos fairly and accurately show how you  
13 looked and the injuries that you had back on that day?

14 A Yes, ma'am.

15 MS. LEXIS: Your Honor, I'd move to admit State's  
16 Proposed Exhibits 253 to 259.

17 MR. LANDIS: No objection.

18 MS. McNEILL: No objection.

19 MR. WOLFBRANDT: No objection.

20 THE COURT: Those will be admitted.

21 (State's Exhibits 253 through 259 admitted)

22 MS. LEXIS: Thank you.

23 BY MS. LEXIS:

24 Q Sir, I'm also showing you State's Proposed Exhibits  
25 260 through 262. Sir, first, do you recognize what's shown in

1 State's Proposed Exhibit 260?

2 A I believe -- I believe, that's from my roommate's  
3 room.

4 Q Okay. Showing you State's 261, do you recognize  
5 what' depicted in 261?

6 A Yes, two guns.

7 Q Okay. Are these your guns?

8 A No, ma'am.

9 Q And State's Exhibit 262, do you recognize what's  
10 depicted there?

11 A Yes, that's my medical records.

12 Q Okay. And do they fairly and accurately depict 260  
13 and 261 -- excuse me, and 261, do they fairly and accurately  
14 depict what was taken from your roommate's area of the house  
15 back on October 20th, 2014?

16 A Yes, ma'am.

17 Q And 262 fairly and accurately depict some hospital  
18 paperwork that was found in your room on October 20th, 2014?

19 A Yes, ma'am.

20 MS. LEXIS: Your Honor, I'd move to admit State's  
21 Proposed Exhibits 260 and 262 into evidence.

22 MR. LANDIS: No objection.

23 MS. McNEILL: No objection.

24 THE COURT: Not 261?

25 MS. LEXIS: And 261 as well.

1 THE COURT: Okay.

2 MR. LANDIS: No objection to 261.

3 MS. McNEILL: No objection.

4 MR. WOLFBRANDT: No objection.

5 THE COURT: Those will all be admitted.

6 (State's Exhibits 260 through 262 admitted)

7 MS. LEXIS: We'd like to publish State's 254.

8 THE COURT: All right.

9 BY MS. LEXIS:

10 Q Sir, do you recognize what's depicted here?

11 A Yes, ma'am.

12 Q Does this particular photograph of you show the  
13 entry wound or the gunshot to the face?

14 A Yes, on -- on the lower right side --

15 Q Okay.

16 A -- of my lip.

17 Q All right. Could you circle? Can you see it in  
18 that photo?

19 A Yes, ma'am.

20 Q And I'm going to show State's Exhibit No. 256. And  
21 sir, what are we looking at here?

22 A The inside of my mouth, you could see a couple  
23 missing teeth right there.

24 Q Okay. And were those teeth knocked out or  
25 essentially removed from your mouth when you were shot in the

1 face?

2 A Yes, ma'am.

3 Q State's Exhibit No. 258, what are we looking at  
4 here, sir?

5 A The gunshot wound to my side.

6 Q And where is it that the bullet entered; do you  
7 recall?

8 A It entered through the back and came out through the  
9 front side kind of.

10 Q Okay. And this is on the left side of your side?

11 A Yes, ma'am.

12 Q State's Exhibit No. 259, is that a closer view of  
13 your gunshot wound to the abdomen side?

14 A Yes, ma'am.

15 Q Okay. And sir, the entrance was the one off of the  
16 back right here; is that right?

17 A Yes, ma'am.

18 Q Okay. And so where's the exit wound?

19 A Right -- that's the exit wound, yes, ma'am.

20 Q And how about State's Exhibit 262? We're going to  
21 just rotate it. Are these the hospital records that were  
22 taken by the police from your room?

23 A Yes, ma'am.

24 Q Thank you. I'm going to show you State's Exhibit  
25 261. And sir, we've already established that these were taken



1 from your roommate's room or from his possession. These are  
2 not your weapons, are they?

3 A No, ma'am.

4 Q And how about State's Exhibit 260? Do you recognize  
5 what's shown here? Were these also taken from your roommate's  
6 room?

7 A I believe, my roommate's room.

8 Q Sir, prior to the police showing up on October 20th,  
9 2014, did you get a visit from an individual by the name of  
10 Gabriel Sotelo?

11 A Yes, ma'am.

12 Q How do you know Gabriel?

13 A Basically, I -- basically, I know him through Nino  
14 (phonetic). I've known him for a couple years now.

15 Q Okay. Who's Nino?

16 A Manny, Emanuel.

17 Q Okay. So earlier when you said Manny, were you  
18 talking about Emanuel Barrientos?

19 A Yes, ma'am.

20 Q Okay. And you also refer to him as Nino?

21 A Yes, ma'am.

22 Q How soon after -- I mean, you were treated at the  
23 hospital in California; is that right?

24 A Yes, ma'am.

25 Q How many days did you stay over in the hospital in

1 California?

2 A I believe, three days.

3 Q Did you return to your apartment in Las Vegas?

4 A Yes, ma'am.

5 Q After that? Okay. And how soon after you returned  
6 from the hospital did you get a visit from Gabriel Sotelo?

7 A Probably a week and a half to two weeks later,  
8 maybe.

9 Q And while Gabriel -- during Gabriel's visit with  
10 you, did you tell him what happened on September 21st, 2014?

11 A Basically, I gave him quick rundown of what  
12 happened. As far as exact details, no, but --

13 Q Okay want?

14 A -- he -- he had a good basic idea.

15 Q Okay. So what rundown did you give him?

16 A Basically, a robbery that went bad. I had got shot  
17 a couple times, and basically, he -- yeah, that -- that's  
18 pretty much it.

19 Q It you tell him that you had committed the robbery  
20 with other people?

21 A Yes, ma'am.

22 Q Okay. When Gabriel was visiting with you, was Manny  
23 over at your house as well?

24 A Yes, ma'am.

25 Q Okay, okay. And did you -- how many people did you

1 tell Gabriel were involved in the robbery where you got shot?

2 A I told him a few people.

3 Q Did you give him any specific names?

4 A What, I think I mentioned Montone's name because he  
5 -- he knows -- he -- he knows him.

6 Q When you say "he", Gabriel knows Montone?

7 A Yes, ma'am.

8 Q Anyone else by name?

9 A No, ma'am.

10 Q I want to talk a little bit about Manny, okay?

11 A Yes, ma'am.

12 Q At some point, did you obtain a firearm from Manny?

13 A Yes, ma'am.

14 Q What kind of firearm did you obtain from him?

15 A A .38 snub nose.

16 Q Now, you previously testified that before the  
17 robbery during the nighttime on September 21st, at 1661  
18 Broadmere, when they were dropping you off at your house or  
19 your apartment, Manny asked you for a weapon; do you remember  
20 that? Or excuse me, Montone asked you for a weapon; is that  
21 right?

22 A Yes, ma'am.

23 Q Okay. And then you testified that you gave him a  
24 .38 snub nose?

25 A Yes, ma'am.

1 Q Was the .38 snub nose that you gave to Montone,  
2 Mr. Laguna, the same weapon that you had gotten from Manny?

3 A Yes, ma'am.

4 Q Or Emanuel Barrientos?

5 A Yes, ma'am.

6 Q During the time of September 21st, 2014, was Manny  
7 around you a lot?

8 A We hung out all the time, but, I mean, prior to the  
9 incident, I probably didn't see him for a little while.

10 Q Okay. What do you mean by a little while? How much  
11 time are you talking?

12 A A few days.

13 Q And was Manny with you during the robbery and home  
14 invasion over at 1661 Broadmere?

15 A No, ma'am.

16 Q So your only contact -- correct me if I'm wrong,  
17 your only contact with him that particular day was you calling  
18 him to see if he could pick you up after you had been shot?

19 A Yes, ma'am.

20 MS. LEXIS: Court's brief indulgence. Court's brief  
21 indulgence.

22 BY MS. LEXIS:

23 Q Mr. Figueroa, you testified previously that during  
24 the morning attempt robbery of the supplier's house over on  
25 the northwest side, that Mr. Murphy had his girlfriend driving

1 the vehicle that you were in; is that right?

2 A Yes, ma'am.

3 Q Okay.

4 MS. LEXIS: Your Honor, I'd like to approach with  
5 what's been previously marked as State's 234.

6 THE COURT: Is it admitted or just proposed?

7 MS. LEXIS: Proposed.

8 THE COURT: Thank you.

9 MS. LEXIS: May I approach?

10 THE COURT: Yes.

11 MS. LEXIS: Thank you.

12 BY MS. LEXIS:

13 Q Sir, I'm going to show you what's been previously  
14 marked as State's Proposed Exhibits 234. Do you recognize  
15 what's depicted in this photograph?

16 A That -- that's the lady who was driving the car in  
17 the beginning --

18 Q Okay.

19 A -- during the first one.

20 Q And who else is in the photographs?

21 A Duboy.

22 Q Okay.

23 MS. LEXIS: Your Honor, I'd move to admit State's  
24 Proposed Exhibits 234 into evidence.

25 MR. LANDIS: I object, and I can't believe State's

1 trying to put that into evidence, to be honest with you.

2 THE COURT: Approach.

3 (Off-record bench conference)

4 MS. LEXIS: Your Honor, may I approach with what's  
5 now been marked as State's Proposed Exhibits 234?

6 THE COURT: Yes.

7 MS. LEXIS: Thank you.

8 BY MS. LEXIS:

9 Q Sir, I'm going to show you State's Exhibit 234,  
10 Proposed. Do you recognize what's depicted in this  
11 photograph?

12 A Yes. It's Duboy and the female that was driving the  
13 car during the first incident.

14 Q Okay. That's the first attempted robbery on  
15 September 21st, 2014?

16 A Yes, ma'am.

17 MS. LEXIS: Your Honor, I'd move to admit State's  
18 Proposed Exhibits 234 into evidence.

19 MR. LANDIS: No objection to this 234.

20 MS. McNEILL: No objection.

21 MR. WOLFBRANDT: No objection.

22 THE COURT: It will be admitted.

23 (State's Exhibit 234 admitted)

24 MS. LEXIS: Permission to publish on Elmo?

25 THE COURT: Granted.

1 MS. LEXIS: Thank you.

2 BY MS. LEXIS:

3 Q Sir, you previously testified that during the first  
4 attempted robbery, on September 21st, that Sunday, Duboy had  
5 his girlfriend, essentially, come out of the vehicle that he  
6 was in once you all were near the house; do you remember that?

