

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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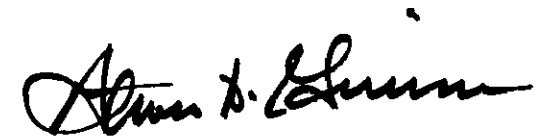
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CLERK OF THE COURT

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,	.	TRANSCRIPT OF
DAVID MURPHY, a/k/a	.	PROCEEDINGS
DAVID MARK MURPHY,	.	
JOSEPH LAGUNA, a/k/a	.	
JOEY LAGUNA,	.	
Defendants.	.	
.	

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 13

THURSDAY, SEPTEMBER 29, 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:

DEBRA WINN
District Court

TRANSCRIPTION BY:

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Englewood, CO 80110
(303) 798-0890

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1 LAS VEGAS, NEVADA, THURSDAY, SEPTEMBER 29, 2016, 1:42 P.M.

2 (Outside the presence of the jury)

3 THE COURT: We are on the record and we're outside
4 the presence of the jury. The record will reflect the
5 presence of the defendants with their respective counsel, the
6 Chief Deputies District Attorneys prosecuting the case, all
7 officers of the court. And we want to make a record regarding
8 some blow-ups of previously admitted phone records that are so
9 small that you need a magnifying glass to see them, so.

10 MR. DiGIACOMO: Correct. And I think that the clerk
11 still has the records. I -- well, actually, if I have my list
12 here, I can tell you what the numbers are.

13 THE CLERK: Are you talking about the blow-ups?

14 MR. DiGIACOMO: Yeah.

15 THE CLERK: Yeah, they're in here.

16 MR. DiGIACOMO: The --

17 THE COURT: So, are you wanting -- you want to have
18 those marked as "A" towards the -- to go with the number?

19 MR. DiGIACOMO: Correct.

20 THE COURT: Okay.

21 MR. DiGIACOMO: So, for example, 299, which is the
22 -- oh, sorry, 298, which is the --

23 THE CLERK: Yeah, I was going to say, I don't have
24 298.

25 MR. DiGIACOMO: 298 is the Jorge Mendoza -- the 666

1 number. That CDR has been blown-up in a paper that is almost
2 two-feet-wide, as well as 299, as well as 303.

3 So, 299 is the Amanda -- or, sorry. 298 is the
4 Jorge Mendoza CDR. 300 is the Amanda Mendoza CDR. 303 is the
5 Murphy call and text records that were in the really, really
6 tiny print. 305 is the Barientos CDRs, the 8981 number.
7 Figueroa's were readable, so there is none for him that are
8 blown-up. Laguna's are 309. And then, as it relates to
9 Laguna's 310, the Cricket tower list that went along with it
10 was really small print. So, those have all been blown up on
11 either two-foot-wide or legal-sized documents.

12 As I made a record about -- oh, Mr. Barientos's, the
13 305, when it -- when I did the change to it, one call detail
14 at the end on September 23rd from the Barientos fell off the
15 page and I can't figure out why it did. So, these are just
16 for demonstrative purposes and I -- that's what I would ask
17 that they're admitted for, and that the originals that were
18 authenticated by the various custodians of records be the
19 originals, but this will just make it easier for them to look
20 at.

21 THE CLERK: Okay. Just to verify though, you have
22 303 -- wait, 300 -- no, 298, 300, 303, 309, and 310? Am I
23 missing any?

24 MR. DiGIACOMO: There should be 305.

25 THE CLERK: I thought I had that 305 a minute ago.

1 Let me see. Yep, there it is. Okay.

2 MR. DiGIACOMO: Okay.

3 THE COURT: All right. And did the defense have an
4 objection?

5 MS. McNEILL: No, Your Honor.

6 MR. LANDIS: No.

7 THE CLERK: You're saying demonstrative, but you
8 want them admitted, so they will go back --

9 MR. DiGIACOMO: Yeah, they'll go back with the jury,
10 but --

11 THE COURT: But just duplicates, although it will be
12 important to let them know that that one call detail record is
13 not on that, because otherwise it could look as if you were
14 trying to pull a fast one on them or something, and I don't
15 want them to think that.

16 MR. DiGIACOMO: And if I could ask the clerk, what
17 is the next two defendant's in order?

18 THE CLERK: I'm sorry? Oh, it's --

19 THE COURT: Defense exhibits.

20 THE CLERK: What exhibits?

21 MR. DiGIACOMO: No, what will be the next two in
22 order?

23 THE CLERK: They go up to F now, so G, H.

24 MR. DiGIACOMO: Okay. So, Mr. -- Mr. Landis wants
25 two photographs from the Figueroa residence that weren't print

1 -- he had an issue with his printer. I have them
2 electronically, so we can display them. And so, for the
3 record, the photograph that's 009 will be the next in order,
4 which I believe will be G; and 37 is going to be the next in
5 order, which will be H. We're just not going to have them
6 here. I'll print them and bring them in the morning for Mr.
7 Landis.

8 MR. LANDIS: So, is it okay with this witness if I
9 move to publish Defense Proposed G? They're just search
10 warrant pics, and then ask him if he recognizes it, and then
11 I'll admit it at that.

12 THE COURT: Right. How are you going to show him --

13 MR. DiGIACOMO: We would stipulate to their
14 admission. He can go through the process, but --

15 MR. LANDIS: Okay, even better.

16 MR. DiGIACOMO: -- for purposes of this, we can put
17 it up first and just go that way. That will be fine.

18 THE COURT: That's fine. As long as you stipulate
19 to the admission, it's not a problem and we'll do it that way.

20 THE CLERK: So, on the easier way, all I have to
21 worry about is G and H will be provided tomorrow?

22 MR. DiGIACOMO: Correct.

23 MR. LANDIS: And then --

24 THE CLERK: Let's go with that.

25 MR. LANDIS: -- I have that jail call I promised to

1 admit some years ago when we crossed Summer. If I can
2 approach the clerk?

3 THE COURT: Okay.

4 MR. LANDIS: And this was going to be admitted I
5 think as a court exhibit.

6 MR. DiGIACOMO: That's correct.

7 THE CLERK: What is it?

8 MR. LANDIS: The jail call from Summer Rice. I put
9 a sticky on it. But it's -- I used it -- I used a portion of
10 it during the Rice cross-examination.

11 THE CLERK: It's a court's exhibit?

12 THE COURT: It's just a court's exhibit. So, the
13 only other court's exhibits we've had have been the jury
14 questions, so --

15 THE CLERK: Right.

16 THE COURT: -- it will be next in order.

17 MR. DiGIACOMO: Madam Court Reporter, can you put
18 this on me? And do we have to turn these TVs on? Because
19 they don't look on. Oh, there you go. They came on on their
20 own. And Mr. Landis, if you could just come over here and
21 confirm I got the right two pictures, we'll be good to go.

22 THE MARSHAL: Will the jury be needing this?

23 MR. DiGIACOMO: G and H. Yes.

24 THE MARSHAL: Okay.

25 MR. DiGIACOMO: G and H, those two.

1 MR. LANDIS: I didn't know -- here, let me look at
2 -- that's G, yeah.

3 MR. DiGIACOMO: That's G, right? And then H will be
4 [inaudible]. That's H?

5 MR. LANDIS: Yeah.

6 MR. DiGIACOMO: Okay.

7 MR. LANDIS: And would that proposed Police Report
8 I've proposed be in that accordion?

9 MR. DiGIACOMO: I can put it in here.

10 MR. LANDIS: No, no, no, it's the hard copy.

11 MR. DiGIACOMO: Oh, in the -- oh, yeah, it's in
12 there.

13 MR. LANDIS: Okay.

14 (Off-record colloquy)

15 THE COURT: Okay. Are we otherwise ready to go?

16 MR. DiGIACOMO: We are, Judge.

17 THE COURT: Okay, let's bring them in.

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

19 (Jury reconvened at 1:49 p.m.)

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

22 THE COURT: Thank you. Please be seated. And the
23 record will reflect we're back within the presence of all 12
24 members of the jury, as well as the three alternates. And of
25 course the three defendants are present with their respective

1 counsel, the Chief Deputy DA's prosecuting the case are
2 present, as are all officers of the court. Detective Jensen
3 is still on the stand, and Detective, you're still under oath.

4 THE WITNESS: Yes, ma'am.

5 THE COURT: And you may proceed with your -- the
6 continuation of your direct.

7 MR. DiGIACOMO: Thank you, Your Honor.

8 DIRECT EXAMINATION (RESUMED)

9 BY MR. DiGIACOMO:

10 Q Detective Jensen, I think we left off somewhere in
11 February, but I want to back up to a few things I didn't ask
12 you about yesterday. So, I'm going to go back to the scene,
13 September 21st, 2014, okay? Either about the time you're
14 arriving or somewhere thereafter, do you learn that the
15 helicopter unit was up in the air looking for potential
16 suspects?

17 A Yes, we did.

18 Q And during the course of your investigation, did you
19 learn that Metro received a 911 call at about 9:55 P.M.
20 concerning information related to that helicopter?

21 A Yes, we did.

22 Q And I'm going to put up for you Exhibit No. 8.
23 Maybe I'm going to put up Exhibit Number 8. Ah, here we go.
24 Now, looking at Exhibit No. 8, can you sort of familiarize
25 yourself with the location that's there? Do you recognize

1 that?

2 A Yes, I do.

3 Q Okay. And the area where someone was reporting
4 information, do you see that generally reflected on this
5 diagram?

6 A I do.

7 Q And where is that area?

8 A That area is over here by the -- this is the Home
9 Depot, and it's over in this area.

10 Q Did you document that information in your -- in a
11 report, as well as get a copy of that 911 call for your case
12 file?

13 A Yes, we did.

14 Q Additionally, a couple of days later, do you learn
15 information about a shotgun that was found on a porch some 4.7
16 miles away or something to that effect?

17 A Yes, we did.

18 Q And did you document that information?

19 A Yes, we did.

20 Q Now, early on in the investigation -- I think you
21 said this yesterday -- you didn't have a lot of information
22 about suspects other than Mr. Mendoza; is that fair?

23 A That's correct.

24 Q Did you consider the 9:55 911 call or that shotgun
25 to be associated with the events that you were investigating?

1 A Well, we didn't know about the shotgun until I
2 believe two days later, but at the time, we thought -- we
3 didn't believe it could be. I mean, there -- it's two hours
4 after the call. They're approximately a half-a-mile away as
5 the crow flies. There's a helicopter up in the air. When --
6 when people see a police helicopter -- and I believe the
7 caller says that the spotlight was like --

8 MS. McNEILL: Objection to what the caller said, and
9 I think this is non-responsive to the question, because I
10 think the question was about the shotgun.

11 THE COURT: No --

12 MR. DiGIACOMO: Actually, I asked him about both
13 incidents.

14 THE COURT: Not both. So, it's sustained as to the
15 hearsay objection.

16 THE WITNESS: Okay.

17 THE COURT: Don't tell us what the caller said,
18 but --

19 THE WITNESS: Okay.

20 THE COURT: -- overruled as to the other objection.
21 You can --

22 THE WITNESS: But anytime the helicopter's up, if
23 there's people in the area, they may want to, you know, not be
24 seen by the police helicopter for whatever reason.

25 BY MR. DiGIACOMO:

1 Q Is this a fairly populated area of Las Vegas?

2 A Yes.

3 Q And in Las Vegas when the helicopter's brought out
4 with its spotlight, is it unusual to receive calls from all
5 kinds of people reporting information that they think may or
6 may not be suspicious?

7 A That's correct.

8 Q I want to sort of jump forward. Yesterday, we
9 talked a little bit about what Mr. Figueroa told you both on
10 the 20th and the 24th. Do you remember those questions?

11 A Yes.

12 Q Okay. And you mentioned something about Mr.
13 Figueroa saying he might have known Joey Larsen; do you
14 remember that testimony?

15 A Yes, I do.

16 Q At what point in time does Mr. Figueroa tell you, I
17 might know who Joey Larsen is?

18 A That was on the 20th when we took him into -- into
19 custody on October 20th.

20 Q At that time, did you have a photograph of him?

21 A No.

22 Q Not with you anyways?

23 A Correct.

24 Q Now let's move forward on the 24th when you talked
25 to Mr. Figueroa. Do you now ask him, hey, do you actually

1 know the guy that lives in 1661 Broadmere?

2 A Yes, I did.

3 Q And what's his response?

4 A He said he's never met the guy before.

5 Q Do you then show him a picture?

6 A Yes, I do.

7 Q And does he confirm that he's never met this guy
8 before?

9 A Yes, he does.

10 Q Yesterday, I was asking you questions -- I want to
11 move forward to September 18th of 2014 -- about Summer
12 Larsen's interview. Do you remember me asking you a few
13 questions about that?

14 A Yes, that's on November 18th.

15 Q Sorry, November 18th, 2014. And when I asked you
16 those questions, I was asking you about a situation in which
17 Ms. Larsen indicates on a picture that Robert looks familiar.
18 Do you remember that?

19 A I do.

20 Q Okay. Have you had a chance to go back and review
21 the transcript and determine who the person in the picture
22 she's saying this guy looks familiar; Robert looks familiar?

23 A Yes.

24 MR. LANDIS: I think that question was asked and
25 answered yesterday.

1 MR. DiGIACOMO: Actually, his response was I don't
2 remember.

3 THE COURT: No, right.

4 MR. LANDIS: Oh.

5 THE COURT: So, it's a different question today.
6 Overruled.

7 THE WITNESS: Yeah. She was -- Summer was looking
8 at a photograph of Jorge Mendoza, and that's who she thought
9 was Robert.

10 BY MR. DiGIACOMO:

11 Q And that's who she thought looked familiar?

12 A Yes, and that's who she thought looked familiar.
13 But she referred to him as Robert, and I said that's not
14 Robert.

15 Q And when she did, did she tell you why it is she
16 thought that person looked familiar?

17 A Yeah, she said she'd run him up on Facebook.

18 Q Yesterday, I was asking you questions about the time
19 you took Mr. Murphy -- or you interviewed Mr. Murphy and he
20 was taken into custody, he had a particular cell phone on him.
21 Do you remember those questions?

22 A Yes, I do.

23 Q And I asked you questions about whether that cell
24 phone was physically on his person when you took those items
25 and then impounded them later on?

1 A That's correct.

2 Q Okay. And I asked you, is that the same number that
3 Summer Larsen or Summer Rice was calling from the jail. Do
4 you remember those questions?

5 A I do.

6 Q If I were to tell you that number was 702-606-5374,
7 does that sound correct to you?

8 A Yes, it does.

9 Q And did you go back and confirm whether or not
10 that's the same phone that Summer Larsen was calling Mr.
11 Murphy from, from the jail?

12 A Yes, it is.

13 Q Yesterday, I briefly talked about the pawn receipt
14 from this case, and I'm going to put up for you one of those,
15 which is 277, which is the actual pawn receipt. And if you
16 give me half-a-second, I will flip it over. Now, when you're
17 a law enforcement officer doing research into pawn activity,
18 is this the document you actually see?

19 A Yes, it -- no, it is not.

20 Q Okay. What do you see?

21 A I see a printout.

22 Q And does it have information that's not contained on
23 maybe the receipts themselves?

24 A Yes, it does.

25 Q Did you -- on that printout -- did you maintain that

1 printout in your case file?

2 A I did.

3 Q And does that printout identify the date that you
4 actually located the pawn activity?

5 A Yes, I did -- it does.

6 Q And do you recall off the top of your head what that
7 date is? If I were to indicate to you that the document
8 showed January 29th of 2015, does that sound about right?

9 A That's about right.

10 Q Prior to January 29th of 2015, you did not have the
11 David Murphy phone records that has been identified as the
12 542-1558 records?

13 A That's correct.

14 Q On that same day, do you issue a court order for
15 those records?

16 A Yes, I do.

17 Q Now, I'm sort of back to where I was yesterday. I
18 talked about Mr. -- your contact with Mr. Laguna, and I want
19 to ask you a couple of questions before I get to that. Back
20 in 2014, when you had contact with Mr. Laguna, does -- did he
21 look somewhat different than he did today?

22 A Yes.

23 Q Okay. And now that you're looking at him, do you
24 know which person is in fact Joey Laguna?

25 A Yes, I do.

1 Q Can you point him out and describe something he's
2 wearing?

3 A He's wearing a -- he's got long dark hair. He's
4 wearing a gray shirt and a gray tie, I believe.

5 Q And he's in the row with the other defendants?

6 A He's in the middle.

7 MR. DiGIACOMO: May the record reflect the
8 identification of Defendant Laguna?

9 THE COURT: It will.

10 BY MR. DiGIACOMO:

11 Q Now, Mr. Mendoza -- did you ever have personal
12 contact with Mr. Mendoza back then?

13 A No.

14 Q But did you receive a photograph of Mr. Mendoza at
15 the time he was taken into custody and booked into the Clark
16 County Detention Center?

17 A Yes.

18 Q And looking at -- well, have you seen that
19 photograph?

20 A Yes.

21 Q Okay. As you sit here today, do you know who Mr.
22 Mendoza is?

23 A Yes, I do.

24 Q Can you point him out, describe something he's
25 wearing?

1 A Jorge Mendoza is wearing the white shirt with the
2 red tie and a dark sports jacket.

3 MR. DiGIACOMO: May the record reflect identification
4 of Mr. Mendoza?

5 THE COURT: It will.

6 BY MR. DiGIACOMO:

7 Q Does Mr. Mendoza look somewhat different in that
8 photograph you received two years ago?

9 A Yes, he does.

10 MR. DiGIACOMO: May I approach, Judge?

11 THE COURT: Yes.

12 BY MR. DiGIACOMO:

13 Q I'm going to show you what's been marked as Grand
14 Jury -- oh, sorry, marked as State's Proposed Exhibits 2 --
15 well, let's just start with 2. Do you recognize the
16 individual that's depicted in that photograph?

17 A Yes, I do.

18 Q Who is that?

19 A That is Jorge Mendoza.

20 Q And is that the way he looked generally in 2014?

21 A Yes, it is.

22 Q I'm going to show you what's been marked as State's
23 Proposed Exhibit No. 5. Do you recognize that individual?

24 A Yes, I do.

25 Q And who is that?

1 A That is Joseph Laguna.

2 Q And is that how -- generally how he looked in 2014?

3 A Yes, it is.

4 Q I didn't ask you this about Mr. Murphy, but looking
5 at State's Proposed Exhibit No. 233, do you recognize that
6 individual?

7 A Yes, I do.

8 Q And is that generally how he looked in 2014?

9 A Yes, it is.

10 Q And finally, I'm going to show you State's Proposed
11 Exhibit 232. Do you recognize that individual?

12 A Yes, I do.

13 Q And is that generally how they looked in 2014?

14 A Yes.

15 MR. DiGIACOMO: I'd move to admit 25, 232, and 233.

16 MR. LANDIS: As to --

17 THE CLERK: 25, 2 what?

18 MR. DiGIACOMO: 25, 232, and 233.

19 MR. LANDIS: As to the picture of Mr. Murphy, unless
20 there's a basis laid that he looks in any way different today
21 than he did two years ago, I don't know what the relevancy is
22 of it.

23 MS. McNEILL: And as to the photo of Mr. Laguna, I
24 don't know what the relevancy of what he looked like in 2014
25 is, because he didn't have contact with law enforcement until

1 2015.

2 THE COURT: All right, approach. I have to see the
3 photos, for one thing.

4 MR. DiGIACOMO: Sure.

5 (Off-record bench conference)

6 MR. WOLFBRANDT: I just was going to get the numbers.

7 THE COURT: Wait, come back.

8 (Off-record bench conference)

9 BY MR. DiGIACOMO:

10 Q I'm going to ask you one clarifying question.
11 State's Proposed Exhibit No. 5, the photograph of -- that
12 you've identified as Mr. Laguna, you didn't actually have
13 contact with Mr. Laguna until 2015; would that be fair?

14 A That's correct.

15 Q And does that accurately reflect what he looked like
16 in 2015?

17 A Yes, it does.

18 Q Okay.

19 MR. DiGIACOMO: So, now I move to re-admit 25, 232,
20 and 233.

21 MR. LANDIS: No objection.

22 MS. McNEILL: No objection.

23 MR. WOLFBRANDT: No objection.

24 THE COURT: They'll be admitted.

25 (State's Exhibits 25, 232, and 233 are admitted)

1 BY MR. DiGIACOMO:

2 Q So, let me get back to the statement that you had
3 with Mr. Laguna. I believe I left off where Mr. Laguna has
4 said that he's home all day with his wife, correct?

5 A That's correct.

6 Q And have you actually been out to the 3668 Lucky
7 Horseshoe address? Have you seen that residence?

8 A Yes, I have.

9 Q And is that residence -- well, have you had other
10 witnesses describe that residence to you before? Without
11 telling us who.

12 A Yes, I have.

13 Q Okay. And was the description consistent with what
14 the witness had told you?

15 A Very consistent, yes.

16 Q I can't remember if I asked you, but during the
17 course of your conversation, did you learn that Mr. Laguna has
18 some problems with his eyesight?

19 A Yes, I did.

20 Q And did he tell you what those problems were?

21 A Yes, he said he couldn't see at night.

22 Q At some --

23 A And I think --

24 Q At some point after he -- during the course of the
25 investigation, do you confront him with the 702-762-1584

1 number?

2 A Yes, I do.

3 Q And his response is?

4 A He says he thinks that's his wife's old number.

5 Q Okay. Do you ask him about who would use that
6 phone?

7 A Yes, I did.

8 Q And what did he tell you?

9 A He told me that him or his wife would use it; they
10 don't lend it to anybody. You know, some people lend phones,
11 they don't, but he said that it would be him or her that would
12 use that phone.

13 Q During the conversation with Mr. Laguna, do you
14 bring up Mr. Figueroa?

15 A Yes, I do.

16 Q Does he acknowledge that he knows him?

17 A Yes, he does.

18 Q Do you ask him questions -- or do you specifically
19 ask him if he has a call with Mr. Figueroa, would it be his
20 wife on the phone?

21 A Yes, I do.

22 Q And what's his response to that?

23 A He says, no, it would be him. He would be calling
24 Robert Figueroa.

25 Q And at some point later in the interview, to clarify

1 the situation, do you ask him sort of a broad question about
2 friends and would his wife be calling his male associate
3 friends type thing?

4 A Yes.

5 Q What do you ask?

6 A As the conversation went on, I asked him if the
7 phone calls to his friends -- the male friends, Robert
8 Figueroa, David Murphy and these, if they would be from him or
9 his wife, and he says, no, they would be from him. I said,
10 she wouldn't be calling them to check on how they're doing, or
11 inviting them to a surprise party, and so it wouldn't be your
12 wife? He said, no, shit no, it would be him.

13 Q Subsequent to your conversation with Mr. Laguna, is
14 he arrested for the crimes that he's here facing trial for
15 now?

16 A Yes, he is.

17 Q I want to ask you about buccal swabs. Do you know
18 what a buccal swab is?

19 A Yes, I do.

20 Q What is it?

21 A It's a way to obtain DNA samples from people. It's
22 like a large toothbrush with -- with much smaller teeth.
23 Usually it's a piece of like felt or a Q-tip, and you have
24 them rub it up and down inside of their mouth, and you box it
25 up, and identify it as theirs, and you send it in.

1 Q When -- well, in the course of this investigation,
2 did you collect buccal swabs from a number of people?

3 A Yes, I did.

4 Q And ultimately, after you sort of gather all the
5 evidence, do you submit five of those or maybe six of those
6 for comparison by the DNA analysts?

7 A Yes, I do.

8 Q Did you collect buccal swabs from David Murphy, Joey
9 Laguna, Jorge Mendoza, as well as Robert Figueroa?

10 A Yes, I did.

11 Q And were they all impounded under the event number,
12 the 140921-3020?

13 A Yes, they were.

14 Q Do you also attend the autopsy?

15 A Yes, I did.

16 Q And at the autopsy, is it standard for the crime
17 scene analyst to impound a buccal swab from the victim, Monty
18 Gibson?

19 A Yes.

20 Q Did that happen in this case?

21 A Yes, it did.

22 Q And would it have been impounded under the same
23 event number?

24 A Yes, it would have been.

25 Q Yesterday, when I was talking about the search

1 warrant to Mr. Laguna -- or sorry, Mr. Figueroa's residence, I
2 showed you a firearm that you later collected from his
3 girlfriend, Chandealea.

4 A Yes.

5 Q Do you remember those questions?

6 A Yes.

7 Q At the time you collected the firearm, did you also
8 collect a holster, as well as some additional magazines for
9 it?

10 A Yes, I did.

11 Q Showing you what's been marked as State's Proposed
12 Exhibit No. 228, do you recognize that?

13 A Yes, I do.

14 Q Is that in substantially the same or similar
15 condition as when you impounded it?

16 A Yes, it is.

17 Q And with the exception, obviously, of those blue
18 markings for further forensic analysis?

19 A Yes.

20 Q And if you were to cut that open, what would you
21 expect to find inside there?

22 A There would be a Ruger magazine for a .40 caliber
23 with 10 cartridges, and a soft Blackhawk holster for a .40
24 caliber Ruger.

25 MR. DiGIACOMO: I'd move to admit 228 and its

1 contents.

2 MR. LANDIS: No objection.

3 MS. McNEILL: No objection.

4 MR. WOLFBRANDT: No objection.

5 THE COURT: It will be admitted.

6 (State's Exhibit 228 is admitted)

7 THE CLERK: Counsel, it's not being opened though,
8 right?

9 MR. DiGIACOMO: That's correct.

10 BY MR. DiGIACOMO:

11 Q Detective, throughout 2000 and -- well, the end of
12 2014 into 2015, did the charges for Summer Larsen change from
13 conspiracy to commit robbery to all the charges that these
14 defendants are facing?

15 A Yes.

16 Q And on September 6th of 2016, did you learn that she
17 had entered a plea to conspiracy to commit robbery, as well as
18 the attempt robbery of the drug supplier's house, the early
19 morning robbery?

20 A Yes, I did.

21 MR. DiGIACOMO: Judge, I think it's been previously
22 admitted outside the presence of the jury. It is State's
23 Exhibit No. 276. I just wanted to make a record in front of
24 the jury that they also have the Guilty Plea Agreement for Ms.
25 Larsen, in addition to the one we admitted yesterday for Mr.

1 Figueroa.

2 THE COURT: That's correct.

3 BY MR. DiGIACOMO:

4 Q Detective, yesterday, there were some transcripts
5 admitted of -- I guess one testimony and four statements that
6 Mr. Figueroa gave; the 10/20 initial one, the 10/23 when he
7 says "I want my lawyer," the 10/24 where he talks to you, and
8 then the 1/25 when he talks to you and Ms. Lexis. You also
9 indicated that you talked to him sometime in mid-November the
10 day after you talked to Summer Larsen and she says, "That
11 ain't Duboy." Do you remember that?

12 A Yes, I do.

13 Q Okay. Was that conversation with Mr. Figueroa
14 recorded?

15 A No, it was not.

16 Q Why not?

17 A Because I was simply going to walk in and show him a
18 picture and say, hey, is this Duboy, and maybe a few other
19 pictures. So, it wasn't anything -- I wasn't going to glean
20 anything new, in my opinion. I wasn't going to do a
21 full-blown interview.

22 Q And it's only once you showed him the picture and he
23 said that it wasn't Duboy that it took longer than you thought
24 you were going to be in the room?

25 A Yes.

1 Q Okay.

2 MR. DiGIACOMO: Judge, I've had marked State's
3 Proposed Exhibit No. 332. Yesterday, State's Exhibits 227
4 through 330 were the four audio recorded statements of Mr.
5 Figueroa that were admitted by transcript. This is the audio
6 associated with that. Each file is labeled by which audio
7 goes with which transcript. I would offer it at this point.

8 MR. LANDIS: No objections.

9 MS. McNEILL: No objection.

10 MR. WOLFBRANDT: No objection.

11 THE COURT: All right. So, that will be the actual
12 audio of all of those is on that one disk, and that will be
13 admitted.

14 (State's Exhibit 332 is admitted)

15 MR. DiGIACOMO: And so the jury is aware, the
16 transcripts are typed up by a human, which means that there
17 theoretically could be either unintelligible's that were
18 intelligible or words that the transcriptionist hears
19 differently than the jury. The audio controls, so whatever
20 they believe the audio says, if it disputes the transcript,
21 they are to rely on these.

22 THE COURT: Correct. That's why we're providing it
23 for you, in case you wanted to compare the actual audiotape
24 with the transcriptions that you've been provided.

25 BY MR. DiGIACOMO:

1 Q Yesterday, during the course of your testimony, I
2 think that we referenced a number of phone numbers that the
3 jury actually had never heard before. And did I forward to
4 you sort of a list of phone numbers that you were able to
5 identify in this particular case?

6 A Yes, you did.

7 Q Did you then take that list and confirm against the
8 information to make sure that the list we gave was accurate to
9 the information that you had?

10 A Yes, I did.

11 Q Detective, I'm going to show you what's been marked
12 as State's Proposed Exhibit No. 333 and ask you is that the
13 list of phone numbers that you were able to gather during the
14 course of the investigation?

15 A Yes.

16 Q And that list may not be exhaustive of every phone
17 number you might have had, but this list as it relates to the
18 name associated with the number is accurate?

19 A That's correct.

20 Q Now, I want to go through some of these numbers to
21 make sure there's a foundation for each of them for you, and
22 some of these are going to be fairly simple. There's the Mr.
23 Mendoza number, which is the 666 --

24 A Correct.

25 Q -- which we've already heard about.

1 A Right.

2 Q Mr. Laguna, which is the 762 we've already heard
3 about, correct?

4 A Yes.

5 Q Mr. Figueroa, which is the 241 number we've already
6 heard about?

7 A That's correct.

8 Q There's the David Murphy number, the 542 number that
9 we heard about?

10 A Yes.

11 Q The David Murphy, 606, the number that's in his
12 possession at the time --

13 A Correct.

14 Q -- he's taken into custody? Summer Larsen, that
15 first phone number -- you had testified yesterday that she
16 provided you a cell phone number that when you got the records
17 back learned was inactive at the time of the crime?

18 A That's correct.

19 Q Is that the number that she had provided?

20 A Yes.

21 Q The second number -- when she was taken into
22 custody, she had a Pinger phone on her?

23 A Yes, she did.

24 Q And thus, were you able to confirm the number for
25 that particular Pinger phone?

1 A Yes.

2 Q And that 702-551 number, 2617, I think you testified
3 yesterday that is the number that's associated with that
4 Pinger phone?

5 A Yes.

6 Q Amanda Mendoza, the jury's already heard about the
7 750 number. The Michelle Estavillo, they heard yesterday the
8 286 number. Ashley Hall, they learned yesterday the 832
9 number. Tod Williams, you told us his department-issued cell
10 yesterday.

11 A Correct.

12 Q Now, Jeff Bonne -- was Jeff Bonne interviewed during
13 the course of the investigation?

14 A Yes, he was.

15 Q And during the course of the investigation, he's the
16 roommate at the residence of Figueroa where the search warrant
17 occurs at; is that correct?

18 A That's correct.

19 Q Him and Cynthia Cruz?

20 A Yes.

21 Q And during the course of your -- of the
22 investigation and contact with him, were you able to identify
23 phone numbers for him and Ms. Cruz?

24 A Yes.

25 Q And is Mr. Bonne's number the 702-630-3890?

1 A Yes, it is.

2 Q And the Cynthia Cruz, is that the 702-337-6324
3 number?

4 A Yes, it is.

5 Q Okay. Now, yesterday, we talked about you received
6 two phone numbers from Gabriel Sotelo for two individuals,
7 correct?

8 A Yes.

9 Q During that time, did you also get his phone number
10 from him?

11 A Yes, we did.

12 Q Okay. And is his phone number the 702-337-0892?

13 A Yes, it is.

14 Q We also talked about Ms. Bird providing you a number
15 for Mr. Figueroa. Did you also get her phone number so that
16 you could cross-reference it against the records?

