

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Respondent.

Docket 73674 Document 2018-16733

INDEX
MELVYN SPROWSON
Case No. 73674

	<u>PAGE NO.</u>
Affidavit of Defense's Investigator filed 03/21/17.....	1118-1119
Affidavit of The Honorable Stefany A. Miley filed 01/23/17	1005-1010
Affidavit to Disqualify Judge Stefany A. Miley for Bias and Misconduct filed 01/31/17	993-997
Affidavit to Disqualify Judge Stefany A. Miley for Bias and Misconduct filed 02/07/17	998-1004
Affidavit to Reconsider Disqualifying Judge Stefany A. Miley for Bias and Misconduct Date of Hrg: 02/24/17	1016-1022
Affidavit to Reconsider Disqualifying Judge Stefany A. Miley for Bias and Misconduct filed 02/28/17	1023-1028
Amended Criminal Complaint filed 12/09/13	3-4
Application for Ex Parte Order to Extend Time in which to File the Pre-Trial Writ of Habeas Corpus filed 02/18/14	257-263
Bail Bond filed 05/05/14	360-364
Clerk's Certificate and Order Dismissing Appeal filed 12/02/15	751-754
Criminal Complaint filed 11/05/13.....	1-2
Decision and Order filed 08/28/15	597-610
Defendant's Motion to Continue Jury Trial Date of Hrg: 06/02/14.....	387-390
Defendant's Motion to Continue Trial Date filed 09/08/14	515-518
Defendant's Motion to Continue Trial Date filed 07/06/15	611-615
Defendant's Motion to Continue Trial Date Date of Hrg:: 06/06/16.....	844-849
Defendant's Proposed Jury Instructions Not Used at Trial filed 03/30/17.....	1124-1127
Defendant's Second Pro Se Motion to Continue Trial Date of Hrg: 04/10/17	1087-1095
District Court Minutes from 01/15/14 through 06/26/17	1175-1250
Ex Parte Application for Court Approval of Payment of Specific Categories of Ancillary Defense Costs Date of Hrg: 06/01/15.....	568-575

1	Ex Parte Application for Expert Witness and	
2	Investigator And Funding Therefor filed 12/09/16	964a-964f
3	Ex Parte Motion and Order for Release of Records filed 05/22/14.....	381-383
4	Ex Parte Motion and Order for Release of Records filed 05/22/14.....	384-386
5	Ex Parte Motion and Order for Release of Records filed 09/10/14.....	519-520
6	Ex Parte Motion and Order for Release of Records filed 09/10/14.....	521-522
7	Ex Parte Motion and Order for Release of Records filed 11/17/14.....	525-526
8	Ex Parte Motion and Order for Release of Records filed 11/17/14.....	527-528
9	Ex Parte Motion and Order for Release of Records filed 11/17/14.....	529-530
10	Ex Parte Motion and Order for Release of Records filed 11/17/14.....	531-532
11	Ex Parte Motion and Order for Release of Records filed 11/17/14.....	533-534
12	Ex Parte Motion and Order for Release of Records filed 09/17/15.....	663-664
13	Fifth Supplemental Notice of Witnesses and/or Expert Witnesses filed 02/27/17.....	1081-1086
14	Fourth Supplemental Notice of Witnesses and/or Expert Witnesses filed 05/09/16.....	831-843
15	Information filed 01/13/14.....	251-254
16	Instructions to the Jury filed 03/31/17	1130-1161
17	Judgment of Conviction (Jury Trial) filed 07/05/17.....	1167-1169
18	Jury List filed 03/23/17.....	1123
19	Jury List filed 03/30/17.....	1129
20	Justice Court Minutes from 11/06/13 through 01/08/14	9-20
21	Media Request & Order Allowing Camera	
22	Access to Court Proceedings filed 11/05/13.....	21-35
23	Media Request & Order Allowing Camera	
24	Access to Court Proceedings filed 01/30/14.....	255-256
25	Media Request & Order Allowing Camera	
26	Access to Court Proceedings filed 02/18/14.....	264-266
27	Media Request & Order Allowing Camera	
28	Access to Court Proceedings filed 02/18/14.....	267-269
	Media Request & Order Allowing Camera	
	Access to Court Proceedings filed 08/13/15.....	627-628

1	Media Request & Order Allowing Camera Access to Court Proceedings filed 10/07/15.....	701-702
2		
3	Media Request & Order Allowing Camera Access to Court Proceedings filed 03/21/17.....	1103-1104
4	Minute Order filed 05/27/15.....	576-577
5	Motion for Bail Reduction Date of Hrg: 11/14/13.....	48-54
6		
7	Motion for Bail Reduction Date of Hrg: 04/14/14.....	322-344
8	Motion for Disclosure of Non-Public Information filed 11/05/13	36-39
9	Motion for Disclosure of Non-Public Information filed 11/08/13	40-43
10	Motion for Disclosure of Non-Public Information filed 11/14/13	44-45
11	Motion for Disclosure of Non-Public Information filed 12/06/13	59-60
12	Motion for Disclosure of Non-Public Information filed 12/09/13	92-95
13	Motion for Disclosure of Non-Public Information filed 12/23/13	96-97
14	Motion for Discovery filed 12/12/13.....	62-91
15	Motion for Discovery filed 08/26/14.....	391-420
16	Motion for Discovery filed 09/20/16.....	859-871
17	Motion to Dismiss Misdemeanor Charges for Lack of Original Jurisdiction Date of Hrg: 11/28/16.....	896-903
18		
19	Motion to Proceed on Appeal in Forma Pauperis Date of Hrg: 10/12/15.....	658-662
20	Motion to Proceed Pro Se filed 08/19/15	629-634
21	Motion to Suppress Evidence Date of Hrg: 06/01/15.....	548-567
22		
23	Motion to Suppress Evidence Date of Hrg: 10/05/15.....	638-644
24	Motion to Withdraw as Counsel of Record filed 07/21/15	622-626
25	Motion to Withdraw the Original Record of Search and Seizure Warrants on File with the District Court	
26	Date of Hrg: 01/04/17.....	912-964
27	Notice of Appeal filed 09/08/15	635-637
28	Notice of Appeal filed 08/01/17	1171-1174

1	Notice of Change of Hearing filed 04/07/14	321
2	Notice of Change of Hearing filed 09/05/14	491
3	Notice of Change of Hearing filed 09/18/14	523
4	Notice of Change of Hearing filed 10/14/14	524
5	Notice of Change of Hearing filed 10/02/15	700
6	Notice of Change of Hearing filed 10/11/16	895
7	Notice of Contempt of Court and Brady Violation filed 03/21/17	1105-1117
8	Notice of Motion and Motion for Clarification Regarding	
9	State's Previously Filed Motion in Limine to Preclude	
10	Evidence of Victim's Prior Sexual Abuse at Trial	
11	Date of Hrg: 10/05/15	671-699
12	Notice of Motion and Motion for Independent	
13	Psychological/Psychiatric Examination of the Complaining Witness	
14	Date of Hrg: 09/08/14	438-460
15	Notice of Motion and Motion in Limine to Preclude	
16	Evidence of Victim's Prior Sexual Abuse at Trial	
17	Date of Hrg: 09/15/14	492-506
18	Notice of Motion and Motion to Admit Evidence of Other Bad Acts	
19	Date of Hrg: 10/26/15	
20	Notice of Motion and Motion to Continue	
21	Date of Hrg: 11/21/13	55-58
22	Notice of Motion and Motion to Set Conditions of	
23	Defendant's Release Upon Defendant Posting Bail	
24	Date of Hrg: 05/12/14	365-380
25	Notice of Motion and State's Motion to Revoke Defendant's Bail	
26	Date of Hrg: 02/04/15	535-543
27	Notice of Request to Withdraw Original Record	
28	of Search and Seizure Warrants filed 12/09/16	909-911
	Notice of Witnesses and/or Expert Witnesses filed 10/08/15	703-714
	Notice Resetting Date and Time of Hearing filed 05/19/17	1165
	Notice Resetting Time of Hearing filed 03/27/14	320
	Opposition to Defendant's Motion for Defendant's Motion for Bail Reduction	
	Date of Hrg: 04/14/14	345-359
	Opposition to State's Motion in Limine to Preclude	
	Evidence of Victim's Prior Sexual Abuse at Trial filed 10/14/14	507-514