7 A Yes, ma'am.

8 Q Okay. So is it your testimony that the female  
9 depicted in this particular photograph was the individual that  
10 Duboy was with that particular day?

11 A Yes, ma'am.

12 Q And she was the same individual that arrived at that  
13 particular location with Duboy?

14 A Yes, ma'am.

15 Q And she's the same person who came out of Duboy's  
16 truck and went on to be the driver in the vehicle that you  
17 were in?

18 A Yes, ma'am.

19 Q Mr. Mendoza's vehicle?

20 A Yes, ma'am.

21 Q Okay. And that when you all met back up at  
22 Mr. Laguna's house, Montone's house, she got out of your  
23 vehicle and went back into Duboy's vehicle?

24 A Yes, ma'am.

25 Q So Mr. Figueroa, during the beginning of your

1 testimony we kind of went over the timeline and the statements  
2 that you gave the police.

3 I'd like to talk about the first time that you're  
4 interviewed by detectives on October 20th, 2014.

5 A Yes, ma'am.

6 Q Okay. The same day that the photographs that I just  
7 showed of you were taken; is that right?

8 A Yes, ma'am.

9 Q At that point, you were already taken into custody  
10 and being booked on the charges in this particular case; is  
11 that right?

12 A Yes, ma'am.

13 Q Okay. And you testified that you didn't exactly  
14 tell the police the truth of what all happened that particular  
15 night; is that right?

16 A Yes, ma'am.

17 Q Okay. What is it that you told detectives on  
18 October 20th, 2014?

19 A When I initially got arrested?

20 Q Yes, sir.

21 A I told them I was going to this house to buy some  
22 weed, and basically, as soon as I walked up, the door was  
23 already kicked in, and basically, like, I heard like a  
24 argument, then instantly like, as I was coming -- you know,  
25 got to the front of the door, they started firing and I -- I



1 said that I had got shot.

2 Q Okay.

3 A And I turned around and ran.

4 Q And when you told detectives about the house --

5 A Yeah.

6 Q -- as you just testified right now, were you talking  
7 about the house on Broadmere?

8 A Yes, ma'am.

9 Q Okay. So essentially that you had come across or  
10 upon a home invasion and that's how you got shot?

11 A Yes, ma'am.

12 Q Then we talked about how you appeared in court on  
13 October 23rd, 2014, your first appearance, and you told  
14 detectives that you wanted to speak to him; do you remember  
15 that?

16 A Yes, ma'am.

17 Q Okay. Fair to say that you didn't -- that you  
18 didn't give a full, full interview that day when the  
19 detectives showed up at the Clark County Detention Center?

20 A Yes, ma'am.

21 Q Okay. And you had just been appointed a lawyer that  
22 particular day; is that right?

23 A Yes, ma'am.

24 Q Okay. And you didn't have access to discovery yet?

25 MS. McNEILL: Objection. Leading and asked and

1 answered. We went over this last week.

2 THE COURT: I don't remember the asked and answered,  
3 but that's sustained on leading.

4 MS. LEXIS: Okay.

5 BY MS. LEXIS:

6 Q Did you have any discovery back on October 23rd,  
7 when the police showed up to the Clark County Detention  
8 Center?

9 A No, ma'am.

10 Q And you gave a statement on October 24th, 2014 with  
11 your lawyer present; is that right?

12 A Yes, ma'am.

13 Q Did you have any discovery at that time?

14 A No, ma'am.

15 Q What is it that you told the police on October 24th,  
16 during your statement?

17 A Me, Duboy, Montone, Mendoza, that we went basically  
18 to go rob this house. And I told him about the one before. I  
19 told him about the girl driving the car. I told him how I got  
20 shot, turned around and ran, how I hid in the backyard, then,  
21 you know, after, what, eight, nine hours I hopped a couple  
22 other walls then made a phone call to my sister and she came  
23 and got me.

24 Q During that particular interview, October 24th --

25 A Yes, ma'am.

1 Q -- 2014, did you tell the detectives that you had a  
2 .40 caliber Ruger with you during the robberies?

3 A Yes, ma'am.

4 Q Okay. And did you tell the police at that time  
5 where it was that they could get the Ruger?

6 A Yes, ma'am.

7 Q And who had you given the Ruger to to hold?

8 A Shandalaya.

9 Q And did you tell detectives where she lived and that  
10 they could retrieve it from her?

11 A Yes, ma'am.

12 Q So basically, on October 24th, 2014, did you tell  
13 police the same thing that you have told the jurors here?

14 A Yes, ma'am.

15 Q The police also came back to the Clark County  
16 Detention Center on January 25th, 2015, before you testified  
17 before the Grand Jury; do you remember that?

18 A Yes, ma'am.

19 Q And I was present with the detective at that time?

20 A Yes, ma'am.

21 Q What did you tell the detective and myself during  
22 that taped interview?

23 MR. LANDIS: Judge, I'm going to object to the  
24 admission of prior consistent statements, which is what it  
25 seems to me what they're doing.

1 MS. McNEILL: And I would join the objection.

2 MR. WOLFBRANDT: I would join that as well.

3 MS. LEXIS: Do you want us to approach?

4 THE COURT: Yes.

5 (Off-record bench conference)

6 THE COURT: All right, the objection's sustained.

7 MS. LEXIS: Thank you.

8 BY MS. LEXIS:

9 Q Mr. Figueroa, do you recall the detectives coming to  
10 see you at the Clark County Detention Center on December 10th,  
11 2014, where they showed you some pictures?

12 A Yes, ma'am.

13 Q And do you recall them showing you a picture of an  
14 individual they believed to be Duboy?

15 A Yes, ma'am.

16 Q Oak. When they presented you with that particular  
17 photograph, what did you tell them?

18 A That wasn't -- that wasn't the Duboy -- Duboy I'm  
19 talking about.

20 Q And at that time, did you give the police a  
21 description of the Duboy that you were talking about?

22 A Yes, ma'am.

23 Q Okay. And what did you describe him as?

24 A Basically, what, six, two, heavy set, had something  
25 wrong with his arm.

1 Q Which arm?

2 A At the time, I wasn't sure if it was the left or  
3 right, but I -- I mean, you know, it was -- I knew he had  
4 something wrong with his arm, and, you know --

5 Q Okay. And do you recall telling the detectives  
6 about knowing an individual that went by the nickname of  
7 Cornbread?

8 A Yes, ma'am.

9 Q Okay. And what was his relationship, if any, to  
10 Duboy?

11 A His brother. Brother-in-law.

12 Q Okay. Do you see Cornbread here in court today?

13 A Yes, ma'am.

14 Q Okay. Can you point to him and describe what he's  
15 wearing.

16 A The gentleman sitting in the far back row, bald  
17 head, button-up T-shirt, kind of white. Looks like it got  
18 stripes.

19 MS. LEXIS: Your Honor, please let the record  
20 reflect identification of the individual Mr. Figueroa knows to  
21 be Cornbread.

22 THE COURT: It will.

23 BY MS. LEXIS:

24 Q The individual in the photograph that the detective  
25 showed you, the one that you indicated was the wrong Duboy,

1 what did he look like?

2 A Mexican guy, heavy set, bald head.

3 Q Do they at some point return with another set of  
4 photographs?

5 A Yes, ma'am.

6 Q Okay. And this time, did the photographs contain  
7 the right Duboy?

8 A Yes, ma'am.

9 Q Okay. And who were the -- who was the photograph  
10 of?

11 A Mr. Murphy.

12 MS. LEXIS: I have no more questions for this  
13 witness. Thank you.

14 THE COURT: Ms. McNeill?

15 MS. McNEILL: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. McNEILL:

18 Q Mr. Figueroa, I want to go back to September 2014  
19 (inaudible), okay?

20 THE COURT: Wait a minute. Is there a microphone up  
21 there?

22 MS. McNEILL: I don't think so.

23 THE MARSHAL: It's over there.

24 (Pause in the proceedings)

25 BY MS. McNEILL:

1           Q     In September 2014, you indicated that after you got  
2 shot, you called your sister to pick you up, correct?

3           A     Yes, ma'am.

4           Q     And you indicated that when your sister picked up,  
5 you lied to her about what had happened to you, correct?

6           A     Yes, ma'am.

7           Q     Okay. And you knew that you couldn't go to a  
8 hospital here with a gunshot wound, didn't you?

9           A     Yes, ma'am.

10          Q     Why was that?

11          A     Basically, a shooting just happened, and there would  
12 be, you know, basically, a police report going out or  
13 something that's saying, you know, be on the lookout for  
14 someone with a gunshot wounds or something of that sort.

15          Q     Okay. So you knew that you needed to go out of  
16 state?

17          A     Yes, ma'am.

18          Q     And that's why you chose California?

19          A     Yes, ma'am.

20          Q     And when you got to the hospital in California, you  
21 lied to the hospital there about what happened to you?

22          A     Yes, ma'am.

23          Q     Okay. And I'm guessing that was for the same  
24 reason, you didn't want law enforcement involved in it?

25          A     Yes, ma'am.

1           Q     In October of 2014, when you were back in Las Vegas,  
2 after going to the hospital in Loma Linda, you knew that the  
3 police might be looking for you, didn't you?

4           A     Yes, ma'am.

5           Q     And in fact, when the police arrested you, they  
6 informed you what they were arresting you for?

7           A     Yes, ma'am.

8           Q     And one of those charges was murder?

9           A     Yes, ma'am.

10          Q     Right? And then when they gave you that -- when  
11 they initially talked to you, remember Ms. Lexis said you told  
12 them this story about going there to buy weed, correct?

13          A     Yes, ma'am.

14          Q     Do you remember when the police talked to you, they  
15 were trying to get you to give them information, do you  
16 remember the police telling you that one of the people  
17 involved had snitched on you?

18          A     Some -- somewhat like that.

19          Q     Okay. And so the police are asking you questions to  
20 try to get you to give information; remember that?