17 A Yes, I did.

18 Q And that number was the 702-272-4809?

19 A Yes, sir.

20 Q Okay. Now, as to the Robert Figueroa, the
21 702-504-1148 number, I believe you testified yesterday that
22 when you did a court order, you got no return back on it?

23 A That's correct.

24 Q Okay. And then there's the one that is identified
25 as the 702-542-8981 number. That number was allegedly tied to

1 Manny Barientos based upon the information you got from Mr.
2 Sotelo?

3 A Yes.

4 Q At this point, have you done any research on law
5 enforcement records to confirm that Mr. Barientos has reported
6 that particular number himself previously?

7 A Yeah. This morning when I got into the office, I
8 did some -- or we did some research through the police
9 records, and we found that Manuel Barientos (phonetic) has
10 that phone number on a North Las Vegas Crime Report in October
11 10th of 2014.

12 MR. LANDIS: I object. It hasn't been provided or
13 informed that that testimony was going to come in.

14 MS. McNEILL: I would second the objection. It's the
15 first time we've heard this information.

16 MR. WOLFBRANDT: I would join in that same objection.

17 THE COURT: Approach.

18 (Off-record bench conference)

19 THE COURT: I'm sorry, we weren't on the record. The
20 objection's withdrawn?

21 MR. LANDIS: Yes, ma'am.

22 MS. McNEILL: Yes, Your Honor.

23 THE COURT: All right, thank you.

24 THE CLERK: So that was 333?

25 MR. DiGIACOMO: No, that was something else. I

1 haven't actually offered --

2 THE CLERK: Oh, okay. You were up there so long --

3 MR. DiGIACOMO: -- 333 yet.

4 BY MR. DiGIACOMO:

5 Q Now that I've asked all those predicate questions,
6 this appears to be an accurate list of the phone numbers that
7 -- or some of the phone numbers that you gathered during the
8 course of your investigation?

9 A Yes, it is.

10 MR. DiGIACOMO: Move to admit 333.

11 MR. LANDIS: No objection.

12 MS. McNEILL: No objection.

13 MR. WOLFBRANDT: No objection.

14 THE COURT: It will be admitted.

15 (State's Exhibit 333 is admitted)

16 BY MR. DiGIACOMO:

17 Q Detective, I'm not going to have you go and read
18 through all those numbers, but I guess just for the record, on
19 top, it says person associated with the phone, and then
20 there's a list of names, correct?

21 A That's correct.

22 Q And then, this may be somewhat self-explanatory, but
23 the number on the right hand side on the same line is that
24 name -- is a number associated with that person?

25 A That's correct.

1 Q Detective, I want to talk to you about the court
2 orders that you issued in this case. Now, prior to maybe
3 September 16th of this year, I mean, prior to very recently,
4 were you aware that the court order for Mr. -- or the 542-1558
5 number did not contain text messages?

6 A Not until recently, no.

7 Q Similarly, recently, did you -- sorry, let me
8 rephrase. Did the court order request text messages, you just
9 didn't receive them as it related to the 1558 number; is that
10 correct?

11 A I believe so.

12 Q Okay. Similarly, did you learn that there doesn't
13 appear to be any text messages associated with the 241-1051
14 number, the Robert Figueroa phone?

15 A That's correct.

16 Q And when you went back to check that court order,
17 did the language of that court order leave open to
18 interpretation whether that was actually being requested?

19 A Yes.

20 Q At the time you entered that order, did you think
21 you were getting text messages?

22 A I did.

23 Q Okay. And it's only subsequent you learned that
24 AT&T didn't provide them?

25 A That's correct.

1 Q So, as we sit here today, you don't -- you've never
2 gotten any evidence of Mr. Figueroa's text records?

3 A That's correct.

4 Q Likewise, some of the other orders in this case,
5 some of them might have had the Murphy or the 552 -- 542-1558
6 language, and some of them might have had the Figueroa
7 language, correct?

8 A That's correct.

9 Q And a number of the companies did provide text
10 information related to the same language that you used for Mr.
11 Figueroa?

12 A Yes, they did.

13 Q And when they provided -- when AT&T provided those
14 records, did they give you anything that says, hey, by the
15 way, there's no text messages in here?

16 A They did not.

17 Q So, until somebody goes through and looks at every
18 last line, there's no way to know that there was or wasn't
19 text messages?

20 A That's correct.

21 Q We are now almost -- well, we're more now than two
22 years. We started this before, but now we're more than two
23 years since the crime, correct?

24 A That's correct.

25 Q On the night of the crime or shortly thereafter, you

1 receive information that Summer Larsen may somehow be involved
2 in this crime; is that correct?

3 A That's correct.

4 Q Between then and now, other than Ashley Hall, has
5 any other additional information been gathered that indicates
6 that she directly ordered somebody to go to that residence to
7 commit a robbery at Broadmere?

8 A No, there's no other evidence of that.

9 MR. DiGIACOMO: Thank you. I have nothing further.
10 I'd pass the witness, Judge.

11 THE COURT: Cross?

12 CROSS-EXAMINATION

13 BY MR. LANDIS:

14 Q During the investigation, it was discovered that
15 Joseph Larsen had at least one handgun registered to him?

16 A I believe so. I don't know if they were registered,
17 but he had two handguns at the scene.

18 Q Right. Let me just focus on what may have been
19 registered to him. Do you recall any information being dug up
20 that he had a registered firearm? And let me be more
21 specific; a 9 millimeter handgun semi-automatic?

22 A I believe he had a 9 millimeter registered. It was
23 not at the house.

24 Q Never was found?

25 A Never was found. No, sir.

1 Q And the two guns that were impounded from 1661
2 Broadmere or right in front of the house in a trunk were not
3 registered to Joseph Larsen to the best of your memory?

4 A To the best of my memory, no.

5 Q Did you ever ask Joseph Larsen where that gun was?

6 A No, I did not.

7 Q Today, we have no idea where that gun is?

8 A That's correct.

9 Q Talking to you a little bit about the interview with
10 Mr. Figueroa on October 24th, that's commonly referred to as a
11 proffer, yes?

12 A My -- my understanding is a proffer would have to
13 require a deputy DA present.

14 Q All right, let me phrase it this way. It's -- it's
15 not uncommon for you to sit down with a suspect, with or
16 without the district attorney, and hear what they have to say
17 before you've reached into any negotiations?

18 A It's not as common as it appears, but it happens.

19 Q You've done it more than a dozen times in your
20 career?

21 A Oh, no.

22 Q No?

23 A No.

24 Q All right. The question though, sometimes the DA's
25 there as we've seen; sometimes they're not as with 10/24, Mr.

1 Figueroa, correct?

2 A That's correct.

3 Q And as we saw on that transcript, as well as on the
4 day before, 10/23 transcript, since the DA wasn't there, you
5 made clear that you don't have the power to negotiate, make
6 promises about what his sentence will be, things like that,
7 correct?

8 A That's correct.

9 Q Because ultimately, the district attorney has the
10 responsibility to do that?

11 A That's correct.

12 Q But the idea with these -- these meetings where an
13 individual's telling you what they can say, if nothing's
14 reached after that 10/24 discussion with Mr. Figueroa, you
15 can't use what he said against him?

16 A That's correct.

17 Q So, in that sense, it's privileged unless you guys
18 reach a negotiation?

19 A I don't -- you know, I don't know if we would be
20 bound by the same things with a proffer, because we didn't
21 have any of the paperwork signed or anything like that. His
22 attorney was there. I re-Mirandized him. So, I -- I think I
23 -- looking back on it now, I think I would be able to use his
24 statement against him.

25 Q Well, let me ask you this. If an agreement was made

1 such as you can't use it against him, would that agreement
2 have been made between his attorney and the district attorney?

3 A Yes.

4 Q And can you say conclusively if an agreement like
5 that was reached or not before 10/24?

6 A I can assume very much that it wasn't. I think I
7 would have been made aware of it.

8 Q In your experience, do defense attorneys let their
9 clients confess to the police when there's not an agreement
10 that the communication's privileged; if they're not getting a
11 benefit?

12 A I don't know. I maybe have done this a couple of
13 times without a DA there and the -- the defendant's attorney.
14 I couldn't get into that. I think that's all up to the DA's
15 office.

16 Q As we sit here today, are you comfortable
17 conclusively saying there was no proffer agreement of any sort
18 before that interview started 10/24?

19 A In my opinion, yes.

20 Q Are you sure? And not your opinion; are you sure?

21 A I don't know what -- what his attorney and the DA's
22 office had talked about.

23 Q We'll leave it at to the best of your knowledge.

24 A Okay.

25 Q That fair?

1 A Sure.

2 Q When you get -- turning now to September 21st, 2014,
3 you get to the scene, and like many homicide scenes, it's a
4 dynamic scene, evidence is being discovered, facts are
5 becoming known, correct?

6 A Yes.

7 Q Some of that you determine independent by yourself;
8 some of it's relayed to you by other officers, right?

9 A That's correct.

10 Q Common stuff?

11 A Right.

12 Q This case, it was pretty clear early on in that
13 investigation that a crime was committed?

14 A Yes.

15 Q Next step is trying to figure out who you're looking
16 for, right?

17 A That's correct.

18 Q Who the suspects are? And before you get to
19 identifying suspects, it's always nice to know how many
20 suspects you're looking for, correct?

21 A Yes.

22 Q If you can. Sometimes you can't, fair?

23 A That's correct.

24 Q One suspect was pretty easy to identify, and locate,
25 and apprehend at -- after the crime?

1 A That's correct.

2 Q And that was obviously Mr. Mendoza, correct?

3 A Yes, yes, sir.

4 Q At that point, it's fair to say that you concluded
5 there was one -- at least one suspect, because you had him in
6 custody?

7 A At least -- well, we had one in custody and -- and
8 firmly believed that there was at least two more.

9 Q And that's what I want to talk to you about. You
10 did some witness interviews, both of people who are in 1661
11 Broadmere and neighbors?

12 A That's correct.

13 Q Looked at whatever forensic evidence was observable
14 around the scene?

15 A Yes.

16 Q You learned from interviews that at least two people
17 entered the house, and that's what people remembered?

18 A That's what they remembered, yes.

19 Q Two people entering the house. Nobody could say
20 with any certainty three people entered the house?

21 A That's correct.

22 Q Beyond what people remembered, what they saw, what
23 they reported, there was also some forensic evidence that gave
24 you guys some suspicions as to how many suspects there might
25 be, right?

1 A Yes.

2 Q Specifically, the blood trail or trails?

3 A Yes.

4 Q And initially, at that point in time when Mendoza's
5 in custody, you've talked to the neighborhood witnesses, if I
6 can put it that way, what about that blood trail did you guys
7 speculate?

8 A Which -- which blood trail? The one that went past
9 Mendoza?

10 Q Well, I'll be more specific. There was two blood
11 trails leaving from 1661, right?

12 A Yes.

13 Q One of the two you guys named as the one Mendoza
14 left up to that car he was in?

15 A That's correct.

16 Q The other blood trail I'm talking about.

17 A Right. It went further down the street. We
18 speculated that at least -- at least another suspect was
19 injured, either shot or bleeding somehow.

20 Q And you knew he got to a certain point because his
21 blood trail stopped, right?

22 A That's correct.

23 Q And that was on Shifting Winds, pretty close to the
24 end of the subdivision, if I can put it that way?

25 A Yes.

1 Q At that point in time, were you guys of an opinion
2 as to whether or not that person was picked up in a car at the
3 end of that blood trail?

4 A That's what -- that's what it appeared to us to be,
5 because the blood trail stopped, and we couldn't -- we
6 couldn't find it anywhere else around the street. You know,
7 keep in mind this is -- it's nighttime, early morning. We're
8 using flashlights, but we were pretty successful in finding
9 the blood trail, and it would stop for a while and pick up
10 again, and -- but we couldn't find anymore after that spot.

11 Q And the abrupt end of the second blood trail kind of
12 in the middle of a street, evidence that there was potentially
13 a third person?

14 A Yes.

15 Q Being a getaway driver or a driver of some sort?

16 A Yes.

17 Q While you're still on the scene of 1661 that night,
18 what other evidence was there to suggest a third suspect?

19 A I don't recall, you know, other than the car picking
20 them up, or possibly picking them up.

21 Q Did any of the neighbors report seeing vehicles, to
22 the best of your memory, after the shooting?

23 A Yeah, I believe one of them saw a vehicle. I didn't
24 interview that person.

25 Q Do you recall if the individual was Gene Walker?

1 Does that sound familiar?

2 A Sounds familiar, yes.

3 Q And Gene Walker's house was a few houses south, same
4 side of the street as 1661 Broadmere?

5 A Yes.

6 Q Kind of would go out -- his driveway would go out
7 into Long Cattle there, yes?

8 A Yes.

9 MR. LANDIS: Could you put 6 up by chance, State?

10 BY MR. LANDIS:

11 Q If you recall this, Gene Walker remembered seeing a
12 car coming towards his house on Long Cattle, right?

13 A Yes.

14 Q And the lights were even shining on him, his memory,
15 right?

16 A Okay.

17 Q And he also remembered that car stopping at the
18 person with the rifle on the street?

19 A That's correct.

20 Q Not picking him up and continuing on?

21 A That's correct.

22 Q Did any other neighbor witnesses or any witnesses
23 who were around this scene at the time of the events identify
24 any other cars?

25 A No, they did not.

1 Q That blood trail, I know it was dark, and I know you
2 guys probably didn't see every drop of blood as you were
3 looking at it with your flashlights, but eventually during
4 this process, the crime scene analystsS professionally
5 diagrams the thing, right?

6 A That's correct.

7 Q And you can look at that and be pretty comfortable
8 about where there was blood?

9 A Yes.

10 Q There's been some testimony during this trial, and
11 I'm not saying it's been intentionally inaccurate, but that
12 the blood trail was continual from 1661 Broadmere, all the way
13 out of the subdivision to where it ended at Shifting Winds?

14 A Well, there was some -- there was some voids where
15 the -- maybe the bleeding had stopped or the person was -- you
16 know, sometimes they'll take a shirt off and hold over the
17 blood so it doesn't drip, you know, to put pressure on their
18 wound.

19 Q Right.

20 A But yeah, there was -- there was some voids. I
21 believe it was down here off of Walrus that we were able to
22 pick it back up.

23 Q You can't say for sure if those voids are caused by
24 a ceasing of the bleeding, per se?

25 A That's correct.

1 Q For instance, an individual might be jumping walls?

2 A Yes. There's no walls on the street, but --

3 Q The blood trail got pretty close to the side of the
4 houses before it got to Shifting Winds; did it not?

5 A I believe it did.

6 Q And it stops at one point before it gets to Shifting
7 Winds pretty close to those houses; do you recall?

8 A Yes.

9 Q And there was actually footprints at one point in
10 the blood trail, right?

11 A Yes.

12 Q Remember that?

13 A Yes, I do.

14 Q Do you recall where on that map, and feel free to
15 mark it if you do, those -- those footprints in the blood
16 trail were?

17 A You know, I'm not for -- I want to say they were
18 either on this -- this corner, or on the -- right near the
19 corner of Shifting Winds and Ranch Hand. That's -- that's to
20 the best of my recollection.

21 Q I don't dispute it. Does that indicate anything to
22 you in your experience?

23 A Yeah, it indicated somebody stepped in the blood.

24 Q Would it be less likely or more likely that the
25 person who stepped in the blood was the bleeder?

1 A Could be.

2 Q That would require them to stop and take some steps
3 or to backtrack, right?

4 A Yes.

5 Q And as part of this investigation, after those
6 footprints were -- or noticed, they were preserved for later
7 comparison as best they could be?

8 A Yes.

9 Q Which means getting the treads preserved as best you
10 can?

11 A However the crime scene analyst decided to do it.

12 Q Fair way to put it. To date, do you have any
13 answers as to what caused that?

14 A I do not.

15 Q You were strongly confident that that blood trail
16 was caused by Robert Figueroa by the time you learned of
17 Robert Figueroa, right?

18 A That's correct.

19 Q And before you interviewed him on the 20th, 23rd,
20 24th?

21 A Yes.

22 Q And that's one of the first things you told him?

23 A That's correct.

24 Q And during the interview on 10/24, you ask him about
25 generally his blood trail, where he went, the path. Do you

1 remember that?

2 A Yes, I do.

3 Q And I think even at one point, you guys tried to get
4 a map and have him draw it?

5 A Yes.

6 Q Did his memory and his drawing jive with the blood
7 trail as it was identified by the CSA?

8 A I believe it did.

9 Q Did he identify where he hid?

10 A Yes, he did.

11 Q Did you go out there?

12 A Yes, we did.

13 Q When was that?

14 A Oh, that was sometime after our interview with him.

15 Q Did he shed any light as to why either the blood
16 trail stopped at certain points or why there were footprints
17 in it?

18 A No, he did not.

19 Q After talking to him on 10/24, as far as the
20 investigation was concerned, it no longer believed that he was
21 picked up by a car at the end of Shifting Winds?

22 A That's correct.

23 Q Prior to that, prior to 10/24, so from 9/21/2014 to
24 10/24/2014, was any other evidence developed that led you to
25 believe there was more suspects than two?

1 A No other evidence, no.

2 Q But --

3 A Oh, I'm sorry. In the car that came by to -- with
4 the person down that the neighbors saw.

5 Q Nothing else that we haven't talked about, to be
6 fair?

7 A That's correct.

8 Q Nevertheless though, after -- going back to
9 September 21st now, after Mendoza's identified as a suspect,
10 the next person you start suspecting as being involved with
11 this is Summer Larsen?

12 A Yes.

13 Q And you make that conclusion within 24 hours of your
14 start?

15 A Yes.

16 Q And partially, that's based on what Steven Larsen
17 said to you?

18 A Yes, it is.

19 Q About what you heard about Ashley Hall car
20 communications, right?

21 A Yes.

22 Q And you guys quickly focused on Summer Larsen?

23 A Yes, we did.

24 Q Not exclusively, but --

25 A Correct.

1 Q -- as somebody who you needed to talk to and wanted
2 to investigate?

3 A That's correct.

4 Q You believed Ashley Hall was a key part of that
5 investigative lead?

6 A I believed Ashley Hall was a witness that was
7 providing us some information. I wouldn't say a key.

8 Q How -- what was the first time you guys talked to
9 her?

10 A I believe they talked to her that night of the 21st.

11 Q Pretty quick, right?

12 A Yeah.

13 Q And she confirmed some information about a
14 conversation with Summer?

15 A Yes.

16 Q Raised your suspicions about Summer?

17 A Yes.

18 Q You wanted to talk to Summer?

19 A Yes.

20 Q And I can say that, as of September 22nd, you guys
21 wanted to talk to Summer?

22 A That's correct.

23 Q You even put out a law enforcement bulletin saying,
24 hey, if you get in contact with her, give me a call?

25 A Yes, we did.

1 Q One of those 24/7 things we heard about yesterday,
2 right?

3 A Yes, sir.

4 Q That was active September 22nd, to the best of your
5 memory?

6 A Yes.

7 Q Do you remember when it was, the first time you were
8 able to talk to her or find her?

9 A Yeah, we found her on November 18th, I believe.

10 Q You had some difficulty tracking her down then?

11 A Yes, we did.

12 Q And you later discovered she fled town for at least
13 a period of that time?

14 A Yes.

15 Q And she fled to Utah?

16 A Yes.

17 Q And you determined that she knew you guys were
18 looking for her?

19 A That was our belief, yes.

20 Q And while we're on that subject, let me -- this
21 subdivision, as we've heard about throughout this trial, kind
22 of became a reoccurring place of information for you during --
23 throughout this investigation, right? The childhood home of
24 Summer?

25 A Oh, yes, the --

1 Q The trailer park?

2 A Yes.

3 Q More than one witness was interviewed there?

4 A More than one person was talked to there, yes.

5 Q Fair enough. And kind of the fact that people grew
6 up there kind of became relevant, right?

7 A Yes.

8 Q And based on the people you talked to there, kind of
9 a gossipy place, right?

10 A Yes.

11 Q The people talk; the people know each other?

12 A Correct.

13 Q And it seems like at least a lot of them had known
14 each other for a good portion of their lives?

15 A Some of the people I talked to, yes.

16 Q During those initial stages, after you start
17 suspecting Summer, after you do some interviews of the likes
18 of Ashley and others, you're concerned that Summer's boyfriend
19 was involved in this?

20 A We thought that could be possible, yes.

21 Q So, the next logical step, I'm guessing, was to
22 identify and hopefully locate that boyfriend?

23 A That's correct.

24 Q Sometimes that would be easy, but in this case, it
25 wasn't?

1 A That's correct.

2 Q Because as I sit here today, can you tell me who her
3 boyfriend was in September 2014?

4 A No, there was several people.

5 Q Right. You found out through talking to people that
6 a lot of potential men could wear that hat during this time
7 frame?

8 A That's correct.

9 Q And as you're learning these names, you start
10 looking into these different individuals, correct?

11 A Yes, I do.

12 Q And during that initial phase when you're trying to
13 locate Summer Larsen's boyfriend who may be involved in this
14 -- and I'm talking now September into the first weeks of
15 October.

16 A Okay.

17 Q Who do you identify, do you recall, as potential
18 boyfriend suspects?

19 A We identified a Snoop, who was later identified as
20 Isaac Rodriguez, I believe, and a Twisted (phonetic), who was
21 later identified as Robert Meads (phonetic).

22 Q As to Isaac Rodriguez, a.k.a, Snoop, multiple
23 witnesses told you that they were spending time together for a
24 while, correct?

25 A Yes.

1 Q You suspected at least that he may have shot Summer?

2 A Yes, that's what we suspected.

3 Q You investigated him to the point that you took a
4 buccal swab and you talked to him a little bit when he was
5 located?

6 A Yes, I did.

7 Q How about the other individual you mentioned, Mr.
8 Meads?

9 A Yes, we interviewed him as well.

10 Q And did you also confirm that he was spending time
11 with Summer during this period of time?

12 A Yes, we did.

13 Q Can you say as we sit here today anybody else that
14 you would have notified -- or identified in those first three
15 weeks?

16 A No.

17 Q David Murphy's name as a boyfriend of Summer's you
18 should look into did not come up during those three weeks?

19 A We found that David Murphy's name as her boyfriend
20 came up when we interviewed Robert Figueroa on the 24th.

21 Q So, put some time on it. Before 10/24, you never
22 suspected David Murphy as her boyfriend?

23 A That's correct.

24 Q His name was never mentioned in that capacity to you
25 by any of the witnesses you interviewed?

1 A That's correct.

2 Q Back to September 21st, Steven Larsen's talk with
3 you guys was probably the first fuse to light the suspicions
4 into Summer?

5 A Yes.

6 Q He said very bluntly, I think she might have
7 something to do with this?

8 A Yes, he did.

9 Q And he talked about some previous burglaries to that
10 residence?

11 A Yes, he did.

12 Q And he told you guys he believed Summer did these
13 previous burglaries?

14 A Yes.

15 Q And at least one of those burglaries you eventually
16 looked into, and it was reported?

17 A That's correct.

18 Q And to your knowledge, nobody was arrested for the
19 reported burglary to 1661 Broadmere that predated September
20 21st?

21 A That's correct.

22 Q Nobody was identified as suspects as of the time you
23 looked at the Incident Report?

24 A That's correct.

25 Q Summer even eventually admits to doing that,

1 correct?

2 A I don't remember her admitting to -- yeah, I think
3 she made some admissions that she was involved in that.

4 Q If I can start talking to you a little bit about
5 Officer's Reports, Arrest Reports, some questions about that
6 report that the State showed you yesterday. There's something
7 known as -- officially known as an Officer's Report?

8 A That's correct.

9 Q And there's something officially known as a Arrest
10 Report?

11 A Yes.

12 Q And there's officially something known as a
13 Declaration of Warrant/Summons?

14 A Yes.

15 Q There's also something called an Incident Report?

16 A Yes.

17 Q These are all Las Vegas Metropolitan Police
18 Department titles put on documents that have to be done at
19 certain times, big policy book?

20 A Yes.

21 Q Simplify that a little bit, of course. Let's start
22 with what's I hope one of the easier ones, an Arrest Report.
23 When does an officer or a detective from Metro have to do an
24 Arrest Report?

25 A We do an Arrest Report when we're going to arrest

1 somebody for probable cause charges, and you would do that
2 Arrest Report that day that you're going to -- to arrest them.

3 Q Are those cases where there's not an active warrant
4 at the time?

5 A That's correct.

6 Q And you -- just make sure it's clear to me, you
7 write that report before you go out into the field and arrest
8 them?

9 A You could.

10 Q Sometimes you might develop probable cause for an
11 arrest out in the field, right?

12 A That's correct.

13 Q And effectuate an arrest because of that?

14 A Yes.

15 Q And what would you do if that was the case?

16 A You would take them to jail, and you would fill out
17 your -- your temporary custody record, your Declaration of
18 Arrest, and you would -- at the jail, you would dictate an
19 Arrest Report.

20 Q When would you do a Declaration of Warrant?

21 A When you have probable cause to make an arrest, or
22 you believe you have probable cause to make an arrest, and you
23 would type out your probable cause and you would take that
24 with other documents and give it to the deputy -- or to the
25 attorney's office -- the district attorney's office, and they

1 would either approve or deny that -- that request. If they
2 approve it, then it would go to a judge, who would either sign
3 it or not approve it.

4 Q Does the officer or detective have some discretion
5 as to which one of those two routes they'd choose between the
6 Declaration of Warrant going to the DA's or the Arrest Report
7 and effectuating the arrest themselves?

8 A Yes.

9 Q And then an Officer's Report, that's different than
10 both of those things?

11 A That's correct.

12 Q What does an Officer's Report do that those don't?

13 A An Officer's Report is documenting the investigation
14 or the case.

15 MR. LANDIS: Court's brief indulgence. Can I
16 approach the witness?

17 THE COURT: You may.

18 BY MR. LANDIS:

19 Q Showing you Defense Proposed A, you were shown that
20 yesterday?

21 A Yes, I was.

22 Q You talked a little bit yesterday about the dates
23 and the information in it, things of that sort, right?

24 A Yes, I did.

25 Q As we sit here today, can you tell me when that

1 thing was finalized and submitted?

2 A I can't tell you the exact date, no.

3 Q And just to make sure some of the things you said
4 yesterday are clear to me, there's a point in time, and it
5 happened in this case, when an Officer's Report's getting
6 amended, added to, and it's in the common drive at the Metro
7 file system?

8 A Right.

9 Q You can access it, put stuff in it, right?

10 A Yes.

11 Q Detective Williams?

12 A Yes, we have access to it. Yes.

13 Q And then at a certain point in time, it gets sent to
14 a supervisor or sergeant?

15 A Yeah, they're in our office. We just take it to
16 them.

17 Q And when you do that, that's you believing it's
18 final?

19 A Yes.

20 Q They review it?

21 A Yes.

22 Q For what?

23 A The sergeants will look over it. They'll look for
24 spelling or, you know, punctuation errors. If the sergeant's
25 familiar with the case, they'll look at -- they'll read

1 through the report, and they may remember something about the
2 investigation that is not in there. And they'll ask -- you
3 know, they can ask you about it and say, you know, did you
4 want to put this incident, you know, or this piece of
5 information in there, and sometimes you do. Sometimes it's
6 irrelevant and you don't -- it doesn't go in the report.

7 MR. LANDIS: Can we approach on something unrelated
8 to this question?

9 THE COURT: Yes.

10 (Off-record bench conference)

11 THE COURT: So, during this recess, it is your duty
12 not to converse among yourselves or with anyone else on any
13 subject connected with the trial, or to read, watch, or listen
14 to any report of or commentary on the trial by any person
15 connected with the trial, or by any medium of information,
16 including, without limitation, newspaper, television, radio,
17 or internet, and you are not to form or express an opinion on
18 any subject connected with this case until it's finally
19 submitted to you. We'll take 15 minutes.

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

21 (Jury recessed at 2:55 p.m.)

22 THE COURT: All right, the record will reflect the
23 jury's departed the courtroom. We're in recess. Restroom.

24 (Court recessed at 2:56 P.M. until 3:14 P.M.)

25 (Within the presence of the jurors)

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

3 THE COURT: Thank you. Please be seated. And the
4 record will reflect we're back within the presence of all 12
5 members of the jury, as well as the three alternates. The
6 three defendants are present with their respective counsel,
7 the Chief Deputy District Attorneys are present, as are all
8 officers of the court. And Mr. Landis, you may resume your
9 cross.

10 MR. LANDIS: Thank you, Your Honor.

11 BY MR. LANDIS:

12 Q Can I summarize Officer's Reports as they can be
13 used to supplement the information that's in previous records
14 when necessary?

15 A Yes.

16 Q Is an Officer's Report always going to be found when
17 there's a felony arrest?

18 A No.

19 Q Even in the case of murders?

20 A No, on -- on my squad, we all do Officer's Reports
21 on every homicide investigation that we work.

22 Q But it's not required that one be done when a murder
23 suspect is arrested?

24 A That's correct.

25 Q What I want to figure out regarding Proposed A

1 that's in front of you there, that Officer's Report, we know
2 based on the dates of events that are in it, it was finalized
3 before October 24th?

4 A That's correct.

5 Q I'm sorry, finalized after October 24th?

6 A After 24th.

7 Q That's what I meant. And maybe I heard you guys
8 wrong. I at least heard you guys implying yesterday on direct
9 testimony that you're comfortable saying it was finalized
10 sometime before November 6th?

11 A It'd depend on when I interviewed Ms. Pruse. That's
12 my last notation in the report.

13 Q That's the best indication you have as to when it
14 was finalized was after that date, the interview of Ms. Pruse?

15 A Yes.

16 Q Which we know happened after the 10/24 interview of
17 Mr. Figueroa?

18 A Yes.

19 Q But saying it happened a week, or two weeks, or a
20 month after the -- the Ms. Pruse interview, we can't say that?

21 A I can't guess.

22 Q At the point that you -- whenever this point is that
23 you -- let me stop. In a perfect world, and I'm not trying to
24 beat you up, we'd have an accurate date on that report?

25 A You'd have an accurate start date. We -- there's no

1 end date on them.

2 Q You never put a finalized date on it?

3 A No.

4 Q So, that's what that date is on the front is a start
5 date?

6 A That's what I do. I don't know what other
7 detectives do.

8 Q And when I say the date on the front, I'm talking
9 about the handwritten date, which was September 22nd?

10 A That's correct.

11 Q When would you have put that handwritten date on
12 that report? When it was finalized? When you first opened
13 it?

14 A I'm sure that when I printed it out and the sergeant
15 signed it, I noticed I didn't have the date on there, and
16 that's when I would have handwritten it on there.

17 MR. LANDIS: If I can approach the witness?

18 THE COURT: Yes.

19 BY MR. LANDIS:

20 Q This is not marked, but if you could just look at
21 it. Does that appear to be a very similar Officer's Report as
22 the one that we were just talking about?

23 A Yes.

24 Q Same number of pages, 28?

25 A I believe so.

1 Q Your work product for the most part, right?

2 A I want to point out two differences, if I could, the
3 first one being the one that has your handwritten date,
4 Defense Proposed A, the first one we were talking about today,
5 that identifies Mendez-Martinez as suspect number 4, correct?