1	Order filed 03/13/14	305
2	Order filed 03/22/17	1120-1122
3	Order filed 06/19/17	1166
4	Order filed 07/05/17	1170
5	Order Denying Defendant's Third Motion to Suppress Evidence Date of Hrg: 04/13/16.....	829-830
6	Order Denying Motion to Disqualify filed 01/24/17	1011-1015
7	Order Granting State's Motion to Admit Evidence of Other Bad Acts Date of Hrg: 12/10/15.....	727-729
8	Order Scheduling Status Check RE: Trial Readiness filed 11/23/16	908
9	Petition for Writ of Habeas Corpus, Motion to Dismiss, and Memorandum of Points and Authorities Date of Hrg: 03/24/14.....	270-304
10	Receipt of Copy of Documents Pertaining to Protected Information and Records from Wells Fargo Bank filed 12/11/15	756-757
11	Receipt of Copy of Protected Information and Records from Montevista Hospital, Willow Springs Center, Hope Counseling, Desert Behavioral Health, Doctor Robin Donaldson, and Doctor Eugene Ronsenman filed 07/13/15	616-617
12	Receipt of Copy of Protected Information and Records from Montevista Hospital, Willow Springs Center, Hope Counseling, Desert Behavioral Health, Doctor Robin Donaldson, and Doctor Eugene Ronsenman filed 07/14/15	618-619
13	Receipt of Copy of Protected Information and Records from Montevista Hospital, Willow Springs Center, Hope Counseling, Desert Behavioral Health, Doctor Robin Donaldson, and Doctor Eugene Ronsenman (Amended) filed 07/17/15.....	620-621
14	Receipt of Copy of Protected Information and Records from Vena M. Davis, Mojave Adult, Child & Family Services filed 11/05/15	749-750
15	Remittitur filed 12/02/15	755
16	Reply to Return to Writ of Habeas Corpus and Opposition to Motion to Dismiss Date of Hrg: 04/30/14.....	309-319
17	Reply to State's Opposition to Defendant's Motion for Independent Psychological/Psychiatric Examination of the Complaining Witness and Discovery Request for Her Medical/Mental Health Treatment Records filed 10/13/14.....	481-490
18	Response to State's Motion to Revoke Defendant's Bail Date of Hrg: 02/04/15.....	544-547
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1	Response to State's Opposition to Defendant's Motion for Discovery	
2	Date of Hrg: 11/02/16.....	884-894
3	Response to State's Opposition to Defendant's Motion to Withdraw the	
4	Original Record of Search and Seizure Warrants in the District Court	
5	Date of Hrg: 01/04/17	972-986
6	Response to State's Opposition to Defendant's Third Motion to Suppress Evidence	
7	Date of Hrg: 04/13/16.....	828i-828bb
8	Request for Rough Draft Transcript filed 09/23/15.....	667-670
9	Second Amended Criminal Complaint filed 12/19/13	5-8
10	Second Request for Rough Draft Transcript filed 02/26/16.....	758-760
11	Second Supplemental Notice of Witnesses and/or Expert Witnesses filed 10/26/15.....	735-742
12	State's Opposition to Defendant's Motion for Discovery	
13	Date of Hrg: 09/22/14.....	421-437
14	State's Opposition to Defendant's Motion for Discovery	
15	Date of Hrg: 11/02/16.....	872-883
16	State's Opposition to Defendant's Motion for Independent	
17	Psychological/Psychiatric Examination of the Complaining Witness	
18	Date of Hrg: 09/10/14.....	461-480
19	State's Opposition to Defendant's Motion to Dismiss	
20	Midemeanor Charges for Lack of Jurisdiction	
21	Date of Hrg: 11/28/16.....	904-907
22	State's Opposition to Defendant's Motion to Suppress Evidence	
23	Date of Hrg: 07/01/15.....	578-596
24	State's Opposition to Defendant's Notice of Request to Withdraw	
25	Original Record of Search and Seizure Warrants and Defendant's	
26	Ex-Parte Application for Expert Witness and Funding Therefor	
27	Date of Hrg: 01/04/17	965-971
28	State's Opposition to Defendant's Second Motion to Suppress Evidence	
	Date of Hrg: 10/05/15.....	645-657
	State's Opposition to Defendant's Sixth Motion to Continue Trial	
	Date of Hrg: 05/16/16.....	850-858
	State's Opposition to Defendant's Seventh Motion to Continue Trial	
	Date of Hrg: 03/21/17	1096-1102
	State's Opposition to Defendant's Third Motion to Suppress Evidence	
	Date of Hrg: 04/06/16.....	828a-828h
	State's Proposed Jury Instructions Not Used at Trial filed 03/30/17	1127-1128

1	Stipulation and Order Regarding Discovery of Child Pornographic Materials filed 09/21/15	665-666
2	Substitution of Attorneys filed 11/08/13	46-47
3	Supplemental Affidavit of The Honorable Stefany A. Miley filed 02/17/17	1070-1080
4	Supplemental Motion to Affidavit to Reconsider Disqualifying Judge Stefany A. Miley for Bias and Misconduct filed 03/06/17	1029-1069
5	Supplemental Notice of Witnesses and/or Expert Witnesses filed 10/19/15	730-734
6	Third Motion to Suppress Evidence Date of Hrg: 04/06/16.....	761-828
7	Third Supplemental Notice of Witnesses and/or Expert Witnesses filed 10/23/15	743-748
8	Verdict filed 03/31/17.....	1162-1164
9	Writ of Habeas Corpus filed 03/14/14.....	306-307
10	Writ of Habeas Corpus filed 03/17/14.....	308
11		
12		

TRANSCRIPTS

13		
14	Recorder's Transcript JURY TRIAL DAY 1	
15	Date of Hrg: 03/21/17.....	1646-1841
16	Recorder's Transcript JURY TRIAL DAY 2	
17	Date of Hrg: 03/22/17.....	1842-2005
18	Recorder's Transcript JURY TRIAL DAY 3	
19	Date of Hrg: 03/23/17.....	2006-2109
20	Recorder's Transcript JURY TRIAL DAY 4	
21	Date of Hrg: 03/24/17.....	2110-2442
22	Recorder's Transcript JURY TRIAL DAY 5	
23	Date of Hrg: 03/27/17.....	2443-2626
24	Recorder's Transcript JURY TRIAL DAY 6	
25	Date of Hrg: 03/28/17.....	2627-2770
26	Recorder's Transcript JURY TRIAL DAY 7	
27	Date of Hrg: 03/29/17.....	2771-2981
28		

1	Recorder's Transcript JURY TRIAL DAY 8	
2	Date of Hrg: 03/30/17	2982-3111
3	Recorder's Transcript JURY TRIAL DAY 9	
4	Date of Hrg: 03/31/17	3112-3117
5	Recorder's Transcript Arraignment Continued	
6	Date of Hrg: 01/29/14	1253-1255
7	Recorder's Transcript Calendar Call	
8	Date of Hrg: 03/19/14	1256-1260
9	Recorder's Transcript Calendar Call	
10	Date of Hrg: 10/28/15	1428-1439
11	Recorder's Transcript Calendar Call	
12	Date of Hrg: 03/08/17	1605-1608
13	Recorder's Transcript Calendar Call	
14	Date of Hrg: 03/15/17	1609-1612
15	Recorder's Transcript Defendant's Motion for Discovery...Defendant's Motion for Independent	
16	Psychological/Psychiatric Examination of the Complaining Witness	
17	Date of Hrg: 09/10/14	1314-1323
18	Recorder's Transcript Defendant's Motion to Continue Jury Trial	
19	Date of Hrg: 05/28/14	1311-1313
20	Recorder's Transcript Defendant's Motion to Continue Jury Trial Date	
21	Date of Hrg: 07/20/15	1349-1358
22	Recorder's Transcript Defendant's Proper Person Motion for Discovery	
23	Date of Hrg: 11/16/16	1543-1569
24	Recorder's Transcript Defendant's Pro Per Motion to Withdraw the Original Record of	
25	Search and Seizure Warrants on File with the District Court	
26	Date of Hrg: 01/04/17	1579-1582
27	Recorder's Transcript Defendant's Pro Se Motion for Discovery	
28	Date of Hrg: 11/02/16	1527-1542