21          A     Yes, ma'am.

22          Q     You didn't want to give them information, did you?

23          A     No, ma'am.

24          Q     Right. So it was in that interview that you lied to  
25 the police?



1 A Yes, ma'am.

2 Q And the police kept telling you that they had  
3 evidence against you, correct?

4 A Yes, ma'am.

5 Q And the police were telling you that somebody else  
6 involved had said that you planned this robbery, remember  
7 that?

8 A Yes, ma'am.

9 Q And then they were telling you that it would be in  
10 your best interest to talk to them?

11 A Yes, ma'am.

12 Q Right? And to tell them that it wasn't you that  
13 planned it, correct?

14 A Yeah. I guess, yes, ma'am.

15 Q Okay. And after that interview is when you went to  
16 court for your case, correct?

17 A Yes, ma'am.

18 Q And you knew that you were being charged with  
19 murder?

20 A Yes, ma'am.

21 Q Right? And it was in court when you were facing  
22 your murder charge that you got scared?

23 A Yes.

24 Q And that's when you indicated to officers that you  
25 wanted to talk to them?

1 A Yes, ma'am.

2 Q Right? And they came to talk to you on October  
3 23rd, right?

4 A Yes, ma'am.

5 Q Okay. And the police again are trying to get  
6 information from you, correct?

7 A Yes, ma'am.

8 Q But you wanted a lawyer there?

9 A Yes, ma'am.

10 Q And you wanted a lawyer there because you wanted to  
11 make sure you could get a good deal, right?

12 A I mean, yes, ma'am.

13 Q All right. That's why you were talking to them,  
14 right?

15 A Yes, ma'am.

16 Q You didn't want to go down on a murder?

17 A No, ma'am.

18 Q Okay. And while you were talking to them, you  
19 wanted to make sure you had a lawyer there so that you could  
20 figure out what deal you were going to get, right?

21 A Yes, ma'am.

22 Q And in fact, do you remember asking the detectives  
23 what kind of deal they could make you. You were concerned  
24 about sentencing, remember that?

25 A Yes, ma'am.

1 Q Okay. And in fact, they told you that they'd have  
2 to talk to the DA first?

3 A Yes, ma'am.

4 Q But that you would need to be cooperative?

5 A Yes, ma'am.

6 Q Do you remember saying that you needed to have your  
7 lawyer there because you don't know about loopholes in the  
8 law?

9 A Yes, ma'am.

10 Q And you were aware these were very serious charges?

11 A Yes, ma'am.

12 Q And it was after that interview that the police came  
13 to you one more time with your lawyer there?

14 A Yes, ma'am.

15 Q Right? And in that interview is when you finally  
16 tell the police about all the involvement of all the other  
17 gentlemen, correct?

18 A Yes, ma'am.

19 Q And again, in that interview, you're indicating that  
20 you don't want to do prison time. You're not trying to do a  
21 lot of prison time, right? You remember saying that?

22 A I believe so.

23 Q And I'm guessing as you sit here today, you don't  
24 want to do a lot of prison time?

25 A No, ma'am.

1 Q There's a big difference between a murder charge and  
2 a robbery with use of a deadly weapon conviction, isn't there?

3 A Yes, ma'am.

4 Q In fact, do you know what the difference is?

5 A What, I believe, like second degree's like 2 to 25,  
6 something like that.

7 Q Okay. Well did your lawyer explain to you that --

8 A I mean, 10 to 25.

9 Q -- on the robbery with deadly weapon you're looking  
10 at 2 to 15 for the robbery?

11 A Okay.

12 Q Did your lawyer explain that to you when you entered  
13 your plea?

14 A Yes, ma'am.

15 Q Right. You were informed of the sentencing range?

16 A Yes, ma'am.

17 Q And then a 1 to 20 for the deadly weapon, correct?

18 A Yes, ma'am.

19 Q Okay. And in fact, you were aware of that before  
20 you entered the plea because you had discussed what kind of  
21 deal you were going to get with the State?

22 A Yes, ma'am.

23 Q Right? Okay. I want to talk to you a little bit  
24 about some of the things that you talked about today. Well,  
25 first I want to go back to one of the interviews. The police

1 asked you in your interview -- one of your interviews with  
2 them about Manny, remember that?

3 A Yes, ma'am.

4 Q And the police thought that Manny was involved?

5 A That -- that's what they were getting at.

6 Q Okay. And you indicated that Manny was just a  
7 homeboy?

8 A Yes, ma'am.

9 (Cell phone ringing).

10 THE COURT: Okay, wait a minute.

11 MS. McNEILL: Yes.

12 THE COURT: Let's -- ma'am, have you got that phone  
13 off?

14 JUROR NO. 2: Yes.

15 THE COURT: All right. Proceed.

16 MS. McNEILL: Thank you, Your Honor.

17 BY MS. McNEILL:

18 Q You testified before the Grand Jury in January of  
19 2015, remember that?

20 A Yes, ma'am.

21 Q And is it fair to say that your testimony before the  
22 Grand Jury contains a few more details than any of your  
23 statements had prior to that date?

24 A I'm -- I don't got all the statements here to  
25 compare them.

1 Q Okay.

2 A I mean --

3 Q Well, how about this --

4 A I don't got a photographic memory.

5 Q Okay. Well, that's fair. In your statements to the  
6 police on December 24th, in that statement, did you tell the  
7 police what time you had the phone calls from Mr. Laguna?

8 A Yes.

9 Q You did? Do you remember telling them a specific  
10 time?

11 A A range of times.

12 Q A range of times? What time do you think you told  
13 them?

14 A On which incident?

15 Q On December -- on October 24th, when you told the  
16 police that Mr. Laguna called you, do you remember telling  
17 them specifically what time?

18 A What, the phone calls in the morning?

19 Q Yes.

20 A Probably around 6:00, 7:00.

21 Q Would it surprise you that you just said in the  
22 morning?

23 A I mean, no.

24 Q No? Okay. In your statement on January 25th, did  
25 you tell the police what time Mr. Laguna called you?

1 A Probably.

2 Q Probably? Do you remember if you told them that?

3 A What, that he called me around 6:00 or 7:00-ish?

4 Q Yeah. Do you remember if you told them that?

5 A I think so.

6 Q Okay.

7 A I mean --

8 Q Do you remember everything you said in that  
9 interview? If you don't remember, I can show you. That's why  
10 I'm asking. It's --

11 A I mean --

12 Q -- just something we have to do. Do you remember  
13 telling them specifically what time?

14 A Pretty much, I guess, yeah.

15 Q Okay. So what time did you tell them?

16 A Probably around 6:00, 7:00.

17 Q Okay. Would it surprise you to know that you did  
18 not tell them what time that happened?

19 A I mean, is it surprising? No, not really. I  
20 mean --

21 Q Okay. Let's go to your interview on -- or to your  
22 statement before the Grand Jury. Do you remember testifying  
23 then?

24 A Yes, ma'am.

25 Q Okay. And do you remember telling them specific

1 times --

2 MS. LEXIS: Objection, Your Honor. This line of  
3 questioning assumes facts not in evidence.

4 MS. McNEILL: Well, if he's -- one, he's testifying  
5 about his -- -- at the Grand Jury and he just said he  
6 remembered telling them what time. And he testified to them  
7 what time.

8 THE COURT: Overruled.

9 BY MS. McNEILL:

10 Q Do you remember testifying at the Grand Jury then as  
11 to what time Mr. Laguna called you, correct?

12 A Yeah.

13 Q Okay. I'm going to ask you to look at your  
14 statements from October 24th and January 25th, and ask if you  
15 can show me where you told the detectives what time Mr. Laguna  
16 called you. If I may approach?

17 THE COURT: Yeah, go ahead.

18 BY MS. McNEILL:

19 Q Is this a copy of your statement from October 24th?

20 A Yes, ma'am.

21 Q Okay. If you could just look through and tell me  
22 where you told them specifically what time Mr. Laguna called  
23 you.

24 A It doesn't look like I gave a real specific time.

25 Q Okay. And if you will look at -- is this a



1 transcript of your statement from January 25th?

2 A Yes, ma'am.

3 Q Okay. And if you could look through that and do the  
4 same.

5 A It doesn't look like I gave a specific time.

6 Q Okay. So you would agree with me that the first  
7 time you mentioned a specific time would be before the Grand  
8 Jury?

9 A I believe so.

10 Q Prior to testifying at the Grand Jury, you spoke  
11 with the district attorney, correct?

12 A Yes, ma'am. Or --

13 Q You remember testifying that at this first house  
14 that you went to, that it was in the north northwest, correct?

15 A Yes, ma'am.

16 Q Do you remember where you told police it was when  
17 you spoke to them on October 20 -- I'm sorry, I got my --  
18 mixed up. October 24th, do you remember where you told them  
19 it was?

20 A What, north northwest area, I believe.

21 Q Well, when you say you believe, does that mean maybe  
22 you don't remember?

23 A I mean, on the way to the house, I mean, I was  
24 smoking weed. I mean, I wasn't looking at every street.  
25 Every --

1 Q Okay.

2 A But I believe it was in north northwest.

3 Q Okay. And I get that. And let me just kind of  
4 explain this. When I ask if you don't remember, that's okay.

5 A Okay.

6 Q Then you can just say that, and then I can help you  
7 try to remember what you said.

8 A Okay.

9 Q So I'm not asking you right now where is it. I'm  
10 asking you do you remember telling the police when you spoke  
11 to them on October 24th where it was? Do you remember what  
12 you said?

13 A North northwest area.

14 Q So you believe that you told the police when asked  
15 where that first house was that it was in the north northwest?

16 A Yes, ma'am.

17 Q Again, I'm going to ask you to look at your  
18 statement.

19 MS. McNEILL: If I may approach the witness.

20 THE COURT: You may.

21 BY MS. McNEILL:

22 Q And tell me where it says north northwest.

23 A Yeah, on this page it doesn't say that.

24 Q Okay. Do you remember them asking where is this  
25 other house at, right? And then your answer was, "I could

1 show you where this other house is at," right? That's what it  
2 said on the paper?