6 A Yes.

7 Q And it has a picture?

8 A Actually, number -- number 5.

9 Q I apologize. And it has a picture?

10 A Yes.

11 Q Now turning to the other report I approached with a
12 moment ago, one of the differences is there's no picture --

13 A That's correct.

14 Q -- for Mendez-Martinez, but it does list him as
15 suspect 5?

16 A Right.

17 Q And then the -- another difference with that report
18 is it doesn't have the date written on the front?

19 A And it's not signed.

20 Q So, it doesn't have your 9/22?

21 A Right.

22 Q Does that mean that -- the one without the date
23 would have came off the printer in your hand?

24 A This -- this was probably printed out. It wasn't
25 signed, it wasn't complete, and obviously not complete because

1 I did have the picture of the wrong Duboy in there.

2 Q And when you would have printed it, it would have
3 been for what purpose?

4 A To review it.

5 Q Okay. Not to send to the sergeant, not to
6 finalize --

7 A No.

8 Q -- not to distribute to anybody outside Metro?

9 A That's correct.

10 Q And your testimony yesterday was once that Officer's
11 Report is given to the sergeant, it's unchangeable? And let
12 me rephrase. After the sergeant approves it and puts it in
13 the system, it's unchangeable?

14 A I wouldn't change it, no.

15 Q Okay. That's your policy, not Metro's policy?

16 A Correct.

17 Q At that point that it's in the -- what do you call
18 that system where it's finalized after sergeant approval? The
19 -- just on the books, I think is the phrase you used
20 yesterday?

21 A Yeah, we put it in the book. Yes.

22 Q Could in this case Detective Williams go in and
23 change it after it's in the book?

24 A Detective Williams would know it was -- it was
25 already signed. He wouldn't change the report either.

1 Q Is it a rule that it should not be changed after
2 it's signed?

3 A Yes. I mean, it's -- for me, it is.

4 Q And for that report, you conclude -- beyond that
5 Mendez-Martinez was involved as a suspect, you also conclude
6 that an African-American individual might be involved?

7 A Yes.

8 Q Explain to me why you made that conclusion at that
9 point in time.

10 A Because we had information that Summer had picked up
11 a black male at a -- it's a 7-Eleven type store called
12 Munchies. And she was with Ashley Hall, Ashley Hall was
13 driving. And Summer was telling this -- this -- who Ashley
14 Hall identified as Evil, telling him about her -- her husband
15 and how easy it would be to break into his house and take his
16 marijuana or whatever property he had.

17 And so we assumed that, at this time, keeping in mind
18 that we still believe that Summer Larsen was a nexus in this
19 home invasion. So we believed that, you know, she would be
20 involved, possibly this black male would be involved, and
21 other people that we have.

22 Q Nothing's in those reports about the Sotelo
23 interview, correct?

24 A That's correct.

25 Q Do you recall when that interview was off the top of

1 your head?

2 A It's dated on his transcription.

3 Q Sometime in October before the 24th Figueroa
4 interview, obviously?

5 A Yes. Well, before the 20th when we took him into
6 custody.

7 Q Very well. At that point in time, before you guys
8 are called to talk to Sotelo, still no new information about
9 -- about suspects, right?

10 A Pardon me?

11 Q Still no new information from the time of the crime
12 about the number of suspects?

13 A Correct.

14 Q You're still just basing it on the blood trail
15 evidence we talked about and the neighbor -- the neighbors'
16 statements?

17 A Correct.

18 Q The Sotelo interview though gives you some
19 information that -- that changes your investigation a lot?

20 A Yes, it does.

21 Q And we've heard about some. He identifies Figueroa
22 as somebody who more or less confessed to him?

23 A Yes.

24 Q And his stories, you hear it firsthand from his
25 mouth, right?

1 A Yes, I do.

2 Q It's fairly detailed in what he heard?

3 A Yes.

4 Q He talks about Figueroa; he claims that this Manny
5 Barientos was there, not only when the story was being told to
6 Sotelo, but also involved in the crime?

7 A Yes, that was his -- that's his recollection of
8 their story.

9 Q And that's what you memorialized in reports?

10 A In his statement, yes.

11 Q Right. He also talked about a third individual
12 being involved, yes? Perhaps going by the nickname Orco?

13 A Oh, yes.

14 Q And he told you that Orco was the guy who already
15 got arrested?

16 A That's correct.

17 Q Who at that point was Mendoza?

18 A Yes.

19 Q He provides you details that, some of them, you can
20 confirm, right?

21 A Some of his information we could confirm, yes.

22 Q Such as, I know where Figueroa lives?

23 A Correct.

24 Q Such as, I know who his roommates are?

25 A Yes.

1 Q Such as, I know at least what one of his roommates
2 drives?

3 A Yes.

4 Q I know where Barientos lives?

5 A That's correct.

6 Q Gave you cell phone numbers?

7 A Yes.

8 Q Probably couldn't confirm this at the time, but even
9 told you Figueroa went to California?

10 A Yes.

11 Q To treat his injuries?

12 A That's correct.

13 Q From the time you get his information, the
14 information from Sotelo, you quickly start confirming what you
15 can about his story?

16 A Yes.

17 Q And yesterday, you were asked questions about
18 whether or not he was going to be arrested the day you talked
19 to him, or if he was arrested, remember?

20 A Yes, I do.

21 Q And your best memory was, I think he was free to go
22 anyway?

23 A Yes, that's to my best recollection.

24 Q We at least know that he was free, because the next
25 morning, you guys picked him up?

1 A That's correct.

2 Q And he was willing to do that?

3 A Yes, he was.

4 Q And he wasn't in custody?

5 A That's correct.

6 Q And what was the purpose of that?

7 A He was going to show us where Robert Figueroa lived,
8 and he also -- I think he also took us to where Manuel
9 Barientos lives.

10 Q And you were able to confirm that what he showed you
11 was in fact Figueroa's residence?

12 A Yes.

13 Q And armed with that information, you start focusing
14 on Robert Figueroa?

15 A That's correct.

16 Q And we know that October 20th is the date of his
17 arrest and the search of his abode, right?

18 A Yes.

19 Q Before you talk to him, before you search anything,
20 you have probable cause, you believe, to arrest him?

21 A I believe so, yes.

22 Q And you secure a search warrant to search his
23 residence?

24 A Yes, we do.

25 Q Which obviously is a showing of probable cause, too?

1 A That's correct.

2 Q Have you had communications with Sotelo since that
3 morning that he drove you around and showed you the Figueroa
4 residence?

5 A Yes. He called me, God, a week ago. Maybe longer.

6 Q Have you had any other communication besides that
7 one in this year, 2016, with him?

8 A I don't recall.

9 Q What was the purpose of him calling you a week or so
10 ago?

11 A He told me that he was served with a subpoena. He
12 didn't know what to do with it. I said, call the DA's office.

13 Q And he still had your number, because I assume you
14 provided it to him way back in the past?

15 A He had my desk number. I believe he called me on my
16 desk phone.

17 Q Let me ask -- the DA asked you yesterday if you did
18 anything to make sure he wasn't arrested that first day you
19 talked to him, and you said, to my memory, no?

20 A Right.

21 Q To your knowledge, did you or anyone in Metro
22 provide him any benefit in exchange for what he -- he provided
23 you?

24 A I don't recall providing him any -- any benefit.

25 Q If a benefit was provided to him in exchange for the

1 information, is that something that would have been logged?

2 A Well, probably not.

3 Q Probably not?

4 A No.

5 Q All right. Is that something that somebody in Metro
6 could have done without running it by you?

7 A Absolutely. You would -- you couldn't do it without
8 running it by a deputy DA.

9 Q What if the benefit was just an OR from jail? You
10 need to run that by a DA?

11 A I don't know.

12 Q For instance, like calling a judge and asking a
13 judge to OR somebody?

14 A I believe you could do that.

15 Q Without a DA involvement?

16 A Yes.

17 Q And have you ever done that in your career, not --
18 not in this case?

19 A Oh, yes.

20 Q Did Sotelo indicate to you during this conversation
21 a week ago whether or not he intended to honor the subpoena?

22 A He did not.

23 Q He did not say?

24 A He didn't say.

25 Q After the Sotelo interview, but before you speak

1 with Figueroa on the 24th, you now suspect how many people?

2 A Well, we have one in custody, we get Figueroa on the
3 20th, Summer Larsen, and possibly the black male known as
4 Evil.

5 Q As of 10/20, the date of the Figueroa arrest, has
6 any warrants been issued to arrest Summer?

7 A I don't recall when I issued a warrant to arrest
8 her. I don't think so.

9 Q November 6th, does that sound familiar, potentially?

10 A Yes.

11 Q What was it that changed between 10/20 and 11/6 that
12 motivated your ability to arrest Summer?

13 A I think because we were unable to find her, I
14 decided that the best way to go would be issue a warrant, and
15 that way, if she's stopped by law enforcement -- if we enter a
16 warrant, we're going to enter it not just locally, but it will
17 go NCIC, which is all 50 states. So, if she was not in state,
18 if she was in California or Utah and she was contacted by law
19 enforcement, they would see that she'd have a warrant for her
20 arrest in Las Vegas.

21 Q What was that -- the charges for the first warrant;
22 do you remember?

23 A I believe it was conspiracy to commit robbery.

24 Q And for what -- what robbery? What potential
25 robbery?

1 A The house on Broadmere.

2 Q You at least suspected she was guilty of committing
3 other burglaries to that residence?

4 A Yeah. I believed she could have been involved in
5 those, yes.

6 Q You never sought charges for those?

7 A No, I did not.

8 Q And to your knowledge, no one in Metro did?

9 A No.

10 Q Can you say with confidence that you had a picture
11 of Mendez Martinez by 11/6?

12 A Yes, I probably had it before that.

13 Q Let me talk about that process of getting to Mendez-
14 Martinez, which you touched about a little bit. Interview of
15 Figueroa on 10/24 and he uses the name Duboy?

16 A Correct.

17 Q Didn't spell it out for you?

18 A Correct.

19 Q It was an oral interview, obviously?

20 A Yes.

21 Q I presume you're taking notes?

22 A I'm recording it.

23 Q And you're ready to listen to that recording if you
24 need to?

25 A Pardon me?

1 Q If you need to listen to the recording after the
2 interview to remember what he said, you can?

3 A Yeah, and I'd jot down, you know, things that I
4 thought were important.

5 Q So, you get this name Duboy. No real name suggested
6 or provided by Figueroa?

7 A Correct.

8 Q Some very basic descriptors?

9 A Yes.

10 Q In terms of height, weight?

11 A Yes.

12 Q Armed with that information, you go to a computer?

13 A Yes.

14 Q And you use a Metro system known as SCOPE?

15 A Yes.

16 Q And let me see if I can summarize SCOPE accurately.
17 SCOPE is a database of a lot of different information sources,
18 right?

19 A Yes, it is.

20 Q Criminal history, arrests, things like that?

21 A Correct.

22 Q Work cards?

23 A Yes, field interviews.

24 Q Traffic tickets?

25 A Yes.

1 Q You can also enter one of these, if contacted, let
2 this detective know?

3 A Records enters that. I have to send them an email
4 requesting it.

5 Q But you'll see that in a SCOPE?

6 A Yes.

7 Q And you'll also find sometimes nicknames?

8 A Yes.

9 Q Or monikers, same thing. And you can search SCOPE
10 as a detective a few different ways, right? The information
11 you enter to search can be a name?

12 A Yes.

13 Q It can be a nickname?

14 A Correct.

15 Q It could be a date of birth?

16 A It can't be just a date of birth, I don't believe.

17 Q Social security number?

18 A Social security number, ID number.

19 Q And you can also do like a sounds like kind of
20 qualifier on those searches?

21 A Yes.

22 Q So, you know, if you don't know how to spell a last
23 name, you can guess, and it hopefully would maybe figure it
24 out for you?

25 A Yes.

1 Q So, you head to your computer armed with this
2 information about Duboy, and I assume you use a nickname
3 search?

4 A Yes, I do.

5 Q And do you recall the specific letters you typed in?

6 A I -- I do not.

7 Q And none of this is recorded by the computer system,
8 right, like your actual search and things like that?

9 A I have no idea.

10 Q But you type in some variation -- some spelling for
11 Duboy?

12 A Yes.

13 Q How many potential matches come up?

14 A I don't recall.

15 Q Give me a ballpark.

16 A I don't recall. I mean, maybe ten.

17 Q Ten?

18 A Yes. I'm -- I'm absolutely guessing.

19 Q And from those however many, you start looking more
20 specific at the other information provided?

21 A Yes.

22 Q And from that, you conclude Mendez-Martinez is your
23 guy?

24 A Yes.

25 Q And his nickname was what?

1 A Duboy.

2 Q How was it spelled?

3 A I believe it was D-o-b-o-y.

4 Q Would looking at that report refresh your
5 recollection? It's page 2. I think it's by his name.

6 A D-u-b-o-y.

7 Q And that's why I assumed you used that sound
8 familiar search when you did this.

9 A Yes.

10 Q How long after that did you get this picture? You
11 don't know?

12 A Oh, I think I had it that day.

13 Q Pretty easy to get in that same computer system in
14 general?

15 A Yeah, the -- the -- I can make the SCOPE put a
16 picture of him up there, or I can run a -- run the name
17 through mug shots or anything like that, or get a picture off
18 of a DMV.

19 Q That -- sometime after that point in time, you
20 finalize that Officer's Report?

21 A Yes, I do.

22 Q And it has his name and picture?

23 A Yes.

24 Q What was the date that you eventually show the
25 picture to Figueroa, according to your testimony?

1 A I believe I showed it to Summer Rice on the 18th,
2 and then to Figueroa on the 19th.

3 Q So, November 18th at the earliest, you show the
4 picture to somebody involved in the case?

5 A Yes.

6 Q And prior to that, prior to November 18th, to
7 whenever you did the search through to November 18th, you
8 could have went to Figueroa and shown him the picture?

9 A Yes.

10 Q You chose not to?

11 A Yes.

12 Q You could have shown that picture to Joey Larsen; at
13 least tried, right?

14 A Yes.

15 Q Steven Larsen?

16 A Yes, I could have.

17 Q Instead, you decided to name him as a murder suspect
18 in this report?

19 A Yes.

20 Q And those reports should include accurate
21 information, right?

22 A Absolutely they should.

23 Q A lot of reports besides the two we've talked about
24 have been completed by you in this case, right?

25 A That's correct.

1 Q A lot of Arrest Reports?

2 A Yes.

3 Q Applications for Search Warrants?

4 A Yes.

5 Q Applications for Court Orders?

6 A Yes.

7 Q You're probably sick of writing about this case?

8 A Yes.

9 Q A lot of the information that makes it into these
10 Arrest Reports and things mirrors the information that's in
11 that Officer's Report, right?

12 A Yes, it does.

13 Q And I presume you even cut and paste it, right?

14 A Yes.

15 Q As of 10/20 when you're getting the search warrant
16 for Figueroa and things like that, you still believe there's
17 an African-American suspect?

18 A At that time, yes.

19 Q At the time you're applying for the search warrant
20 for Summer, which is November, is that still what we'll find
21 in the reports?

22 A The Arrest Warrant?

23 Q Yes.

24 A I don't recall the information I put in her Arrest
25 Warrant.

1 Q Would looking at it refresh your memory?

2 A Yes.

3 MR. LANDIS: Can I approach?

4 THE COURT: Yes.

5 BY MR. LANDIS:

6 Q Excuse my notes on the first page. Looking at that,
7 if you could just refresh your memory as to what you were
8 writing about other potential suspects who are unidentified.

9 A I think the only time I mentioned the black male is
10 when I'm doing a summary of Ashley Hall's statement. Is that
11 correct?

12 Q I'm not at liberty to tell you that.

13 A Yeah, that --

14 THE COURT: Take as much time as you need to read
15 that.

16 THE WITNESS: So, your question is what?

17 BY MR. LANDIS:

18 Q In that Declaration of Warrant, what do you state
19 the current investigation identifying as suspects other than
20 Mendoza, and Rice, and Figueroa?

21 A Well, and keeping in mind this is for Ashley Hall,
22 but I state that -- I use Jesus -- or, sorry, Martinez in
23 there as Duboy.

24 Q And we can stop there.

25 A Okay.

1 Q While that's in front of you, does it refresh your
2 memory as to the date it was executed?

3 A Or signed?

4 Q Sure.

5 A It's -- it's blank. I would -- it's typed up here,
6 "Executed on the 6th day of November."

7 Q So, at that point, Duboy in your view is still
8 Mendez Martinez?

9 A Yes.

10 Q Summer's arrested, and you talked a little bit about
11 these jail calls, right?

12 A Yes.

13 Q And that's a common source of potential evidence for
14 you guys?

15 A That's correct.

16 Q Some people talk on the phones?

17 A Yes.

18 Q Some people think they're smarter than the
19 recording?

20 A That's correct.

21 Q And since you were still unsure as to the full
22 picture of this crime, you guys were focused on those phone
23 calls with Summer?

24 A Yes.

25 Q And you personally listened to at least some of

1 them?

2 A Yes, I did.

3 Q And what -- do you know the time frame that would
4 have been?

5 A Sometime after she was taken into custody on
6 November 18th.

7 Q I would assume you were doing the listening pretty
8 early on after that arrest?

9 A Oh, I don't -- I don't recall when I started
10 listening to them.

11 Q How many calls did you listen to roughly? Any idea?

12 A I want to say I probably listened to six or seven.

13 Q And these weren't live listens; these were the
14 recordings using the system like you talked about yesterday?

15 A Yes.

16 Q And if I could just explain that a touch better.
17 Inmates, when they make a call, they have to use their unique
18 identifiers?

19 A That's correct.

20 Q So, you can go into the system and just input the
21 same unique identifiers the inmate uses?

22 A Yes, yes, sir.

23 Q And it brings up all their phone calls?

24 A Yes.

25 Q You could also though do a search, I want -- I want

1 to know everyone who called this guy, right?

2 A Yes.

3 Q And you could find all the inmates who called
4 whatever phone number?

5 A Correct.

6 Q You're privy to the reality that some inmates try to
7 -- try to hide their communications from these recordings,
8 right?

9 A Yes.

10 Q And a common way they do that would be to use
11 somebody else's account to make the call?

12 A That's correct.

13 Q So, I have a buddy in the cell next to me and I want
14 to make a call. I say, hey, I'm going to give you some
15 Doritos, let me use your account?

16 A Yes.

17 Q I mean, that's real life, right?

18 A Yes.

19 Q And the hope is that then when the officers are
20 searching for their calls through their unique identifiers,
21 you're not going to find it --

22 A That's correct.

23 Q -- because I used my celly's?

24 A That's correct.

25 Q But you guys know the cat and mouse game, and you do

1 what you can to try to outstep that?

2 A Yes.

3 Q And one way you can hopefully outstep it with some
4 defendants is that number search? You know this inmate calls
5 this guy, so you do a number search for this guy?

6 A Right.

7 Q And you identified some phone calls like that that
8 Summer was making?

9 A Yes, we did.

10 Q And when you would identify a call that you found to
11 be potentially relevant, you not only save the recording, but
12 you send it out for transcription?

13 A Yes.

14 Q Inmates who do that kind of trick, if I can use that
15 phrase, the using somebody else's account, that's a red flag
16 that's going to make you really want to know what's on that
17 call?

18 A Oh, I wouldn't say it's a red flag, but it's
19 something that we expect from time to time.

20 Q It at least indicates some suspicion?

21 A Yes.

22 Q Doesn't mean it's necessarily suspicious though,
23 right?

24 A That's correct.

25 Q Do you remember a call she made that was

1 transcribed; she made using somebody else's account?

2 A Yeah, I do, but I don't recall the name that she
3 used.

4 Q Another inmate's account?

5 A Yes.

6 Q Do you remember who she called?

7 A I don't recall.

8 Q Do you remember -- let me just do it this way.
9 Would looking at a transcript of it refresh your memory,
10 perhaps?

11 A Yes.

12 (Mr. Landis/Mr. DiGiacomo conferring)

13 MR. LANDIS: Can I approach?

14 THE COURT: Yes.

15 BY MR. LANDIS:

16 Q And I'll have you look at that, but just to be
17 clear, that's a transcript of a phone call, yes?

18 A Yes, it is.

19 Q And it's got some handwriting on the top?

20 A Yes, it does.

21 Q Do you recognize that?

22 A I do.

23 Q Yours?

24 A That is mine.

25 Q Very good. And looking at that, you can identify

1 the inmate's account she used, right?

2 A Yes.

3 Q It doesn't -- unless the person says their name on
4 the recording though, it doesn't identify the recipient of the
5 call, the person Summer was talking to?

6 A That's correct.

7 Q But fair for me to say that you were searching that
8 number because it was somebody who she had been calling?

9 A I don't -- I don't recall how I got to that number,
10 but --

11 Q Is there any other way you would have got to it?
12 Oh, you mean you could have got it from other investigative
13 leads as opposed to --

14 A Yes --

15 Q -- a number -- okay.

16 A Yeah.

17 Q It's a number you developed tied to Summer Larsen,
18 and that's why you searched it in the computer system?

19 A I'm -- I don't recall how I got to that number. I
20 just don't. It's two years ago.

21 Q Did you conclude, listening to those phone calls,
22 that some of the phone calls she was making were to a Hispanic
23 male?

24 A Yes.

25 Q And did you at least believe that Hispanic male to

1 be Isaac Rodriguez?

2 A I believed it could have been.

3 Q Do you believe that's one of those calls that that
4 was that potential person?

5 A I don't -- I don't remember the voice. I couldn't
6 say that was Isaac Rodriguez unless he identifies himself in
7 there.

8 Q Let me just say this. When you're listening to
9 calls where Summer Larsen, Summer Rice is talking to a male,
10 those were particularly interesting to you?

11 A Yes.

12 Q You're looking for evidence that she's conspiring or
13 colluding with this person to help them out?

14 A I want to hear what she's saying.

15 Q Right. And in a perfect world, your hope is she'll
16 call the person she colluded with, right?

17 A Yes.

18 Q And they'll make it clear through their phone calls?

19 A Yes.

20 Q And that stuff does happen?

21 A It does happen.

22 MR. LANDIS: And Judge, I'm going to ask to admit and
23 play that phone call that that transcript's for.

24 THE CLERK: What number is it?

25 MR. LANDIS: It's not a number yet.

1 THE COURT: All right, well, it does have to be a
2 proposed --

3 MR. LANDIS: Yeah, it would be Proposed I.

4 THE COURT: Okay.

5 MR. LANDIS: Defense I.

6 THE CLERK: I? And what is it again?

7 MR. LANDIS: It's a phone call from Summer Rice.

8 THE CLERK: A transcript, or?

9 MR. LANDIS: No, I'm going to play the actual call.

10 THE CLERK: Okay.

11 MR. DiGIACOMO: May we approach, Judge?

12 THE COURT: Yes.

13 (Off-record bench conference)

14 BY MR. LANDIS:

15 Q Do you still have a transcript up there of the call?

16 A You've got mine.

17 Q That's what I was worried about.

18 MR. LANDIS: Can I approach the witness?

19 THE COURT: You may.

20 THE WITNESS: Thank you.

21 THE COURT: So, the objection is sustained.

22 BY MR. LANDIS:

23 Q You can't tell me exactly who that male is, but you
24 can tell me that male is not David Murphy?

25 A That's correct.

1 Q Or any of these defendants?

2 A That's correct.

3 Q One thing I want to focus on in that call -- and the
4 male starts asking about whether or not the police have been
5 asking about him, right? And I'd refer you to page 4.

6 A Yes.

7 Q And she tells him, in effect -- I'm paraphrasing, of
8 course -- they haven't brought you up?

9 A Right.

10 Q That's kind of the stuff you're listening for when
11 you listen to those phone calls, right?

12 A Yes.

13 Q Somebody concerned that the police are asking about
14 them?

15 A Yes.

16 Q Especially if it's a potential lover of Summer Rice?

17 A That's correct.

18 Q The date of that call was?

19 A 11/18 of 2014.

20 Q Same day she --

21 A That's what I have handwritten up there.

22 Q Right, which is --

23 A Yes.

24 Q -- very soon after her arrest?

25 A Yes.

1 Q We've got to assume one of her first calls? What
2 did you do based on that information when you heard it?

3 A I tried -- I'm not sure what I did, to be honest.
4 I'm sure I would have tried to find that number who it
5 belonged to.

6 Q Do you recall if you did?

7 A I don't recall doing that.

8 Q Do you recall if you ever specifically asked Summer
9 questions about that conversation?

10 A I did not.

11 Q And just for the record, does it list the phone
12 number that Summer called?

13 A Yes, it does.

14 Q Could you state it for the record?

15 A 702-366-1640.

16 Q And at a minimum -- this is my last question about
17 it. As we stand here today, you can tell me, whoever that guy
18 is she's talking to is not somebody who was arrested in this
19 case?

20 A That's correct.

21 Q When do you think you stopped in total listening to
22 Summer Larsen's jail calls?

23 A I -- I don't know. I mean, I would listen to -- you
24 know, some of them were ten minutes long. I would listen to,
25 you know, two or three, and then I'd have to take a break.

1 It's -- for me, it's boring sitting there listening to people
2 talk.

3 Q And you get sick of hearing them talk about the same
4 thing over and over again, right?

5 A Yes.

6 Q And as I told you at the break, I'm worried that
7 might be happening here, huh?

8 A Yeah.

9 Q Let me say this then. Do you think you listened to
10 any phone calls in 2016 from Summer Rice?

11 A I don't recall.

12 Q Can't say yes or no?

13 A No.

14 Q Same for 2015?

15 A Yes.

16 Q 2014, you can say you listened to some, but just not
17 exactly how many?

18 A Yes.

19 Q None of that stuff was detailed in a report in terms
20 of how many phone calls you listened to, when they were dated,
21 things like that?

22 A That's correct.

23 Q Is there a reason you left that out of reports?

24 A No. I -- the phone calls I listened to, I -- when
25 they had anything to do with -- what I felt with the

1 investigation or anything that I felt suspicious, I had
2 transcribed.

3 Q After speaking with Robert Figueroa, you still
4 weren't convinced there was three, or four suspects, or five?

5 A On October 24th?

6 Q Yes.

7 A I was convinced there was five suspects on October
8 24th.

9 Q And that change in opinion was exclusively based as
10 of 10/24 on what Figueroa told you?

11 A Figueroa combined with what Gabriel --

12 Q Sotelo.

13 A -- Sotelo told us.

14 Q Which didn't match in terms of number of suspects,
15 right?

16 A Well, I was able to confirm some information from
17 Sotelo; I was able to confirm a lot of information from Robert
18 Figueroa.

19 Q And I want to talk just before any confirmation took
20 place of the Figueroa, just for now.

21 A Okay.

22 Q No indication from Sotelo that there was a getaway
23 driver?

24 A Not that I recall.

25 Q Do you recall that you specifically asked him how

1 they got there, and he told you a G-ride?

2 A Yes.

3 Q What's that mean?

4 A A G-ride's a street term for a stolen car.

5 Q He didn't indicate there was another driver of that
6 car?

7 A That's correct.

8 Q Figueroa's -- or statement on the 24th is different
9 about that, right?

10 A Yes.

11 Q So, he would add a suspect that Sotelo didn't?

12 A Yes.

13 Q And their statements were also different in who they
14 identified as the suspects, right?

15 A Yes.

16 Q And you guys came into that 10/24 Figueroa interview
17 with questions about Manny because of what Sotelo told you?

18 A That's correct.

19 Q And he was quick to put those to rest, right?

20 A Yes. When we finally got around to asking him about
21 Manny Barientos, he told us that Manny was not involved in no
22 -- no shape, or something like that.

23 Q He did tell you though, Figueroa, on 10/24 that Joey
24 Laguna/Matone had a .38?

25 A I believe he did, yes.

1 Q When did he tell you, if ever, that that .38 came
2 from Manny?

3 A He never told me that.

4 Q Did you ever determine any specifics about that .38?

5 A No. He never told me where it came from; I never
6 asked.

7 Q And it was never recovered?

8 A It was never recovered.

9 Q Cell phones were seized in this case, and I'm not
10 going to go through the details as to each one and when, but a
11 lot of cell phones were seized throughout the investigation?

12 A Yes.

13 Q Some of them most likely were possessed by people
14 involved with this at the time of the murder on September
15 21st?

16 A Yes.

17 Q Some of them could have been you weren't sure?

18 A That's correct.

19 Q Some of them were probably new phones?

20 A Yes.

21 Q And to get cell phone records, like we've talked
22 about for weeks in here, you don't need the physical cell
23 phone?

24 A That's correct.

25 Q You just need the number and the provider of the

1 cell service?

2 A Yes.

3 Q But there's a different search you can do with a
4 cell phone itself if you possess it, right?

5 A That's correct.

6 Q Specifically, you can do a forensic computer search,
7 in effect?

8 A That's correct.

9 Q Which, just like with a computer, kind of combs
10 through the data and pulls off whatever's available?

11 A Yes.

12 Q Which can even mean deleted stuff, potentially?

13 A Yes.

14 Q And did any forensics occur to any phones in this
15 case to the best of your knowledge?

16 A No.

17 Q And as a homicide detective, you can at least
18 request that, right?

19 A Yes, I can.

20 Q And to your knowledge, was that ever requested?

21 A No, it was not.

22 Q Talk to you a little about gunpowder residue. I
23 took from your direct testimony that you're not the biggest
24 proponent of gunpowder testing?

25 A I am not.

1 Q In general though, it's something Metro does?

2 A We -- there's certain limitations you have to go
3 through.

4 Q Yes.

5 A Do you want me to explain them?

6 Q If you want, which I know you don't. Let me just --

7 A Go ahead.

8 Q -- try to shorten it up.

9 A Go ahead.

10 Q Sometimes Metro employees do gunpowder residue
11 tests?

12 A Yes, we do.

13 Q And some Metro employees are equipped with gunpowder
14 residue tests?

15 A Yes.

16 Q Which is some kind of cloth or something like that,
17 right?

18 A It's a swab, as far as I know. It's -- and the
19 crime scene analysts are the ones who administrate it -- or
20 administer it.

21 Q And you testified yesterday that if somebody's
22 around a lot of shooting, they might get gunpowder even though
23 they didn't touch a gun?

24 A That's correct.

25 Q And that's the primary reason you don't love it?

1 A Well, that, and there's also a lot of false
2 positives with the test.

3 Q You'd agree with me though that sometimes gunpowder
4 might be on certain locations on the hand that make it more
5 relevant than other places on the hand?

6 A Absolutely not.

7 Q So, if gunpowder's on the back of a hand, for
8 instance, that means nothing to you?

9 A It means nothing to me.

10 Q What if there hasn't been a lot of gunfire around
11 the person who you're testing? Does that make it more
12 relevant to you?

13 A If it's in a close proximity, a house, and there's
14 guns fired, and this -- and people touch the walls, the
15 cabinets, a handrail, a doorknob, anything that was in that
16 general area, they're going to test positive for gunshot
17 residue.

18 Q Wherever their hand touched, whatever --

19 A Yes.

20 Q And --

21 A And it will wipe onto clothes and things like that.

22 Q But it doesn't stay airborne very long? For
23 instance, if someone had shot a gun in here ten weeks ago, I'm
24 not going to walk through that air and get gunpowder residue?

25 A Correct, but you still could get a false positive.

1 Q Which has nothing to do with that?

2 A That's correct.

3 Q And I'm not saying this would be the end of an
4 investigation, but in this case, you said that you did not
5 test Gibson or request that Gibson be tested because you
6 concluded he was in the area, close proximity to a lot of
7 gunfire?

8 A That's correct.

9 Q And that conclusion was based on what?

10 A From witness statements and knowing the scene.

11 Q And there's one person who you talked to directly
12 that day who could have told you that, right?

13 A Correct, Joey.

14 Q And according to him, Gibson was close to the
15 gunfire?

16 A I believe they were standing by each other when it
17 started, and then he moved to the other side, and then down
18 the hallway with him.

19 Q You had no evidence though that Gibson ever shot?

20 A I had evidence that Gibson didn't shoot -- well, I
21 had Joey Larsen telling me that Monty Gibson did not fire a
22 weapon.