1	Recorder's Transcript	
2	Defendant's Pro Se Motion to Proceed on Appeal in Forma Pauperis...	
3	Defendant's Pro Se Motion to Suppress Evidence... State's Motion for	
4	Clarification Regarding State's Previously Filed Motion in Limine to	
5	Preclude Evidence of Victim's Prior Sexual Abuse at Trial... Status Check	
6	Date of Hrg: 10/12/15.....	1395-1403
7	Recorder's Transcript	
8	Defendant's Pro Se Motion to Proceed on Appeal in Forma Pauperis...	
9	Defendant's Pro Se Motion to Suppress Evidence... State's Motion for	
10	Clarification Regarding State's Previously Filed Motion in Limine to	
11	Preclude Evidence of Victim's Prior Sexual Abuse at Trial... Status Check	
12	Date of Hrg: 10/19/15.....	1404-1427
13	Recorder's Transcript	
14	Defendant's Second Pro Se Motion to Continue Trial	
15	Date of Hrg: 03/21/17.....	1613-1645
16	Recorder's Transcript	
17	Evidentiary Hearing; Defendant's Motion to Suppress Evidence	
18	Date of Hrg: 07/01/15.....	3156-3257
19	Recorder's Transcript	
20	Initial Arraignment	
21	Date of Hrg: 01/15/14.....	1251-1252
22	Recorder's Transcript	
23	Motion	
24	Date of Hrg: 04/13/16.....	1504-1518
25	Recorder's Transcript	
26	Motion for Bail Reduction	
27	Date of Hrg: 04/14/14.....	1261-1263
28	Recorder's Transcript	
29	Motion for Bail Reduction	
30	Date of Hrg: 04/21/14.....	1264-1274
31	Recorder's Transcript	
32	Petition for Writ of Habeas Corpus	
33	Date of Hrg: 04/30/14.....	1275-1301
34	Recorder's Transcript	
35	Petrocelli Hearing	
36	State's Motion to Admit Evidence of Other Bad Acts	
37	Date of Hrg: 12/10/15.....	1443-1503
38	Recorder's Transcript	
39	Sentencing	
40	Date of Hrg: 05/24/17.....	3118-3125
41	Recorder's Transcript	
42	Sentencing	
43	Date of Hrg: 06/26/17.....	3134-3155

1	Recorder's Transcript	
2	State's Motion in Limine to Preclude Evidence of Victim's Prior Sexual Abuse at Trial;	
3	Defendant's Motion for Discovery; Defendant's Motion for Independent	
	Psychological/Psychiatric Examination of the Complaining Witness	
3	Date of Hrg: 11/05/14.....	1324-1342
4	Recorder's Transcript	
5	State's Motion to Revoke Defendant's Bail	
5	Date of Hrg: 02/04/15.....	1343-1348
6	Recorder's Transcript	
7	State's Motion to Set Conditions of Defendant's	
7	Release upon Defendant Posting Bail	
8	Date of Hrg: 05/12/14.....	1302-1310
9	Recorder's Transcript	
9	State's Opposition to Defendant's Sixth Motion to Continue Trial	
10	Date of Hrg: 05/16/16.....	1519-1526
11	Recorder's Transcript	
11	Status Check: Discovery	
12	Date of Hrg: 08/31/15.....	1380-1384
13	Recorder's Transcript	
13	Status Check: Discovery	
14	Date of Hrg: 09/21/15.....	1385-1394
15	Recorder's Transcript	
15	Status Check: Faretta Canvass, Resetting of Trial	
16	and Defendant's Motion to Proceed Pro Se	
16	Date of Hrg: 08/24/15.....	1367-1379
17	Recorder's Transcript	
17	Status Check: New Counsel/Resetting of Trial	
18	Date of Hrg: 08/19/15.....	1364-1366
19	Recorder's Transcript	
19	Status Check: PSI Corrections	
20	Date of Hrg: 05/31/17.....	3126-3133
21	Recorder's Transcript	
21	Status Check: Resetting of Trial	
22	Date of Hrg: 07/22/15.....	1359-1363
23	Recorder's Transcript	
23	Status Check: Resetting of Trial	
24	Date of Hrg: 11/02/15.....	1440-1442
25	Recorder's Transcript	
25	Status Check: Trial Readiness	
26	Date of Hrg: 11/28/16.....	1570-1578
27	Recorder's Transcript	
27	Status Check: Trial Readiness	
28	Date of Hrg: 02/06/17.....	1598-1604

1	Recorder's Transcript	
	Status Check: Trial Readiness	
2	Status Check: Investigator	
	Defendant's Pro Per Motion to Withdraw the Original Record of	
3	Search and Seizure Warrants on File with District Court	
	Date of Hrg: 01/09/17	1583-1597
4	Reporter's Transcript	
5	Motion to Continue Preliminary Hearing	
	Date of Hrg: 11/21/13	98-107
6	Reporter's Transcript	
7	Preliminary Hearing	
	Date of Hrg: 12/30/13	108-197
8	Reporter's Transcript	
9	Preliminary Hearing Volume II	
	Date of Hrg: 01/08/14	198-250
10		
11		
12		
13		
14		
15		
16		
17		
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19		
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21		
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DISTRICT COURT
CLARK COUNTY, NEVADA

CASE #: C295158

DEPT. XXIII

MELVYN PERRY SPROWSON, JR.,
Defendant.

WEDNESDAY, JULY 1, 2015

RECORDER'S ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS
EVIDENTIARY HEARING; DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

JACQUELINE M. BLUTH, ESQ.
Chief Deputy District Attorney

JOHN J. MOMOT, JR., ESQ.
YI LIN ZHUENG, ESQ.

RECORDED BY: MARIA GARIBAY, COURT RECORDER

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INDEX OF WITNESSES

STATE’S WITNESSES **PAGE**

KATHY YOUNG HARRIS

Direct Examination by Ms. Bluth	5
Cross-Examination by Mr. Momot	18
Redirect Examination by Ms. Bluth	41

GILBERT LINDSEY

Direct Examination by Ms. Bluth	43
Cross-Examination by Mr. Momot	53
Redirect Examination by Ms. Bluth	64

GARY ABBOTT

Direct Examination by Ms. Bluth	65
Cross-Examination by Mr. Momot	74
Redirect Examination by Ms. Bluth	83
Recross Examination by Mr. Momot	85

* * * * *

DEFENSE WITNESS

MELVIN SPROWSON

Direct Examination by Mr. Momot	87
Cross-Examination by Ms. Bluth	88

1 WEDNESDAY, JULY 1, 2015 AT 11:07 A.M.

2
3 THE COURT: All right. Good morning, everyone. Hi, Mr. Sprowson, good
4 morning.

5 THE DEFENDANT: Hi.

6 THE COURT: Hi, counsel. Good morning. So, this is the time set for our
7 suppression hearing. I have an opposition filed by the State. Are we ready to
8 proceed today?

9 MS. BLUTH: Yes, Your Honor.

10 THE COURT: All right. And what witnesses do we have today?

11 MS. BLUTH: We have the two individuals at the apartment complex which
12 would be Kathy Young Harris and Gilbert Lindsey and then the officer involved on
13 that day which is Officer Gary Abbott.

14 THE COURT: Okay. Do we need any statements before I bring the
15 witnesses in?

16 MS. BLUTH: Not on behalf of the State.

17 THE COURT: Okay. And Kathy, when is the trial date for?

18 MS. BLUTH: August 3rd.

19 THE COURT CLERK: August 3rd.

20 THE COURT: Okay. So, a couple things. Oh, I got to go through -- I have a
21 big box of documents I need to go through. So, I've got to do that on the in camera
22 review. We will get a written decision out by the beginning of next week. Given the
23 nature of this case, I will do -- I usually do written decisions on these things. That
24 way I clearly articulate the basis for my decisions. Okay. So, I will get on all of that.

25 MR. BLUTH: We you going to say something about the trial date?

1 THE COURT: No; I was just asking Kathy.

2 MS. BLUTH: Okay.

3 THE COURT: Okay. Why don't we -- unless Mr. Momot has something he'd
4 like to say, you want to bring in the witnesses?

5 MR. MOMOT: No, Your Honor.

6 THE COURT: And do you think you'd be ready to go in August?

7 MR. MOMOT: I don't know. It depends on how this hearing develops and if
8 there has to be any additional motions.

9 THE COURT: Okay. And just to be completely candid, I do have a murder
10 case starting on July 27th. And so I was going to check with the Court and check
11 with the defense if we could move it just one week forward. If you can't, then I'm
12 sure Mr. Sweetin can do this without me. But I just wanted to kind of check with you
13 guys but if you can't, fine.

14 THE COURT: Kathy says no.

15 MS. BLUTH: What about two weeks?

16 THE COURT CLERK: So, you're wanting to bump it up to say in July?

17 MS. BLUTH: Oh, no, sorry, past like further like either the following week or
18 the week after. Obviously I would check with Mr. Momot if that was okay with his
19 schedule.