3 A Yes.

4 Q Right. So it doesn't say north northwest, correct?

5 A Yes, ma'am.

6 Q And then when you spoke to them again on January  
7 25th, and I think that was the interview where Ms. Lexis was  
8 present, do you remember telling them where you told them this  
9 other house was? Do you remember what you said then?

10 A What, the second house?

11 Q The first house.

12 A First house?

13 Q I'm talking about January 25th, when you spoke to  
14 the police again --

15 A Yes.

16 Q -- and they asked you about this other house, do you  
17 remember what you said, where it was?

18 A I guess, north northwest. I mean, that's --

19 Q Are you guessing that's what you said or do you  
20 remember?

21 A Not exactly.

22 Q Okay. And --

23 A Not exactly.

24 Q If looking at your statement would help you  
25 remember, I can approach.

1 MS. McNEILL: May I approach, Your Honor?

2 THE COURT: Would looking at your statement help you  
3 remember?

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Okay.

6 THE WITNESS: It's my statement.

7 BY MS. McNEILL:

8 Q Okay. If you read this area to yourself. Okay.  
9 Does that help you remember?

10 A I said if you gave me a map, I could pinpoint it.

11 Q Okay. That's true. Did you say that. But when  
12 they asked you where it was, you also said somewhere, right?

13 A Somewhere, if you gave me a map, I could pinpoint  
14 it.

15 Q Okay. But you said uh, somewhere. Did they give  
16 you a map to pinpoint it?

17 A Did they? No, ma'am.

18 Q No? Okay. At any point have they shown you a map  
19 to pinpoint where that was?

20 A No, ma'am.

21 Q Have the police ever come to get you out of your  
22 cell to take you to drive them to that house?

23 A No, ma'am.

24 Q Okay. You indicated that at that first location, it  
25 was in the north northwest in a cul-de-sac, right?

1 A Yes, ma'am.

2 Q And that Duboy was parked down the street from the  
3 house?

4 A Yes, ma'am.

5 Q Do you remember where he was parked?

6 A He was parked at the end of the street, you know.  
7 The street, it comes down, it -- it meets with another street  
8 and it would make a T, and he was, I guess, parked right --  
9 right -- you know, right there, but right out of sight.

10 Q Okay. Could you see the car from where you were?

11 A No, ma'am.

12 Q Okay. And your testimony was that you were going to  
13 take 100 to 200 pounds of marijuana?

14 A Yes, ma'am.

15 Q How familiar are you with marijuana?

16 A I'm pretty familiar with it.

17 Q I mean, you were a drug dealer, correct?

18 A Yes, ma'am.

19 Q And you sold marijuana?

20 A Yes, ma'am.

21 Q Okay. So you have some familiarity with it?

22 A Yes, ma'am.

23 Q Okay. How big is a pound of marijuana? Maybe a  
24 foot long? Would you agree with me, for the record?

25 A I mean, give or take, yes.

1 Q Okay. And then maybe, I don't know, is that six  
2 inches high?

3 A Yes, ma'am.

4 Q Okay. So kind of a brick?

5 A Yes, ma'am.

6 Q So there would be 100 to 200 of those that you would  
7 be taking out of the house?

8 A That's what I was informed of, yes, ma'am.

9 Q You indicated today that Mr. Laguna asked you to  
10 bring a .38, correct?

11 A Yes, ma'am.

12 Q Is that what you said? Okay.

13 A Yes, ma'am.

14 Q Okay. Have you ever told the police that before,  
15 that Mr. Laguna asked you to bring a gun?

16 A No, ma'am.

17 Q And then you indicated that it was Manny who  
18 provided this gun to you, the .38?

19 A It was -- it's been at my house for weeks before  
20 that so as far as giving me the gun, no. It was there and  
21 basically, I started claiming it.

22 Q Okay. Well, then I guess I'm confused, because I  
23 thought you testified that Manny provided the gun to you  
24 because Mr. Laguna needed one?

25 A No, ma'am.

1 Q Is that what you said?

2 A No, ma'am.

3 Q Okay. So at some date before this Manny had just  
4 left a .38 at your house?

5 A Yes, ma'am.

6 Q You indicated that you were wearing a black mask  
7 during the second incident on September 21st, remember that?

8 A Yes, ma'am.

9 Q Do you remember telling the police that you dumped  
10 the mask when you were running?

11 A No, ma'am.

12 Q You don't remember telling them that? Would looking  
13 at your statement refresh your recollection?

14 A Yes, ma'am.

15 (Ms. McNeill conference with District Attorneys)

16 MS. McNEILL: If I may approach the witness?

17 THE COURT: Yes.

18 BY MS. McNEILL:

19 Q If you'd just read this part to yourself. Does that  
20 help you remember?

21 A And what was your question again?

22 Q Do you remember telling them that you dumped the  
23 mask while you were running?

24 A I said in my statement if I would have dumped the  
25 mask, I wouldn't want to be nowhere near it.

1 Q Okay. Okay. Do you remember when they asked you  
2 where the mask was, you said, I would have dumped it while I  
3 was running, right?

4 A I mean --

5 Q Is that what you said?

6 A Yes, that's what I said --

7 Q Okay.

8 A -- in the statement.

9 Q Where did you dump the mask?

10 A I never dumped the mask, though.

11 Q Okay. So where's the mask now?

12 A I got rid of it.

13 Q Okay. When?

14 A When? What, a couple days after.

15 Q Okay. So when you told the police that on October  
16 24th, that you dumped it while you were running, that was a  
17 lie?

18 A I never really said I dumped it, though.

19 Q Okay. All right. You indicated that your weapon  
20 was holstered while you were inside the Broadmere house,  
21 remember that?

22 A Upon entering, it was holstered.

23 Q Right.

24 A Yes, ma'am.

25 Q And the only time you took it out was when you were



1 running because it was sort of flopping around, remember that?

2 A Yes, ma'am.

3 Q Okay. Do you remember telling the police -- they  
4 asked you if you ever fired your weapon, and you said that you  
5 didn't ever fire it, right?

6 A Yes, ma'am.

7 Q And you remember telling them that it was because it  
8 was on safety?

9 A Yes, ma'am.

10 Q Okay. But you didn't tell them that it was  
11 holstered while you were in the house, correct?

12 A No, ma'am.

13 Q And you never fired your weapon on September 21st?

14 A No, ma'am.

15 Q You said that Duboy picked up Mr. Laguna at the end  
16 of the Broadmere driveway, correct?

17 A Yes, ma'am.

18 Q Which direction did he drive away? Towards Long  
19 Cattle or towards Garamound?

20 A I would -- towards the left so that would be south.

21 Q Maybe we can put up a picture for you. That might  
22 help.

23 MR. DiGIACOMO: Court's indulgence for a second. I  
24 have to go back to --

25 (Mr. DiGiacomo/Ms. McNeill conferring)

1 THE WITNESS: Yeah, south down Broadmere.

2 BY MS. McNEILL:

3 Q Okay. Well, if you could -- do you see the picture  
4 up in front of you?

5 A Yes, ma'am.

6 Q Okay. So south down Broadmere, which direction did  
7 he drive?

8 A To the left-hand side south down Broadmere if you're  
9 facing the house.

10 Q Okay. So you can actually show us on the screen.  
11 So he drove past the Broadmere house?

12 A Yes, ma'am.

13 Q Right? Past Long Cattle?

14 A Yes, ma'am.

15 Q Okay. Down to -- down to that long street on the  
16 bottom, which is (inaudible) towards Ranch Hand?

17 A Yes, ma'am.

18 Q Right? Okay. You were shown some pictures that the  
19 police took when they searched your apartment. If I could  
20 approach you with Defense Proposed Exhibits B and C?

21 THE COURT: Is that D like David?

22 MS. McNEILL: B as in boy --

23 THE COURT: B as in boy.

24 MS. McNEILL: -- and C. If I may approach, Your  
25 Honor?

1 THE COURT: Yes.

2 BY MS. McNEILL:

3 Q Showing you Proposed Exhibit B, do you know what  
4 that is? Is that from your apartment the day that the police  
5 took the pictures?

6 A Yes, ma'am.

7 Q Whose room is that?

8 A That's my room.

9 Q Okay. And showing you Defense Proposed Exhibit C,  
10 that's another picture similar to the first one, correct?

11 A Yes, ma'am.

12 Q And that's your room?

13 A Yes, ma'am.

14 Q Okay.

15 MS. McNEILL: Your Honor, I would move for the  
16 admission of Defense Exhibit B and C.

17 MS. LEXIS: No objection.

18 MS. McNEILL: And move to publish.

19 THE CLERK: Which ones were they?

20 THE COURT: So --

21 MS. McNEILL: B and C.

22 THE COURT: -- B and C are admitted, and you're  
23 publishing first --

24 (Defendant Laguna's Exhibits B and C admitted)

25 (Mr. DiGiacomo/Ms. McNeill conferring)

1 MR. DiGIACOMO: For the record, I just put up B.

2 BY MS. McNEILL:

3 Q Okay. Mr. Figueroa, you indicated that that was  
4 your bedroom in your apartment at the time you were arrested,  
5 correct?

6 A Yes, ma'am.

7 Q Can you tell me what's in those jars?

8 A That jar looks empty and that jar looks like it got  
9 one of those brown plastic bags where you get from Smith's.

10 Q Okay.

11 A For --

12 Q Which jar looks empty?

13 A The first one with the orange tag.

14 Q Okay. And what does the orange tag say? Can you  
15 read it?

16 A I think it says Bubba.

17 Q Bubba? Do you know --

18 A Yes, ma'am.

19 Q -- what Bubba means?

20 A It's a type of marijuana.

21 Q Okay.

22 A Yes.

23 Q And it looks like to you that the second jar has a  
24 grocery bag in it?

25 A Yes, ma'am.

1           Q     Okay. It doesn't look like baggies of marijuana to  
2 you?

3           A     No, ma'am.

4           Q     Okay. Back in October of 2014, you were selling  
5 marijuana, weren't you?

6           A     Yes, ma'am.

7           Q     And in fact, when you say that you knew Gabriel  
8 Sotelo, you knew Mr. Sotelo because you sold marijuana to him,  
9 didn't you?