23 Q Nevertheless, evidence showed two guns from inside
24 the house were fired?

25 A That's correct.

1 Q And at least according to Larsen, he fired them
2 both?

3 A Yes.

4 Q So, based on that, it's -- it's -- is it hard to
5 conclude that he was right there with the gunfire?

6 A I would say he was in close enough proximity to the
7 gunfire that I didn't want to have his hands tested for
8 gunshot residue because I thought it would be a worthless
9 examination.

10 Q You'd agree though if Joey Larsen's word wasn't
11 true, Gibson could have been in the backyard or at the
12 neighbor's house at the time of the shooting -- initial
13 shooting?

14 A If he was at the neighbor's house, he'd be alive
15 today.

16 Q Perhaps, perhaps. Could have been upstairs when
17 Joey Larsen fired those two guns?

18 A If he was upstairs, he wouldn't be down dead in the
19 doorway.

20 Q Well, let's break that down. The initial shots are
21 fired when the door is kicked in, right?

22 A Correct.

23 Q Then you had information that there was a fair
24 amount of break from then to when Gibson approached the door?

25 A Yes.

1 Q You can't tell me he wasn't upstairs before he
2 approached that door at that point in time?

3 A I can't tell you that he wasn't.

4 Q Right.

5 A And I can't tell you that he was.

6 Q Exactly, and that's all -- that's all I was trying
7 to get. Talking about the interview of Figueroa on October
8 24th, you talked a little bit on direct about things you've
9 learned to do when interviewing people?

10 A Yes.

11 Q I don't want to put a label on them, but tactics?
12 Is that -- tools? How about tools?

13 A It's -- it's method, I guess. Some people are a lot
14 better at it than I am.

15 Q Right. And this is something that's taught,
16 interrogation tools?

17 A Yes, I've been to some interview and interrogation
18 classes through my career.

19 Q And I'm sure it's something you've learned from
20 watching other people do it during --

21 A Yes.

22 Q Right. And some things prove successful over time,
23 and some things don't?

24 A That's correct.

25 Q And the point in using these methods of

1 interrogation, to get people to talk, right?

2 A Yes.

3 Q And a case is always easier to solve if a person in
4 their own words tells you they did it?

5 A Yes.

6 Q And these different methods of interrogation are
7 very effective for law enforcement so long as the information
8 you're getting from the person is true and accurate?

9 A That's correct.

10 Q Confession methods that produce unreliable
11 confessions aren't helping --

12 A That's --

13 Q -- the justice system?

14 A Correct.

15 Q And that's something you've been trained to watch
16 out for, right?

17 A Yes.

18 Q And there's certain tactics that might cross that
19 line and make that risk too high to make it worth it?

20 A I don't follow your question, but --

21 Q No problem. I'll get into more specifics.
22 Yesterday, you were talking about a method being suggesting
23 you have false evidence.

24 A Suggesting we have evidence, yes.

25 Q That you don't?

1 A That we don't have.

2 Q And like the textbook old fashioned example is you
3 walk into the interview with a big folder of blank paper to
4 the suspect, and you say, Johnny, we know you're guilty?

5 A Yeah, well, I wish it was that easy.

6 Q But -- but yeah, that's the general example you hear
7 in the first book on the subject?

8 A Yes.

9 Q And as you said yesterday, that's something you're
10 allowed to do?

11 A Yes.

12 Q And it's something you did with Figueroa?

13 A I did.

14 Q Specifically, you did it with Figueroa talking about
15 what the other guy was saying?

16 A That's correct.

17 Q And in your experience, that's proven to be an
18 effective tool to get people to talk?

19 A From time to time, it's worked.

20 Q And the idea is the paranoia will eat them away when
21 they're in jail?

22 A The idea is they're going to want to tell their side
23 of the story so their co-conspirator or friend isn't the only
24 one out there with a story.

25 Q And it also puts a time crunch on their mental

1 process, doesn't it?

2 A I -- I wouldn't be able to speak to that.

3 Q But comparing that to a situation, you would never
4 put a gun to a suspect's head and say, tell me what you did,
5 right?

6 A Absolutely not.

7 Q That would be an example of interrogation methods
8 that are a little too coercive?

9 A Yes.

10 Q And that's all I was trying to say. You also talked
11 a little bit about kind of theme development, and that's
12 something that you'll employ during interrogation?

13 A Yes.

14 Q And what that means, at least in this case with Mr.
15 Figueroa on 10/20 through 10/24, is to let him know that you
16 believe his role was minor?

17 A Yes.

18 Q And that his story was understandable as to how he
19 got involved in this mess?

20 A Yes.

21 Q You had no idea if those things were true?

22 A Pardon me?

23 Q You had no idea if those things were true when you
24 said them?

25 A That's correct.

1 Q And again, that's something that's hopeful to get
2 them speaking?

3 A Yes.

4 Q Did that work with Figueroa on 10/20?

5 A Well, he gave us a statement and told us what he did
6 and what -- what his co-conspirators did, yes.

7 Q And you very quickly had made it clear to him that
8 you thought that -- on 10/20, sir. On 10/20.

9 A Oh, on 10/20. Oh, I'm sorry. On 10/20, no, he lied
10 to us.

11 Q And you made it clear to him you thought he was
12 lying?

13 A Yes.

14 Q And you put some of these pressures or these
15 different techniques on him at that point?

16 A Yes, we did.

17 Q When a suspect requests a lawyer, there's special
18 rules about what that means, right?

19 A Yes.

20 Q And if they clearly state they want a lawyer, what's
21 that mean?

22 A We don't -- we -- we don't ask them anymore
23 questions regarding the crimes, things like that.

24 Q If they choose thereafter to reach out to you, the
25 suspect, you're allowed to talk to them again?

1 A That's correct.

2 Q But you're not allowed to knock on their cell door
3 the next day if no one's asked you to and start hitting them
4 with questions again?

5 A That's correct.

6 Q And that's how that interview on 10/20 ended with
7 Figueroa?

8 A Yes.

9 Q And when 10/23 rolled around and you guys went back
10 to see him, it was because he asked?

11 A That's correct.

12 Q And it kind of was put on hold because he still
13 wanted the lawyer?

14 A That's correct.

15 Q When you interviewed Mr. Murphy, I know it was
16 sometime later. Do you recall how that interview ended?

17 A Yeah, he was brought down to our homicide office --

18 Q Not how it started; how it ended.

19 A Oh, how it ended. Yeah, I believe he asked for an
20 attorney as well.

21 Q Did you stop questioning?

22 A I stopped -- I believe I did. I may have asked him
23 some questions about tattoo -- or some other things. I'm not
24 sure.

25 Q By the time you interviewed Mr. Murphy, you had

1 interviewed a lot of people in that subdivision?

2 A Not a lot. I would say three, four people out of
3 that subdivision. And when you say subdivision, you're
4 talking the trailer park?

5 Q Indeed.

6 A Okay.

7 Q Steve Larsen, right?

8 A Yes.

9 Q Summer's mom?

10 A Yes.

11 Q Summer's sister?

12 A No, that's a neighbor.

13 Q Summer's grandmother?

14 A No, I never spoke to her, I don't believe.

15 Q Tracy Rowe?

16 A Yes.

17 Q And I understand she wasn't living there, but she
18 was from there and she still knew those people?

19 A Okay.

20 Q Ashley Hall?

21 A Again, not living there, but was from there.

22 Q Right, and identified with the people around there;
23 knew most of them?

24 A Yes.

25 Q Joey Larsen would also fall into that category?

1 A Yes, he used to live there.

2 Q So, when you first sit down with Mr. Murphy and you
3 say, do you know what we're here for --

4 A Yes.

5 Q -- he tells you, it's about the Joey Larsen house,
6 right?

7 A No, he says it's something between Summer and Joey.

8 Q Which you took to mean something involving that
9 murder and robbery, right?

10 A Yes.

11 Q You showed him as many pictures as you had that day
12 of potentially involved people?

13 A I believe so.

14 Q And to the best of your memory -- and if you don't
15 remember, let me know -- showed him a picture of Mendoza?

16 A Yes.

17 Q He identified him as Mendoza?

18 A Correct.

19 Q You showed him a picture of Joseph Larsen?

20 A Yes.

21 Q He identified that as Joseph Larsen?

22 A Yes.

23 Q Joey Laguna?

24 A Yes.

25 Q You showed him a picture of the decedent, Mr.

1 Gibson?

2 A I did.

3 Q He did not identify that?

4 A He did not recognize him.

5 Q You showed him a picture of Robert Figueroa?

6 A I did.

7 Q He did not identify that?

8 A I don't recall if he did or didn't. Is it in his
9 statement?

10 MR. LANDIS: I'm sorry. Court's brief indulgence.

11 THE WITNESS: I'm sorry.

12 MR. LANDIS: That's all right. Can I approach the
13 witness?

14 THE COURT: You may.

15 MR. DiGIACOMO: What page?

16 MR. LANDIS: I think it's going to start on page 6.
17 That's at least where he starts with Jorge.

18 THE WITNESS: Okay. So, that's Joey. Somewhere. He
19 says, "I think that's Joey," and I said, "That's a different
20 Joey, right?" Montone. Jorge. You were looking at Robert
21 Figueroa, right?

22 BY MR. LANDIS:

23 Q You've got it.

24 A I'm on page 8. Did I go past it?

25 Q I can't say off the top of my head. I'm sorry, I

1 wasn't prepared to give you that transcript.

2 A I'm sorry.

3 Q It's all right, but let me say this. Just looking
4 at that transcript, we know you had a picture of Figueroa at
5 the time, right?

6 A That's correct.

7 Q And based on those pictures that he did identify,
8 confident in saying that you showed it to him, right?

9 A Yes.

10 Q And do you see anywhere in there at all where he
11 says, I know that guy, it's Robert Figueroa?

12 A I do not.

13 Q And to your memory, he did not identify Robert
14 Figueroa, to the best of your memory, during that interview?

15 A I would say no, but again, I'm trying to read
16 through here real quick, and I'm sorry, folks. Okay.

17 Q Do you see Robert Figueroa?

18 A No, not yet. I'm just -- I don't know if I'm
19 missing it or what I'm doing, but how far after that do I --

20 Q Just do you see -- I don't think it's in there, but
21 do you see Robert Figueroa anywhere in there?

22 A I do not.

23 Q All right.

24 A I'm --

25 Q Are you comfortable saying based on that that he did

1 not identify a picture of Robert Figueroa that would have been
2 shown to him?

3 A Based on this, I'm -- maybe I didn't show him a
4 picture of Robert Figueroa.

5 Q Can you recall a reason that may have been?

6 A I have no idea.

7 Q After the Murphy interview, he's in jail for murder?

8 A Yes.

9 Q This murder?

10 A Yes.

11 Q Everybody's in jail except for one person?

12 A Yes.

13 Q And that's Joey Laguna?

14 A That's correct.

15 Q And at that point in time, Summer Larsen's not just
16 there for a conspiracy; she's got the full-blown charges?

17 A Yes.

18 Q On 10/24, you hear Figueroa talk about this early
19 morning robbery attempt?

20 A Yes.

21 Q Did you ever try to find that house?

22 A I don't recall how much effort we put into that
23 house. To me, that -- I mean, that was an attempted robbery.
24 That's not where the murder happened, and that's what I was
25 focused on.

1 Q And I know you're not a narcotics detective or a
2 robbery detective, but that sounded like a large-scale
3 marijuana operation according to Figueroa?

4 A Yes.

5 Q And nothing was done to look into it in terms of its
6 just criminal activity?

7 A That's correct.

8 Q At least in the reports, there's no indication that
9 it was surveilled?

10 A No.

11 Q Searched, right?

12 A No.

13 Q Knocked on the door to see who was home?

14 A No.

15 Q When did you during your investigation conclude that
16 Summer Rice had nothing to do with the Joseph Larsen robbery
17 on 9/21?

18 A Oh, God. It was -- oh, it was shortly after --
19 probably relatively quickly when I was finished interviewing
20 David Murphy. When I found out he'd been to that house by
21 himself, or when Joey and Summer lived there and he had
22 visited there one time, then we get to thinking, okay, well,
23 maybe Summer doesn't have to tell him where this house is.
24 You know, he knows where this house is.

25 Q Based on that evidence alone, you --

1 A No.

2 Q -- you were comfortable?

3 A It put doubt in it for us.

4 Q And that was stronger evidence in your mind versus
5 what Ashley Hall told you about the conversation with Summer?

6 A It was a conglomeration of that and meeting with the
7 DA's office and discussing our -- the strategy for submitting
8 this case.

9 Q At that point in time though, the date of Murphy's
10 arrest, the DA's in control of the cases that have been filed,
11 right?

12 A Yes.

13 Q You don't amend charges at that point?

14 A I charge people and let the DA do that.

15 Q And once they've initiated charges, you don't come
16 in and say, hey, change the charges?

17 A No, I don't.

18 Q Are you aware of when those charges were dismissed
19 against Summer, the ones involving Joey Larsen's house?

20 A Not the exact date, no.

21 Q Was it in 2014?

22 A No.

23 Q '15?

24 A I -- I don't recall.

25 Q Were you involved in that decision when it was made?

1 A I'm sure I was made aware of it, but I wasn't
2 involved in the decision-making.

3 Q And in this case, in no case, at that point after
4 the DA is in control of the case, that would not be your call?

5 A That's correct.

6 Q They can consult with you, but they don't even have
7 to?

8 A Correct.

9 MR. LANDIS: Court's brief indulgence. I think I'm
10 almost done, sir.

11 BY MR. LANDIS:

12 Q Did you ever -- just a few more questions. Did you
13 ever learn or suspect throughout the course of your
14 investigation that Summer Larsen committed the earlier
15 burglaries to the Larsen homes, the ones predating the murder,
16 with somebody else?

17 A I don't recall exactly. I think she'd made some --
18 some admissions of being involved in that, but I couldn't tell
19 you. And it's their home. They're still married.

20 Q Certainly, certainly, but the understanding was she
21 wasn't living there?

22 A Correct.

23 Q And she went there, and eventually admits to
24 stealing a lot of things that weren't hers?

25 A Okay, and I know she was involved in possibly

1 damaging some property there, too. I don't know.

2 Q And my question isn't anything beyond you never had
3 a firm idea of another suspect who was involved in doing those
4 things with her?

5 A That's correct.

6 Q And since my client's statement's in front of you
7 now, can I go back and just have you look as to how many times
8 he requested a lawyer before the interview ends?

9 A Sure.

10 Q Just be the last few pages.

11 A I believe he starts on page 9.

12 Q Let's break it down. He asked it first, and you
13 asked some more questions, right?

14 A Right. He said he wanted his lawyer. I said, "Let
15 me ask you a question. What's your cell number?" He said, "I
16 want my lawyer."

17 Q Then --

18 A "Okay."

19 Q Yeah.

20 A Then he says, "I'm done with you." And I said,
21 "Dave, I understand you want your lawyer." Do you want me to
22 go on what he says, but --

23 Q Well, he asked for a lawyer again, right?

24 A After I say, "I understand you want your lawyer," he
25 says, "What you doin', man? You ain't going to connect me to

1 shit, just like you got Summer and Thomas."

2 Q Then you keep talking?

3 A Then I keep talking for a little, and he says, "I
4 ain't going to -- I ain't got nothin' to do with it. I'm
5 good. I want my -- I want a lawyer." I said, "Okay." He
6 says, "Can I have my lawyer, please?" I said, "Listen, I
7 understand. I'm not here to help you, but I'm not here to
8 screw you either."

9 And we talk for a little bit more. I ask him where
10 he's born; in Bakersfield. We talk for probably another -- we
11 probably talked for another page-and-a-half, and then the
12 officers come in and they say, "Hey, we're here to transport
13 you," and I ask him if he needs to use the restroom, I'm sure.
14 We have him shake his arms out to get some blood circulating
15 back in there, but I think that's the last time he asked me a
16 question for his attorney was several pages back. We probably
17 talked for two or three pages after that.

18 Q Without the attorney being there, just to be clear?

19 A Correct. Keeping in mind there's nothing he says
20 that we could use against him.

21 Q Certainly, certainly. Last question. When was the
22 first date that you obtained cell phone location data that was
23 readable and understandable by you? So, not things that were
24 just numbers, but --

25 A Oh, I couldn't tell you the date they came in.

1 Q How about a month?

2 A October, November --

3 Q '14?

4 A -- for some of them.

5 Q '14?

6 A Of 2014 maybe. I -- I don't know for sure when I
7 even submitted for the -- for the information.

8 Q And we could at least agree though that cell phone
9 records continued to come in from that early portion through
10 September 20, '16?

11 A Yes.

12 MR. LANDIS: Thank you for your time, sir.

13 THE WITNESS: Thank you. Do you want your --

14 MR. LANDIS: Yes, I'll come get it. Thank you. I'll
15 pass the witness. If I can approach to grab those docs?

16 THE COURT: You may. Ms. McNeill?

17 MS. MCNEILL: Thank you, Your Honor.

18 MR. LANDIS: Thank you, sir.

19 THE WITNESS: You bet. Thank you.

20 CROSS-EXAMINATION

21 BY MS. MCNEILL:

22 Q I'm not going to be as lengthy as Mr. Landis, so
23 that's the benefit of going second, I guess.

24 A Okay.

25 Q But bear with me, because I kind of want to -- I

1 don't want to repeat questions he asked, so --

2 A Okay.

3 Q -- I got to go through my notes here. You talked a
4 little bit about the report that you authored, and you
5 indicated that once it's in your book, you don't go back in
6 and change it, right?

7 A That's correct.

8 Q By your book, do you mean sort of the binder that
9 you keep a lot of the evidence in?

10 A A lot of the reports in, yes.

11 Q Okay. And sometimes that can be multiple binders,
12 and that's where you put all of the things that are relevant
13 to the case?

14 A Yes.

15 Q Okay. And so, that's what you mean by once it's in
16 that book?

17 A Yes. Once it's signed and it's in that book, then
18 it doesn't get changed.

19 Q Okay. But you can go back and author supplemental
20 reports, correct?

21 A Yes, we can.

22 Q Okay. So, you could author another report and then
23 put that in the book, right?

24 A Yes.

25 Q Okay. You indicated yesterday that at some point,

1 there was a ping done of a cell phone. Remember that?

2 A Yes.

3 Q Okay. Were you involved in that process?

4 A No.

5 Q It was Detective Williams, correct?

6 A I don't know if it was Detective Williams. It was
7 our criminal apprehension team.

8 Q Okay. It was your criminal apprehension team?

9 A Well, they're a task force.

10 Q Okay. And they work in connection with the FBI?

11 A Yes.

12 Q How did the FBI and this criminal apprehension team
13 get involved in pinging this cell phone?

14 A I believe they were made aware of the cell phone,
15 and I don't know what process they take after that.

16 Q Okay. So, just -- I guess just to clear this up,
17 the cell phone that we're talking about belonged to Jorge
18 Mendoza?

19 A That's correct.

20 Q Okay. Today, have you ever found that cell phone?

21 A No.

22 Q Okay. And so, you're the lead detective on this
23 case, right?

24 A Yes.

25 Q But you're not sure how the criminal apprehension

1 team got involved with pinging that cell phone?

2 A That's correct.

3 Q Okay. And you don't have any reports in your book
4 or books about the pinging of that cell phone?

5 A No.

6 Q And you don't have any reports about Detective
7 Williams driving to any locations?

8 A I know Detective Williams went to the location where
9 the car was found, which was near Joseph Laguna's house.

10 Q Okay. Well, but that wasn't my question. My
11 question was you don't have any reports that Detective
12 Williams wrote about what he did with that information?

13 A That's correct.

14 Q Okay. And so, the -- and then your answer to my
15 question was that it was in this location sort of near Mr.
16 Laguna's house, right?

17 A That's correct.

18 Q Okay. And that's on Lucky Horseshoe?

19 A That's correct.

20 Q You were also made aware by Amanda Mendoza that she
21 found the car in a location near that Lucky Horseshoe address,
22 right?

23 A Detective Williams was made aware of that, and then
24 I learned --

25 Q But you learned that?

1 A Then I learned about it.

2 Q Right. So, you had that information, because you
3 authored all these reports and reviewed them, and you're here
4 testifying all of these things?

5 A Yes.

6 Q Okay. You also learned through viewing all of that
7 information that Amanda Mendoza claimed that she and Jorge had
8 a friend who lived in that area at some time, and that was
9 near where she found the car?

10 A I don't recall that.

11 Q Okay. Did you ever -- were you ever made aware that
12 Jorge Mendoza had a family member who lived across the street
13 from Mr. Laguna?

14 MR. DiGIACOMO: Objection, that assumes a fact not in
15 evidence.

16 MS. McNEILL: I'm asking if he's aware of it.

17 THE COURT: Sustained.

18 BY MS. McNEILL:

19 Q Did you ever go to Joseph Laguna's house?

20 A I don't believe I was -- went to his home. I was in
21 his neighborhood.

22 Q Okay. When was that?

23 A I don't recall. Sometime during this investigation.

24 Q Is that in any of your reports?

25 A I don't think so.

1 Q What were you doing in the neighborhood?

2 A I went over to look to see where the car was
3 located, where the telephone had pinged, things like that.

4 Q Okay. After October 24th when you talked to Mr.
5 Figueroa and he gave you Mr. Laguna's name, you still did not
6 arrest Mr. Laguna anytime in 2014?

7 A That's correct.

8 Q In fact, he wasn't arrested until February of 2015,
9 correct?

10 A That's correct.

11 Q Okay. But you were given his name by Mr. Figueroa
12 as being involved in this incident?

13 A Yes.

14 Q To date, you've never served a search warrant on Mr.
15 Laguna's home?

16 A That's correct.

17 Q You haven't spoken to his wife?

18 A Have not.

19 Q I want to ask you a little bit of questions about
20 Mr. Figueroa. Were you made aware from your review of the
21 reports in this case that Mr. Figueroa's stepfather is a
22 police officer?

23 A Yes, I was.

24 Q Is it a Metro police officer?

25 A Yes, he is.

1 Q You indicated that Mr. Figueroa -- there was no
2 evidence that you collected that Mr. Figueroa shot his weapon
3 at the Broadmere incident, correct?

4 A That's correct.

5 Q And by that, do you mean that there was no evidence
6 that he fired his .40, correct?

7 A That's correct.

8 Q As a detective, you're familiar with firearms?

9 A A little bit.

10 Q A little bit? Well, you have to qualify to become a
11 police officer, right?

12 A Yes.

13 Q Okay. And so, the difference -- one of the
14 differences between a revolver and a semi-automatic is a
15 semi-automatic will expel the cartridge casing, right?

16 A Yes.

17 Q A revolver does not expel the cartridge casing?

18 A That's correct.

19 Q Okay. So, if someone shoots a revolver, there won't
20 be a cartridge casing left behind?

21 A That's correct.

22 Q And you would agree with me that based on your
23 knowledge in investigating various crime scenes, you don't
24 always find bullets after they're fired?

25 A That's correct.

1 Q The gun that you -- that you collected, the .40
2 caliber, Mr. Figueroa was very forthcoming with where that
3 would be, wasn't he?

4 A Yes, he was.

5 Q In contrast, he's never informed you that this
6 supposed .38 that Mr. Laguna may have been was provided to him
7 by Manny Barientos, correct?

8 A That's correct.

9 Q Gabe Sotelo gave you -- told you he could take you
10 to Manny's address, right?

11 A Yes.

12 Q Did you ever go there?

13 A Yes, we did.

14 Q Okay. Where is that?

15 A It's down by the old southeast substation, which is
16 going to be like Mojave and Saint Louis area on the east side
17 of town.

18 Q Did you ever make contact with Mr. Barientos?

19 A No. We contacted -- we knocked on the door and
20 contacted family members.

21 Q Okay. And to date, you've never had any
22 conversations with Mr. Barientos?

23 A No.

24 Q In fact, the Police Report, the Officer's Report,
25 the lengthy report Mr. Landis asked you questions about,

1 there's a lot of people's pictures on that report, right?

2 A Yes.

3 Q Including Gabe Sotelo's?

4 A Yes.

5 Q Even though he's not a suspect?

6 A That's correct.

7 Q There's no picture of Manny Barientos in that
8 report?

9 A That's correct.

10 Q You had information that Manny Barientos may have
11 been involved, right?

12 A Right.

13 Q And that came from Gabe Sotelo?

14 A That's correct.

15 Q You talked to Mr. Landis about some of your training
16 on interviewing -- well, not just suspects, but you learned
17 how to interview witnesses, right?

18 A Yes, ma'am.

19 Q Okay. And there was kind of a different -- you
20 don't interview a witness the same way you interview a
21 suspect; fair to say?

22 A There's -- there's subtle differences, yes.

23 Q Okay. But sometimes, you would agree with me, when
24 you're speaking with someone, you're not sure if they are just
25 a witness; they might be a suspect?

1 A That's correct.

2 Q One of the things you're looking for when you're
3 interviewing a potential suspect, would you agree with me, is
4 if they have information that potentially only the person who
5 committed the crime would know?

6 A Yes.

7 Q Based on your experience as a detective, would you
8 also agree with me though that when a crime is committed,
9 sometimes people on the streets will talk?

10 A Yes.

11 Q They'll talk to their friends?

12 A Yes.

13 Q And they will sometimes confess to crimes to their
14 friends?

15 A That's correct.

16 Q But Gabe Sotelo provided you with some information
17 that corroborated information you knew about what had happened
18 at the Broadmere address?

19 A Yes.

20 Q And he provided you with that nickname Orca I think
21 Mr. Landis asked you about, or Orco?

22 A Yes, something like that.

23 Q And you've already testified that you are able to
24 run through SCOPE by moniker or nickname, right?

25 A Yes, ma'am.

1 Q Did you ever put in that Orco nickname into SCOPE?

2 A I don't believe so.

3 Q Gabe Sotelo told you that Manny Barientos was known
4 to carry a .38, correct?

5 A Yes.

6 Q And that Manny had a .38 the day at the Broadmere
7 address?

8 A That's what he said, yes.

9 Q The phone that you impounded from Mr. Figueroa when
10 he was arrested on the 20th, was that released and given to
11 his girlfriend?

12 A I don't believe we released the phone.

13 Q Okay. Do you remember him asking you to release --

14 A Yes.

15 Q -- his -- okay. Did you -- but you don't remember
16 releasing that phone?

17 A That's correct.

18 Q And that's one of those phones that Mr. Landis asked
19 you about if you've ever done any sort of forensic work on it,
20 right?

21 A That's correct.

22 Q And the answer to that was no?

23 A That's correct.

24 Q When you were interviewing Mr. Figueroa the time
25 that he asked for his lawyer and he provided you all of this

1 information --

2 A On the 20th.

3 Q -- you made it clear to him -- you said, I don't
4 care if you're selling weed. Remember that?

5 A That's correct.

6 Q And that was your way of letting him know that he
7 could tell you whatever he needed to tell you, and if he
8 talked about selling weed, you weren't going to charge him
9 with that, right?

10 A That's correct.

11 Q So, you had information that Mr. Figueroa might be a
12 drug dealer?

13 A Yes, I got that from Gabe.

14 Q Okay. And in fact, Gabe indicated that he purchased
15 marijuana from Mr. Figueroa?

16 A That's correct.

17 Q Okay, and from Mr. Barientos?

18 A Yes.

19 Q During that interview with Mr. Barientos, Mr.
20 DiGiacomo asked you about the name Matone coming up, correct?

21 A That's correct.

22 Q Mr. -- or Mr. Sotelo did not give you that
23 information when he was talking about how Robert and Manny
24 were involved in this murder, right?

25 A That's correct.

1 Q In fact, it was in response to a question from you,
2 right?

3 A Yes, ma'am.

4 Q About who lives in the area of Alexander and Craig?

5 A That's correct.

6 Q Okay, and then he provided that name?

7 A That's correct.

8 Q You're aware of where this trailer park where Mr.
9 Murphy, and Summer Larsen, and Joey Larsen grew up, right?

10 A Yes.

11 Q And it's fair to say it's not far from the Lucky
12 Horseshoe address, right?

13 A It's a few miles from there, yes, but it's
14 relatively close.

15 Q Okay. The interview of Mr. Sotelo was on October
16 16th, right?

17 A That's correct.

18 Q So, that was just four days before you spoke to
19 Robert Figueroa, correct?

20 A Yes.

21 Q And after that interview, Mr. Sotelo was released
22 back onto the streets, correct?

23 A Yes.

24 Q The interview that you did with Mr. Laguna, I want
25 to talk to you a little bit about that. Mr. Landis kind of

1 went through with you some of these -- I think he called them
2 tools that you use, and we'd talked a little bit about that,
3 when you are interviewing someone. And I'm willing to bet you
4 used some of those when you talked to Mr. Laguna, correct?

5 A Yes.

6 Q And some of those were fairly similar to ones that
7 you used with Mr. Figueroa, right?

8 A Yes.

9 Q You indicated to him that some other people were
10 talking about him, right?

11 A That's correct.

12 Q And that some other people were saying that he was
13 the mastermind?

14 A That's correct.

15 Q And you didn't believe that, right?

16 A That's correct.

17 Q Okay. You asked him for his cell phone number, and
18 I know you told Mr. DiGiacomo he gave you a different number
19 than the one that you associate with him in 2014, right?

20 A That's correct.

21 Q But you have no -- you don't have any way of
22 believing that that wasn't his cell phone number when he gave
23 it to you, right?

24 A No.

25 Q In fact, he had that cell phone with him, right?

1 A That's correct.

2 Q And he let you go through that phone, right?

3 A I did not go through that phone.

4 Q Right, but he offered to you that you could?

5 A Yes.

6 Q Okay. You asked him for his wife's phone number,
7 and he provided you with a phone number, right?

8 A I think I -- I asked him about the last four digits
9 or something. He said that could be his wife's old number.

10 Q Okay. And it's fair to say people don't always have
11 the same cell phone number?

12 A That's correct.

13 Q In fact, you've come across that with several people
14 in this case, that their numbers changed over time?

15 A Yes.

16 Q Then you asked him -- you asked him questions about
17 if he knew Duboy, David Murphy, and he said he did, right?

18 A Yes, he did.

19 Q In fact, they're good friends?

20 A That's correct.

21 Q You asked him if he knew Jorge Mendoza, and he
22 wasn't quite as sure, but he did remember meeting him at some
23 point?

24 A Yes, correct.

25 Q And that would be through David Murphy?

1 A That's correct.

2 Q He told you he knew Robert Figueroa?

3 A He did.

4 Q At some point, you -- Mr. DiGiacomo said that you
5 sort of confronted him with his 762 -- 762-1584 number. When
6 you did that, he didn't to you; he remembered that that might
7 have been his number in September 2014, right?

8 A That's correct.

9 Q And you told Mr. DiGiacomo that he told you that he
10 wouldn't let people use his phone, right?

11 A That's correct.

12 Q He wouldn't have given his phone to someone else,
13 right?

14 A Yes.

15 Q In your years in interviewing suspects, it's fair to
16 say some people are more than willing to give you information
17 about other people, right?

18 A Yes.

19 Q Okay, and some people are not?

20 A That's correct.

21 Q And -- okay. You also mentioned that he told you
22 that he couldn't see well at night, correct?

23 A That's correct.

24 Q Is it fair to say he also told you that he just
25 couldn't see well?

1 A Yes.

2 Q And that he'd had a corneal transplant?

3 A That's correct.

4 Q And in fact, in that interview, you made a comment
5 about that's why you're holding those papers so close, right?

6 A Yes, I do -- I did.

7 Q During the course of that interview, you used
8 several of these tactics trying to get Mr. Laguna to talk --

9 A Yes.

10 Q -- right? He never made any admissions that he was
11 there that day, did he?

12 A That's correct.

13 Q In fact, he got pretty angry, didn't he?

14 A Yeah, he said that he was getting angry.

15 Q And the end of that interview, he just didn't want
16 to talk to you anymore, did he?

17 A That's correct.

18 MS. McNEILL: I'll pass the witness.

19 THE COURT: Mr. Wolfbrandt?

20 CROSS-EXAMINATION

21 BY MR. WOLFBRANDT:

22 Q Good afternoon, Detective Jensen.

23 A Good afternoon.

24 Q Going third is even shorter. Do you recall what
25 time you arrived at the neighborhood where the Broadmere home

1 was?