20 [Colloquy between the Court and Ms. Bluth]

21 MR. MOMOT: Can Mr. Sprowson come down here, Your Honor?

22 THE COURT: No; he needs to stay over there.

23 MR. MOMOT: Okay.

24 MS. BLUTH: Okay. I'll talk to everybody and I'll talk to Mr. Sprowson.

25 THE COURT: Okay.

1 MS. BLUTH: So, we would call Kathy Young Harris.

2 THE MARSHAL: Please remain standing and raise your right hand to be
3 sworn by the clerk.

4 **KATHY YOUNG HARRIS**

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

6 THE COURT CLERK: Please be seated. Would you please state and spell
7 your first and last name for the record.

8 THE WITNESS; Yes; it's Kathy Young Harris, K-A-T-HY Y-O-U-N-G
9 H-A-R-R-I-S.

10 THE COURT: Whenever you're ready, counsel.

11 MS. BLUTH: Thank you. May I use the podium, Judge.

12 THE COURT: You can be wherever you're comfortable.

13 **DIRECT EXAMINATION**

14 BY MS. BLUTH:

15 Q Good morning, ma'am.

16 A Good morning.

17 Q Should I -- I know your last name is hyphenated. So, should I call you
18 Ms. Young or Ms. Harris; which is proper?

19 A Either. I don't care.

20 Q Okay.

21 A Whichever is easiest.

22 Q Okay. Thank you. Ms. Young, how are you employed?

23 A I work for Mesa Ridge Village Townhomes. I'm the property manager.

24 Q Okay. And how long have you been employed in that position?

25 A Almost 12 years.

1 Q And can you give us the general area of where the Mesa Town Homes
2 are located?

3 A Yes; we're on Russell Road and right off of Nellis up on the mountain.

4 Q Here in Clark County in Las Vegas?

5 A Yes, Las Vegas, yes.

6 Q And you said that you've employed there for 12 years?

7 A Yes.

8 Q And have you been the manager for 12 years?

9 A Yes.

10 Q And just briefly, what are your job duties as the manager at those town
11 homes?

12 A Managing the property. I do all the tenant selection, you know, like the
13 applications, tenant complaints, collect all the rents, deal with tenant issues.

14 Q Okay. I'd like to specifically now turn your attention to November 1st of
15 2013.

16 A Okay.

17 Q Were you working on that specific day?

18 A Yes, ma'am.

19 Q Okay. And during this time period, was there an individual by the name
20 of Melvin Sprowson living on the property?

21 A Yes, ma'am.

22 Q And did you know him? And what I mean by know him is like would you
23 see him coming and going or would you have conversations with him?

24 A If I saw him to have conversations I would, but where our property is
25 located I may not see him every day coming and going.

1 Q Okay. Do you see him here in the courtroom today?

2 A Yes.

3 Q Okay. Can you please to him and describe an article of clothing he's
4 wearing?

5 A Yes; he has navy blue like top on.

6 MS. BLUTH: Okay. Your Honor, may the record reflect that she's identified
7 the Defendant?

8 THE COURT: It will.

9 MS. BLUTH: Thank you.

10 BY MS. BLUTH:

11 Q Now in November of 2013, which townhome was it that Mr. Sprowson
12 was leasing?

13 A Number 143 and that's in Building 7.

14 Q While he was living on the property, did you ever see anyone else
15 coming and going from his apartment?

16 A No, ma'am.

17 Q And to your knowledge, did you know anyone else to be living there?

18 A No.

19 Q Now, again specifically I want to talk about November 1st of 2013. On
20 that day, were you dealing with an alarm type issue in the area?

21 A Yes, we were.

22 Q And could you explain to the Court exactly what was going on on that
23 day?

24 A I did hear an alarm going off. I had several tenants in that area calling
25 saying there's an alarm going off, that it was troublesome to them.

1 Q When you say you have several tenants in that area, when you say
2 area which specific area are you referring to?

3 A Our buildings are built in fourplexes so garages like meet garages so
4 they're in a fourplex. Sometimes you don't know where a sound or an alarm is
5 coming from. We knew the general area.

6 Q Okay. And so when you say the general area, you stated earlier that
7 Mr. Sprowson was staying in Apartment 143 which is Building 7?

8 A Correct.

9 Q What general area did the alarm -- did you believe the alarm to be
10 coming from?

11 A Either from Building 2 which their patios would meet in Building 7 or
12 from the opposite building which would be Building 8 where the garages come
13 together in that general location.

14 Q Okay. And you stated that you received several calls from tenants in
15 that general area?

16 A Yes.

17 Q Is that how you were initially --

18 A Yes.

19 Q -- told about the alarms?

20 A Yes.

21 THE COURT: Hold on a second. Where is -- okay. You said the alarm was
22 believed to be coming from Building 2 or Building 8; where is Building 7 in
23 conjunction with 2 and 8?

24 THE WITNESS: In the center. Building 2 is like here and then Building 7 and
25 then Building 8. I know that they're numbered kind of crazy.

1 THE COURT: Building 7 is between Building 2 and 8; right

2 THE WITNESS: Yes.

3 THE COURT: Okay. Thank you.

4 BY MS. BLUTH:

5 Q And so did you believe that the alarm to be in one of those three
6 sections, 2, 7 or 8?

7 A Yes.

8 Q Now during your years as a manager on the property, had you ever had
9 a fire before on property?

10 A Yes, we had.

11 Q And when timing wise when was that?

12 A It would have been in November -- I don't remember the exact year --
13 but it would have been in Building 13 which is against the mountain, kind of in that
14 general area, and it had been burning for quite some time before we were aware
15 that there was an issue.

16 Q Because of that experience, are you very cautious when it comes to
17 alarms, et cetera?

18 A Yes; I'm terrified of fires.

19 Q Okay. Now on -- when you received notice or, you know, the contact
20 from the tenants that an alarm was possibly going off, what precautions, what steps
21 did you take to see if there was in fact a serious issue going on?

22 A I called my maintenance guy and phone and asked him if he was a
23 general area or if he could check on alarms 'cause I wasn't sure if it was someone's
24 alarm clock or a fire alarm that was going off.

25 Q Now the issue with these townhomes you stated that they're very close

1 together; is that correct?

2 A Yes; they're pretty close.

3 Q So, is that a common issue where you might have like a tenant calling
4 you about another tenant and alarms going off?

5 A Yes.

6 Q And it's not necessarily like a fire alarm or a car alarm or a clock alarm;
7 is that something you guys deal with pretty commonly?

8 A Yes; it's usually someone's alarm clock that's going off.

9 Q But you don't know that when the tenant calls; correct?

10 A No, no.

11 Q Now on that same day, did a police officer by the name of Officer
12 Abbott come onto the premises?

13 A Yes; he was with the school police.

14 Q Okay. And when you say he was with the school police, was he in
15 common like police uniform --?

16 A Yes.

17 Q -- as well? And when you made contact with him, where were the two
18 of you located on the premises?

19 A In my office.

20 Q Did he introduce himself and explain to you why he was there?

21 A Yes.

22 Q And what was his reasoning for being on property?

23 A He said that he was looking for a minor child that could be on our
24 property.

25 Q And did he let you know where he believed the child to be?

1 A Yes, ma'am.

2 Q Okay. And then where did the conversation go from there after he
3 explained to you why he was present on property?

4 A With him?

5 Q Yes, with him.

6 A I -- gosh -- I know I was dealing with the alarm problem at that point.
7 He told me that he was looking for a minor that could possibly be, you know, in the
8 area or in 143. I don't remember.

9 Q Okay. Did you explain to him what was going on with the alarm?

10 A I mentioned to him, yes, and he was there -- I believe he was in there
11 when I was talking to Gilbert on the phone about the alarm.

12 THE COURT: Can I just ask a question? When you're talking about a fire
13 alarm, you know, sometimes in buildings you'll see like you can pull the handle
14 outside the building and you have a fire alarm or you have the smoke detectors
15 inside.

16 THE WITNESS: There's smoke detectors inside.

17 THE COURT: Is that what you're referencing when you talk about an alarm
18 going off?

19 THE WITNESS: Yes, I'm sorry, yes.

20 THE COURT: Okay. Thank you.

21 THE WITNESS: You're welcome.

22 MS. BLUTH: I'm so sorry. I forgot where I left off.

23 THE COURT: You were asking about what was transpiring as the officer
24 entered the office.

25 MS. BLUTH: Oh, okay. Thank you.

1 BY MS. BLUTH:

2 Q So, you stated that when you were speaking to Officer Abbott, you were
3 kind of already dealing with this fire issue?