10          A     Yes, ma'am.

11          Q     And you indicated that you had a conversation with  
12 Mr. Sotelo about the robbery?

13          A     Yes, ma'am.

14          Q     And you indicated that you told him, basically,  
15 that it was a robbery gone wrong, right?

16          A     Yes, ma'am.

17          Q     And you told -- you said that you told Gabe that  
18 there were a few people there, right?

19          A     Yes, ma'am.

20          Q     But you didn't give specific names? Or actually,  
21 I'm sorry, you thought you mentioned Mr. Laguna's name?

22          A     Yes.

23          Q     You, in fact, told Mr. Sotelo that Manny was with  
24 you during the robbery, didn't you?

25          A     No, ma'am.

1           Q     You told Mr. Sotelo that Manny went into the house  
2 with you during the robbery?

3           A     No, ma'am.

4           Q     You told Mr. Sotelo that there was something else  
5 with you named Orko (phonetic), right?

6           A     No, ma'am.

7           Q     Okay. You told Mr. Sotelo that you would buy weed  
8 from the guy who lived in the house, didn't you?

9           A     No, ma'am.

10          Q     And that you told Mr. Sotelo that you went to  
11 California to have your injuries treated?

12          A     Yes, ma'am.

13          Q     Do you remember the interview that you did with  
14 police where your attorney was present? Your attorney told  
15 you that you were doing yourself a big favor by giving  
16 information to the police, correct?

17          A     Yes, ma'am.

18          Q     Do you believe that you did yourself a favor by  
19 talking to the police?

20          A     I mean, a peace of mind.

21          Q     Okay. And would you agree with me that you did  
22 yourself a favor when you lied to your sister about how you  
23 got your injuries?

24          A     Yes, ma'am.

25          Q     And you did yourself a favor when you lied to the

1 hospital in Loma Linda about how you got your injuries?

2 A Yes, ma'am.

3 Q And you did yourself a favor when you lied to the  
4 police during your first interview?

5 A Yes, ma'am.

6 Q Okay. You did yourself a favor by then telling the  
7 COs when you went to court on your murder case that you wanted  
8 to talk to them, right?

9 A Yes, ma'am.

10 Q And then you did yourself a favor by talking to the  
11 police?

12 A Yes, ma'am.

13 Q In subsequent interviews? You did yourself a favor  
14 by meeting with the District Attorneys?

15 A Yes, ma'am.

16 Q Right? And you did yourself a favor by testifying  
17 before the Grand Jury?

18 A Yes, ma'am.

19 Q And you're doing yourself a favor by testifying  
20 today, right?

21 A Yes, ma'am.

22 Q Okay. So you're all about doing yourself favors?

23 A I mean, after getting shot and yes, ma'am.

24 MS. McNEILL: Nothing further.

25 THE COURT: Mr. Landis.

1 MR. LANDIS: Court's brief indulgence.

2 THE COURT: How's the jury doing? Need a break?  
3 Hands, show of hands? No? Okay. How about court staff?  
4 You're okay? Okay.

5 MR. LANDIS: My mind was in the same place as the  
6 Court's and his is probably shorter. We were thinking maybe  
7 he'd go before the break and then I'd jump in.

8 MR. WOLFBRANDT: That's fine.

9 THE COURT: Okay. Excuse me coughing. Vegas throat  
10 this morning. Mr. Wolfbrandt.

11 CROSS-EXAMINATION

12 BY MR. WOLFBRANDT:

13 Q All right, Mr. Figueroa, the first interview you  
14 gave with the police you told them that you -- you were there  
15 but you hadn't even gotten near the house; is that correct?

16 A When the police arrested me, right? That first  
17 initial interview --

18 Q Right.

19 A -- while they were arresting me?

20 Q Right. The one on October 24th?

21 A I told them I was coming around the corner and I had  
22 seen a home invasion in progress and basically, as soon as I,  
23 you know, got there, I had got shot and I turned around and I  
24 ran.

25 Q And did you tell them why you were there in the



1 neighborhood?

2 A I told them I was going to buy some weed.

3 Q And just coincidentally as you were in that  
4 neighborhood to buy weed and you were around the corner of the  
5 house, some random home invasion happened and you got shot; is  
6 that essentially what you told the police?

7 A Yes, sir.

8 Q All right. I'm going to go to the early morning of  
9 September 27th, 2014.

10 A Okay.

11 Q Okay. Actually, it was prior to that. You get -- a  
12 couple days before that. You get a phone call from somebody  
13 that says they want you to be involved in, as you termed it, a  
14 lick; do you recall that?

15 A What -- what -- on September what?

16 Q I backed up and said I think you said you got a call  
17 a day or so before that day from somebody that wanted to have  
18 you participate in what you called a lick.

19 A Yeah, I'm not sure about that.

20 Q Okay. Then let's go to September -- let me see, the  
21 21st, the early morning hours. You testified on direct  
22 examination on Friday that you had received a call from Joey  
23 Laguna -- actually, you said that you received a phone call  
24 from Montone --

25 A Yes, sir.

1           Q     -- right?  And that he wanted you to participate in  
2 a lick.

3           A     Yes, sir.

4           Q     And you were more than willing to do that, weren't  
5 you?

6           A     Yes, sir.

7           Q     Is that the first you had heard of this?

8           A     What, this house, this location?

9           Q     The whole topic of doing a lick.

10          A     I mean, pretty much, yeah.

11          Q     Pretty much or was it?  Was that the first?  You  
12 roll out of bed, you get a phone call, says do you want to go  
13 participate in a lick, and you go okay, okay, I'm in?

14          A     Yes.

15          Q     And you had no idea, no knowledge of a lick going to  
16 happen on that morning prior to you getting that phone call;  
17 is that what your testimony is?

18          A     Yes, sir.

19          Q     Now, that morning you had no idea who Jorge Mendoza  
20 was, did you?

21          A     No, sir.

22          Q     Never seen him?

23          A     Never even him.

24          Q     Never met him?

25          A     Never met him.

1 Q Never heard of his name before?

2 A Never heard of his name before.

3 Q So a little bit later that morning a car shows up to  
4 your house --

5 A Yes, sir.

6 Q -- right? And who did you say was in that car?

7 A Montone and Mendoza.

8 Q Okay. But you didn't know it was Mendoza at the  
9 time? Or you didn't know him by name?

10 A Yeah, I didn't know him by name.

11 Q So was there any conversation between -- not  
12 between, but there at the house as you were getting picked up?

13 A No. I believe, they picked me up in front of my  
14 apartment complex.

15 Q You got a phone call to say that they were there?

16 A Yes, sir.

17 Q Did you have any idea what car to be looking for?

18 A I was -- I walked to the front of my apartment  
19 complex, it's pretty early in the morning, there ain't going  
20 to be too many cars out there to where I recognize people  
21 inside the car.

22 Q Okay. So the answer is you had no idea when you  
23 walked out of the apartment what car you were looking for?

24 A Yes, but I knew the car was in front of my apartment  
25 complex.

1 Q And you knew that because of a phone call you got?

2 A Yes, sir.

3 Q And you gotta call from Montone?

4 A Yes, sir.

5 Q All right. So you leave the apartment. It's you,  
6 Mendoza and Duboy?

7 A Montone, sir.

8 Q Sorry, Montone, okay. So who's driving?

9 A Mendoza.

10 Q Did you have a weapon with you?

11 A Yes, sir.

12 Q What did you have?

13 A I had my .40.

14 Q That's that Ruger .40?

15 A Yes, sir.

16 Q It's a semi-automatic?

17 A Yes, sir.

18 Q Did Montone have a weapon?

19 A At that time, I don't believe so.

20 Q How about Mendoza?

21 A No, sir.

22 Q So you get picked up outside your apartment and go  
23 where?

24 A We go -- we go to this house.

25 Q To Montone's house?

1           A     No, sir. To where the first initial incident was  
2 going to happen.

3           Q     Okay. So is that up in the northwest part of town?

4           A     Yes, sir.

5           Q     Is that what you're saying?

6           A     Yes, sir.

7           Q     All right. And is that where you meet up with Duboy  
8 in a truck?

9           A     Yes, sir.

10          Q     Do you see if Duboy has a weapon with him?

11          A     I'm -- I'm not sure. He -- he's in the truck.

12          Q     Okay. Okay. So and Duboy's girlfriend's in the  
13 truck, you said --

14          A     Yes, sir.

15          Q     -- correct, when you first met up? And she gets out  
16 of that truck and comes over to the car, according to your  
17 testimony on Friday, and gets in the driver's seat of the car,  
18 correct?

19          A     Yes, sir.

20          Q     Okay. And Mr. Mendoza then gets in the back seat of  
21 the car where you're sitting, right?

22          A     Yes.

23          Q     Are you guessing or is that what happened?

24          A     He gets in the back seat with me.

25          Q     Do you recall whether she had a weapon?

1           A     I don't -- I don't think so.

2           Q     And the plan was that according to you, is that  
3 Duboy was going to park around the corner with the truck,  
4 correct?

5           A     Yes, sir.

6           Q     And that you guys were going to go rush the house  
7 and start to steal 1 to 200 pounds of marijuana, correct?

8           A     Yes, sir.

9           Q     And if I understand now, based on your testimony,  
10 you're the only one that had a weapon with you?

11          A     Yes, sir.

12          Q     Correct? And if I recall your direct testimony  
13 correctly from Friday, correct me if I'm wrong, as you were  
14 driving up and through the cul-de-sac, everybody noticed that  
15 there was a lot of people around --

16          A     Yes, sir.

17          Q     -- correct? And that it was Mr. Mendoza that said  
18 this isn't going to happen?

19          A     Yes, sir.

20          Q     Correct?

21          A     Yes, sir.

22          Q     So he's the one that called it off, if you will?

23          A     Yes, sir.

24          Q     Did you want to continue forward with it?

25          A     No, sir.

1           Q     So from when you leave that cul-de-sac, you know,  
2 after you've called this thing off, you guys go to Montone's  
3 house?

4           A     Yes, sir.

5           Q     Did you stop anywhere along the way?

6           A     I don't believe so.

7           Q     Okay. So the girl's driving, you're still in the  
8 back seat with Mendoza, and Montone's in the right front seat?