2 A I would say sometime after -- or close to 9:00
3 o'clock.

4 Q Would it have been even closer to 10:00?

5 A It might have been.

6 Q Did you and Detective Williams, your partner --

7 A Yes.

8 Q -- do you arrive in the same vehicle?

9 A No. We respond from our homes.

10 Q All right. And did you arrive pretty much at the
11 same time, or do you know?

12 A I'm sure we did.

13 Q Okay.

14 A Well, he may have arrived sooner. He lives closer
15 to that area than I do.

16 Q All right. Now, you talked about doing a staging?

17 A Yes.

18 Q I believe you said a staging or --

19 A Yes.

20 Q -- a briefing?

21 A A briefing.

22 Q I'm sorry, it was a briefing. Was that one of the
23 first things that you did when you arrived at the scene?

24 A Yes.

25 Q So, when you arrived, there was a lot of activity,

1 wasn't there?

2 A Yes, there was. There was a lot of police activity.

3 Q Okay. Were crime scene analysts already there doing
4 things?

5 A No, I don't believe they would have been started.
6 They would have been at the briefing with us.

7 Q Do they pretty much work independently, or do you
8 kind of guide them as to what you think is relevant evidence?

9 A We work together. Now, if there's certain things
10 that I want photographed or something that I want impounded,
11 we'll talk -- we'll -- I talk to them, and they'll generally
12 do it. Sometimes they'll say, you know, we can photograph
13 that, we don't have to take it, you know. And if it's a push
14 or shove, then we -- we get the supervisors involved.

15 Q When you were at that first briefing -- and there
16 was only the one briefing, wasn't there?

17 A Yes.

18 Q Okay. So, at that briefing, did you learn that Mr.
19 Mendoza had been found in the -- in a black vehicle?

20 A Yes.

21 Q And when you arrived, was he already transported to
22 the hospital?

23 A Yes, I believe he was.

24 Q So, at any time during this case, have you ever seen
25 Mr. Mendoza prior to yesterday and today?

1 A No, not that I recall.

2 Q You didn't go to the hospital?

3 A I did not.

4 Q Now, your role there at the scene was primarily
5 gathering --

6 A My role --

7 Q -- crime scene diagraming and --

8 A No, no, the crime scene analysts do all that. My
9 role at that scene is to document some of the evidence for our
10 reports. But the crime scene analysts, their reports are much
11 more thorough. I mean, they're taking measurements, they're
12 doing trajectories and things like that. We don't do that.
13 You know, we'll say, you know, we found four bullets
14 headstamped this, this caliber, or four casings, things like
15 that.

16 Q Right, but as to differentiate from Detective
17 Williams' role was more of witness and --

18 A Yes. He was -- he was --

19 Q -- questioning?

20 A He was assigned to talk to the witnesses, interview
21 witnesses, and possible suspects.

22 Q Okay.

23 MR. WOLFBRANDT: Okay, that's all I have.

24 THE WITNESS: Okay.

25 THE COURT: Redirect?

1 MR. DiGIACOMO: Yes, Judge.

2 REDIRECT EXAMINATION

3 BY MR. DiGIACOMO:

4 Q Detective, I want to kind of start -- try and do
5 this chronologically, and hopefully get you out of here and
6 get the jury out of here on time. So, let's start with just a
7 few things that I want to clear up.

8 When you -- Mr. Landis was asking you questions, and
9 he did this kind of throughout the cross-examination about,
10 you know, as of this point, you only have two suspects, maybe
11 a third that's driving the car, those type of things. Do you
12 remember those questions?

13 A Yes, I do.

14 Q And he asked you for a list of evidence that you had
15 that there was in fact a person driving the car.

16 A Yes, sir.

17 Q Do you remember those questions?

18 A Yes.

19 Q Okay. During the time period you're processing the
20 crime scene, I'm assuming you're having communications with
21 your various partners throughout their doing work?

22 A Yes. You know, they would give me pieces of
23 information as we got kind of a break or a lull in the -- in
24 the investigation.

25 Q And during the time that you're out there, you

1 receive information as to what it is Mr. Mendoza is claiming
2 at the hospital?

3 A Yes.

4 Q Okay. Would you agree with me that Mr. Mendoza --
5 or let me ask you this. Based upon what you learned from your
6 partner, did you expect that Mr. Mendoza's champagne-colored
7 Nissan Maxima would either be located within that development
8 or would have been driven from that development?

9 A Yes.

10 Q Okay. Based upon the information that Mr. Mendoza
11 provided, was there potentially as many as four individuals if
12 you count Mr. Mendoza, so three individuals plus Mr. Mendoza
13 involved in something within that neighborhood?

14 A Yes, these are the people that approached him and --
15 yes.

16 Q So, there's at least some information you have that
17 there's three, as many as four suspects that were involved in
18 this neighborhood?

19 A Yes.

20 Q Mr. Landis also discussed with you sort of the
21 footprints that occurred at this scene that are in the blood
22 trail, and there was some discussion -- and I think I could
23 just use this. Some discussion about like -- and I will
24 generally describe or -- kind of where the blood trail kind of
25 goes is generally like that, correct?

1 A Yes.

2 Q And as you go along the blood trail, it's not like
3 my finger just drew that perfect little line of a blood trail?

4 A Right, it staggered.

5 Q And in various locations, as opposed to there being
6 drops or a line, there are big splotches on the ground?

7 A That's correct.

8 Q Did you draw some conclusion from your experience as
9 to what happened at that location?

10 A The big splotches would -- I would assume, or what
11 I've seen in the past is that's where the person who was
12 bleeding spots, and maybe they change position if they're
13 holding something over their wound, but they stop, and that's
14 where the blood pools up more.

15 Q So, if they're holding something against their head,
16 they let go, big spot on the ground, and then they might step
17 in that on their way out?

18 A Yes.

19 Q Okay. The fact that there were footprints in the
20 blood for a blood trail that goes a quarter-mile, in your
21 experience, do you think that the person that was bleeding
22 that badly could have made it a quarter-mile without leaving
23 some of their footprints in blood?

24 A No.

25 Q Okay. There was some questions related to Mr.

1 Figueroa in October 20th, and then October 24th, and Mr.
2 Landis kind of in between sort of said it's this -- he kind of
3 said October 20th to 24th. Would you describe your interview
4 of Mr. Figueroa on 10/20 as a true suspect interview?

5 A Yes. I mean, he was -- when I saw his gunshot
6 wounds, I absolutely believed that he was one of the people
7 involved.

8 Q Okay. Now, then Mr. Landis asked you questions
9 about 10/24.

10 A Yes.

11 Q Was the 10/24 the same situation where you utilized
12 investigative techniques to gather information from Mr.
13 Figueroa?

14 A No. For the 10/24 interview, he'd reached out to
15 us. He wanted to tell his story. And I think that's what we
16 did. I believe I said, you know, just start from the
17 beginning and tell us the story.

18 Q And during the course of that, there was questions
19 about a proffer versus a statement, or a confession, or
20 whatever we want to call 10/24, correct?

21 A That's correct.

22 Q In the course of your career, you've been involved
23 in proffers, correct?

24 A Yes, I -- yes, I have.

25 Q And a proffer involves my office basically giving

1 somebody the right to, off the record, tell us what we're
2 going to tell us, and we won't use what you tell us against
3 you, correct?

4 A That's correct.

5 Q And sometimes you're present, sometimes you're not?

6 A That's correct.

7 Q And when that happens, before anything happens,
8 there's a discussion between the parties, including the person
9 who's about to speak, where they're explained that situation?

10 A That's correct.

11 Q When you potentially might use a statement against
12 somebody who's in custody, do you have to do something first?

13 A Yes, I do.

14 Q And what do you have to do?

15 A You have to advise them of their Miranda rights.

16 Q So, I'm going to put up page 3 of State's Exhibit
17 327, and I'm going to jump down to the very bottom here. On
18 page 3, as you're reading Mr. Figueroa his Miranda rights, you
19 tell him anything he says can and may be used against him in a
20 court of law; is that fair?

21 A That's correct.

22 Q And he has a lawyer present, correct?

23 A That's correct.

24 Q Mr. Figueroa on October 24th of 2014 fully confessed
25 to the crimes we're here about?

1 A Yes, he did.

2 Q And without any protection of that statement not
3 being ever used against him?

4 A That's correct.

5 Q During that interview, there was a request by Mr.
6 Figueroa for his girlfriend to get her cell phone back, a
7 wallet, something else. Did you confirm what actually was
8 released to his girlfriend?

9 A I did.

10 Q And do you recall it off the top of your head?

11 A Yeah, I do. It was a wallet with some money, a pair
12 of tennis shoes, and some keys on a lanyard.

13 Q So, the cell phone, despite his request, was not
14 returned?

15 A That's correct.

16 Q During the questioning of -- by Mr. Landis, there
17 was some questions about you could have done a CFL warrant, a
18 computer forensics warrant on cell phones in this case?

19 A That's correct.

20 Q Okay. And you didn't do that in this case, correct?

21 A I did not.

22 Q There are times when you can get into somebody's
23 cell phone?

24 A That's correct.

25 Q And anybody who's watched the news knows there's

1 times when you can't?

2 A That's correct.

3 Q Okay. In this particular case, did you ever locate
4 the phone that Jorge Mendoza had, the 666-4948?

5 A I did not.

6 Q Did you ever locate the phone that Mr. Laguna
7 admitted being in his possession, the 762-1584?

8 A No.

9 Q And did you ever find the phone that Mr. Murphy --
10 or at least was in his name in September of 2014, and upon
11 receipt, the 542-1558? Did you ever find those three phones?

12 A I did not.

13 Q Can you do a CFL without the phone?

14 A You cannot.

15 Q Which leads me into questions, and Mr. Landis
16 brought up with you that, hey, Mr. Murphy asked for a lawyer
17 and you kept talking, correct?

18 A That's correct.

19 Q Because a defendant asks for his lawyer, there are
20 still some things you're allowed to ask a person, correct?

21 A That's correct.

22 Q It's what they call booking information, correct?

23 A Yes, identifying information.

24 Q You're entitled to ask him, hey, what's your phone
25 number, what's your address, where do you live, where were you

1 born, those types of information?

2 A Yes.

3 Q And there's nothing inappropriate about any of that?

4 A No.

5 Q There was some discussion about gunshot residue.

6 And I'm sorry to jump back, but there was some discussion from
7 Mr. Landis about, well, hey, Monty Gibson might have been
8 here, might have been there, might have been there. When a
9 gun fires, what does it discharge?

10 A Discharges gunpowder.

11 Q And as a police officer, have you ever been around a
12 gun when it discharged?

13 A Yes.

14 Q And if you're in a small confined space, does the
15 smoke of the discharge remain there?

16 A Yes, it does.

17 Q So, Mr. Landis said, if I fired a gun in here
18 yesterday, and then today you walked in, you wouldn't expect
19 me to get gun residue on me from that end?

20 A That's correct.

21 Q If someone fired upwards in the range of, well, at
22 least 6, as many as 15 shots within that home, do you think
23 anybody who walked in the downstairs of that home might have
24 gunshot residue on them?

25 A Absolutely.

1 Q There was questions asked about this report that you
2 generated that Mr. Mendez-Martinez was contained within. Do
3 you remember those questions?

4 A I do.

5 Q I'm sure you do. And there was some question about
6 when was that report finalized. Do you remember that?

7 A I do.

8 Q Okay. Certainly, that report was finalized before
9 you started your next report; would that be fair?

10 A That's correct.

11 Q And once you went in and showed Mr. Figueroa the
12 David Murphy photograph, did you begin drafting the next
13 report saying, hey, I got the wrong Duboy?

14 A After I showed Figueroa that photo, yes, I did.

15 MR. DiGIACOMO: May I approach?

16 THE COURT: You may.

17 BY MR. DiGIACOMO:

18 Q Detective, I'm showing you -- is that the report
19 that you began after talking to Mr. Figueroa?

20 A Yes, it is.

21 Q And does it tell you exactly when it is you began
22 writing that report?

23 A Yes, it does. It's Wednesday, November 19th, 2014.

24 Q So, the same day you find out from Figueroa that
25 that's not the right report, you begin writing that report?

1 A That's correct.

2 Q And that report is explaining how it is Mr. Mendez-
3 Martinez got in the report, and that you've actually
4 identified Mr. Murphy as the individual involved in the case?

5 A Yes, sir.

6 Q There was some questions about the investigation in
7 a dope house -- of the dope house. Do you remember that?

8 A Yes, I do.

9 Q You're a homicide detective, right?

10 A That's correct.

11 Q And I'm assuming you don't tell everybody what you
12 do in relationship to your investigation of a homicide to the
13 other thousands of employees at Metro, correct?

14 A In the -- no, I don't. And in the real world, the
15 narcotics guys don't care what I have to say, you know, and I
16 don't care what they have to say.

17 Q And my -- my question is this, is, you know, you
18 have no idea if that house has ever been investigated or not
19 investigated by law enforcement related to drug transactions
20 one way or the other; is that fair?

21 A That's correct.

22 Q Mr. Landis said, at what point did you draw the
23 conclusion that Summer wasn't involved, and I think you sort
24 of said, well, I had doubts when something happened, correct?

25 A Right, when I spoke with David Murphy.

1 Q Now, I know we're standing in a courtroom today, and
2 certainly, the jury's already heard a lot about the question
3 of reasonable doubt, but there are certain principles that
4 apply in the criminal justice system, correct?

5 A Yes.

6 Q So, would you agree that it isn't about whether or
7 not you believe she's involved or not involved; it's whether
8 or not you can prove beyond a reasonable doubt that she's
9 involved or not involved?

10 A Yes, sir.

11 Q And cases -- this case didn't stop being
12 investigated when Summer Larsen was arrested?

13 A No, it did not.

14 Q Case wasn't stopped being investigated when it was
15 indicted, correct?

16 A That's correct.

17 Q And it continued to be investigated up unto the
18 point even into the beginning of this trial?

19 A Yes, sir.

20 Q At some point, was there a decision made that you
21 just couldn't prove these allegations beyond a reasonable
22 doubt against Summer Larsen?

23 A Yes, sir.

24 Q So, in that -- staying with that sort of same theme,
25 related to Ashley Larsen -- Ashley Hall, there were some

1 questions about what she told you and didn't tell you,
2 correct?

3 A Yes.

4 Q And the information that you had was that
5 potentially she had some information about Summer and an
6 African-American male having a conversation on Friday before
7 this Sunday?

8 A That's correct.

9 Q And the information was this African-American male's
10 name is Evil that she didn't know?

11 A Right, and he had tattoos on his face or something
12 like that.

13 Q And she told you that this conversation began when
14 she went and picked them up from a place called Munchies?

15 A Yes.

16 Q When -- during the course of your investigation, do
17 you kind of go over to Munchies to sort of see, like, hey, how
18 is this working?

19 A Yes, I did.

20 Q And by the time you get to Munchies anyways, is
21 Munchies even an establishment that's open?

22 A No, it's -- it's chained up and the shelves are
23 empty.

24 Q Likewise, there were some questions about Summer and
25 this phone call on November 18th with a Hispanic male, and I

1 don't think Mr. Landis is going to disagree that we both
2 probably think it's Isaac Rodriguez or Snoop, but it's a
3 Hispanic male; would you agree with me?

4 A That's correct.

5 Q And the number that was put out there is probably
6 not that relevant, but during the course of that conversation,
7 she's -- she's talking to an individual. Now, you've met
8 Isaac Rodriguez?

9 A Yes.

10 Q Isaac Rodriguez I'm assuming is not a law-abiding
11 citizen on a daily basis, correct?

12 A No.

13 Q And many of the people that Summer Larsen was in
14 contact with during this period were likewise not law-abiding
15 individuals?

16 A That's correct.

17 Q And is it unusual when they get on the phone because
18 they think the police might be coming that they might say
19 something to the effect of, like, hey, did they ask about me,
20 that type of stuff?

21 A That's correct.

22 Q Is there any information that you've ever uncovered
23 that Isaac Rodriguez was involved in the homicide that
24 occurred on September 21st?

25 A No, sir.

1 Q Likewise, there's questions about, well, why didn't
2 we arrest Summer Larsen for these burglaries that occurred at
3 Joey's house, correct?

4 A That's correct.

5 Q There is factual questions and legal questions;
6 you'd agree with me?

7 A Yes.

8 Q And you sort of said it; she's married to Joey
9 Larsen?

10 A That's correct.

11 Q So, there's a question, would you agree, as to
12 whether or not she lawfully could enter that house, or damage
13 that house, or do anything she wants?

14 A That's a huge question.

15 Q Before I get to my very last area, I wanted to get
16 to one other thing that Ms. McNeill got up and asked you
17 about, but the suggestion that maybe Robert Figueroa had a
18 different firearm than the .40 caliber that was in -- that he
19 says is in his hands when he's at the corner and Roger Day
20 sees him.

21 A That's correct.

22 Q You would agree with me that if it's any
23 semi-automatic firearm, that you would likely find casings in
24 that location if it was fired?

25 A Absolutely.

1 Q And even if it was a revolver, if it's pointed in
2 the direction of a house, bullets travel in a straight line,
3 correct?

4 A That's correct.

5 Q And even if it was a revolver, you'd expect to see
6 bullet strikes to whatever direction that revolver was fired?

7 A Yes.

8 Q And did you find any bullet strikes that would be
9 consistent with firing from that location?

10 A No, I did not.

11 Q That brings us to Mr. Sotelo. There was questions
12 about he provided you some information, and there's some
13 information that he provided you that you weren't able to
14 confirm?

15 A That's correct.

16 Q Mr. Sotelo during the course of his interview with
17 you explained that he had kind of seen all this stuff on the
18 news, correct?

19 A Yes.

20 Q That he had a conversation with Mr. Figueroa, right?

21 A Yes, yes.

22 Q And that he kind of put two to two -- two and two
23 together and believes that it's Figueroa, Manny, and this guy
24 Orca?

25 A Yes.

1 Q Or Orco. And Orco is the guy that was arrested at
2 the scene?

3 A Right, he's the guy in custody.

4 Q And if we assume that -- those facts, Orco was the
5 guy arrested at the scene, Jorge Mendoza's the guy arrested at
6 the scene?

7 A That's correct.

8 Q Now, I'm assuming you've pulled all three of these
9 defendants' SCOPEs, right?

10 A Yes.

11 Q Have you found any evidence to suggest to you that
12 Jorge Mendoza has a moniker, let alone that that moniker is
13 Orco?

14 A No, I do not.

15 Q Likewise, in -- there was questions about you pulled
16 Duboy's. When you pulled Duboy in SCOPE, Mr. Murphy was one
17 of the people that has Duboy in SCOPE prior to September of
18 2014, correct?

19 A Yes.

20 Q You just did not associate the information you were
21 getting with David Murphy?

22 A That's correct.

23 Q During the course of your conversation with Mr.
24 Sotelo, he tells you -- or you receive information from him
25 that that phone number is in fact the phone number that he

1 calls Manny on all the time and that Manny answers?

2 A That's correct.

3 Q So, and he gives you that phone number as, hey,
4 that's how you're going to find Manny?

5 A Yes, he does.

6 Q Additionally, Mr. Sotelo claims, anyways, that the
7 first time that he learns anything is when he hasn't seen
8 Manny or Mr. Figueroa for some period of time, and now he
9 wants to buy marijuana, and that's why he goes over there and
10 sees them, correct?

11 A That's correct.

12 Q He doesn't tell you that -- or did he ever tell you
13 that Mr. Figueroa called him repeatedly as he was hiding in
14 that backyard to come pick him up?

15 A He did not.

16 Q Lastly, Ms. McNeill kind of said to you, well, he's
17 talking to you about Manny with the .38, and he's talking
18 about Orco or Orca, and he's talking about Mr. Figueroa, but
19 he never really says anything about Mr. Laguna being involved
20 in this situation, correct?

21 A That's correct.

22 Q Mr. Sotelo's description of Manny, and Robert, and
23 Mr. Orco or whatever is that those three are all kind of a
24 group together, right?

25 A That's correct.

1 Q And that sort of the leader of this group is Mr.
2 Laguna?

3 MS. McNEILL: Objection, Your Honor. Can we
4 approach?

5 (Off-record bench conference)

6 THE COURT: All right. So, ladies and gentlemen, I
7 know that yesterday we went until 5:30, and we had one that
8 needed to go get children picked up, and that the marshal
9 explained that that was cutting it a little too close. And so
10 I've been mindful of that and was not intending to go past
11 5:15.

12 We're not going to finish with this witness tonight.
13 You may have had an inkling by this point in time that we're
14 not going to be finishing this trial by tomorrow. And so, for
15 that, I apologize, because I always try and estimate and
16 overestimate to make sure, but obviously, now it appears that
17 probably the evidence is not going to be finished until
18 perhaps Wednesday of next week.

19 Obviously, you have to hear closing arguments, you
20 have to be instructed on the law, and then you have to
21 deliberate because that's what you've been here for, for all
22 this time. So, I am expecting that, as I say, we might not be
23 done until next week, because you cannot be rushed in a case
24 as important as this in your deliberations, all right?

25 So, knowing that -- and you were told we were going

1 to be done by tomorrow. That's not happening. So, I need to
2 know if there's anyone who feels like they could not possibly
3 -- and I don't know why this would be, but you weren't told
4 that -- you know, you were told Friday. So, but I -- so, I'm
5 needing to find out, is there someone who feels that they
6 cannot stay through next week? Seeing no hands. Thank you.
7 I'm seeing a hand possibly.

8 JUROR NO. 1: Would it be all next week until Friday?

9 THE COURT: I don't know. I don't know. So, that's
10 why I'm asking you now. So, wait, we're going to give you the
11 microphone. Right, no, the person that was speaking needs --

12 THE MARSHAL: Oh.

13 JUROR NO. 1: Malinda Yates.

14 THE COURT: She's in Seat No. 1. Okay, go ahead.

15 JUROR NO. 1: I'm in Seat No. 1.

16 THE COURT: Yes.

17 JUROR NO. 1: I just asked would it be all of next
18 week?

19 THE COURT: And I do not know.

20 JUROR NO. 1: Okay.

21 THE COURT: I don't know, because I don't know how
22 long the jury will deliberate, for instance, you know? So,
23 because that's completely up to you. I have no control over
24 that, okay? And --

25 JUROR NO. 3: Just all I want to know is if we're --

1 THE COURT: Name?

2 JUROR NO. 3: Oh, Matt Mruzek.

3 THE COURT: All right, and you're in Seat No. 3.

4 JUROR NO. 3: Seat No. 3.

5 THE COURT: Okay.

6 JUROR NO. 3: Are we assuming the same schedule --
7 type of schedule, Monday through Thursday half-days, Friday --

8 THE COURT: Yeah, same, because my schedule doesn't
9 change as far as my other things that I have to attend to.
10 So, the schedule remains the same, yes, except for once you
11 start deliberating, then, you know, you can come in at 9:00 in
12 the morning, and yeah, you don't have to wait until I'm done
13 with drug court because you deliberate in a jury room.

14 JUROR NO. 3: Thank you.

15 THE COURT: Okay. So, I'm only wanting to find out
16 like is somebody scheduled for surgery or something next week,
17 because of course, you know, if you have -- if you run into
18 some problem that you think is insurmountable as we progress,
19 then you need to let the marshal know and we'll discuss this
20 again. But I just wanted to alert you now, right, so you can
21 plan, and also to apologize that there will be this delay, all
22 right?

23 And now I want to get you out of here because there
24 are children to be picked up. So, ladies and gentlemen, we
25 are going to take an overnight recess. Now, we're starting

1 tomorrow at 9:00, as tomorrow's my Friday and I don't have any
2 court in the morning. So, we'll start at 9:00.

3 During this overnight recess, it is your duty not to
4 converse among yourselves or with anyone else on any subject
5 connected with the trial, or to 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 I'll see you tomorrow at 9:00.

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

13 (Jury recessed at 5:10 p.m.)

14 THE COURT: And the record will reflect that the jury
15 has departed the courtroom. All right, so there was an
16 objection, so let's just state that on the record.

17 MS. McNEILL: Thank you, Your Honor. My objection
18 was when Mr. DiGiacomo elicited from the detective that the --
19 that Manny, and Gabe, and I think maybe Mr. Figueroa were
20 members of a group, and that he began to ask him that my
21 client was the leader of that group. And my objection -- I
22 objected at that time.

23 I think unless we're going to say that they're some
24 sort of bowling league or something like that, the inference
25 is pretty clear to the jury that the group is a gang. I don't

1 believe I opened the door to that information. Mr. DiGiacomo
2 on direct asked the detective if the name Matone ever came up
3 in his interview with Mr. Sotelo, and he said it did. I'm
4 allowed to put that in context.

5 This is the same thing that Mr. DiGiacomo accused Mr.
6 Landis of was putting things in the proper context. The
7 context of that question was in response not to whether my
8 client was involved in this or if he'd heard the name Matone.
9 That information came from the detective asking him if he knew
10 anyone who lived in this area, and that's when he provided the
11 name. And so, I was putting that into context. I don't
12 believe by doing that I've opened the door to the fact that my
13 client is allegedly the leader of this group. The group is
14 the gang.

15 And so, I would at this point move for a mistrial. I
16 think that the entire time, we've made it clear -- you know,
17 we've been trying to keep any type of gang affiliation out of
18 this case. I certainly wouldn't elicit that information if it
19 was not a tactical decision on my part. And so if that comes
20 in, at this point, I'm completely ineffective.

21 I would ask for a mistrial because I think that the
22 only logical inference to the jury is that it's a gang. I
23 mean, they're sitting here looking at these gentlemen. They
24 see my client's tattoos. He's brought in a picture where you
25 can clearly see his neck tattoo. This was something Mr.

1 Laguna's been worried about from the beginning. Mr. DiGiacomo
2 has elicited that most of the people involved with this have
3 criminal records.

4 I think, again, it's only logical for the jury to
5 conclude that the group that my client is a leader of is a
6 gang. I can't unring that bell, and I don't think that that's
7 relevant. It certainly doesn't put -- you know, me putting
8 into context his question doesn't open the door to that coming
9 in. And so I would ask for a mistrial at this point because
10 Mr. Laguna has been severely prejudiced by that.

11 THE COURT: And State?

12 MR. DiGIACOMO: Thank you. During -- first, let's
13 start with the opening. During the opening, the defense, and
14 Ms. McNeill in particular, said, you know, they're -- Gabriel
15 Sotelo was out there, he said Manny Barientos did it, and his
16 phone number shows up on Mr. Figueroa's records, and my client
17 had nothing to do with it.

18 Then, during the cross of Figueroa, both -- I think
19 everybody but Mr. Wolfbrandt all crossed Mr. Figueroa on, hey,
20 you're friends with Manny; hey, you're friends with Gabe; you
21 told Gabe this. And you know, he denied it and he said, no,
22 that's not the inference of this and all that.

23 Then, I just -- in questioning this witness just
24 asked him, hey, did you have the name Matone as, you know,
25 maybe involved here prior to October 20th or whenever it is

1 that you had contact with Mr. Figueroa? Then, on
2 cross-examination by Ms. McNeill, she says this. He says that
3 Orco, and Laguna, and Manny, and he says my client had
4 absolutely nothing to do with it.

5 Well, that is not what Gabriel Sotelo said. Gabriel
6 Sotelo said these three did it. And when asked, well, who
7 lives at Gowan and Craig? Mr. Laguna, he's the shot caller.
8 And if Mr. Sotelo does make it into the courtroom, I will be
9 requesting to cross him on his gang membership, the gang
10 membership of all those people, and the fact that, no kidding,
11 he's not going to rat out Mr. Laguna.

12 But my question was, hey, look, these all three
13 people are associated and this guy is the one who tells these
14 guys what to do, which is highly relevant to the credibility
15 of Mr. Sotelo under 51.069, all of which is admissible as bias
16 of a witness, because they've been bringing in his hearsay
17 statements this entire trial and I'm now allowed to attack it
18 as if he testified.

19 THE COURT: All right. Well, so Motion for Mistrial,
20 that's denied. I mean, you're -- you want to jump to this
21 conclusion that because four people are associated that
22 they're the members of a criminal gang? I don't -- I don't
23 think that this jury is going to infer that from the testimony
24 that I heard. I thought what the testimony was was that
25 they're all friends, they run together, they're associated

1 with each other, and that does -- that doesn't translate to me
2 to a criminal gang.

3 And when -- when you're trying to say your client --
4 you know, you're having this -- you're crossing this detective
5 about conversations with Mr. Sotelo, so yes, eliciting what
6 Mr. Sotelo said, and that he -- well, he didn't say anything
7 about Mr. Laguna. Well, that's not -- that's misleading the
8 jury, and you have opened the door to what -- whatever it was
9 that Sotelo then told him.

10 MS. McNEILL: Can I --

11 THE COURT: But I certainly don't think that the
12 testimony that's come up to this point to say that they were
13 in a group means everybody's going to go, ah, criminal gang.
14 And the fact that somebody has a tattoo also does not mean
15 criminal gang.

16 MS. McNEILL: If I could respond, Your Honor. One, I
17 did not say Mr. Laguna had nothing to do with this according
18 to Mr. Sotelo. Again, my question was based in putting Mr.
19 DiGiacomo's question in context, because he -- his question
20 was, did the name Matone come up from Gabriel Sotelo? He did
21 not put it into context of, did you ask him a question about
22 this location and that name came up?

23 His question was designed to infer to the jury that
24 Gabe Sotelo pointed a finger at my client as being involved in
25 this incident, one. So, I was putting that into context.

1 Two, my question was, did Gabe Sotelo say that Mr. Laguna had
2 anything to do with this incident? That is not the same as
3 was he involved with these people. So, again, I don't believe
4 by putting that into context I've opened the door.

5 And I would like to also make the record that, again,
6 I want the record to reflect that, at this point, I'm
7 absolutely ineffective as far as Mr. Laguna goes, and he can
8 deal with that on post-conviction. Two, I --

9 THE COURT: Well, wait, wait, wait.

10 DEFENDANT LAGUNA: I don't want her on me either,
11 because she's not -- she's -- if that's the case, she's
12 heard --

13 THE COURT: You be quiet, you be quiet.

14 DEFENDANT LAGUNA: -- she's heard me. So I don't
15 want her --

16 THE COURT: You be quiet.

17 THE CORRECTIONS OFFICER: Be quiet.

18 DEFENDANT LAGUNA: No.

19 THE CORRECTIONS OFFICER: Hey, man.

20 DEFENDANT LAGUNA: I'm speaking.

21 THE COURT: No, you're not speaking now.

22 MS. McNEILL: And --

23 THE COURT: So, let me just say that you are far from
24 an ineffective counsel. And then the other thing I want to
25 say is, you know, that to say that somebody has tattoos, and

1 from that, one, you know, must -- is going to deduce that
2 they're a member of a criminal gang, you have a tattoo that's
3 visible to this jury as you walk around. Do you think
4 everybody's sitting here thinking you're part of a criminal
5 gang? No. And so, I mean, I just -- I'm sorry, but you --
6 you know, there is not -- this does not rise at all to a
7 mistrial.

8 And the fact that you all have allowed, you know,
9 without objection -- and I'm sitting here. I'm not going to
10 jump in the middle of your cases and say, no, you know, that
11 question calls for hearsay; that assumes facts not in
12 evidence. I rule on your objections when you make them. And
13 when you're -- everybody's letting a bunch of hearsay come in,
14 well, that's your decision, and I assume that those are
15 tactical decisions. So, if you want to make any further
16 record on this, you may do that tomorrow morning, okay?