4 A Yes.

5 Q And you said that you had got on the phone or got on the radio and
6 spoke to Gilbert?

7 A On the telephone.

8 Q Who is Gilbert?

9 A Gilbert is my maintenance supervisor.

10 Q Okay. And what were you communicating to Gilbert about?

11 A About the alarms and if he could go back and check and see where
12 they were, where we're communicating because he was going to go unit to unit
13 because we do have, you know, permission to enter and see if we figure out where
14 it was because it was disturbing people.

15 Q When you say you have permission to enter, what do you mean by
16 that?

17 A Okay. Each tenant we ask in the beginning do we have access to
18 come in at need be to do work and they'll give us a permission to enter at any time.

19 Q And did you have that understanding or agreement with Mr. Sprowson?

20 A Yes.

21 Q And so when you're speaking to Mr. Abbott, my question was did you
22 let him know that this alarm issue was going on?

23 A I'm sure I did, yes.

24 Q And at some point in time the decision was made to go into Apartment
25 143; correct?

1 A Yes.

2 Q Can you explain to the Court why that decision was made?

3 A We had been in units in Building H. We had gone through -- we'd been
4 in 145 which would be attached to that building. Forty-two was vacant -- I mean not
5 42, excuse me, 44 next door was vacant. So, Gilbert came and got the key for 143
6 because it's not mastered keyed, none of the units are mastered keyed, and went in.

7 Q Okay.

8 THE COURT: Hold on a second. Did you go in -- okay. So, 143 is in Building
9 7 and they are fourplexes; right?

10 THE WITNESS: Yes.

11 THE COURT: Okay. So, one of the fourplexes is vacant and then we have
12 the Defendant unit. So, there would have been two other units in the building.
13 Didn't you go into the other two units as well?

14 THE COURT: Yes; we went into 145 and it was not an alarm there. The
15 people in 146 I know were outside and they didn't -- I talked with them and they
16 didn't have an alarm.

17 THE COURT: Okay. So, which units did you go into in addition to unit 143?

18 THE WITNESS: We had been in 145, 144, and across into Building 2 we had
19 been into 150.

20 THE COURT: Okay.

21 THE WITNESS: And next it would be 149.

22 THE COURT: Okay. I just want to make sure I type this up correctly. So,
23 you went into 143, which is the Defendant's unit, 145 and 144. All those were
24 contained in Building 7?

25 THE WITNESS: No.

1 THE COURT: Okay. I'm confused.

2 THE WITNESS: Okay. In Building 2 -- okay. In Building 7 is 43,44,45 and
3 46.

4 THE COURT: Okay. So, you went into 143, you went into 144 in Building 7
5 and what else? What other units did you go into in Building 7?

6 THE WITNESS: Okay. One forty-six we talked to the tenant sitting outside
7 because they were the ones at that point they were living there. They had called
8 about they could hear an alarm going off.

9 THE COURT: One forty-six was the person that called?

10 THE WITNESS: One of the people.

11 THE COURT: Okay. So, 143, 144 you went into, 146 you talked to them, and
12 then what about the fourth unit?

13 THE WITNESS: Forty-five. Gilbert did go into 45.

14 THE COURT: And 145?

15 THE WITNESS: Uh-huh.

16 THE COURT: Thank you.

17 THE WITNESS: And then the building across the way in Building 2.

18 THE COURT: So, you went to every unit or talked to someone with respect to
19 Building 7?

20 THE WITNESS: Yes.

21 THE COURT: Okay. Thank you. That's what I needed, clarification.

22 BY MS. BLUTH:

23 Q And one thing I'd like to clarify. Do you remember the exact order that
24 you went into all those rooms or you just know that those are the townhouses that
25 you went into? Does my question make sense?

1 A It does make sense and for me to remember exactly which ones, I know
2 that we did go up -- talk to the people in 46 first because he had called, concerned
3 about it. The people in 42, he had also called but that's in Building A. But
4 cornerwise the garages would be in that same area.

5 Q So, I guess my question is, is you don't know exactly like at which point
6 in time you went to each one?

7 A No.

8 Q You just know that those occupants and buildings were checked?

9 A Correct; that's correct.

10 Q Okay. So, we back up one question previous I said the decision was
11 made to go into 143 and I asked what -- why did you guys or why did you and
12 Gilbert make that decision, and if you could just repeat your answer?

13 A Yes; because we had been in the other units. That was one that we
14 needed to go in to see if that's where the alarm was coming off to make sure that it
15 was secured.

16 Q Now did you personally go into 143 or was that done by Gilbert?

17 A That was done by Gilbert.

18 Q And when Gilbert does that, is he -- does he say on the phone with you
19 or stay on the radio with you so you're constantly communicating?

20 A We're on the telephone. We don't have radios but we're on the
21 telephone. He has a cell phone and I have office phone.

22 Q And you stated that he had to come and get the key from you because
23 you don't have master keys?

24 A Yes; right.

25 Q And so as Gilbert is walking through 143 --

1 A Mm-hmm.

2 Q -- explain to me like is he communicating to you the entire time?

3 A Yes; pretty much the whole time because we were communicating from
4 unit to unit, you know, as he goes through to see if we can locate it. And he
5 knocked on the door because that's normal procedure and then to go inside to see if
6 there's an alarm.

7 Q Okay.

8 A So, he did call and say, ooh, maybe someone's here because the TV is
9 on. I can't hear the alarm but maybe we need to still check and make sure
10 everything is okay. So, he went up the stairs. He was on the phone with me, he
11 said I'm going to go up the stairs. In the meantime, he hollering maintenance,
12 maintenance and up the stairs. Then I heard -- I only heard him say, oh, there's
13 somebody -- who are you, and then he radioed -- he did not radio back, he spoke
14 back to me and I could hear his -- I could not hear who he was speaking to, only his
15 conversation.

16 Q Okay.

17 A And he said I can't go any further. There is someone here. She says
18 that she's Melvin's niece and that she is -- he said -- he did ask her age. She said
19 I'm 18. He wasn't comfortable. He said I'm going to leave.

20 Q Okay. And so did he then exit the --

21 A Yes.

22 Q -- area? Now when you're on the phone with Gilbert, is Officer Abbott
23 in your presence?

24 A Yes.

25 Q Do you relay that information to Officer Abbott?

1 A I think he could hear me on the phone.

2 Q Okay. And so at any point in time did Officer Abbott ever ask you to go
3 into the apartment?

4 A No.

5 Q Even after -- let me back up one second. So, after you get off the
6 phone with Gilbert, does Officer Abbott then leave --

7 A Yes.

8 Q -- your office building?

9 A Yes.

10 Q Okay. And then are you aware that he had some type of contact with
11 the female in the apartment?

12 A Yes.

13 Q Okay. Even after all of that is taken care of, do you and Gilbert still
14 continue checking for fire alarms?

15 A Yes. Or whatever alarm is going off.

16 Q Okay. Were you or Gilbert ever able to find where the alarm was
17 coming from?

18 A Not exactly. We had a suspicion it was in 140 but we were not
19 absolutely sure.

20 MS. BLUTH: Okay. May I have Court's indulgence for a second, Your
21 Honor?

22 MS. BLUTH: I'll pass the witness. Thank you, Ms. Young.

23 THE COURT: Cross.

24 MR. MOMOT: May I do it from here, Your Honor?

25 THE COURT: Just wherever you're comfortable.

1 MR. MOMOT: Thank you, Your Honor.

2 **CROSS-EXAMINATION**

3 BY MR. MOMOT:

4 Q Ms. Harris, you indicate that you've been working at this place for the
5 last 12 years and the policy regarding checking residences, is there a policy
6 distributed to the tenants or do they sign off this policy that you have permission to
7 go in to their residence at any time?

8 A It's for both.

9 Q It's a verbal agreement?

10 A Yes.

11 Q Okay. But that's not per statute of the 24 hour rule; is it?

12 A No.

13 Q And you're familiar which statute I'm talking about?

14 A Yeah; that is in the lease, absolutely.

15 Q And that statute requires 24 hour notice prior to going in to any
16 apartment?

17 A Unless it's an emergency, yes.

18 Q Unless it's an emergency which would be a fire, if you have a flood, so
19 to speak?

20 A Correct.

21 Q Okay. And that's not the case today because there was no fire on
22 November 1st; was there?

23 A No, sir.

24 Q Now -- and you said that these alarms have been reported to your office
25 by various tenants over a period of time; did you keep a record of this?