9           A     Yes, sir.

10          Q     All right. When you get to Montone's house, then  
11 does the pick up truck come there with Duboy?

12          A     Yes, sir.

13          Q     How long do you stay at Montone's house?

14          A     About an hour.

15          Q     Did you get something to eat?

16          A     We smoked some marijuana.

17          Q     Okay. When you say "we", who's we?

18          A     Me -- me and Duboy.

19          Q     Okay. Just you two?

20          A     I believe, we were the main ones.

21          Q     Okay. Fair enough. So when you left Montone's  
22 house, do you go to your apartment?

23          A     Yes, sir.

24          Q     Okay. How did you get there?

25          A     Mr. Mendoza drove me.

1 Q Okay. So just the two of you in the car?

2 A I -- I believe so. I believe so.

3 Q You went straight to your apartment, correct?

4 A Yes, sir.

5 Q No stops along the way?

6 A No stops.

7 Q At that point in the -- during that morning, had you  
8 been given Mr. Mendoza's name? Had you ever -- were you  
9 actually even introduced to him?

10 A Basically, you know, what, on the ride there a  
11 little -- little bit of small talk. On the ride back, a  
12 little bit of small talk. I mean, I know initially when I  
13 hopped in the car, you know, Montone, he's there, hey, what's  
14 up, and this is so and so and --

15 Q But he's not the one you knew?

16 A No, sir.

17 Q All right. Later that afternoon or later that  
18 evening, I guess, is -- how did it come about for you to go  
19 back to Montone's house?

20 A Basically, he set it up to where Mendoza was going  
21 to come and get me from my house and go back to his house and  
22 pick -- pick them up.

23 Q All right. So throughout that afternoon, before  
24 going back to Montone's house, you have phone calls back and  
25 forth with him, don't you?



1           A     With Montone, yes.

2           Q     With now, this is the apartment that you described  
3 earlier. You've seen pictures earlier that you shared with  
4 Manny, was it?

5           A     The apartment?

6           Q     Yeah.

7           A     No, sir.

8           Q     Who were your roommates again?

9           A     Jeff and Cindy.

10          Q     So picture of the guns that were recovered from that  
11 apartment, those belonged to Jeff or Cindy?

12          A     I believe, they were Jeff's.

13          Q     Were you living with Jeff and Cindy in September of  
14 2014?

15          A     Yes, sir.

16          Q     And that didn't change until the time you got  
17 arrested in October?

18          A     Yes, sir.

19          Q     Right? How many other guns did you have in that  
20 apartment that were yours in September of 2014? We've heard  
21 about the Ruger .40 and then snub nose .38. Did you have any  
22 other weapons?

23          A     No, sir.

24          Q     All right. So you guys end up leaving Montone's  
25 house and you said Duboy's driving the car now?

1           A     Yes, sir.

2           Q     Okay. And you are where in the car?

3           A     I'm in the back -- I'm in the back right seat behind  
4 the passenger.

5           Q     Okay. Let me ask you this; when Mendoza picked you  
6 up at your house, your apartment --

7           A     Yes, sir.

8           Q     -- you brought with you then the .40 semi-automatic  
9 and the .38 snub nose, right?

10          A     Yes, sir.

11          Q     Did Mendoza have a weapon with him at that time when  
12 he picked you up that evening?

13          A     He had that -- he had that rifle.

14          Q     Are you sure he had the rifle with him?

15          A     Yes, sir.

16          Q     You don't recall that he didn't have any weapon with  
17 him when he first picked you up?

18          A     I don't think I seen it until after we picked up --  
19 after we stopped at Montone's house, I don't think I seen it  
20 until -- like, initially when I got in the car, no, I -- I  
21 didn't know it was there.

22          Q     You didn't see one, did you?

23          A     But -- but -- no, sir, not initially.

24          Q     When you got to Montone's house, do you recall  
25 conversations that Mendoza didn't have a weapon with him?

1 A No, sir. He had -- he had his weapon with him.

2 Q Well, you didn't see it, did you?

3 A Not until we got to Montone's house.

4 Q All right. Then where did you see it?

5 A Him pulling it out.

6 Q He pulled it out and carried it into Montone's  
7 house?

8 A I mean, during the little -- I mean, after we -- you  
9 know, after we hop in the car, he pulls it out. I guess, it  
10 was in the back seat kind of tucked, I don't know, but he --  
11 he pulled it out.

12 Q There was never any driving over to Mendoza's house  
13 for him to get a weapon, was there, that you recall?

14 A No, sir.

15 Q All right. So that evening of September 21st, you  
16 and Mendoza arrive at Montone's house. Do you get out of the  
17 car and go into Montone's house?

18 A No, sir.

19 Q And what happens, they -- people come out of  
20 Montone's house and towards the car, and then get into the  
21 car? @

22 A I believe they were standing in the driveway because  
23 I -- yeah, I think they was standing in the driveway just kind  
24 of -- just kind of waiting around.

25 Q I believe, you said on direct that Mendoza got out

1 of the driver's seat and Duboy got in and drove?

2 A Yes, sir.

3 Q Is that because Duboy knew where this place was?

4 A Yes, sir.

5 Q And to your knowledge, Mendoza had no idea where he  
6 was going?

7 A Yeah, I don't -- I don't believe so.

8 Q Did you know where they were going?

9 A No, sir.

10 Q All right, so you get into the neighborhood there at  
11 Broadmere, and on direct you testified that Duboy did a --  
12 basically, a drive-by of the house then pointed it out to  
13 you --

14 A Yes, sir.

15 Q -- is that correct? All right. And then this is  
16 where I get a little fuzzy. Did he let you guys out of the  
17 car and then drive around a corner, or did he park the car  
18 around a corner, and you got out of the car there?

19 A He done a first initial drive-by, and he -- he let  
20 us out right basically in front of the driveway, then he goes  
21 up the street and kind of does like a little u-turn and parks  
22 light there on the corner.

23 Q As you -- did you wait at the end of the driveway to  
24 watch him park the car?

25 A I mean, yeah. I mean, the headlights are on, he

1 goes up, headlights go off, he parks the car right there. I  
2 mean --

3 Q You saw where he parked, right?

4 A Yes, sir.

5 Q So you knew exactly where it was that that car was  
6 as you were supposed to be going occupy the driveway?

7 A Yes, sir.

8 Q All right, now you're the first one to the door --

9 A Yes, sir.

10 Q -- of the house, right?

11 A Yes, sir.

12 Q You said you were a little bit bigger, and you were  
13 the one to kind of throw your shoulder into the door to try to  
14 break it open?

15 A Yes, sir.

16 Q The door flies open. It takes you a couple of times  
17 to get it open, doesn't it?

18 A Yes, sir.

19 Q How many times do you remember?

20 A Two times.

21 Q So you hit it hard once, right?

22 A Yes, sir.

23 Q Then you hit it hard the second time and it breaks  
24 free?

25 A Yes, sir.

1 Q And immediately you get shot?

2 A I basically, take two steps inside the house  
3 because, you know, the first hit, boom, it was solid. The  
4 second hit, it kind of threw the door forward and, you know,  
5 kind of momentum pushed me, and basically, I take two steps  
6 and immediately get shot.

7 Q And it's your testimony today that you did not  
8 return fire?

9 A Yes, sir.

10 Q All right. And so as soon as you get shot in the  
11 mouth, in the face --

12 A Yes, sir.

13 Q -- can you describe exactly how your body moved?

14 A It laid me straight down.

15 Q What do you mean laid you straight down?

16 A It knocked me straight -- just straight to the  
17 ground.

18 Q All the way flat on the ground?

19 A Basically, as far as I can remember. I mean --

20 Q I mean, did you lose your feet and went completely  
21 to the ground?

22 A Yes, sir.

23 Q All right. And then what happened?

24 A I got up. I got up. I turn -- well, you know,  
25 getting up turning trying to make it out the door, I get shot

1 again.

2 Q Okay. And you were still inside the house?

3 A Yes. Right -- right where the threshold of the door  
4 is.

5 Q The door is still wide open?

6 A Yes, sir.

7 Q And did you get up, then, and start to run out the  
8 house?

9 A Yes, sir.

10 Q Was there any obstacle to you getting out the door?

11 A No, sir. No, sir.

12 Q And did you run into any of the other two that were  
13 behind you?

14 A No, sir.

15 Q And I take it you weren't kind of walking, you were  
16 on a dead run, weren't you?

17 A I was moving as fast as I can.

18 Q Did you see Mendoza when you turned around?

19 A No, sir.

20 Q You didn't see him at all?

21 A I mean, after getting shot in the face, I mean, I --  
22 lights and blackness and all types of things is going on.

23 Q So you run out, you get to the end of the  
24 driveway --

25 A Um-h'm.

1 Q -- and you keep running, correct?

2 A Yes, sir.

3 Q And you actually turn and ran away from where the  
4 car was parked up and around the corner, didn't you?

5 A Yes, sir.

6 Q So when you got to the corner of Broadmere and Long  
7 Cattle, you stopped and looked back, right?

8 A Yes, sir.

9 Q All right. And then that's when you saw the car --  
10 a car that -- excuse me, that's when you saw the car come and  
11 pick up who?

12 A Montone.

13 Q Did you wave at them? Did you want to get in that  
14 car?

15 A Yes, sir.

16 Q Did you take any steps towards the car?

17 A I believe, I kind of, you know, done like a stutter  
18 step, but, I mean, the car basically, never stopped. It was  
19 pulled up, kind of door flew open, dives in and keeps on  
20 rolling. I mean, I -- I do believe I was trying to yell, but  
21 at that time, I couldn't -- I just got shot in my jaw and had  
22 a bullet stuck in my neck.

23 Q Okay. Did you try to run towards the car?

24 A I done like a little stutter step. A little -- but  
25 like I said, it done like a -- it never really stopped at all.



1 It just --

2 Q And as you're looking back -- at that point, as  
3 you're looking back towards the house, you don't see anybody  
4 else, correct?

5 A My main focus was on the car leaving me.

6 Q Okay. So the car leaves and drives -- it doesn't go  
7 down Long Cattle where you are, does it?

8 A No, sir.

9 Q It goes -- just keep going further in the same  
10 direction it was going, right?

11 A Yes, sir.

12 Q And is it your testimony that you did not fire any  
13 shots from that corner of Broadmere and Long Cattle?

14 A Yes, sir.

15 Q Did you know Mendoza's phone number that day?

16 A He had called me during -- during the second  
17 incident when he pulled up to my apartment, he had, what, he  
18 had called me to come outside.