17 MS. McNEILL: Yes, Your Honor.

18 THE COURT: Because I'm real tired tonight, and it's
19 almost 5:30, and I told my husband I would be off at 5:00
20 because we're going to the theater tonight. So, you can talk
21 as long as you want, as long as it's between 8:30 and 9:00
22 tomorrow to make whatever record you'd like, because, you
23 know, I never keep you from making a record. All right.

24 MR. DiGIACOMO: We told the jury 9:00, right?

25 THE COURT: We told the jury 9:00, so if you want to

1 be here at 8:30 to put whatever record you want to make,
2 that's fine.

3 The CORRECTIONS OFFICER: Judge, you want them here
4 by 9:00 or 8:30? What time would they --

5 THE COURT: They need to be here at 8:30.

6 THE CORRECTIONS OFFICER: 8:30? Okay.

7 THE COURT: All right, and so we're -- we'll be here
8 at 8:30 so you can make any records, and then jury will be
9 here at 9:00. I'll see you tomorrow.

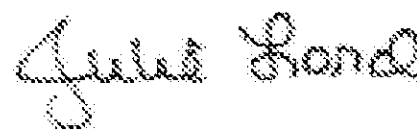
10 (Court recessed at 5:21 p.m. until Friday,
11 September 30, 2016, at 9:20 a.m.)

12 * * * * *

13 ATTEST: I hereby certify that I have truly and correctly
14 transcribed the audio/visual proceedings in the above-entitled
15 case to the best of my ability.

16

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JULIE LORD, INDEPENDENT TRANSCRIBER

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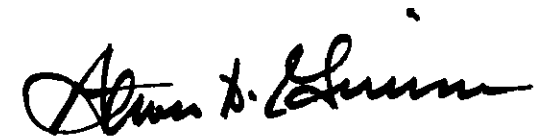
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CLERK OF THE COURT

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,	.	TRANSCRIPT OF
DAVID MURPHY, a/k/a	.	PROCEEDINGS
DAVID MARK MURPHY,	.	
JOSEPH LAGUNA, a/k/a	.	
JOEY LAGUNA,	.	
Defendants.	.	
.	

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 14

FRIDAY, SEPTEMBER 30, 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:

DEBRA WINN
District Court

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1 LAS VEGAS, NEVADA, FRIDAY, SEPTEMBER 30, 2016, 9:20 A.M.

2 (Outside the presence of the jury)

3 THE COURT: All right. Are we on the record now?

4 THE COURT RECORDER: Yes, Judge.

5 THE COURT: Okay. We're on the record outside the
6 presence of the jury. The record will reflect the presence of
7 all three members -- or all three defendants, as well as their
8 respective attorneys. The Chief Deputy District Attorneys
9 prosecuting the case are present, as are all officers of the
10 court.

11 It's of, course 9:20. We were supposed to start at
12 8:30. So we've had a -- sort of a cascade of problems here
13 this morning; Mr. Laguna initially refusing to come. I see
14 he's here now and seems fine, so that's good. But that
15 delayed us. I had to do an order, and it delayed the
16 transport.

17 And then Ms. McNeill of course was also a half-an-
18 hour late to court, which I find mind-boggling, but -- and
19 then we had a juror with a flat tire who was also slightly
20 late, although she managed to get her act together pretty
21 quickly. But nonetheless, here we are an hour later than we
22 had expected to be able to start.

23 So, this is how I want to go with this now in
24 addressing, you know, the record we didn't finish making
25 yesterday. So -- so, on redirect, there was an objection, but

1 basically, it was, you know, objection, objection, in the
2 middle of the question, and then approach.

3 So we need to deal on -- put on the record on what
4 the legal objection to the question was so that I can rule
5 upon that, as well as, then you'd also made a Motion for a
6 Mistrial. And I had ruled on that but said you could make
7 further record. And so, I want to do that, of course. But I
8 don't think that we made a proper record about the initial
9 objection and what the actual objection to the question is,
10 so.

11 MS. McNEILL: My objection to the question was that
12 it was eliciting improper prejudicial information that my
13 client's in a gang. I don't believe that's relevant; I don't
14 believe it's proper. I think -- I know the Court made a
15 ruling that you don't see that that's the inference. I
16 believe that's the inference that the jury will take away from
17 the question of them being in a group together.

18 Along those lines, I'd like to admit as a court
19 exhibit Mr. Sotelo's statement so that on appeal, the Supreme
20 Court has the actual statement since they -- so -- since part
21 of the issue was Mr. DiGiacomo 's question. And I believe
22 that what I was doing was putting into context what the
23 question was; what the information was that was actually given
24 to the detective by Mr. Sotelo. And so, if I could have that
25 marked.

1 THE COURT: Okay. I'm unclear as to -- so both
2 sides are putting in testimony from a witness who's not here,
3 right? Nobody objected, and you're still not making any
4 objection that this last question sought to elicit hearsay?

5 MS. McNEILL: No.

6 THE COURT: Okay. And so, I need you to state the
7 question, at least as best you recollect it, because I can't
8 remember --

9 MR. DiGIACOMO: Yeah.

10 THE COURT: -- what the question was.

11 MR. DiGIACOMO: The first question I asked was, as
12 it relates to this Orco guy, whoever that might be, Manny, and
13 Mr. Figueroa, the information you received was that they were
14 all sort of in a group together. And then I said, the
15 information you also received was that Mr. Laguna, or this
16 person, Matone (sic), was the leader who tells them what to
17 do, is the -- is I think sort of the question and answer that
18 I asked.

19 THE COURT: Okay, because I did not -- I -- I
20 thought -- I don't remember that you asked that kind of
21 leading question. And I -- these are the times I wish we had
22 a court reporter instead of recorder, because then I could
23 just say read back the question, but --

24 THE COURT RECORDER: We can play back the question,
25 Judge.

1 THE COURT: Pardon me?

2 THE COURT RECORDER: I can play back the question.

3 THE COURT: Yeah, let's play back that question, the
4 question just before the -- can you find it that easily
5 though?

6 THE COURT RECORDER: It will take me just a minute.

7 THE COURT: Okay.

8 THE COURT RECORDER: Where were you at, Mr.
9 DiGiacomo?

10 MR. DiGIACOMO: It was the last two questions I
11 asked before --

12 THE COURT: Yeah, before --

13 MR. DiGIACOMO: -- the Court sent the jury out.

14 THE COURT: Exactly.

15 THE COURT RECORDER: Before his --

16 MS. LEXIS: It was like 5:00 o'clock.

17 MR. DiGIACOMO: No, no. It was the -- I was on
18 redirect, and so it was the last thing I said before we had a
19 bench conference and then the jury was sent out of the room.

20 THE COURT RECORDER: It will take me a minute,
21 Judge.

22 THE COURT: Okay. Because my recollection was that
23 it was an answer that was being given, and I didn't remember
24 that it was --

25 MR. DiGIACOMO: It may have been less leading than

1 that.

2 THE COURT: -- posed that way, so.

3 MR. DiGIACOMO: I don't remember exactly the
4 question and answer sequence, but that was the -- the nature
5 of the testimony.

6 THE COURT: The nature, right.

7 MR. LANDIS: The leader -- the word "leader" came
8 out of Mr. DiGiacomo's mouth first.

9 MS. McNEILL: It did, yes.

10 MR. LANDIS: There's no doubt about that.

11 MS. McNEILL: Yes. He said, Mr. Laguna is the
12 leader of this group.

13 THE COURT: All right, and while I'm -- while I'm at
14 it, I can look at that statement, the one that was marked
15 just --

16 THE CLERK: She didn't give it to me yet.

17 THE COURT: Would you let me look at that, please?

18 THE CLERK: Did you admit it, or no, not yet?

19 THE COURT: No, because she wanted to mark it as a
20 court exhibit, but I want to look at it first.

21 (Pause in the proceedings)

22 THE COURT RECORDER: Mr. DiGiacomo?

23 MR. DiGIACOMO: Yes, ma'am.

24 THE COURT RECORDER: Can you look at those notes and
25 see if you can help me dial in where you want?

1 MR. DiGIACOMO: It's redirect. Go all the way to
2 the end of my redirect.

3 THE COURT RECORDER: The end of your redirect?

4 THE COURT: It's like the very last question he
5 asked, and --

6 MR. DiGIACOMO: Yeah, right at the bottom. Keep
7 going down, keep going down.

8 THE COURT RECORDER: No, because we're already
9 outside the presence. 5:10:53 is outside the presence.

10 MR. DiGIACOMO: Oh, okay. So, yeah, keep rolling
11 up.

12 THE COURT RECORDER: 5:04:02? Can you see that,
13 Judge? It's on your screen. And then --

14 MR. DiGIACOMO: Right here, yeah. I guess 5:03:27,
15 "Manny, Orca, Figueroa" -- yeah.

16 THE COURT: "Objection, can we approach?" Okay.

17 MR. DiGIACOMO: If you start there, that's sort of
18 the end of my --

19 (Court Proceedings from 9/29/17 played, as follows:)

20 BY MR. DiGIACOMO:

21 Q And he's talking about Mr. Figueroa, but he never
22 really says anything about Mr. Laguna being involved in the
23 situation, correct?

24 A That's correct.

25 Q Mr. Sotelo's description of Manny, and Robert, and

1 Mr. Orco, or whatever, is that those three are all kind of a
2 group together, right?

3 A That's correct.

4 Q And that sort of the leader of this group is Mr.
5 Laguna?

6 MS. McNEILL: Objection, Your Honor. Can we
7 approach?

8 (Court Proceedings from 9/29/17 stopped playing)

9 THE COURT: Okay, so there's no answer. That's what
10 -- that's what I was trying to find out, so -- because I
11 couldn't -- I couldn't tell if there was an answer to the
12 question, so then you objected. And so, I -- I'm on page 8 of
13 this.

14 MR. DiGIACOMO: Judge, there's probably two pages
15 that relate to those two questions.

16 THE COURT: Okay.

17 MR. DiGIACOMO: And I was looking at them last
18 night. Let me just -- I can probably find them to you. Okay,
19 so page 6, after he sort of described all these people, about
20 1, 2 -- the third question down --

21 THE COURT: "I just know his street name"?

22 MR. DiGIACOMO: Right. When he's -- that's the
23 third one that he's come up with, and he says, "That little
24 crew, they like -- that's all they do." And if you were to
25 read the whole thing, what he's saying as to these three

1 individuals is that these three individuals are a group of
2 individuals who commit burglaries, or robberies, or whatever
3 it is.

4 And then he talks a lot about the Little Locos. And
5 then later, it's Detective Jensen, and it's much later in the
6 statement when -- after he gets all the identifying
7 information he can on these individuals.

8 MS. McNEILL: It's page 20 --

9 MR. DiGIACOMO: 22.

10 MS. McNEILL: 22.

11 THE COURT: Thank you.

12 MS. McNEILL: Where he says, "Montone, that's like
13 OG, like their -- like their shot caller."

14 MR. DiGIACOMO: Correct.

15 THE COURT: Okay. Your question -- Ms. McNeill?

16 MS. McNEILL: Yes, Your Honor.

17 THE COURT: Your question had been about -- I think
18 was -- if I remember right; correct me if I'm wrong -- that
19 did Sotelo -- or maybe you led him and said, but Sotelo never
20 said that Laguna was involved. Is that what it was?

21 MS. McNEILL: My question was, because Mr. DiGiacomo
22 asked him Gabe Sotelo -- the name Matone came up with Gabe
23 Sotelo.

24 THE COURT: Right.

25 MS. McNEILL: So, to put that in context, my

1 question was, the name came up because of a question you asked
2 about who lives in the area of Craig and Alexander, and then I
3 said it wasn't in reference to this incident; the name didn't
4 come up in reference to this incident.

5 Because I think that Mr. DiGiacomo's question
6 implied that that's -- since the conversation with Sotelo was
7 about what happened at Broadmere, that's kind of what we were
8 limiting it to. When he asked that question, I felt that it
9 took it out of context. So, to clarify that my client's
10 nickname came up in response to a question from the detective;
11 not about this incident.

12 THE COURT: All right. Well, I guess I'm --
13 frankly, I'm more concerned that -- I mean, if this guy comes
14 and testifies, you know, that's one thing, but to -- this is
15 like hearsay from -- from this guy who -- so you're eliciting
16 hearsay testimony. I don't know that there's any exception to
17 a -- to the hearsay rule to ask him about, or -- you know, the
18 question was leading also. But so that's -- but there was no
19 objection to those things, but there wasn't an answer, and I
20 just don't think it's a proper question, because you're
21 basically putting in testimony that's hearsay, testimony in a
22 prejudicial, and I'm going to --

23 MR. DiGIACOMO: Can I address the --

24 THE COURT: Yeah.

25 MR. DiGIACOMO: -- the Court's concerns?

1 THE COURT: Yes.

2 MR. DiGIACOMO: Because what Ms. McNeill has claimed
3 is that I somehow opened the door to Gabriel Sotelo's
4 statements as hearsay offered for the truth of the matter
5 asserted. And I was very careful throughout all of this. Did
6 you get information about an individual named Robert Figueroa;
7 did you go find Mr. Figueroa; what did you see; did you get
8 information about someone named Manny Ramirez (phonetic); what
9 phone number did he provide you?

10 I'm not offering any of that for the truth of the
11 matter asserted. I am offering that to establish that the
12 information that Gabriel Sotelo provided as it related to
13 Manny was false. And during -- the question I asked Detective
14 Jensen was, during the course of your conversation with Mr.
15 Sotelo, did the name Matone (sic) come up? There's no truth
16 of the matter asserted to that question and answer either.

17 THE COURT: Right.

18 MR. DiGIACOMO: I put absolutely no hearsay in
19 whatsoever in my questions. Ms. McNeill put in the hearsay
20 statements of Gabriel Sotelo during her questions of Detective
21 Jensen. Mr. Landis did the exact same thing as it related to
22 Detective Jensen. Both of them have put in what Gabriel
23 Sotelo said about the incident during their cross-examination
24 of Mr. Figueroa. And as the Court will recall, the objection
25 to assuming a fact not in evidence came a little late, but

1 they put in all of that in front of the jury.

2 And there is a statute that says 51.069 allows you
3 to attack the credibility of a hearsay declarant as if he
4 testified. And what -- if I were allowed to finish my
5 questions -- and I was thinking about this last night, that I
6 didn't go far enough, because I should be allowed to ask the
7 detective a variety of additional questions related to that
8 testimony, because they're saying Gabriel Sotelo said Mr.
9 Laguna had nothing to do with this, and they're offering that
10 to establish that Mr. Laguna had nothing to do with this, and
11 thus, I'm entitled to attack that.

12 Detective, isn't it true that these three
13 individuals are -- that Mr. Sotelo told you about are a member
14 of a particular group? Yes. And that Mr. Laguna is the
15 leader of that particular group? Yes. Isn't it true that
16 what Mr. Sotelo did by talking to you is commonly referred to
17 as snitching? Yes. Detective, are aware of any reason why it
18 is he might not tell you what he knows about Mr. Laguna?

19 I'm entitled to now cross-examine Mr. Sotelo.
20 That's what I'm entitled to do, because they offered it. It's
21 not my fault that they're offering the hearsay statements of
22 Mr. Sotelo. I'm entitled to go into his bias, and this
23 directly relates to his bias and why it is he wouldn't say
24 that Mr. Laguna's the person involved in this crime.

25 And how it is that I can be precluded from doing

1 that when they're offering Mr. Sotelo's hearsay statements
2 because they do not believe he will be a witness in this case,
3 because they have a material witness warrant, that's on them.
4 I don't have to do the rules of evidence for them. They make
5 the decision, and thus, I'm allowed to cross-examine on, is --
6 you know, does he have a reason why he wouldn't be telling you
7 that Laguna's involved in this crime.

8 MR. LANDIS: And if I --

9 MS. McNEILL: And if I -- I'm sorry. If I could
10 respond?

11 THE COURT: Okay, wait. 50 -- what was your --

12 MR. DiGIACOMO: 51.069.

13 THE COURT: Thank you. Well, he's right. It says,
14 "When a hearsay statement has been admitted in evidence," and
15 you did admit hearsay statements in evidence, "the credibility
16 of the declarant may be attacked or supported by any evidence
17 which would be admissible for those purposes if the declarant
18 had testified as a witness."

19 Now, you know, obviously, the State could have
20 objected to your admitting hearsay statements, but they
21 didn't. And so now you did when you, you know -- "the
22 credibility may be attacked or supported by any evidence which
23 would be admissible for those purposes if the declarant had
24 testified as a witness." So, his own statements, right?

25 MR. LANDIS: Can I respond? I have a few things to

1 say. The first one is, every time I bring up this issue, it's
2 ignored. But we must understand, even if the Court agrees
3 that somebody opened the door to this, it doesn't come in
4 against every defendant. And if Sotelo doesn't testify,
5 Mendoza has a confrontation clause problem, so we better hope
6 he gets in here. And why I say that is hearsay statements
7 were put into evidence Sotelo made that identified Mendoza as
8 being involved. We got a confrontation problem if Sotelo
9 doesn't testify. That's just the truth.

10 MR. WOLFBRANDT: And I was going to get to that, one
11 of the --

12 MR. LANDIS: Moreover, and more important, what he's
13 saying about I didn't admit hearsay but we did, to the extent
14 that argument holds water, it's just because his State
15 questions were not -- had no foundation if they weren't based
16 in hearsay. It's no different. The basis that we asked our
17 questions and his were the same, which is effect on the
18 listener; effect on the investigation.

19 The fact that we asked the questions directly and he
20 chooses to ask them as, hey, did you learn from Sotelo blah,
21 blah, blah, doesn't matter. I could object foundation, then
22 he'd still be in the same spot where it can't come in unless
23 it's hearsay. We brought it in, and the reason I think all of
24 it's admissible is effect on the listener, not truth of the
25 matter asserted --

1 MS. McNEILL: Right.

2 MR. LANDIS: -- honestly. And to say now that this
3 gang stuff comes in against everybody is hugely prejudicial.
4 It's going to create --

5 THE COURT: Okay, wait, wait. So, I think you're
6 mistaking a hearsay exception as to something that's not
7 hearsay. So, the purpose of this is if hearsay comes in --
8 because it may come in under an exception, right? In other
9 words, effect on the listener doesn't change it from being
10 hearsay.

11 MR. LANDIS: It does, because it's not being
12 admitted for the truth of the matter asserted. Thus, it's not
13 hearsay.

14 THE COURT: Well --

15 MR. LANDIS: And honestly, the bottom line, that's
16 the law.

17 THE COURT: All right, all right, I see what you're
18 saying.

19 MR. LANDIS: And the point is -- I'll even say this.
20 Even if we did admit hearsay and you were to look at it that
21 way, there's no way that leads to all of this gang evidence
22 coming in, because it's going to be far more than this guy's
23 testimony.

24 THE COURT: Well, Mr. DiGiacomo, you're not
25 intending to get into all of this Little Loco business and

1 whatnot anyway. We've been --

2 MR. DiGIACOMO: No. If Mr. Sotelo testifies, I will
3 request to have that discussion outside the jury, but I think
4 I'm entitled to ask Mr. Murphy's a member of Little Locos.

5 THE COURT: No, I'm talking about just this witness.
6 This witness.

7 MR. DiGIACOMO: As it relates to this witness, I was
8 going to limit to, he's snitching, and do you have any, you
9 know, basis to believe that he would have a reason to not
10 snitch on Mr. Laguna? Answer, yes. That's what I was going
11 to ask him.

12 MR. LANDIS: Then we have to explore that. You --

13 MS. McNEILL: Right, and then that puts me in a --

14 THE COURT: I don't know what the answer is for
15 that.

16 MR. LANDIS: It's gang evidence.

17 MS. McNEILL: It's gang evidence, Your Honor, and
18 then it puts me in the position of either ignoring it or going
19 into it. At that point, I have to make a decision whether or
20 not I decide it's more helpful or hurtful to explore what I
21 believe I know about Gabe Sotelo's gang affiliation, and how
22 Mr. DiGiacomo's contention that my client is Gabe Sotelo's
23 shot caller may or may not be accurate. And then that opens
24 the door to everyone's gang membership, except Mr. Mendoza --

25 MR. WOLFBRANDT: And --

1 MS. McNEILL: -- who has none.

2 MR. WOLFBRANDT: And on behalf of Mr. Mendoza,
3 that's absolutely right. He has no gang affiliation. I
4 didn't ask Detective Jensen one question about Gabe Sotelo or
5 any of his interview of Mr. Sotelo that I can recall.
6 Somewhere during Mr. Figueroa's testimony, the term "Orco"
7 came out, and I let it go because there was no context to it,
8 and I'm not sure there was even an identification or that that
9 was even in any way related to Mr. Mendoza, but Mr. Mendoza
10 had never used the term "Orco."

11 I think Detective Jensen will -- can verify that he
12 doesn't have -- there's no moniker in SCOPE about it. He's
13 never been affiliated with any kind of gang. But within his
14 -- Detective Jensen's Officer's Report, yes, it is -- it's
15 attributed to Gabriel Sotelo, that Sotelo tells Detective
16 Jensen that Figueroa, Barientos, and Mendoza are all northern
17 Little Locos gang members, and that Sotelo tells Detective
18 Jensen that Orca -- Orco, rather, is Mendoza. But that's
19 information that Sotelo is getting from Figueroa that's being
20 passed onto Detective Jensen, that's now going to be like
21 fourth generation hearsay.

22 And all that's -- I didn't open any door there. And
23 so far, I think, they haven't crossed over the line, but if
24 they start going a little further to start trying to include
25 Orco as a gang -- a Little Loco gang member with all these

1 other ones, and that's why a snitch doesn't want to testify,
2 for fear of retaliation, they're trying to lump Mendoza in
3 that when there's absolutely no evidence whatsoever that he's
4 associated with or that he's anything other than married to a
5 cousin of David Murphy, and that's it, so.

6 MR. DiGIACOMO: And I think I can allay Mr.
7 Wolfbrandt's fear, because I was going to get to that
8 question, too. The -- when Mr. Sotelo tells you about this
9 Orco guy, he claims he knows him, correct? Yes. And he
10 claims he met him in prison, correct? Yes. And you know for
11 a fact that Mr. Mendoza has never been in prison, correct?
12 Yes.

13 So, once again, I'm attacking his credibility
14 because they put in the hearsay statement, and thus, I'm going
15 to establish that he's completely lying about the Orco
16 situation. That isn't true. That is absolutely 100 percent
17 false, because it's impossible to be true.

18 MR. LANDIS: And I don't think his statement about
19 prison and Orco is as clear as Mr. DiGiacomo is saying.

20 MS. McNEILL: I would concur.

21 MR. DiGIACOMO: He says, I met him in prison.

22 MR. LANDIS: It's unclear if he's talking about
23 Orco.

24 MS. McNEILL: Right.

25 DEFENDANT LAGUNA: He's talking about me.

1 THE COURT: Well --

2 MS. McNEILL: Right.

3 THE COURT: When I -- you know, when I started
4 reading this statement, I was pretty unclear about who is who.

5 DEFENDANT LAGUNA: He's talking about me.

6 THE COURT: I mean, he's talking about Emanuel. I
7 don't know who that is, I guess.

8 MR. DiGIACOMO: That's Manny.

9 THE COURT: Okay, and then Rob is Figueroa. Then,
10 let's see. They tell me -- he says, "The guy who got caught,
11 Orco, or Largo, or whatever his name is." I mean, if you're
12 really trying to attack the credibility of -- of this guy, it
13 just -- I mean, it seems to me like the better way to do that
14 is to ask -- you know, instead of asking leading questions,
15 which I can't --

16 MR. DiGIACOMO: Well, I was concerned that the
17 answer would be --

18 THE COURT: Yeah, I --

19 MR. DiGIACOMO: -- something that was going to cause
20 a problem.

21 THE COURT: We can't --

22 MR. DiGIACOMO: I didn't think they were going to
23 object to the leading nature of any of these questions if the
24 Court's going to allow it, because that protects --

25 THE COURT: Well, yeah.

1 MR. DiGIACOMO: Detective Jensen's not a lawyer.

2 THE COURT: Sometimes they object to leading -- your
3 leading, and sometimes they don't, so, you know, I don't say
4 anything when there's no objection, but --

5 MR. LANDIS: I think the tone will be different
6 today, so you'll be ready to rule, and I'll explain why when
7 we get to the next issue.

8 THE COURT: All right. So, there wasn't an answer
9 to that last question, so I -- what was your -- I mean, you
10 want him to -- you were going to ask him -- and do you want to
11 ask that question again? Because the jury will have forgotten
12 it by today, so.

13 MR. DiGIACOMO: The information that Mr. Sotelo
14 provided you was that Matone -- because he doesn't ever say
15 Laguna -- that this Matone person was sort of the leader of
16 this group? Detective, what Mr. Sotelo did was considered
17 snitching; did you have information in your investigation that
18 would provide you a reason why Mr. Sotelo would not want to
19 snitch on Matone?

20 THE COURT: What would your answer be to that
21 question?

22 THE WITNESS: My answer would be because Matone was
23 the ring -- or the shot caller for that clique, that -- those
24 people.

25 MR. DiGIACOMO: So, I was going to limit him to yes

1 or no.

2 THE COURT: Yeah.

3 MR. LANDIS: But -- but --

4 THE COURT: Because --

5 MR. LANDIS: -- we have to get into it.

6 THE COURT: Because --

7 MS. McNEILL: Right.

8 THE COURT: I mean, we basically -- you're trying to
9 establish that -- that he's a liar, right?

10 MR. DiGIACOMO: Correct.

11 THE COURT: That this guy's a liar, so anything he
12 would say -- I thought the only reason you knew that he was
13 supposedly involved in this clique, this group, was because --

14 THE WITNESS: Was from Sotelo. So --

15 THE COURT: From Sotelo, so --

16 MR. DiGIACOMO: Well, initially, but now you have
17 information that Mr. Laguna is in fact --

18 THE WITNESS: Involved.

19 MR. DiGIACOMO: -- the shot caller for the Little
20 Locos.

21 THE WITNESS: Yes.

22 MR. DiGIACOMO: And he's also a shot caller for the
23 Nevada Treces.

24 THE WITNESS: Yes.

25 MR. LANDIS: Undisclosed.

1 MR. DiGIACOMO: And so you have information as to
2 why it is a person would not want to snitch on -- I mean,
3 there is other information in the case that he has, unrelated
4 to Sotelo, that confirms that all of these individuals, with
5 the exception of Mr. Mendoza, are members of the same gang. I
6 wasn't getting into that, and I wouldn't -- and I hadn't
7 gotten into it until redirect when Ms. McNeill, and actually,
8 Mr. Landis did the same thing, started putting in the hearsay
9 statements of Manny to -- or of Sotelo to establish that their
10 clients didn't commit this crime.

11 To suggest that, well, the effect on his
12 investigation -- what did he do? We all know what he did. He
13 went over and saw Figueroa and he ran the cell phone records.
14 What about the question, he told you that he lived at Cheyenne
15 and he had nothing to do with this incident, what about that
16 is related to the effect on the investigation? It's offered
17 for one purpose: to establish Mr. Laguna had nothing to do
18 with this crime.

19 MS. McNEILL: Can I explain why I asked that
20 question? I've explained it multiple times. Mr. DiGiacomo
21 asked the detective, did you get information from Gabe Sotelo
22 -- did you get the name Matone from Gabe Sotelo? I did not
23 ask that question to off -- to suggest that my client wasn't
24 involved in the crime. It was not offered for the truth of
25 the matter.

1 It was offered to show that the information came
2 from the detective asking a question, because again, asking
3 apropos of nothing the detective "Did you also get information
4 from Gabe Sotelo about Matone", suggests to the jury that what
5 Gabe Sotelo said was that Matone was involved, because that
6 question out there on its own is pregnant with all sorts of
7 meaning. So, I was clarifying, as Mr. DiGiacomo did with Mr.
8 Landis asking questions he believed were out of context.

9 I believe he asked that question of the detective
10 and he took it out of context, because Dave Sotelo did not
11 offer up the name Matone on his own. It was in response to,
12 who lives at Craig and Alexander? I wasn't offering it to
13 prove that my client lives at Craig and Alexander. I was
14 offering it to prove -- to put it into context that the
15 question -- the answer came from the detective's question.

16 And when I said, and so he wasn't giving you the
17 name Matone because it had anything to do with this incident,
18 I was not offering it to prove that my client had anything to
19 do with the incident. I was offering it to show the context
20 of the question that Mr. DiGiacomo asked; that the name of
21 Matone did not come from Gabe Sotelo as being someone who's
22 involved in this incident, which it didn't.

23 Gabe Sotelo, all he says is that my client may run
24 with these people and he may be their shot caller, but at no
25 point does he say that my client was involved in this murder,

1 and so I asked him to clarify that. That was a clarification
2 question. I did not offer it for -- to show that Mr. Laguna
3 was not involved in this crime, because that wouldn't be the
4 context of that question anyway.

5 THE COURT: Well, okay. So, I just really don't
6 want you to continue to go down this road, because to me, it's
7 going to -- it's fraught with peril for --

8 MR. DiGIACOMO: Well, it is, but that -- I mean --

9 THE COURT: And --

10 MR. DiGIACOMO: At what point do I have to suffer
11 because of the decisions being made by the counsel on the left
12 side? I mean, they should know better than to offer hearsay
13 statements that I can attack. They both did it with their own
14 clients, and I've chosen not to offer their Judgments of
15 Convictions. But to that extent, at what point -- you know, I
16 let it go for a very long time in this case, but you know, at
17 what point do I have to -- somehow I'm being punished because
18 they're doing things that -- and now I don't get to do
19 something?

20 MR. LANDIS: And he's acting very righteous and
21 victimized for a guy who didn't object to one of these darn
22 hearsay statements. I mean, honestly, he is.

23 MS. McNEILL: Right. And I would also go even
24 farther and say -- again, he didn't object to a single one.
25 There has been all kinds of evidence that have come out

1 through witnesses that has never been disclosed to us. And
2 so, if anybody's fighting a losing battle, it's on this side
3 of the room.

4 THE COURT: All right. Well, everybody feels that
5 they're being treated unfairly, but I don't think anybody's
6 getting treated unfairly or -- and I'm not punishing anyone.
7 I'm just trying to make rulings on evidence. I just -- you
8 know, I think that I can exclude evidence that's relevant
9 because I think it may be more prejudicial than probative.

10 MR. DiGIACOMO: Sure.

11 THE COURT: And that's what I'm concerned about
12 here, and so I don't want you to go further with that line of
13 questioning. I mean, if you have questions, other things that
14 you can point to where this witness could say, you know, he
15 found other things that showed that this statement -- this guy
16 is lying, you know, other things, part of his investigation,
17 but just to --

18 MR. DiGIACOMO: Yeah, like the Orco part, right?
19 I'm not excluded from going into Orco, and that, by
20 definition, his client can't be Orco because there's -- he's
21 never been in prison. That's certainly not prejudicial.

22 THE COURT: Right. I don't --

23 MR. DiGIACOMO: Right? And I think that --

24 THE COURT: You're not going to object to that,
25 right?

1 MR. DiGIACOMO: -- probably clarifies for Mr.
2 Wolfbrandt --

3 THE COURT: Because he's never been in prison,
4 right?

5 MR. DiGIACOMO: -- that that's true.

6 MR. WOLFBRANDT: No, I agree, because either Marc
7 does it because he's already got the floor now, or I got to
8 come back and do it. I'd just as soon not do it because, you
9 know, Jorge has never been in a gang, and then now I've got to
10 try and defend stuff.

11 What I would prefer, if you're telling the State
12 they can't go any further with that, I'd ask that you strike
13 the last question that was asked when we approached the bench
14 and admonish the jury, to the extent that if they may or may
15 not even remember it, they're not to consider that question.

16 THE COURT: Well, they're never supposed to -- I'm
17 going to sustain the objection, and they already have been
18 instructed that they're -- that a question -- you're not to
19 guess what the answer might be and whatnot.