1 A No.

2 Q You would just respond on a telephone report basis, telephone call by
3 telephone call basis?

4 A Yes.

5 Q Did you ever hear of a telephone call being made to you from
6 Apartment 143 --

7 A No, sir.

8 Q -- complaining about an alarm?

9 A No, sir.

10 Q And did you receive a call from 144?

11 A One forty-four was vacant.

12 Q Did you receive a call from 145?

13 A No.

14 Q So, you received a call from only 146?

15 A In that building.

16 Q In that building?

17 A Yes.

18 Q And when did you receive that call?

19 A I cannot give you a specific time.

20 Q Was it November 1st?

21 A Yes, but I don't know the time.

22 Q You don't know what time?

23 A No.

24 Q When you went over, the maintenance went over to Building 146?

25 A Yes.

1 Q And you don't know if that was in the morning. Was it before Abbot was
2 there or after?

3 A That he went into -- we didn't go into 146.

4 Q Well let me ask this. I'm sorry. Approximately what time did Officer
5 Abbott come to visit you on November 1st?

6 A The time of day?

7 Q Yes.

8 A I don't know. I don't recall the exact time.

9 Q Was it in the morning or afternoon?

10 A I am thinking it was before lunch but I'm not absolutely positive.

11 Q Okay. Fair enough. Let's just say before lunch.

12 A Okay.

13 Q Okay. Now the call from Building -- from Apartment 146, was that
14 before lunch or after lunch?

15 A It would have been before. I don't know an exact time.

16 Q Okay. So, we don't know. But sometime during the day that day it was
17 checked on by talking to the person who was outside the apartment?

18 A Correct.

19 Q And they verified to you there was no problem?

20 A Right.

21 Q And they didn't tell the maintenance guy or you, you were never notified
22 that the person in 146 said that the alarm in 143 was going off; did you?

23 A No; they did not say 143.

24 Q Okay. Now just for clarification, there's no central station in your office
25 that would reflect whether or not an alarm is going off in a particular apartment?

1 A No. You mean like a box or something.

2 Q Right. Like some type of a schematic of the apartment complex that
3 would show various alarms?

4 A No, sir.

5 Q Burglary alarms or fire alarms or smoke alarms; is that correct?

6 A That's correct.

7 Q You don't have that in your office?

8 A No, we do not.

9 Q And as a matter of fact when we were at your office last week, myself,
10 Ms. Zheng and my investigator, we had an opportunity to talk to you; correct?

11 A That's correct.

12 Q And there's no indication of any alarm repositories there; correct?

13 A That's correct.

14 Q But as a matter of fact you did not wish to talk to us about this hearing
15 that we're at here today; correct?

16 A That's correct.

17 Q And did you indicate that you did not talk to the prosecutor either?

18 A At that point, no, I had not.

19 Q You didn't tell that to us?

20 A No, I didn't tell you that.

21 Q You didn't talk to the prosecutor or didn't tell us that you did?

22 A On that day -- the day you came out?

23 Q Yes.

24 A No, I had -- we had been subpoenaed.

25 Q But you had not talked to anybody in the prosecutor's office?

1 A Not at that day, no.

2 Q Okay. And that's what you told us; correct?

3 A That's correct.

4 Q All right. Since that time, did you have an opportunity to talk to them?

5 A This morning.

6 Q Okay. Now and you told the prosecutor everything that you're telling us
7 here today?

8 A That's correct.

9 Q Now the smoke alarm situation at your apartment complex, what is the
10 company that installs these smoke alarms?

11 A I have no idea who installed them. They were installed during
12 construction time.

13 Q And do you maintain the smoke alarms?

14 A Yes, we do.

15 Q And is that on a schedule?

16 A We do it as needed, as a need basis at least once a year all the -- they
17 are dry wired as well as battery operated. So, sometimes they will just start chirping
18 or we know that, you know, it is time to be done if we're in to do other maintenance
19 in the unit.

20 Q Okay. Now as you note you have a schedule to run this alarm, smoke
21 alarm in 143 was last serviced?

22 A No; we know that it was serviced -- no, I can't tell you that. I don't
23 know. It should have been serviced prior to --

24 Q Mr. Sprowson moving in?

25 A Yes.

1 Q Okay. And when did he move into the apartment?

2 A I don't remember the exact date. I'm thinking it was in August but I
3 don't know the exact date.

4 Q Okay. Now you said you had a discussion with Officer Abbott about
5 this alarms going off where you did speak --

6 A I did not discuss with him. I think he was in my office. You've been in
7 my office so if you're on the phone with somebody.

8 Q So, you were on the phone with somebody discussing a smoke alarm
9 situation --

10 A Yes.

11 Q -- and Officer Abbott happened to be there?

12 A Yes.

13 Q When Officer Abbott was there, did he talk to you about -- well he did
14 talk to you about looking for a young girl; correct?

15 A Yes, he did.

16 Q Did he have a picture of her with him?

17 A No.

18 Q Did he give you any kind of paperwork regarding her?

19 A No.

20 Q Did he describe her to you?

21 A Not other than she was a minor. I don't recall him ever telling me a
22 description of what she looked like.

23 Q And he was alone?

24 A Yes, sir.

25 Q And were you alone in the office?

1 A Yes, sir.

2 Q And your office actually is like one of the apartments?

3 A Uh-huh, it's one of the townhomes, yes.

4 Q And it's like a upstairs downstairs?

5 A That's correct.

6 Q Three bedroom?

7 A Yes.

8 Q Okay. Now the configuration of Apartment 143 is -- who would be on
9 either side of 143?

10 A One forty-three would be on the end of the fourplex. So, there would
11 only be one common wall that would adjoin to the next unit which would be a two
12 bedroom.

13 Q Which would be what number?

14 A One forty-four.

15 Q One forty-four. And that was vacant?

16 A Yes.

17 Q Now is there -- are there people upstairs?

18 A No; because these are townhomes.

19 Q So, there's just one common wall between the two homes --

20 A Correct.

21 Q -- and they stand alone?

22 A I'm not sure what you mean.

23 Q Would that be a building in it of itself, 144,143?

24 A No; because it's a fourplex.

25 Q So, behind them would be two other units?

1 A Behind them would be the garages and then behind would another
2 building with a garage.

3 Q A different building?

4 A Uh-huh.

5 Q So, when you say a fourplex --

6 A Uh-huh.

7 Q -- we have 143 and 144 with a common wall?

8 A Uh-huh.

9 Q And there has to be two other units; correct?

10 A That's correct.

11 Q And that would be 145 and 146?

12 A That's correct.

13 Q Okay. Now do they have common walls with 143 and 144?

14 A One forty-four would have a common wall with 143 and 145. Sorry. I
15 had to get it in my head where I'm at. So, the two bedrooms have two commons
16 walls.

17 Q How about this.

18 A I should have brought a map. I could have shown you.

19 MR. MOMOT: May I approach the witness, Your Honor?

20 THE COURT: You may.

21 MR. MOMOT: I'm giving the witness a piece of lined paper and my pen to
22 please diagram the configuration of the fourplex.

23 THE WITNESS: I'm not a good artist but I'll do my best; how's that.

24 MR. MOMOT: Okay.

25 THE WITNESS: This would be a three bedroom and a two bedroom. And

1 these are not to scale, of course, and a two bedroom and a three bedroom. Back
2 here would be a garage.

3 MR. MOMOT: Put down G-A-R.

4 THE WITNESS: G-A-R.

5 MR. MOMOT: Garage.

6 BY MR. MOMOT:

7 Q Okay. Now above where you noted the three bedroom and two
8 bedroom, could you please delineate where 143, 144 --

9 A Sure.

10 Q -- where they probably -- okay. So, it goes from left to right, in line, 143,
11 44, 45 and 46; correct?

12 A Correct.

13 Q So, the only common wall 143 house is 144?

14 A Correct.

15 Q And could you put down north and south?

16 A I have to think where I'm at here to do that for you. This would be
17 facing south. If this was the front door this would face south; is that okay?

18 Q Okay.

19 A And this would be north. This would be west and this would -- I have to
20 think about that. This would be east and this would be west.