19 Q You weren't already out there waiting for him?

20 A No, sir.

21 (Mr. Wolfbrandt/Mr. DiGiacomo conferring)

22 BY MR. WOLFBRANDT:

23 Q All right. Do you see State's Exhibit 261 there on  
24 the screen?

25 A Yes, sir.

1           Q     Okay. Those are the guns that you said were your  
2 roommate's guns that the police took when you got arrested on  
3 October the 20th, 2014?

4           A     Yes, sir.

5           Q     Do you know what kind of guns those are?

6           A     No, sir.

7           Q     Well, do you know whether or not the one on the  
8 right, as you look at that picture, is that a semi-automatic  
9 or revolver?

10          A     It looks like a semi-automatic.

11          Q     How about the one that's laying in the case? What  
12 does that look like to you?

13          A     Revolver.

14          Q     Okay. Have you ever handled those weapons before?

15          A     Well, I believe, he showed me, yeah. I mean,  
16 handling them, what do you mean?

17          Q     Is the revolver that you took with you that day?

18          A     Oh, absolutely not.

19          Q     Well, what happened to the one that you took with  
20 you on September 21st?

21          A     I don't know. Montone hopped in the car with it and  
22 took off.

23          Q     All right. After you got picked up by your  
24 girlfriend, later the next morning or at --

25          A     My sister, sir?

1 Q -- early -- oh, it was your sister?

2 A Yes, sir.

3 Q Okay. At that point, did you ever have any other  
4 conversation with Mr. Mendoza?

5 A After that incident?

6 Q Yep.

7 A Probably -- probably a couple weeks after that, I  
8 called him up, you know, trying to figure out what's going on,  
9 you know.

10 Q I'm talking about Mendoza.

11 A Oh, no, sorry, I meant Montone. Sorry about that.  
12 My mistake. But, yeah, I never had no conversation with  
13 Mendoza.

14 Q But you had some conversation with Montone, tried to  
15 figure out what happened?

16 A Yes, sir.

17 Q Did you have any conversations with Duboy to figure  
18 out what happened?

19 A No, sir.

20 Q Did you guys ever get together after that?

21 A No, sir.

22 MR. WOLFBRANDT: Court's indulgence.

23 BY MR. WOLFBRANDT:

24 Q All right, Mr. Figueroa, you testified you took  
25 about -- as you hit that front door on Broadmere, that

1 momentum took you a step or two just inside the threshold of  
2 the house, correct?

3 A Yes, sir.

4 Q All right. Nobody else got inside the threshold of  
5 that house, did they?

6 A I don't believe so.

7 Q All right. You first come through the door and you  
8 immediately get shot in the face; is that correct?

9 A Yes, sir.

10 Q How many shots did you hear coming from inside the  
11 house to your direction, if you recall?

12 A Coming towards my direction as I entered?

13 Q As you go in the house, obviously, one came your  
14 direction because you got hit in the face, right?

15 A I believe, that was the first initial bullet that  
16 was fired that came at my face.

17 Q I agree.

18 A Yes.

19 Q How many other shots came at you, if you know?

20 A I'm not sure. I'm not sure.

21 Q Well, one other one came at you because it hit you  
22 in the side, didn't it?

23 A Yes, sir, but the exact number of how many shots  
24 actually came at me during that incident, I'm not -- I don't  
25 know.

1 Q And it's your testimony you did not return fire?

2 A Yes, sir.

3 Q All right, thank you.

4 MR. WOLFBRANDT: That's all I have.

5 THE COURT: We're going to take a break right now.

6 This will be our afternoon break. So it's the only break  
7 we're going to have until we recess for the evening.

8 So during this recess, it is your duty not to  
9 converse among yourselves or with anyone else on any subject  
10 connected with the trial or to read, watch or listen to any  
11 report of or commentary on the trial by any person connected  
12 with the trial or by any medium of information, including  
13 without limitation, newspaper, television, radio or Internet.  
14 You're not to form or express an opinion on any subject  
15 connected with this case until it's finally submitted to you.  
16 We'll be in recess for 15 minutes, so actually since it's just  
17 past the half hour, I'll give you until 10 minutes to 4:00.

18 THE MARSHAL: All rise for the jury, please.

19 (Jury recessed at 3:31 p.m.)

20 THE COURT: And the record will reflect the jury's  
21 departed the courtroom. Any matters outside the presence  
22 before we take our recess?

23 MR. DiGIACOMO: Just one thing. We intend to offer  
24 probably his entire 10/24 statement as well as his entire  
25 Grand Jury transcript so I'd ask over the break if there's

1 anything they want redacted from it, to let us know up-front  
2 so we can discuss that because we intend to offer both of  
3 those considering particularly Ms. McNeill's cross at this  
4 point.

5 THE COURT: Okay. And your response to that?

6 MR. LANDIS: Could the State clarify the basis to  
7 admit the entire statement?

8 MR. DiGIACOMO: Well, yes, two of them. First of  
9 all, the Grand Jury transcript comes in its entirety, and the  
10 nature of the cross-examination is, you had a whole bunch more  
11 specific information that you didn't say in the first one, and  
12 you never said the time.

13 Well, they get to review the entire transcript and  
14 see, did they ever ask him specifically what time was this  
15 time called? Specifically, what was asked and what was  
16 answered and compare it to the Grand Jury to see if there's  
17 any difference between the two.

18 MR. LANDIS: I'm unaware of a rule that would allow  
19 them to admit the entirety of the transcripts. I agree they  
20 could admit inconsistent statements or even consistent  
21 statements and they could also admit things used to refresh  
22 his recollection, but I don't think that gives them the right  
23 to admit the whole transcript whole cloth.

24 A lot of that stuff they can clean up on cross -- I  
25 mean, on redirect, I apologize.

1           MR. DiGIACOMO: Well, for the record, the Grand Jury  
2 transcript by statute is admissible in its entirety once he  
3 testified. We could have put it in in direct. On  
4 cross-examination, the suggestion of the cross-examination is,  
5 you had some information, but now you're telling more specific  
6 information because it helps the State. The jury's entitled  
7 to view what he said initially to see if he's really changed  
8 anything that is actually substantial between the first  
9 statement and the time in which he now has this motive to make  
10 up more specific facts.

11           So thus, it's admissible one, as a prior consistent  
12 statement. But two, it's also being offered for a non-hearsay  
13 purpose, which is to corroborate the fact that he tells his  
14 entire version of events on 10/24, and thus, any little  
15 additional fact that he has now told is not substantive.

16           MR. LANDIS: My position is simply, the statements  
17 that he made are proper questions. They can redirect him all  
18 they want, but that doesn't mean the whole statement comes in,  
19 the entire transcript.

20           MR. DiGIACOMO: Well, you -- they --

21           THE COURT: The way the -- you know, the way that  
22 testimony, the cross, was done basically, to me, makes the  
23 statement, a prior consistent statement. Now, I haven't seen  
24 the statement so I don't know if there's anything. And that's  
25 why I think why the prosecution is saying you need to make

1 sure there's nothing in there that you're going to  
2 specifically object to because I haven't seen those statements  
3 so I'm not aware.

4 MS. McNEILL: There's quite a bit.

5 THE COURT: Well, if there's something that in  
6 particular you would want to argue is somehow prejudicial and  
7 more prejudicial than probative given your cross-examination,  
8 but since I've never seen those, I really can't --

9 MR. DiGIACOMO: Like, for example --

10 THE COURT: -- say.

11 MR. DiGIACOMO: -- I know that we're going to have  
12 to take out the part where it says we were cell mates in Ely  
13 or wherever they were cell mates. I can't remember what he  
14 says. But, you know, that type of things. Cell mates we'll  
15 have to change to roommates, but I actually have it in Word so  
16 we can.

17 But other than that, is there anything else in there  
18 that they want to remove in the sense that it's like a bad  
19 act? I don't think so. I think that's really the only thing  
20 in there is that Laguna's been in prison before.

21 MR. LANDIS: It's 58 pages. I've never looked  
22 through it for purposes of redaction because I had no idea  
23 that they were going to make that motion, and I've never heard  
24 of a transcript coming in under these conditions. So I'm  
25 happy to look through it, but I would hope the Court didn't



1 expect us to know that now.

2 MS. McNEILL: And, Your Honor, I understand what  
3 your ruling was. Just for the record, I wanted to join  
4 Mr. Landis's objection and indicate that I believe, as well,  
5 that they could just ask him questions on redirect that would  
6 then be prior consistent statements.

7 I agree, I don't -- I just -- I know there's a lot  
8 of things in here in his various statements about them being  
9 gang members together, about my client being a gang member,  
10 about him being cellies. So there's going -- it's going to  
11 take me some time to go through. And I know even in the Grand  
12 Jury transcript, I think he indicates that they were cellies.

13 So there's going to be a few things that will need  
14 to be taken out.

15 THE COURT: Right. Well, when you -- you know,  
16 you've got to, obviously, take those kinds of things out, and  
17 but the problem is when you ask somebody well, did you  
18 specifically tell them the time, then that implies that he was  
19 asked that. And so, I mean, yes, could the State ask that on  
20 direct? Yes, they could, but they also have the right to  
21 approach it in the way they wish to. It's their case as far  
22 as how they want to respond. Just like I don't tell you how  
23 to cross.

24 So they're offering the statement. So if you have  
25 some specific objection or, you know, legal basis to keep it

1 out, it seems that it's probably going to be a consistent  
2 statement. Although, as I say, obviously, not everything  
3 whole cloth is going to come in, but I wish, you know, I had  
4 the benefit of the statement, then I could look at it and  
5 know. But I don't, unless you want to give me a copy.

6 MR. LANDIS: What would be Court's ruling be on  
7 things in that statement that are inconsistent with what he  
8 said today -- what -- are those going to be --

9 MR. DiGIACOMO: Certainly, that's admissible. It's  
10 a prior inconsistent statement. It's substantively  
11 admissible. So if it's inconsistent with his testimony, it  
12 comes in. If it's consistent, now that he has a motive to  
13 have changed, then it comes in.