20 MR. WOLFBRANDT: Well, that, and that questions
21 aren't in evidence, but the insinuation --

22 THE COURT: Yeah.

23 MR. WOLFBRANDT: -- is still hanging out there, so.

24 THE COURT: Okay. I mean, I'll remind them that
25 questions aren't evidence. I don't certainly want to repeat

1 the question, because I'm sure they won't remember it.

2 MR. WOLFBRANDT: Yeah, I don't want to do that
3 either. No, not at all.

4 THE COURT: I'm sure they won't remember it.

5 MR. WOLFBRANDT: But if it goes any further --

6 THE COURT: If I couldn't remember it, they're not
7 going to.

8 MR. WOLFBRANDT: -- the prejudice to Mendoza far
9 outweighs any probative value this may have.

10 MR. DiGIACOMO: I still haven't gotten the answer to
11 the question. Do you want me to ask the Orco questions or not
12 to establish that he couldn't possibly have been talking about
13 your client?

14 THE COURT: Right, because --

15 MR. WOLFBRANDT: Sure.

16 MR. DiGIACOMO: Yeah. I mean, that was -- I was --
17 I intended to do that. I also have -- and I'm assuming this
18 isn't a problem. I have all three Certified Judgments of
19 Convictions for Mr. Sotelo, as they're now admissible because
20 they offered a hearsay statement of Mr. Sotelo, and so I'm
21 going to have these marked as well.

22 MR. LANDIS: And I will object to that.

23 THE COURT: I'll allow that.

24 MS. McNEILL: And I'm sorry, can I have Mr. Sotelo's
25 statement --

1 THE COURT: Yeah.

2 MS. McNEILL: -- marked and admitted?

3 THE COURT: What I just -- I didn't want was to
4 attack his credibility with his hearsay statements. That's
5 what I'm not -- that's -- that's the --

6 THE CLERK: You're admitting this now, right?

7 THE COURT: -- that's the more prejudicial than
8 probative.

9 THE CLERK: You want to admit this as a court's
10 exhibit?

11 THE COURT: Court's exhibit, yeah.

12 MR. LANDIS: And I would hope we're not losing sight
13 of the fact that this unreliable Sotelo was the sole basis for
14 them to secure a search warrant at the time. We can label
15 them whatever we want right now, but a spade is a spade, and
16 they relied on it to get a search warrant exclusively,
17 exclusively back then.

18 And we have another issue, if we can move on. I
19 don't know if we're done, but it needs to be addressed before
20 he finishes testifying.

21 MR. DiGIACOMO: That's correct.

22 THE COURT: So, what's that issue?

23 MR. LANDIS: Yesterday, we got into questions about
24 whether the October 24th, 2014 Figueroa statement was a
25 proffer statement.

1 THE COURT: Yes.

2 MR. LANDIS: And I'll lay it out the best I can. On
3 my cross-examination, I at least brought it up the most
4 directly, I did, and I started asking him if that was a
5 proffer of statement. When he became wiggly with his answers,
6 I knew I was opening a can of worms and I tried to back out.
7 I did. I started asking him questions about, okay, it's
8 probably an agreement between the defense attorney and the DA
9 that you're not intimately involved in. I tried to back out.

10 On redirect, Mr. DiGiacomo made the issue central,
11 and he said -- he more or less established that it wasn't a
12 proffer agreement, and that they were going to use whatever he
13 said that day against him if they didn't reach an agreement.
14 And there was a lot of questions about it.

15 After court, before I get home and look at my
16 computer, they send me the proffer letter that they didn't
17 disclose before, that they had sent to Figueroa's attorney at
18 the time, Dave Brown. That wasn't disclosed. I specifically
19 asked for it pretrial. And Mr. DiGiacomo's questions were
20 disingenuous and inappropriate. They were. They left this
21 jury with an impression of something that's not true, and the
22 only reason he was in a position to argue that was because of
23 a discovery violation.

24 I tried to remedy this issue last night with Mr.
25 DiGiacomo by reaching a stipulation that we wouldn't have to

1 get into this with this witness anymore, and that we wouldn't
2 have to get into it with future witnesses, but we're now in a
3 position where Dave Brown, that attorney, is going to testify,
4 Greg Coyer is going to testify, and it's all going to be about
5 this proffer agreement --

6 THE COURT: I'm sorry, Mr. Brown's going to testify
7 -- oh, Greg Coyer, you said. Okay.

8 MR. LANDIS: And I mean, these people are going to
9 testify about this proffer agreement, which is a side issue,
10 which I don't think should be central in this case, but now
11 it's going to be central. But the point is, one, we now have
12 a misleading record caused by his redirect examination. We
13 do.

14 THE COURT: All right. The letter --

15 MR. DiGIACOMO: Yeah. May I --

16 THE COURT: I don't -- I don't know --

17 MR. DiGIACOMO: May I address the facts that he left
18 out?

19 THE COURT: Yes, yeah. Okay, yes, because I'm
20 confused about --

21 MR. DiGIACOMO: So -- so the Court is aware, the
22 cross-examination happened. You will see from Exhibit number
23 327 the recorded interview. Mr. Brown says there's no
24 promises. You know, there's -- you know, the only thing you
25 can do is tell the truth, that's your only hope of ever

1 getting a deal.

2 Then, Barry Jensen, who will testify he had no
3 knowledge of any sort of proffer, and he has no authority,
4 more importantly, to provide a proffer, read him his Miranda
5 warnings, then Mr. Figueroa testified. He went up there and
6 started crossing on that, and I was like, are you kidding me?
7 This isn't a proffer; this is clearly admissible.

8 More importantly, I recall Exhibit 331 where Mr.
9 Figueroa says, I want to get rid of my lawyer because he had
10 me confess. Then, oh, by the way, can you suppress my
11 confession? So, obviously, he believed it, and he's told
12 everything he did in that interview would be used against him.

13 Mr. Landis was upset with me. He was telling me how
14 he's going to call Dave Brown, that, you know, that was all
15 lies, and that there was some sort of -- that Figueroa was
16 providing a proffer. And I'm like, that's just -- that didn't
17 happen.

18 MR. LANDIS: And can I just say something right
19 there to fix the record? I mean, my position was, and it is,
20 that there was a gentlemen's agreement between Dave Brown and
21 Mr. DiGiacomo about it having the legal effect of a proffer.
22 That's my position, and it was then, but go on.

23 MR. DiGIACOMO: I mean, whether that's his position
24 or not, I was like, look, there -- Figueroa gave a confession,
25 it was Mirandized, that's the evidence, right? Because it's

1 only relevant to Mr. Figueroa's credibility, right?

2 MR. LANDIS: No.

3 MR. DiGIACOMO: So, as we were walking out, Mr. --
4 Ms. Lexis goes, you know, I had never done a proffer letter
5 before. I remember doing a proffer letter in this case and e-
6 mailing it. So crap, go find that for me. So she goes, and I
7 have it for a court exhibit here. She finds that on October
8 23rd of 2014 at 6:22 P.M., there's a letter that is signed by
9 Ms. Lexis that was sent to Mr. Brown and Mr. -- and I was
10 CC'ed on it and have no recollection of it.

11 So, my answer to her is, well, where the hell is the
12 signed letter? If there was a proffer -- a proffer doesn't
13 happen unless the DA's in the room. And the first thing that
14 comes out of somebody's mouth during a proffer is what? Hey,
15 you can tell me you killed 13 people. I can't do anything
16 with that information or use that statement against you. The
17 only thing I can do is go find derivative evidence related to
18 that investigation.

19 So, I contacted Mr. Gaffney in saying, hey, do you
20 have a signed copy of a proffer letter? He's like, no, I have
21 no -- no knowledge of a proffer letter whatsoever.

22 So, I contacted Mr. -- because we didn't have a
23 signed one, I contacted Mr. Brown; hey, do you have a proffer
24 letter? No, I don't have a proffer letter. My guy the
25 morning of the 23rd told me that he wanted to talk to the

1 police, and before I could even call you, he told some CO, and
2 you already knew about it, and you had already sent Barry
3 Jensen down to talk to the defendant. And then I told Barry
4 that I'd meet him the next morning down at the Clark County
5 Detention Center. If you sent me something after hours on the
6 23rd, I didn't get it. I never had a discussion with Mr.
7 Figueroa about there being any sort of proffer and that these
8 statements wouldn't be used against him. And Detective Jensen
9 read him Miranda warnings, and what I told my client is
10 exactly what you hear in the recording.

11 And so my position is, how the heck is this
12 admissible? One. Two, how is it a discovery violation? It's
13 only relevant to the credibility of Mr. Figueroa, and Mr.
14 Figueroa has no knowledge of it. I told them I'd be happy to
15 allow them at some point before the trial ends to have a short
16 evidentiary hearing with Mr. Brown if they don't believe my
17 representations as it relates to that letter.

18 But if Dave Brown says, I did not tell my client
19 that what you say will not be used against you, how is it
20 relevant to a jury trial when Dave Brown's credibility is not
21 an issue, my credibility is not an issue. The only person's
22 credibility that is an issue is Mr. Figueroa's, and he had no
23 knowledge of the letter.

24 MR. LANDIS: Because the record is inaccurate as it
25 currently stands, and the record reads there was no proffer

1 agreement, and that's not true. And if he wants me to prove
2 it --

3 THE COURT: That's -- no, that is true.

4 MR. LANDIS: It's not true.

5 THE COURT: There is no evidence before the Court at
6 this time that there's any proffer agreement. This is --

7 MR. LANDIS: I know.

8 THE COURT: -- a -- you know, this is an unsigned
9 thing. It says here, "If you and your client wish to engage
10 in a proffer under the conditions outlined, please inform us
11 and we can set up a time to execute this agreement." And now
12 you're saying -- and we can certainly, yes, have a hearing if
13 you're --

14 MR. LANDIS: I'm just going to -- I don't need a
15 hearing.

16 THE COURT: Are you saying you don't believe what --
17 the representation that's made by Mr. DiGiacomo about what Mr.
18 Brown said, or not?

19 MR. LANDIS: I -- here's what I believe, and I'm
20 going to prove it. And if you guys want this record, we'll
21 have it. I believe Mr. Brown and Mr. DiGiacomo have a working
22 relationship, and I know other attorneys who I'll bring in
23 here to testify that they have the same relationship with
24 DiGiacomo, where Dave Brown knew 100 percent, it doesn't
25 matter if that letter was sent or not, that what he was

1 walking into was a proffer situation. In other words, if they
2 didn't strike a deal, they weren't going to use that. And I
3 know it's true, and I'm going to prove it if that's where
4 we're going.

5 MR. DiGIACOMO: What would be relevant about that?

6 MR. LANDIS: The record now states there was no
7 proffer agreement. That's why it's relevant.

8 MR. DiGIACOMO: As it relates to that testimony,
9 yes.

10 THE COURT: Unless Mr. Brown is going to come in
11 here and say that he told his client that they would not use
12 this against him, which seems to be belied by his Motion to
13 Dismiss his client, which I did read, you know, and --

14 MR. DiGIACOMO: And nobody objects when Mr. -- when
15 Detective Jensen reads him the Miranda warnings and tells him,
16 everything that you say here can and will be used against you;
17 do you understand that? Yeah. Dave Brown doesn't go, hey,
18 wait a second, no, no, no, no, no --

19 MR. LANDIS: And that's --

20 MR. DiGIACOMO: -- nothing you say is going to be
21 used against you, and Figueroa doesn't go, hey, no, no. How
22 is it possible that there's a recording in which both Dave
23 Brown and the detective advised the witness that whatever he
24 says can be used against him?

25 Did Dave Brown and I have the type of relationship

1 where I can tell him, hey, I've got your guy, and if he's
2 truthful to me, the best thing for him to do is to tell the
3 truth so that he can become a witness in the case? Sure. Am
4 I making any promises? No, but it's all dependent on whether
5 or not your guy is truthful and I can confirm his information.
6 That -- I don't know if I had that conversation, but I mean,
7 yeah, that's the way things work in the courthouse. But
8 unless that's conveyed to the witness, it's irrelevant.

9 And from what my understanding of what happened here
10 is Dave Brown had no idea that we would be willing to do a
11 proffer with his client when he had that interview. And so if
12 they want an evidentiary hearing on, you know, is there a --
13 was there some sort of proffer agreement, the -- whether or
14 not there was or there wasn't, it only matters whether or not
15 Mr. Figueroa thought those statements could be used against
16 him.

17 MR. LANDIS: Nope, because --

18 THE COURT: And that's what -- and that's what I
19 said. That's -- to me, that's the only relevant thing
20 vis-a-vis --

21 MR. LANDIS: If you were --

22 THE COURT: -- the record as it stands today,
23 because the importance of that is did he have a motive, right,
24 to fabricate? I mean, you're going to argue that he did
25 anyway, because he -- even if he had a belief of that, right?

1 But again, unless Mr. Brown comes in and says that -- the
2 detective Mirandized. He's already testified and said that
3 this was not a proffer.

4 MR. LANDIS: And on the one hand, I have three
5 transcripts currently, just found them last night, where it
6 was a proffer and they read Miranda. And I'll put that before
7 the Court if we're going to go this way, but to say that
8 Miranda shows that it's not a proffer isn't true.

9 The Court's position about whether or not Figueroa
10 knew it, I could respect that position beginning of yesterday.
11 But now, after his redirect, the testimony says there was no
12 proffer agreement of any kind, which is factually inaccurate.
13 And to say that justice is best served by a factually
14 inaccurate record, all right, all right.

15 THE COURT: But your speculation about what --
16 what --

17 MR. LANDIS: I'm not speculating.

18 THE COURT: -- Mr. DiGiacomo's reputation is in the
19 courthouse, I mean, that -- this is boggling my mind. Now, if
20 you want to get Brown in here, and he'll testify that he told
21 his client on that day that it was a proffer and that this
22 wasn't going to be used against him, fine. I mean, I think
23 that opens the door to have Figueroa recalled and whatnot, but
24 then that's what needs to happen.

25 MR. LANDIS: And I'm not saying -- you should

1 believe me, I'm saying I'm going to prove my case, but we
2 don't need to go down this road. I'm going to -- I'll prove
3 what I'm saying.

4 MR. DiGIACOMO: Well, I'm asking you to exclude any
5 mention of this in front of the jury. You know, if they want
6 to have some sort of evidentiary hearing at some point where
7 they can put up Dave Brown to say, you know, there was some
8 agreement that was conveyed to Figueroa that I would never use
9 this against him, that's --

10 THE COURT: Well, we've got to have -- yeah. I
11 mean, to be -- you -- it's going to be outside the presence of
12 the jury at least first, because there's several issues
13 happening here.

14 MR. DiGIACOMO: Right.

15 THE COURT: There's attorney/client privilege. Is
16 he going to invoke it, waive it? I don't know.

17 MR. LANDIS: Looks like Dave Brown already violated
18 it when he talked to Mr. DiGiacomo last night.

19 THE COURT: I don't know, because I don't know any
20 of this. This is like -- everybody's just -- this is really
21 ridiculous.

22 MR. LANDIS: That's why I tried to stop this, and
23 it's going to become a show, but I'm moving -- can I approach
24 the clerk to admit my discovery letter I sent to the DA's
25 pretrial? Because I asked for proffer letters or attempts to

1 negotiate the case, and they didn't send me that or any
2 proffer letters.

3 THE COURT: All right.

4 THE CLERK: What am I doing with this?

5 MR. LANDIS: Just a court's exhibit.

6 THE COURT: Court's exhibit.

7 THE CLERK: Okay.

8 MS. McNEILL: And I would just join in Mr. Landis's
9 objection. I didn't specifically ask for any proffer letters,
10 but I don't believe I have to specifically ask for that. The
11 State has to turn over anything that goes to any incentives
12 that were given to a witness to testify, absent me asking it.

13 MR. LANDIS: And it's okay that they withhold stuff,
14 walk me into places because they withheld stuff, and it's
15 fair. I'm ready, let's go. It's fair, and that's fair. It
16 is.

17 THE COURT: Mr. Landis, don't take that tone. Don't
18 take that tone with me as if you're insinuating that I'm
19 keeping things from being fair here.

20 MR. LANDIS: The reason I'm bringing that tone up is
21 to hope the Court will understand where I'm coming from,
22 because I think --

23 THE COURT: I don't need sarcasm.

24 MR. LANDIS: It's not sarcasm. It's not. It's not.

25 THE COURT: Yeah, it is.

1 MR. LANDIS: It's not.

2 THE COURT: Of course it is. It's classic sarcasm.
3 So, I want to have -- I want to get Brown in here, so when can
4 you get him here?

5 MR. LANDIS: I haven't talked to him since this
6 started yesterday, because I was hoping to avoid it.

7 THE COURT: Well, this is -- this is an issue that
8 needs to be addressed, and we need to address it, because --

9 MR. DiGIACOMO: I'm happy to send Mr. Brown a --

10 THE COURT: -- it goes to -- it goes to -- you know,
11 if there was some type of agreement, obviously, it's basically
12 the type of material that should be disclosed, and the only --
13 and if it now has been, and it's -- but -- and it's not too
14 late. If in fact what you're saying is true, then that we
15 need to find out and we need to clear it up obviously before
16 the end of the trial, and the sooner the better, as far as I'm
17 concerned.

18 MR. DiGIACOMO: I'm happy to send a text to Mr.
19 Brown and ask him if he's available whenever you think you're
20 going to take lunch in this case.

21 THE COURT: Well, obviously, I never get lunch in
22 this case.

23 MR. DiGIACOMO: Well, that's true. But I mean,
24 whatever time you want Mr. Brown to be -- I can ask him. I
25 mean, I don't know what his schedule is, but --

1 THE COURT: All right, do that, because I want --

2 MR. DiGIACOMO: I told him that Mr. Landis would
3 likely subpoena him, and he said that that wouldn't be a
4 problem and that he would obviously appear.

5 THE COURT: Okay, good. Let's do that.

6 MR. LANDIS: Wait, wait, so do you want me to
7 subpoena him, or --

8 THE COURT: No, we're going to text him, because I
9 think he'll voluntarily appear.

10 MR. LANDIS: I do, too.

11 MS. McNEILL: Your Honor, Mr. Laguna needs to use
12 the restroom. I think the officers were concerned that he be
13 out here for the record, but I think Mr. Laguna's fine with me
14 being out here.

15 DEFENDANT LAGUNA: Yeah.

16 THE COURT: You okay, Mr. Laguna --

17 DEFENDANT LAGUNA: Yeah.

18 THE COURT: -- to go to the restroom? Okay. All
19 right, so is there anything else? We're clear that I'm
20 sustaining the objection to the last question, basically
21 because I think, although it may be relevant, that it's more
22 prejudicial than probative, potentially.

23 And I'm going to admonish the jury that, once again,
24 a question is not evidence, that they're to -- since I
25 sustained the objection, they are to disregard the question --

1 the last question that was asked yesterday. If they remember
2 it, they're to disregard it.

3 MR. WOLFBRANDT: Thank you.

4 THE COURT: And then we'll go forward with, you
5 know, the things, obviously, that this detective was able to
6 independently show that Sotelo may have told him that were
7 untrue that have come out already, the Orca thing -- or --

8 THE CLERK: Orco.

9 THE COURT: Is that your understanding, Mr.
10 Wolfbrandt?

11 MR. WOLFBRANDT: They've already elicited all the
12 other misstatements or untruthful statements from Sotelo, but
13 yes, if we can explain that as far as this detective knows, my
14 client's never been known by the name of Orco, and he's never
15 been in prison, and that was how Sotelo related it to what
16 Figueroa told him.

17 MR. DiGIACOMO: Yeah, I have no problem with that.

18 THE COURT: Is there anything else?

19 MR. LANDIS: I don't think that's what Sotelo says,
20 so I will -- I'm going to respond to that on my questioning.
21 I don't. I don't think that's what Sotelo says. I don't
22 think the transcript reads that clear.

23 THE COURT: Okay.

24 MS. McNEILL: I concur with Mr. Landis.

25 THE COURT: Then let me -- where is the transcript

1 again?

2 THE CLERK: I think it's -- the voluntary statement?

3 THE COURT: Thanks. What page was it where he talks
4 about -- because I know he talks about -- the first time he
5 mentions anything about it is page 4, "The guy who got caught,
6 Orco, or Largo, or whatever his name is." That -- that's the
7 first time I see that. And then, where is the place that
8 you're talking about you think he says he was in prison?

9 MR. WOLFBRANDT: I think it's on page 10.

10 MS. LEXIS: The first mention of prison is on page
11 6.

12 THE COURT: Okay.

13 MR. DiGIACOMO: I think it's on page 6 where he
14 says, "The guy that shot that the police caught, old, like, I
15 want to say like 40." "Do you know where he ever worked?"
16 "No, no." "Okay." "I just -- I just know him from like here,
17 and then -- but then prison and him being from Little Locos,
18 and I know Rob from Little Locos. It was just --."

19 THE COURT: Okay, yeah, yeah. Oh, okay.

20 MS. LEXIS: And then page 10 --

21 THE COURT: Well, let's see.

22 MS. LEXIS: -- indicates that Mr. Sotelo was in
23 prison when he was 18, on page 12, and that he went to prison
24 in Las Vegas, also on page 12.

25 THE COURT: All right, wait a minute, let me catch

1 up.

2 MS. LEXIS: Okay.

3 THE COURT: I'm not seeing --

4 MS. LEXIS: Oh, I'm sorry.

5 THE COURT: -- any of that on page 12.

6 MS. LEXIS: 11, Your Honor, sorry. 10 and 11.

7 THE COURT: Okay, is there --

8 MS. LEXIS: And then -- and then page 22 is where
9 it's not -- is where there's reference about the detective
10 asking, "What, you say he just got out of prison?" "Yeah."
11 "When did he just get out of prison?" "I want to say 2013."

12 MR. DiGIACOMO: I think that's who --

13 MS. McNEILL: And that's --

14 MR. DiGIACOMO: He's talking about Matone though.

15 MS. McNEILL: That's my client he's talking about.

16 MS. LEXIS: That's when he's talking about Matone.

17 THE COURT: Oh, all right, Matone. Yeah, that's

18 not --

19 MR. DiGIACOMO: Yeah, no. Back --

20 THE COURT: So, we're staying away from that.

21 MR. DiGIACOMO: When I read it, the only -- where
22 that I saw it, but --

23 THE COURT: On page 6?

24 MR. DiGIACOMO: Page 6.

25 THE COURT: Yeah. That's --

1 MR. WOLFBRANDT: It actually starts at the bottom of
2 page 5, which leads into the explanation on 6.

3 THE COURT: Right, because he's talking about this
4 person that --

5 MR. WOLFBRANDT: The guy with the long hair.

6 THE COURT: He says -- the question, "But you know
7 -- you know the Mexican guy that got shot?" Answer, "Yes."
8 "With the long hair?" "Yeah." "And what's his name?"
9 "That's -- I believe his street name is Orco or Largo." But
10 has there been -- was there any testimony elicited? I want
11 to --

12 MR. DiGIACOMO: I already established that Orco was
13 not Mr. Mendoza's nickname.

14 THE COURT: Right.

15 MR. DiGIACOMO: The fact I didn't establish is that
16 Mr. Sotelo claims that he knows Orco from prison, and Mr.
17 Mendoza has never been from prison -- been in prison. I mean,
18 to me, that establishes another falsity from the statement of
19 Mr. Sotelo.

20 THE COURT: Yeah, okay.

21 MR. LANDIS: But what I think he's saying, I think
22 he'll testify to it, is he met him through guys in prison. In
23 other words, guys Sotelo met in prison.

24 MR. DiGIACOMO: Well, I mean, if Sotelo testifies,
25 then he can testify to that and clarify it. But as of right

1 now, we have hearsay in that I'm entitled to attack.

2 MR. LANDIS: And I'm not -- of course. They can try
3 to bring this in however they want, but I'm just -- the reason
4 I brought it up is I'm going to bring it up because I don't
5 think it says that, and that's all I was saying. I don't
6 think it makes it inadmissible.

7 THE COURT: Well, it's not entirely clear. It could
8 be either or both.

9 MR. DiGIACOMO: Well, I guess he could ask the
10 detective, I mean --

11 THE COURT: Yeah, right.

12 MR. DiGIACOMO: -- your conversation.

13 MR. LANDIS: How would he know any better than us
14 reading the transcript?

15 THE COURT: It's just what --

16 MR. DiGIACOMO: You always have it better when
17 you're actually having the conversation with the person.

18 MR. LANDIS: I'm sure he has a great memory of that
19 statement.

20 THE WITNESS: Pages?

21 MR. DiGIACOMO: Oh, you want me to show you the --

22 THE COURT: Well, I don't see how it -- it's not
23 prejudicial to Mr. Mendoza, because --

24 MR. DiGIACOMO: Do you have Sotelo in front of you?

25 THE COURT: -- it's saying that --

1 THE WITNESS: Yes.

2 THE COURT: -- saying that's not true.

3 MR. DiGIACOMO: Okay, page 6, bottom half.

4 THE COURT: It's beneficial to Mr. Mendoza.

5 THE WITNESS: I got that.

6 MR. DiGIACOMO: Okay, read that to yourself.

7 (Witness reading document)

8 THE COURT: Okay, did you finish reading it?

9 THE WITNESS: Yeah. The bottom of page 6, yeah. I
10 mean, he's talking about Mr. Mendez, the guy that got shot.

11 THE COURT: Mr. Mendoza?

12 THE WITNESS: I'm sorry, Mr. Mendoza.

13 THE COURT: Okay, but did you understand him to say
14 that he knew Mr. Mendoza from prison?

15 THE WITNESS: That's the way I read it, yes.

16 THE COURT: Okay. Do you have any independent
17 recollection other than just reading this transcript? You
18 don't remember it? It was a long time ago.

19 THE WITNESS: No, he tells me he was in prison in 18
20 -- when he was 18. And then he says, "I just know him from
21 like here, but then in prison." So, I'm -- my best
22 recollection is he knows him from prison.

23 THE COURT: Okay. All right, well --

24 MR. WOLFBRANDT: But he -- he never mentions --

25 MS. McNEILL: He doesn't say "in prison."

1 MR. WOLFBRANDT: -- the name Mendoza. He refers to
2 him as "the second one in, the one that got shot."

3 THE WITNESS: Right.

4 THE COURT: Right.

5 THE WITNESS: Right.

6 MR. WOLFBRANDT: So that's what I'll --

7 THE COURT: And he certainly differentiates him from
8 -- from Figueroa, who he knows, and knows --

9 MR. WOLFBRANDT: Well, yeah, except for --

10 THE COURT: -- that person was shot, right?

11 MR. DiGIACOMO: Right.

12 THE COURT: Is that --

13 MR. DiGIACOMO: Yeah, no and --

14 THE COURT: So --

15 MR. WOLFBRANDT: At the --

16 MR. DiGIACOMO: Because he clarifies that. You mean
17 Rob? No, I'm talking about the guy that got shot --

18 THE COURT: Right.

19 MR. DiGIACOMO: -- that got caught by the police.

20 THE COURT: Right, exactly.

21 MR. DiGIACOMO: So obviously, he's not talking about
22 Figueroa.

23 THE COURT: Right, exactly. So, I -- you know, I'm
24 going to --

25 MR. WOLFBRANDT: But in --

1 THE COURT: I'm going to allow that, because it --
2 it's not hearsay as it's obviously not offered for the truth.
3 In fact, that's going to be brought out, it's -- with the
4 further questioning that in fact he knows that Mr. Mendoza,
5 the defendant, was never been -- has never been in prison, so
6 there you go. So he's -- so this guy's a liar, so that's the
7 -- that's the purpose of it. Sotelo's a liar, so that's --
8 it's not offered for the truth.

9 (Pause in the proceedings)

10 THE COURT: Are we ready to bring in the jury?

11 MS. LEXIS: Yes.

12 THE COURT: Bring them in.

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

14 (Jury reconvenes at 10:22 a.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. The
18 record will reflect the presence of all 12 members of the
19 jury, as well as the three alternates. The defendants are
20 present with their respective counsel. The Chief Deputy
21 District Attorneys prosecuting the case are present, as are
22 all officers of the court.

23 Good morning, ladies and gentlemen. I apologize to
24 you for keeping you waiting for two hours. Proceed.

25 MR. DiGIACOMO: Thank you.

1 THE COURT: And you're still under oath, Detective.

2 THE WITNESS: Yes, ma'am.

3 REDIRECT EXAMINATION (RESUMED)

4 BY MR. DiGIACOMO:

5 Q Detective, I left off I think talking about Mr.
6 Sotelo's statement to you related to certain facts that he
7 provided you. We --

8 THE COURT: Oh, excuse me. Let me interrupt you.
9 The last question before you left was -- the objection was
10 sustained, if you even remember that last question.

11 UNKNOWN JUROR: No.

12 THE COURT: Disregard it, because you were earlier
13 told, remember, questions aren't evidence. Okay. I'm sorry.

14 MR. DiGIACOMO: Thank you.

15 BY MR. DiGIACOMO:

16 Q Detective, at some point, you discuss with Mr.
17 Sotelo the identity of the person that he described as second
18 through the door who got shot.

19 MR. LANDIS: Objection, leading.

20 THE COURT: Sustained.

21 BY MR. DiGIACOMO:

22 Q Detective, did you have a discussion with Mr. Sotelo
23 about the second guy through the door?

24 A Yes, we did.

25 Q And what did he tell you about what physically

1 happened to that guy at the scene?

2 A He said that's the guy that got shot and the guy
3 that the police caught that night.

4 Q During the course of this, does he indicate to you
5 that he saw a picture of this person on the news?

6 A Yes, he did.

7 Q And I think we've talked about it previously. Did
8 he give you a moniker for this particular individual?

9 A Yes, he did. He said he knew him as Orco or Largo.

10 Q Based upon that information from the evidence you
11 gathered in your case, is there anybody who happened to be
12 caught at the scene of the homicide --

13 A With those --

14 Q -- in this case?

15 A With those names?

16 Q No, no, just did anybody get caught?

17 A Yes.

18 Q Who got caught.

19 A It was Jorge Mendoza.

20 Q Now, I think I asked you yesterday do you have any
21 information that Jorge Mendoza's moniker is Orco. Do you have
22 any information that his moniker was Largo?

23 A No, we do not.

24 Q Did Mr. Sotelo provide you any other fact about how
25 you could identify this person or how he knows this person?

1 A Yes. He said he knew him from the streets, and that
2 he'd also knew him in prison.

3 Q Now, in the --

4 A Or knew of him.

5 Q -- course of your investigation in this case, have
6 you conducted a criminal history check on Mr. Mendoza?

7 A Yes, I did.

8 Q And did you determine whether or not Mr. Mendoza has
9 ever been in prison?

10 A Mr. Mendoza's never been to prison.

11 Q I'm assuming during the course of the investigation,
12 you also did a criminal history check on Mr. Sotelo?

13 A Yes, I did.

14 Q And Mr. Sotelo is, well, now a three-time convicted
15 felon?

16 A That's correct.

17 MR. DiGIACOMO: Judge, I have in my hand what's been
18 marked as State's Proposed Exhibit 335, 336, and 337. They
19 are certified copies of Judgments of Convictions for a Gabriel
20 Sotelo for the crimes of theft in 2015, burglary in 2011, and
21 attempt burglary in 2011.