21 Q Are you sure about that?

22 A If that's the front of the building, yes, I am sure.

23 Q All right. This is north --

24 A Oh, sorry.

25 Q -- and this is south.

1 A Yes, this would be north, that would be south.

2 Q And where's east?

3 A Okay. Got you. Sorry about that.

4 THE COURT: Sign that and date that, please. Can you sign that drawing and
5 date it, please?

6 THE WITNESS: Yes, I will.

7 THE COURT: Mr. Momot, we're going to make it a defense exhibit.

8 MR. MOMOT: Yes, please, Your Honor, have it marked and moved for
9 admission.

10 THE COURT: It will be admitted.

11 MR. MOMOT: Thank you, Your Honor.

12 BY MR. MOMOT:

13 Q Now looking at your own exhibit, 146 is the person that you said --
14 called in regarding a smoke alarm; correct?

15 A Uh-huh; yes, sir.

16 Q So, that's two buildings away from 143; correct?

17 A Not two buildings, two units away.

18 Q Two units away; correct?

19 A Yes; 'cause you hear it from outside.

20 Q You could hear the alarm from outside?

21 A You could hear an alarm from outside?

22 Q All right. So, now what I understand is the maintenance man never said
23 to you that he could hear an alarm from outside of 143; could he?

24 A Not directly, no.

25 Q He didn't say it to you period I cannot -- I can hear an alarm or I cannot

1 hear an alarm; did he ever mention those words to you?

2 A That he could hear the alarm?

3 Q He could hear an alarm?

4 A He could hear the alarm.

5 Q Of 146?

6 A No; we did not know what unit it was coming from, sir.

7 Q He went over there to examine a unit for an alarm going off --

8 A Right.

9 Q -- pursuant to a phone call; correct?

10 A Yes.

11 Q And that was a phone call from the person who owned Unit 146,
12 correct, or leasing 146?

13 A Correct. But I'd gotten other phone calls as well on the property. But
14 we could not detect exactly where the alarm was coming from.

15 Q That morning?

16 A I do not remember the exact time of day.

17 Q You don't remember was it that day?

18 A It was on that date but I don't recall the time of day.

19 Q You don't know if it was in the morning or afternoon?

20 A No; I'm pretty sure it was before but I don't know for a fact.

21 Q But you don't know for sure?

22 A No, I don't remember.

23 Q The best that you do remember is 146 phone call?

24 A Yeah; I remember them calling 'cause they were outside. Also, the
25 people in 142 I remember them calling.

1 Q One forty-two. But that's not in this building area; correct?

2 A It is. It's right across from them; their garages meet.

3 Q Their garages meet where, ma'am?

4 A Okay. If we left a space here.

5 Q You can't write on that exhibit now.

6 A Oh, okay.

7 Q You have to testify from it.

8 A Okay. So, let's go this direction what building, the next building over

9 where 142 would be would be right here.

10 Q The next building. So, what building would that be?

11 A That would be Building 8.

12 Q Building 8 would have Unit 142?

13 A That's correct.

14 Q The other building --

15 A Their garages meet right here.

16 Q And their garages meet so two garages apart; correct?

17 A Not two garages apart.

18 Q Have a garage in the rear.

19 A This would be their garage and their garage would be here.

20 Q Right. A garage area and a garage area --

21 A Correct.

22 Q -- and then Unit 142; correct, to the east of 143?

23 A One forty-three was here, 142 would be right there.

24 Q In a separate building?

25 A In a separate building going to the same direction.

1 Q East, is that east?

2 A That would be east of this building.

3 Q East of Building 7, Unit 143 would be another Building, number 2.

4 Between Buildings 2 and 7 are two garages; correct?

5 A It you cold 42's garage and that garage, yes.

6 Q Okay.

7 A I wouldn't count it that way.

8 Q That's true; correct?

9 A Yeah.

10 THE COURT: Did you ever find out where the alarm was coming from,
11 ma'am?

12 THE WITNESS: We assumed that it probably was coming from Unit 140.

13 THE COURT: Did you go into Unit 140?

14 THE WITNESS: Talked to the tenants that were there. She said I think I've
15 left my alarm on. That would not have been that particular, you know, second of
16 that day but when we're asking about units.

17 BY MR. MOMOT:

18 Q But that's not November 1st?

19 A It was November 1st. It would be the same day.

20 Q It was the same day?

21 A But we didn't stop asking about alarms.

22 Q Where was Unit 140?

23 A It's in that -- there's Building 42 -- I'm sorry-- Unit 42.

24 Q Showing you Exhibit A again.

25 A Okay. No problem.

1 Q Don't draw on this.

2 A Okay. I wasn't going to. I was just going to point with your pen. I'll use
3 my finger.

4 MS. BLUTH: And unless Mr. Momot is objecting, I have no problem with her
5 adding to the exhibit to draw on it.

6 THE WITNESS: It would be easier if we could draw on it.

7 MR. MOMOT: Let's draw the other buildings.

8 THE WITNESS: Oh, I'm not going to draw all of 'em.

9 MR. MOMOT: Just draw Building 7.

10 BY MR. MOMOT:

11 Q This was on top -- this is Building 7?

12 A Right here.

13 Q Yes, ma'am.

14 A And this is Building 8.

15 Q Okay.

16 THE COURT: And where's Building 2?

17 THE WITNESS: Building 2 is right here.

18 MR. MOMOT: Can you draw it, please.

19 BY MR. MOMOT:

20 Q Now where are the garages?

21 A This would be the garage right here.

22 Q Put a G please.

23 A Okay. I'm sorry. And a garage here.

24 Q Okay.

25 A And a garage here, here, here, here. The garages for Building 2 would

1 be on this side, and this would be their patios.

2 Q Could you put that north, south, east and west. Okay. This would be
3 east; right?

4 A Yeah.

5 Q Okay. Now the last question was you said that there was another alarm
6 going off?

7 A No; I said -- I did not say another alarm.

8 Q What did you say?

9 A You'd asked me where the alarm, I think. I don't remember the exact
10 question you asked me but I didn't ever say that there were more than one alarm
11 going off.

12 Q Did any alarm go off in Building number 2?

13 A Not that we were aware of, no.

14 Q Okay. So, Building 2 no alarms going off?

15 A No.

16 Q Okay. Building number 8, did you say were any alarms were going off?

17 A I do not know it factually, only from what a tenant said. They had
18 probably left their alarm on in this unit.

19 Q In Building number -- in Unit number 140, Building number 8.

20 A Building 8, correct.

21 Q Okay. And do you know when that was going off, the alarm?

22 A No.

23 Q You don't even know if it was November 1st?

24 A I know it was on November 1st but I do not know a specific time.

25 Q Okay. Did you send your alarm guy over there?

1 A Yes.

2 Q Do you remember when?

3 A Not at the time of day, no.

4 Q Okay. So, we don't know the time of day?

5 A No.

6 Q And we just have -- we're back to 143, 4, 5, and 6, Building number 7?

7 A Yes.

8 MR. MOMOT: I'd like to mark as B, Your Honor, please.

9 THE COURT: Did you sign and date it? It will be admitted as Defense

10 Exhibit. Now I'm confused. I need some clarification, please.

11 Okay. So, the maintenance man ultimately went to Unit 140 and talked

12 to a woman there; correct, or an individual at Unit 140?

13 THE WITNESS: In 146.

14 THE COURT: In 146. I'm sorry. I guess I was confused. Okay. Which unit

15 was it where the individual said I think their clock alarm may be going off?

16 THE WITNESS: One forty.

17 THE COURT: Okay. And that's Building 8?

18 THE WITNESS: That's Building 8.

19 THE COURT: So, what happened after the person in 140 said their clock

20 alarm may be going off. Did they go in -- maybe if I ask this question in a different

21 way. After the individual in 140 said their clock alarm may be going off, were there

22 any other complaints of an alarm going off?

23 THE WITNESS: One forty-two, the people in 142 had also called that it was

24 going off. One forty I do recall was later in the day we were asking if anyone knew

25 about an alarm going off and she said, oh, I may have left my alarm clock on.

1 THE COURT: Okay. So, is it fair to say that you never determined exactly
2 where the alarm was going off?

3 THE WITNESS: No.

4 THE COURT: Do you assume it could have been 140 because they said they
5 had an alarm clock going off at some point of the day?