14 I'm going through now, and I will have it done.  
15 There is something about Duboy and everybody being gangsters  
16 and they all have ties, which could easily be removed. But  
17 we'll go through it at the break and I'll e-mail a copy to the  
18 Court so that you have a copy for when we do have to address  
19 it.

20 THE COURT: All right. Good, so -- because I'd like  
21 to read it and then I can make more specific rulings. But in  
22 the meantime, this is your time. We've only got ten minutes  
23 left so let's use it. We're in recess.

24 (Court recessed at 3:38 p.m. until 3:53 p.m.)

25 (In the presence of the jury)

1           THE MARSHAL: Your Honor, all members of the jury  
2 and the three alternates are present.

3           THE COURT: Thank you. Please be seated. And the  
4 record will reflect that we're back within the presence of all  
5 12 members of the jury as well as the three alternates, all  
6 three defendants are present with their respective counsel.  
7 Chief Deputies prosecuting the case are present as are all  
8 officers of the court.

9           And Mr. Landis, are you ready?

10          MR. LANDIS: I am.

11                           CROSS-EXAMINATION

12 BY MR. LANDIS:

13          Q     As of today, do you have an attorney representing  
14 you in this case?

15          A     Yes, sir.

16          Q     What's his name?

17          A     I know him by Lucas, Luke.

18          Q     You've motioned over behind the DAs. Let me ask you  
19 this, though, was your attorney here Friday when you were in  
20 court?

21          A     Yes, sir.

22          Q     And as of today, he's been here?

23          A     Yes, sir.

24          Q     And he's been sitting behind the District Attorneys;  
25 is that right?

1           A     Yes, sir.

2           Q     Is that the same attorney you've had since you were  
3 arrested on this case?

4           A     No, sir.

5           Q     What was the name of your first attorney?

6           A     David Brown.

7           Q     When did you change attorneys?

8           A     Probably, about a year ago.   Probably a little bit  
9 more than a year ago.

10          Q     Was that your choice or Dave Brown's choice?

11          A     Both of ours.

12          Q     Fair to say you filed (sic) a motion to fire him?

13          A     Yes, sir.

14          Q     He filed a motion to fire you?

15          A     Yes, sir.

16          Q     And that's why you say it was both of yours?

17          A     Yes, sir.

18          Q     Before Friday afternoon, when was the most recent  
19 time you sat down with these District Attorneys and talked to  
20 them?

21          A     Before -- before when?

22          Q     Friday afternoon?

23          A     Probably, just did, what, like a pretrial interview  
24 time of deal.

25          Q     You tell me.

1           A     I said a pretrial interview, just -- just sat down.

2           Q     When was that?

3           A     Probably, a week -- probably about close to two  
4 weeks ago.

5           Q     Your attorney was there?

6           A     Yes, sir.

7           Q     In your view, Mr. Figueroa, is it ever okay to lie?

8           A     No, sir.

9           Q     You've admitted that you've lied a few different  
10 times during the events you've testified to?

11          A     Oh, yes, sir.

12          Q     Why is it that you lied, even know it wasn't okay?

13          A     Because initially, I mean -- initially, I came up  
14 with -- with that story trying -- trying to, you know -- I  
15 didn't want to have no involvement in this case, but I also  
16 didn't want anyone else to be involved. That's how come I  
17 came up with that initial story.

18          Q     We'll get to that, but let me back it up a little  
19 bit further. You get behind that big wall between the trees  
20 and the wall that night shortly after you're shot, right?

21          A     Yes, sir.

22          Q     You know you're shot in the chin, right?

23          A     Yes, sir.

24          Q     Lost a tooth?

25          A     Yes, sir.

1 Q You also realize you've got a gunshot wound to your  
2 abdomen or your side, right?

3 A Yes, sir.

4 Q You're hurt?

5 A Yes, sir.

6 Q You're worried you're going to die?

7 A Yes, sir.

8 Q And you're bleeding?

9 A Yes, sir.

10 Q As you're sitting behind that wall for those hours,  
11 eight plus hours, you can hear police officers around, right?

12 A Yes, sir.

13 Q You can even hear newscasters somewhere behind that  
14 wall giving a news report, right?

15 A Yes, sir.

16 Q At one point you even think you hear the homeowner  
17 of the house you're in step outside of the backyard to talk to  
18 the police?

19 A Yes, sir.

20 Q You could hear the police walkie-talkies?

21 A Yes, sir.

22 Q You could have alerted them to you being there,  
23 right?

24 A Yes, sir.

25 Q You've got to believe they would have provided you

1 medical assistance, right?

2 A Yes, sir.

3 Q At that point in time, though, you made the decision  
4 that getting caught was worse than potentially dying?

5 A Yes, sir.

6 Q You get your sister to pick you up, and you lied to  
7 your own sister about why you were injured?

8 A Yes, sir.

9 Q Flesh and blood, yes?

10 A Yes, sir.

11 Q Did you lie to her to protect her?

12 A Basically, to protect her and, you know, she don't  
13 -- she -- she didn't -- I don't -- I didn't want her to know  
14 about this incident or nothing about it. I didn't want her to  
15 know.

16 Q Also lied to protect yourself?

17 A I mean, yes, sir.

18 Q You get home after your sister takes you, and  
19 eventually, your roommates get home, right?

20 A Yes, sir.

21 Q And that's your roommate Jeff?

22 A Yes, sir.

23 Q And your roommate Cindy?

24 A Yes, sir.

25 Q How long had you been living with them?

1           A     Probably, around July of, what, 2014 to the date I  
2 got arrested.

3           Q     You're still hurt at this point, correct?

4           A     Yes, sir.

5           Q     You're still bleeding?

6           A     Yes, sir.

7           Q     Are you still scared you might die?

8           A     At that point, no. I mean, I was hurt. I knew I  
9 was hurt bad, but, I mean, as far as dying, I mean, I figured  
10 -- I figured I'd be all right.

11          Q     It's obvious to the -- when they get home whenever  
12 it is that day --

13          A     Um-h'm.

14          Q     -- they realize you're hurt, right?

15          A     Yes, sir.

16          Q     You don't tell them the truth about why you're hurt,  
17 why?

18          A     No, sir.

19          Q     Your sister had begged you to go to the hospital?

20          A     Yes, sir.

21          Q     You didn't when she asked you to, correct?

22          A     Yes, sir.

23          Q     Initially, Jeff was asking you to go to the  
24 hospital, correct?

25          A     Yes, sir.



1 Q You didn't go initially, correct?

2 A Yes, sir.

3 Q Same with Cindy, right?

4 A Yes, sir.

5 Q You didn't tell them why you were unwilling to go to  
6 the hospital?

7 A Yes, sir.

8 Q They keep begging you to go to the hospital for  
9 days, right?

10 A Yes, sir.

11 Q Eventually, you agree to go, but only if it's to a  
12 place in California?

13 A Yes, sir.

14 Q That was your idea?

15 A Yes, sir.

16 Q It was your idea to go to California, again, to  
17 protect yourself?

18 A Yes, sir.

19 Q When you get to the Loma Linda Hospital in  
20 California, the medical professionals there, the doctors, the  
21 nurses, they're asking you what happened, right?

22 A Yes, sir.

23 Q They're not police, right?

24 A Yes, sir.

25 Q They're asking you what happened because they're

1 trying to treat you, correct?

2 A Yes, sir.

3 Q You lie to the people who are trying to treat you?

4 A Yes, sir.

5 Q You not only lie about how you got the gunshot wound  
6 to your face, right?

7 A Yes, sir.

8 Q You even lie about the existence of the second  
9 gunshot wound?

10 A Yes, sir.

11 Q When the San Bernardino Police Department comes to  
12 that hospital and they interview you, do they suspect that you  
13 were involved in a home invasion?

14 A No, sir.

15 Q You lied to them?

16 A Yes, sir.

17 Q You told them a story about a bullet ricocheting as  
18 you guys were shooting guns?

19 A Yes, sir.

20 Q You didn't tell them you were from Nevada?

21 A Yes, sir.

22 Q You didn't tell them you were from Las Vegas?

23 A Yes, sir.

24 Q All of those lies to the San Bernardino Police  
25 Department were to benefit you?

1           A     Yes, sir.

2           Q     Fair for us to assume, then, one occasion that  
3 you'll lie is when it benefits you, at least back then?

4           A     Okay.

5           Q     If you don't think that's fair, tell me. I don't  
6 want to put words in your mouth.

7           A     Okay. I'm going along with it. Yes, sir.

8           Q     Do you think that's true or not?

9           A     I mean, yes.

10          Q     Prior to the date that you were arrested, you  
11 mentioned today that you told Gabriel Sotelo a brief rundown  
12 about what happened, yeah?

13          A     Yes, sir.

14          Q     Who else in this world did you tell the truth to  
15 about what you did before your arrest?

16          A     I mean, there was -- I've never told the whole  
17 exact. I just, you know, keep on giving -- gave people brief  
18 little rundowns because, you know, they ask what happened,  
19 I'll just -- just a home invasion that went bad. That's it,  
20 basically.

21          Q     Who did you tell that to?

22          A     I mean, basically, to whoever had seen me who had --  
23 whoever seen me hurt.

24          Q     That include Jeff?

25          A     Yes, sir.

1 Q Cindy?

2 A Yes, sir.

3 Q Your girlfriend?

4 A Yes, sir.

5 Q Manny?

6 A Yes, sir.

7 Q And Gabe or Gabriel?

8 A Yes, sir.

9 Q Can you recall anybody else you saw during that  
10 period of time?

11 A What, sisters, brothers. I mean --

12 Q When you started running from 1661 Broadmere on  
13 September 21st, besides yourself, you had no idea if anybody  
14 else had been shot?

15 A Yes, sir.

16 Q Correct?

17 A No idea.

18 Q No idea if anybody died?

19 A No idea.

20 Q When you get home that next morning, after your  
21 sister drives you there, you know the cops were called so you  
22 know they're probably investigating it, but you don't know  
23 it's a murder case?

24 A Yes, sir.

25 Q You're worried about getting caught?