22 MR. LANDIS: No objection.

23 MS. McNEILL: No --

24 MR. DiGIACOMO: I would offer them.

25 MS. McNEILL: No objection.

1 MR. WOLFBRANDT: No objection.

2 THE COURT: Those will be admitted.

3 (State's Exhibits 335, 336, and 337 are admitted)

4 MR. DiGIACOMO: I have nothing further, Judge.

5 THE COURT: Recross.

6 RECROSS-EXAMINATION

7 BY MR. LANDIS:

8 Q When did you lookup Sotelo's criminal history, sir?

9 A I believe it was shortly after we met with him.

10 Q Could you be more specific?

11 A Sometime in early October of 2014.

12 Q Did that make it into any reports?

13 A Pardon me?

14 Q Did that make it into any reports?

15 A That I looked him -- looked up his criminal record?

16 Q Or -- yeah.

17 A No, I attached his SCOPE printout in my book.

18 Q And you didn't put any of his criminal history

19 specifically in any reports beyond the fact --

20 A I --

21 Q -- that you looked up?

22 A I did not.

23 Q Why wasn't that important enough to make it into a
24 report?

25 A Because that's disseminating criminal information,

1 and it's a violation of the -- of those rules.

2 Q Somebody's felony convictions is private information
3 that you can't disseminate to the public?

4 A It's -- that's what I believe. It was -- came from
5 our SCOPE, our police -- our police data banks, and I know we
6 have rules against disseminating that information.

7 Q And I understand what a SCOPE is and that that's
8 privileged, but my question to you is this. You writing in a
9 Police Report that somebody has three felony convictions --

10 A Um-hum.

11 Q -- in your opinion violates protection laws?

12 A I believe it could, yes.

13 Q Do we have a problem about what Mr. DiGiacomo just
14 did then?

15 A I don't know. That's --

16 THE COURT: No, we don't.

17 MR. LANDIS: I'd like the Court to take judicial
18 notice that there is no problem revealing somebody has prior
19 felony convictions.

20 MR. DiGIACOMO: Judge, I would object to that legal
21 conclusion, because he got it from SCOPE and there is a
22 statute that precludes that.

23 MR. LANDIS: Precludes SCOPE. I think the Court has
24 every right to take judicial notice of that.

25 THE COURT: The Court does take judicial notice that

1 dissemination of SCOPE records is a violation.

2 MR. LANDIS: And that's not what I asked, but
3 judicial notice that disclosing a felony is not a violation of
4 any privilege or protection law.

5 THE COURT: Disclosing -- if -- if he wanted to put
6 in a report that a suspect or a witness had a felony
7 conviction? No, that would not be a violation of
8 dissemination of criminal history records.

9 MR. LANDIS: Thank you.

10 BY MR. LANDIS:

11 Q Let me ask you this. You work with Clark County
12 district attorneys all the time?

13 A Yes.

14 Q On almost every case?

15 A Almost every case, yes.

16 Q And this is not the first case you've worked with
17 Mr. DiGiacomo?

18 A That's correct.

19 Q It sounded to me -- and just correct me if I'm wrong
20 -- that you guys have talked even as you are testifying on
21 nights that we've recessed during your testimony?

22 A Yes, we've made comments about what -- to know
23 statements and things like that, what to go over.

24 Q You were preparing for your testimony, correct?

25 A Yes.

1 Q And you knew the general areas he was going to ask
2 you questions about?

3 A The general areas, yes.

4 Q And you knew that because you guys went over it?

5 A Yes.

6 Q Yesterday, I was asking you some questions about
7 what pictures you showed to my client, David Murphy, and what
8 he recognized. Do you recall?

9 A Yes, I do.

10 Q And we were looking at a transcript which made it
11 kind of hard?

12 A Yes.

13 Q Would looking at your Officer's Report of his
14 interview perhaps refresh your recollection as to what
15 pictures he didn't recognize?

16 A Yes, it would.

17 MR. LANDIS: May I approach the witness?

18 THE COURT: Yes, you may.

19 THE WITNESS: Thank you. (Witness reviewing
20 documents). Okay.

21 BY MR. LANDIS:

22 Q Did that refresh your recollection as to what
23 pictures were shown to him in total?

24 A Yes, it does.

25 Q Whose pictures?

1 A I showed him David Murphy's photo, Joey Laguna's
2 photo. I'm sorry, I showed David Murphy, Joey Laguna's photo,
3 Robert Figueroa's photo, Jorge Mendoza's photo, Summer
4 Larsen's photo, Joseph Larsen, and Monty Gibson.

5 Q What pictures did he not recognize of those group?

6 A He said he didn't recognize Monty Gibson or Robert
7 Figueroa.

8 Q Moving onto my client's interview by you and his
9 request for a lawyer, on redirect examination, Mr. DiGiacomo
10 asked you if you can ask booking questions --

11 A That's correct.

12 Q -- after somebody invokes their right to a lawyer?

13 A Yes, sir.

14 Q And your -- your response was yes, yes, you can?

15 A Yes, I can.

16 Q My question to you is, after the first time my
17 client asked for a lawyer when you interviewed him, were all
18 the questions you asked him booking questions?

19 A They were irrelevant -- they were not important
20 questions, to my knowledge.

21 Q Let me restate my question. Were they all booking
22 questions?

23 A No, they were not.

24 Q And the first question you asked him after he
25 requested a lawyer was what's his cell phone number?

1 A That's correct.

2 Q Is it your testimony in this trial that that was for
3 purposes of booking and not for purposes of investigation?

4 A That was booking, yes. And -- booking and
5 investigation.

6 Q Why is it that you continued to ask him questions
7 that were not related to booking after he invoked his right to
8 a lawyer?

9 A Just making conversation. I wanted --

10 Q That violates the Constitution, based on your
11 training and experience?

12 MR. DiGIACOMO: Objection, calls for a legal
13 conclusion.

14 THE COURT: Sustained.

15 BY MR. LANDIS:

16 Q Conversation about what? Small talk?

17 A I don't recall the exact questions. I think they
18 were about maybe where he lived.

19 Q Would looking at the transcript refresh your
20 recollection?

21 A Sure.

22 MR. LANDIS: Can I approach?

23 THE COURT: Yes.

24 BY MR. LANDIS:

25 Q If I could direct your attention to page 9, I think

1 that would be the first time he requested a lawyer.

2 A Yes, he requests his lawyer there.

3 Q And I just want to be accurate, and I don't want to
4 misstate or exclude anything that was said, so I'll be
5 detailed. In response to that, you directly ask him about the
6 cell phone?

7 A Yes, I do.

8 Q He directly responds with "I want a lawyer" again?

9 A He says, "I want my lawyer," yes.

10 Q Which would be the second time, yes?

11 A Yes.

12 Q And then he tells you he's done. You say, I want
13 your lawyer?

14 A Um-hum. Right.

15 Q "I understand you want your lawyer"?

16 A That's correct.

17 Q Then he says, "You ain't going to connect me to
18 this" --

19 MR. DiGIACOMO: Judge, I object and ask him to ask
20 -- to read the entire question, as that would be in context.

21 MR. LANDIS: That's fine. We can read the whole
22 transcript. I'm not trying to hide a single thing.

23 THE COURT: Right, just --

24 MR. LANDIS: We'll do it like this. I'll read David
25 Murphy's part, and I'll start with the top of the page.

1 THE WITNESS: Okay.

2 BY MR. LANDIS:

3 Q "If I'm under arrest, I want my lawyer," correct?

4 A Yes.

5 Q Your response?

6 A "Let me ask you a question. What's your cell phone
7 number?"

8 Q His response, "I want my lawyer."

9 A I say, "Okay."

10 Q "I'm done with you."

11 A "Hey, Dave, I understand you want your lawyer."

12 Q "What you doin', man? You ain't going to connect me
13 to this shit, just like you got Summer and Thomas. You ain't
14 got nothing to do with it. I'm through."

15 A "So -- so you know what Summer's in custody for,
16 right?"

17 Q "Yeah, everybody knows what Summer's in."

18 A "Okay, all right. You're a cool guy and everything.
19 You ain't" --

20 MR. DiGIACOMO: Wait, I object. That's --

21 THE WITNESS: No, I'm sorry, that's --

22 MR. DiGIACOMO: -- the answer.

23 THE WITNESS: -- your part.

24 BY MR. LANDIS:

25 Q "You're a cool guy and everything. You ain't here

1 to help me; you're here to get me."

2 A "No, I'm a --"

3 Q "I ain't got nothing to do with -- I'm good. I want
4 my lawyer."

5 A "Okay."

6 Q "Can I have my lawyer, please?"

7 A "Listen, listen, I understand. And I'm not your --
8 you're right. I'm not here to help you, but I'm not here to
9 screw you over either."

10 Q "That's -- I ain't got nothing to do with this."

11 A "I think -- I think you do, and I think it's going
12 to be pretty easy to prove in court you do, and the reason --"

13 Q "I don't know about that."

14 A "Hold on, hold on. The reason I want to talk to you
15 is because I think you've got a side of your story that's
16 important to get out. You've asked for your attorney, so, uh,
17 if you get your attorney, and you decide you want to give me
18 your side of the story, I'll be more than happy to come and
19 talk with you and your attorney."

20 Q "All right."

21 A "I understand -- uh, I understand you're one of the
22 people that went up to the house. I understand you didn't
23 pull the trigger. I don't even think you had a gun that
24 night. So there, uh, you got it -- or you -- you got every --
25 every reason in the world that you would want to help and talk

1 to -- that you'd want to talk to me and help yourself, because
2 otherwise -- otherwise, I'm going to hurt you."

3 Q "Why?"

4 A "Because I'm going to lump you in with these other
5 cold-blooded killers, all right, buddy? Sit tight. Do you
6 need to use the restroom or anything?"

7 Q And I'll stop it there. And if you want to look,
8 but after that, it goes into small talk about water and using
9 the restroom?

10 A Yes.

11 Q You guys eventually point out that he's going to get
12 transported to jail?

13 A That's correct. And I ask him where he was born and
14 things like that.

15 Q My question to you is, the parts that we read
16 verbatim there a moment ago, those aren't -- that's not small
17 talk?

18 A No, but most of them aren't questions. A lot of
19 that was my statement to him.

20 Q And you'd agree with me those aren't booking
21 questions?

22 A That's correct.

23 Q And you'd agree with me those are the same kinds of
24 things you identified as methods you use in interrogation?

25 A Yes.

1 Q The last question I have for you is this.
2 Figueroa's proffer October 24th, '14, right?

3 A October 14th.

4 Q You heard it?

5 A Or 24th, I'm sorry.

6 Q If I misstated it, October 24th, 2014?

7 A Yes.

8 Q You heard it?

9 A Yes.

10 Q You started investigating what he was saying?

11 A Yes.

12 Q Roughly two weeks later, you write -- you type the
13 Summer Rice or Summer Larsen Declaration of Warrant, yes?

14 A Yes.

15 Q And in that Declaration, under penalty of perjury,
16 you declare, "Detectives believe that Summer Larsen conspired
17 with an unknown black male, and possibly others, to include
18 Jesus Mendez-Martinez, to rob her husband?"

19 A That's correct.

20 Q That was your statement you wrote in that report?

21 A Yes.

22 MR. LANDIS: I have nothing further. Can I approach
23 the witness to retrieve?

24 THE COURT: Yes. Ms. McNeill?

25 MS. MCNEILL: Yes, Your Honor. Thank you.

1 MR. LANDIS: Sorry, that's my fault.

2 MS. McNEILL: That's okay. Thank you.

3 RECROSS-EXAMINATION

4 BY MS. McNEILL:

5 Q Detective, just a few areas I want to go into based
6 on Mr. DiGiacomo's questions. I had asked you questions about
7 Mr. Figueroa that you said he didn't -- there was evidence he
8 didn't fire, and I'd asked you questions about there was --
9 well, it was evidence he didn't fire that .40 caliber.
10 Remember that?

11 A That's correct.

12 Q And I had asked you, sometimes when someone shoots a
13 bullet, you don't always find that bullet?

14 A That's correct.

15 Q And then Mr. DiGiacomo said, well, if a bullet
16 travels in a straight line, and you didn't find any bullet
17 strikes. Remember that?

18 A That's correct.

19 Q Okay. Did you search every house on Broadmere
20 Street for bullet strikes?

21 A I'm sure we looked at the houses near either -- on
22 either side of the Broadmere house.

23 Q Okay. But as you sit here today, you have no way of
24 knowing where Figueroa -- exactly where he was standing when
25 he was on Long Cattle, right?

1 A That's correct.

2 Q And you have no way of knowing where he would have
3 been pointing a gun if he'd been shooting, correct?

4 A Correct.

5 Q Okay. So, you have no way of knowing the straight
6 line that bullet would have traveled in if it had been fired?

7 A That's correct.

8 Q Okay. And it's fair to say that there is physical
9 evidence in this case that was missed, right?

10 A I don't know what physical evidence would have been
11 missed.

12 Q Did you impound Jorge Mendoza's car at any point?

13 A No, we did not.

14 Q Okay. So, any physical evidence that may have been
15 in that car, we don't have, right?

16 A Right, but we didn't learn about that car until
17 several weeks later.

18 Q Okay, well, let's talk about that. The car --

19 A That it was involved.

20 Q Okay. Well, Detective, let's see. Detectives
21 responded to Jorge Mendoza's house after Jorge Mendoza had
22 been arrested, right?

23 A Yes.

24 Q And you had evidence that there had been at least
25 one other person involved in that crime?

1 A Yes.

2 Q And you believed that that other blood trail, the
3 person had been picked up by a car?

4 A Yes.

5 Q All right. And then this car shows up at the
6 Mendoza home?

7 A Yes.

8 Q And Amanda Mendoza provides you with information
9 that Jorge had been missing all night and she had to go find a
10 car --

11 A That's correct.

12 Q -- right? Okay. And at no point was that car
13 impounded?

14 A That's correct.

15 Q Okay.

16 A It was -- it was -- I believe it was --

17 Q My question -- there's no question pending,
18 Detective.

19 A Okay.

20 Q Mr. DiGiacomo can clean that up with you if you'd
21 like. It's fair to say that there was other physical evidence
22 at the Broadmere scene that wasn't found. Robert Figueroa?

23 A That's correct.

24 Q Okay. In fact, he indicated that he'd been hiding
25 there all night and could hear the police conversations?

1 A Yes.

2 Q Right? Okay. Mr. DiGiacomo asked you if you ever
3 found the phone that Joey Laguna had, that 762 number, too,
4 correct?

5 A That's correct.

6 Q And you said no?

7 A Correct.

8 Q Okay. Do you remember when you were questioning Mr.
9 Laguna about his phone, he actually told you that he had the
10 same phone; it was just a different phone number?

11 A I don't recall that.

12 Q Okay. First, you asked him questions about -- in
13 the beginning of your interview, what's your cell number,
14 correct?

15 A Yes.

16 Q Okay. Not specifically cell phone, just cell
17 number, right?

18 A Right.

19 Q Later in the interview when you ask him -- when you
20 remind him of this 762 number --

21 MR. DiGIACOMO: Page, counsel?

22 MS. McNEILL: Page 14. Sorry.

23 BY MS. McNEILL:

24 Q You ask him about the phone that he has, and you
25 say, "How long have you had that?" Remember that?

1 A Yes.

2 Q And he says, "I don't remember," right?

3 A Yes.

4 Q And you say, "Have you had it for a month, two
5 months?" Right?

6 A Yes.

7 Q He says, "No, I've had it longer than that"?

8 A Yes.

9 Q And you said, "Would you have had that phone number
10 in September of 2014?" He says yes, right?

11 A That's correct.

12 Q And you said --

13 MR. DiGIACOMO: Well, I object to
14 mischaracterization. If you're going to read the questions
15 and the answers, can you read the actual answers?

16 MS. McNEILL: Okay.

17 BY MS. McNEILL:

18 Q "Would you have had that phone number in September
19 of 2014?" "Hm, I might have." Remember that?

20 A Yes.

21 Q Then you say, "But you might have had another phone
22 in September of 2014, too?" Remember that question?

23 A Yes.

24 Q And his answer was, "No, I didn't have another
25 phone." Right?

1 A Correct.

2 Q Okay. That phone that he had on him that day, did
3 you impound that phone?

4 A I believe I did.

5 Q But I thought you said you never found the phone
6 number that Laguna -- the phone that that number went to.

7 A Apparently, I didn't connect the dots on that.

8 Q Okay. And so, if you have his phone, it's sitting
9 somewhere in evidence and has never been examined?

10 A That's correct.

11 Q You indicated that you ran this criminal records
12 search for Mr. Sotelo, and we just learned that he's a
13 three-time felon, correct?

14 A That's correct.

15 Q Did that affect what you believed about what he told
16 you?

17 A We talk to ex-felons a lot of times. Sometimes they
18 give us true statements; other times they give us bits and
19 pieces of true statements. I was able to corroborate what --
20 some of what Sotelo told me.

21 Q Okay. So, the mere fact that he was a three-time
22 felon didn't make you think he was being untruthful?

23 A No.

24 Q Okay. In fact, you used the information that he
25 told you to arrest Robert Figueroa, right?

1 A Yes.

2 MS. McNEILL: Okay, nothing further.

3 MR. WOLFBRANDT: Judge, I have no questions.

4 THE COURT: Oh, thank you.

5 FURTHER REDIRECT EXAMINATION

6 BY MR. DiGIACOMO:

7 Q Detective, do you -- those big books behind you --

8 A Yes.

9 Q -- are those your homicide books?

10 A Yes, they are.

11 Q Have you previously in this case provided those
12 books to my office for the defense attorneys to review?

13 A Yes, I have.

14 Q Are the SCOPE printouts for the witnesses within
15 that book?

16 A Yes, they are.

17 Q So, when you say you didn't write it in a report,
18 it's documented within the case file that they had access to?

19 A Yes, it is.

20 Q I just want to go to Mr. Laguna's statement, if you
21 could pull it out. You need to go to the bottom of page 14,
22 and I want to read the last couple of questions and the first
23 questions and answers of the next page.

24 A Bear with me a minute. Okay.

25 Q So --

1 A What pages did you want?

2 Q Page 14. Going to go right to where Ms. McNeill
3 left off.

4 A Okay.

5 Q Okay. So, the questions that were asked of you --
6 I'll just start with her last question. "But you might have
7 had another phone in September of '14, too?" Answer, "No, I
8 didn't have another phone." Question, "You wouldn't have had
9 another phone number?" Answer, "No. We had a house phone
10 because I had just got off house arrest. And I don't --
11 because I just got off."

12 MS. McNEILL: Objection, move to strike.

13 THE COURT: Sustained. The jury will disregard
14 that.

15 BY MR. DiGIACOMO:

16 Q Next question, "Um-hum. Let me see that for a
17 minute." Answer -- what was his answer?

18 A "My wife did."

19 Q Question, "What's her phone number?"

20 A He says, "I don't remember it."

21 Q And then, question, "Would it have been 762-1584,"
22 right?

23 A Correct, that's what I asked him.

24 Q Is that the first time that that number comes up?

25 A Yes.

1 Q Okay. And then you say, "Have you ever used that
2 number?" And his answer was, "Yeah, that was -- that was
3 probably it, yeah."

4 A Yes.

5 Q Okay. From that conversation, you didn't take that
6 the phone in your hand was the 762 number?

7 A I did not.

8 MR. DiGIACOMO: Thank you. I have nothing further.

9 MR. LANDIS: No re-recross.

10 THE COURT: No re-recross?

11 MS. McNEILL: Just one question.

12 FURTHER RECROSS-EXAMINATION

13 BY MS. McNEILL:

14 Q So, you didn't take that to be the phone number
15 connected -- the phone connected with the phone number, but
16 you did impound the phone?

17 A Yes.

18 MS. McNEILL: Okay, nothing further.

19 MR. WOLFBRANDT: Nothing more.

20 THE COURT: May this witness be excused?

21 MR. DiGIACOMO: He may.

22 THE COURT: Thank you for your testimony, Detective.

23 THE WITNESS: Thank you, Your Honor. Thanks for
24 your patience.

25 (Pause in the proceedings)

1 THE COURT: State, you may call your next witness.

2 MR. DiGIACOMO: With the understanding that I've
3 confirmed with your clerk everything we've offered that has
4 been admitted is admitted, at this point, the State would
5 rest.

6 THE COURT: And the State has rested. Do you have
7 an order you wish to call witnesses? Do you wish to approach?

8 MR. LANDIS: We've talked about an order. We're
9 ready if --

10 MR. WOLFBRANDT: But I think we do need to approach.

11 THE COURT: I'm sorry?

12 MR. WOLFBRANDT: I think we do need to approach.

13 THE COURT: Approach.

14 (Off-record bench conference)

15 THE COURT: So, ladies and gentlemen, we need to
16 take about a 15-minute recess. So -- well, you get a recess.

17 During this recess, it is your duty not to converse
18 among yourselves or with anyone else on any subject connected
19 with the trial, or to read, watch, or listen to any report of
20 or commentary on the trial by any person connected with the
21 trial, or by any medium of information, including, without
22 limitation, newspaper, television, radio, or internet. You're
23 not to form or express an opinion on any subject connected
24 with this case until it's finally submitted to you. I'll see
25 you back in 15 minutes.

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

2 (Jury recessed at 10:49 a.m.)

3 THE COURT: The record will reflect the jury has
4 departed the courtroom. And -- all right. So, Mr. Mendoza,
5 could you maybe step up beside the -- your lawyer by the
6 microphone?

7 MR. DiGIACOMO: Should we just do all three at one
8 time so you don't have to read the admonishment the three
9 times?

10 THE COURT: Oh. Have you -- have you decided yet,
11 or are you going to wait until --

12 MS. McNEILL: I don't think my client can make that
13 decision until we know what Mr. Mendoza's going to say.

14 MR. DiGIACOMO: Okay.

15 THE COURT: Right, that's why I was figuring -- I'm
16 already hearing that Mr. Mendoza has made a decision. I think
17 that they can reach their decision --

18 MR. DiGIACOMO: That's fine.

19 THE COURT: -- later. All right. So, Mr. Mendoza,
20 so under the Constitution of the United States and under the
21 Constitution of the State of Nevada, you cannot be compelled
22 to testify in a trial. Do you understand that?

23 DEFENDANT MENDOZA: Yes.

24 THE COURT: Okay. Please keep your voice up so we
25 can pick you up.

1 DEFENDANT MENDOZA: Yes.

2 THE COURT: Okay, thank you. But of course, you may
3 at your own request give up this right and take the witness
4 stand and testify. Now, if you do, you will be subject to
5 cross-examination by the State's attorneys, and anything that
6 you might say either on direct examination or
7 cross-examination is the subject of fair comment to the jury
8 in closing argument by the State. And do you understand that?

9 DEFENDANT MENDOZA: Yes.

10 THE COURT: Okay. Now, if you choose not to
11 testify, the Court would not permit the district attorney to
12 make any comment to the jury about you not testifying. In
13 other words, they can't stand up there and say to a jury,
14 well, he didn't testify, and therefore, he must be guilty.
15 That cannot -- can't happen. You know, it's -- nothing like
16 that can happen. Do you understand that?

17 DEFENDANT MENDOZA: Yes.

18 THE COURT: Okay. Now, if you elected not to
19 testify, then the Court would instruct the jury, but only if
20 your lawyer specifically requests that, in fact, the law
21 doesn't compel a defendant in a criminal case to take the
22 stand and testify, and no presumption may be raised and no
23 inference may be drawn of any kind from the failure of a
24 defendant to testify.

25 So, that kind of instruction would be given to the

1 jury if you chose not to testify and your lawyer requested
2 such an instruction. Do you understand these rights that I
3 have just explained to you?

4 DEFENDANT MENDOZA: Yes.

5 THE COURT: Do you have any question about any of
6 those rights?

7 DEFENDANT MENDOZA: No.

8 THE COURT: Okay. Does he have felony convictions?

9 MR. WOLFBRANDT: No.

10 THE COURT: Okay.

11 MR. DiGIACOMO: No, he does not.

12 THE COURT: All right. So, have you made a decision
13 after speaking with your lawyer as to whether you would like
14 to testify?

15 DEFENDANT MENDOZA: Yes.

16 THE COURT: What's that decision?

17 DEFENDANT MENDOZA: I will testify.

18 THE COURT: Very well. And are -- is that how we're
19 starting? So, Mr. Wolfbrandt --

20 MR. WOLFBRANDT: We're going to start.

21 THE COURT: -- you're going to call -- okay.

22 MR. WOLFBRANDT: Right.

23 THE COURT: All right. This would be the
24 opportunity for counsel, defendants to use the restroom, okay?

25 MR. WOLFBRANDT: Okay.

1 THE COURT: As well as court staff, of course.

2 (Court recessed at 10:53 A.M. until 11:08 A.M.)

3 (Outside the presence of the jury)

4 THE COURT: Okay, let's bring the jury back in.

5 THE MARSHAL: One snuck off to the restroom, ma'am.
6 We're getting her.

7 THE COURT: All right, everybody sit down. We'll
8 get up again.

9 (Pause in the proceedings)

10 THE MARSHAL: All ready, Your Honor?

11 THE COURT: Yes.

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

13 (Jury reconvenes at 11:10 a.m.)

14 THE MARSHAL: Your Honor, all 12 members of the jury
15 are present, along with the three alternates.

16 THE COURT: Thank you. Please be seated. And the
17 record will reflect we're back within the presence of all 12
18 members of the jury, as well as the three alternates. The
19 three defendants are present with their respective counsel,
20 the chief deputy DA's prosecuting the case are present, as are
21 all officers of the court. Mr. Wolfbrandt?

22 MR. WOLFBRANDT: Judge, my first witness would be my
23 client, Mr. Mendoza.

24 THE COURT: Mr. Mendoza.

25 THE MARSHAL: Step up over here, please, Mr.

1 Mendoza. You can go ahead and take the witness stand. Remain
2 standing, face the clerk to -- clerk, raise your right hand to
3 be sworn in.

4 JORGE MENDOZA, DEFENDANT, SWORN

5 THE CLERK: Please be seated, and then please state
6 and spell your first and last name for the record.

7 THE WITNESS: My name's Jorge Mendoza. J-o-r-g-e,
8 M-e-n-d-o-z-a.

9 THE COURT: You may proceed.

10 MR. WOLFBRANDT: Thank you.

11 DIRECT EXAMINATION

12 BY MR. WOLFBRANDT:

13 Q Good morning, Jorge. How old are you?

14 A 34, I believe. 34.

15 Q Trying to trick you on the first question.

16 A I don't -- I think I'm 34.

17 Q When were you born?

18 A September 3rd, 1982.

19 Q September --

20 A 3rd --

21 Q 3rd?

22 A -- of 1982.

23 Q So, you'd be 34. Are you married?

24 A Yes.

25 Q Who's your wife?

1 A Amanda Mendoza.

2 Q And is she in the back of the courtroom today?

3 A Yes.

4 Q Okay. How did you meet her?

5 A I lived two houses down the street to her and went
6 to high school with her.

7 Q Okay. Do you recall when you first met her? Was it
8 high school or junior high?

9 A High school. Freshman year in high school. I seen
10 her walking to school.

11 Q Okay. And that was about how long ago?

12 A About 17 years ago.

13 Q Do you have children?

14 A Yes.

15 Q How many?

16 A Two.

17 Q Boy and a girl?

18 A Yes, sir.

19 Q How old are they?

20 A 10 and 8.

21 Q What was your occupation?

22 A I was a lineman electrician.

23 Q How long did you do that?

24 A About 11 years.

25 Q And what -- what's entailed with being a lineman

1 electrician?

2 A I traveled from state to state doing transmission
3 and distribution lines for electrical substations, step up and
4 step down power. We specialized mostly in working for the
5 solar field in wind energy. Green energy pretty much is what
6 we specialized in.

7 Q Okay, so we're talking about like the big propellers
8 that are out --

9 A Big windmills, yes.

10 Q Okay, and those generate electricity. And what, did
11 you work on the lines and the transmission lines and whatnot
12 that --

13 A We worked on the lines and the substations that
14 helped regulate and generate the power, which made the power
15 consistent so that it was useable by the consumer.

16 Q Did there come a time when you lost that job?

17 A Yes.

18 Q Can you tell the ladies and gentlemen of the jury
19 why that happened?

20 A Because I failed a drug test.

21 Q And what was the drug of choice?

22 A Heroin.

23 Q All right, and how long ago was that? Let's use --

24 A Two-and-a-half years ago.

25 Q Let's use September 21st, 2014 as a reference point.

1 How long before that date -- or did it occur before that date?

2 A Yes.

3 Q Do you recall how long prior to September 21st, 2014
4 you lost your job?

5 A Six to eight weeks.

6 Q Did you let Amanda know that you had failed that
7 drug test and lost your job?

8 A Not immediately.

9 Q For those six weeks, what did you do with yourself?

10 A I kind of just left the house, tried to make myself
11 scarce so that -- you know, I was hoping she -- it wouldn't
12 bring to much attention on the fact that I was home, as
13 compared to when I usually would never be home.

14 Q Okay. Would you go to casinos and gamble?

15 A Casinos, gamble, friends' house, wherever I can put
16 myself, pretty much.

17 Q Did Amanda work outside the home?

18 A No, she did not.

19 Q So, were you the sole provider for the family?

20 A Yes, I was.

21 Q So, for those six weeks, did you have any kind of
22 source of income?

23 A No, I did not.

24 Q Do you know David Murphy?

25 A Yes.

1 Q How do you know him?

2 A Through a roundabout way. Not really blood-related,
3 but kind of through marriage through my wife's side of the
4 family.

5 Q So, do you have personal knowledge of the kind of
6 relationship that your wife and David Murphy had?

7 A Yes. I considered David my cousin because, like I
8 said, I've been with my wife for about 18 years, so I've known
9 him just as long as that time, and we were pretty close
10 friends.

11 Q Were they childhood friends growing up, to your
12 knowledge?

13 A He wasn't as close to her as I was to him, if that
14 really makes any sense. When I met him, me and him kind of
15 got along, so I hung out with him more than he really had
16 anything to do with her, other than just family.

17 Q Would you see him at family functions?

18 A Absolutely.

19 Q And barbecues and whatnot?

20 A Yes.

21 Q Would you do things -- you and Amanda do things with
22 him and a wife or girlfriend as couples?

23 A Yes, we would. We used to go out New Year's, Fourth
24 of July's. Just on random occasions, we'd go out.

25 Q How frequently would you say you socialized with

1 Dave Murphy in the year 2014?

2 A I'd say 2014 was more so than ever because of the
3 fact that I was actually in town and out of work, so I hung
4 out with him a little more than I ever have before.

5 Q Is that for that six weeks prior to September 21st?

6 A Partly, yes.

7 Q Do you know Joey Laguna?

8 A Yes.

9 Q How do you know him?

10 A I've met him at family type functions. I've seen
11 him here and there, just once in a while. Not real close or
12 nothing.

13 Q Do you know him better or less than you do David
14 Murphy?

15 A Less. Much less.

16 Q Would you -- did you see him in any events outside
17 of holiday family get-togethers?

18 A Never.

19 Q Did you ever socialize with him?

20 A No.

21 Q Did you ever know Summer Larsen?

22 A No, I did not.

23 Q Did you ever meet her?

24 A No.

25 Q Did you ever see her at any events -- any family

1 events?

2 A No.

3 Q What neighborhood did you grow up in? Or actually,
4 let me withdraw that one. Did you grow up here in Las Vegas?

5 A For my older half of my adult life, I guess. From
6 when I was probably 16 and up, yes. But before so, I was
7 raised in Apple Valley, California.

8 Q But you went to high school here?

9 A Yes.

10 Q And what high school did you go to?

11 A I went to Silverado for a little bit, and then I
12 went to Mojave.

13 Q Okay, so about -- what neighborhood was that?

14 A It's the northwest side of town by Camino Al Norte
15 and North 5th.

16 Q Camino Al Norte and North 5th?

17 A Just north of Craig. Take Martin Luther King until
18 it ends. North of Craig, it becomes Camino Al Norte.

19 Q Okay. All right, let's direct your attention to I
20 guess September 20th of 2014. When is -- when's the first
21 time that you had any -- or did you have any conversations
22 with anybody regarding the events for why we're here today?

23 A When? On the --

24 Q Actually, you know what, I left something out before
25 I get to that. Prior to September 21st, 2014, did you know