6 THE WITNESS: Yeah. That she probably didn't turn it off when she left.

7 THE COURT: Okay. So, it was 140 and 146 that called about the alarm?

8 THE WITNESS: No, 140 -- no --

9 THE COURT: All right. 142 and 146?

10 THE WITNESS: Yes; and there was another one and I don't remember where
11 the tenant was.

12 THE COURT: Okay. Thank you. Mr. Momot.

13 BY MR. MOMOT:

14 Q So, we have 142 in Building number 8 and 146 in Building 7; correct?

15 A Correct.

16 Q Now in order to check those buildings, the maintenance man would
17 have to come to your office secure a key to go into those units or does he have a
18 master key?

19 A No units there are master key. We have no units on that property that
20 are master keyed; they're individual. Keys for each building are kept in an envelope
21 in a secured drawer and he does have access to take those.

22 Q Those keys are located where?

23 A In my office.

24 Q In your office?

25 A Uh-huh.

1 Q Okay. Now -- and when you're in your office your line of sight to Unit
2 143 is there?

3 A Oh, no, no.

4 Q And to Unit 143 would be approximately how far away, 200 yards?

5 A Oh, God, I don't know.

6 Q A football field?

7 A Not a football field.

8 Q The closest unit of Building 7 to you is Unit 146; is that correct?

9 A That would be closest to me in Building 7.

10 Q Yes.

11 A Would be 46, yeah.

12 Q Would be 146. And 143 would be farthest away; correct?

13 A That's correct.

14 Q All right. Now. These alarms that you hear they're not heard by you in
15 your office; correct?

16 A No.

17 Q The only way that you can -- you're being made aware of this is through
18 calls from tenants; correct?

19 A Or if you were outside. We do have an alarm system that is on a lift
20 station so you can hear 'em because things will echo through there. I don't know
21 how to explain it. But if you're outside you would be probably hear it.

22 Q Okay. No one had told you that they were outside of Building 143 and
23 was hearing an alarm [indiscernible] within Building 143?

24 A No.

25 Q Unit 143; correct?

1 A No.

2 Q You did not receive a call on November 1st or October 31st that an alarm

3 was going off in Unit 143; did you?

4 A No, sir, no sir.

5 Q Okay. And the key to 143 had to be gotten from your office for the

6 maintenance man to go into 143; correct?

7 A For that building, yes.

8 Q And as a matter of fact the checking of the alarm system going off in

9 143 coincidentally was happening while Officer Abbott was present in your office; is

10 that correct?

11 A Yes.

12 Q Now the maintenance man, was he there for this conversation that you

13 were having with anyone regarding alarms? Was the maintenance man in your

14 office at that time?

15 A At what time?

16 Q At any time of your discussion regarding the alarm going off in 146?

17 A He was not in my office.

18 Q How about with this other unit, 140?

19 A I don't know that he was there or not.

20 Q Okay.

21 A I don't recall.

22 Q When Officer Abbott was there, your maintenance man was not in your

23 office?

24 A No.

25 Q Okay. He was in the field someplace?

1 A Yes; he was out working.

2 Q And then he came back and he got the key to 143?

3 A Yes; for Building 7. He got the key for the building.

4 Q Right. Did you hand him that key to 143?

5 A No; I handed him an envelope of keys for the Building 7.

6 Q Did you have to extract it from the envelope to give it to him?

7 A No, no, I had him get the keys.

8 Q He knew where to get them and he did it on his own?

9 A Yes; yes, he can.

10 Q All right. He can. On this particular day is that what he did?

11 A I'm pretty -- I'm pretty sure he did because it's just a habit of doing this

12 so I'm not positive.

13 Q This envelope with the keys to Building 7, where is that envelope kept

14 physically?

15 A They're kept in a drawer with all keys. Each building's keys are put in

16 an envelope and kept in an envelope in a secure drawer.

17 Q Is that in your desk drawer?

18 A No.

19 Q In a file cabinet drawer?

20 A No; it's in the kitchen.

21 Q It's in the kitchen drawer?

22 A Yes.

23 Q And that's right off from where your office is?

24 A Yeah, I can sit it.

25 Q You can see it?

1 A Yes.

2 Q Okay. Now and your office, your desk is like in a dining room area?

3 A Living room, dining room area.

4 Q Okay. So, when you enter the building to your office, you would go

5 through somewhat of a living room area to go to your desk area; correct?

6 A I come through the garage door.

7 Q About what a person like myself goes through?

8 A Oh, comes through the front door, yes.

9 Q I go through a front door.

10 A That would be the living room.

11 Q The living room and then I would find your desk area?

12 A That's correct.

13 Q And then as I'm approaching you directly, to the right would be the

14 kitchen area?

15 A No. If I am sitting here it would be to my left and to your right.

16 Q My right; correct? Okay. Do you know whether or not the maintenance

17 man had any conversation with Officer Abbott that morning?

18 A I don't know.

19 Q In your office?

20 A I don't recall in my office. I don't know that factual but I don't recall in

21 my office.

22 Q Okay. All right. You said that you follow the dictates of NRS 118A

23 [330]; that's the landlord's access to the dwelling unit; is that my understanding.

24 A Yes.

25 Q You've looked at that particular statute?

1 A Yes.

2 Q And in that statute would require 24 hour notice; correct?

3 A Yes.

4 Q Now -- but you also testified to that you have an oral agreement with
5 the tenants to be able to go in; correct?

6 A Yes.

7 Q Did you have an oral agreement with Mr. Sprowson to do that?

8 A Yes, sir.

9 Q Did you note that any place?

10 A It would have been noted on his folio and any work orders that were
11 ever written. I put it on there. PTE means permission to enter.

12 Q Okay. Did you bring that folio with you today?

13 A No; I brought nothing.

14 Q Okay. Now when you had your discussion with Officer Abbott you did
15 talk to him about another investigator being there --

16 A Yes, sir.

17 Q -- another investigator coming out to our apartment complex?

18 A A private investigator.

19 Q A private investigator came out. And did you talk to that private
20 investigator?

21 A I did very briefly.

22 Q Was it a man or a woman?

23 A A male.

24 Q Do you know the person's name?

25 A No, sir.

1 Q How long before Officer Abbott arrived on the November 1st did you talk
2 to that private investigator?

3 A Probably a couple weeks. I don't remember exactly.

4 Q Did that private investigator show you a picture?

5 A No.

6 Q Did that private investigator talk to other tenants?

7 A He was wanting to talk to children.

8 Q Did that annoy you?

9 A Yes.

10 Q Okay. Did you tell that to that investigator?

11 A Yes, I did.

12 Q Did the investigator leave the premises?

13 A Yes, he did.

14 MR. MOMOT: Can I get a Court's indulgence?

15 BY MR. MOMOT:

16 Q Did you relay that information to Officer Abbott?

17 A I don't know that I did that. I told -- I do recall telling him that there had
18 been a private investigator but I don't recall -- I don't recall telling him about him
19 speaking to children.

20 Q Did you ever give Officer Abbott permission to go enter into that
21 apartment?

22 A Oh, absolutely not.

23 Q Let me ask you this.

24 A Okay.

25 Q You had a discussion with Officer Abbott about this private previous

1 investigator that came out looking for a missing girl; correct?

2 A Correct.

3 Q And you told Officer Abbott -- he was asking about a girl by the name
4 Jaysenia Torres; correct?

5 A I don't recall a name.

6 Q Okay. Was it the same girl that Officer Abbott was looking for?

7 A I do not know that.

8 Q Okay. And then somehow the conversation got into smoke alarms;
9 correct?

10 A What conversation?

11 Q The conversation that you had with Officer Abbott, did you get into a
12 discussion with Abbott or talk to Abbott about alarms going off in the area?

13 A I don't recall ever talking to him about it.

14 MR. MOMOT: Okay. May I check with my client for a second, Your Honor?

15 THE COURT: You may.

16 [Colloquy between Mr. Momot and the Defendant]

17 MR. MOMOT: No further questions, Your Honor.

18 THE COURT: All right. Any redirect?

19 MS. BLUTH: Just two.

20 **REDIRECT EXAMINATION**

21 BY MS. BLUTH:

22 Q You just testified that you don't remember whether or not you had a
23 conversation with Officer Abbott about the fire alarms, but you previously testified
24 that you do remember him being in the room when you were speaking to Gilbert?

25 A That is correct. But I don't recall ever specifically talking to him directly

1 about it.

2 Q And several times you have during your testimony you've said I don't
3 recall. This happened in November of 2013; correct?

4 A That's correct.

5 Q So, is your memory -- are some of these questions a little hard to
6 pinpoint exactly when, where, what?

7 A Yes, very.

8 MR. MOMOT: I think that's leading the witness, Your Honor.

9 THE COURT: It is leading but that's okay.

10 BY MS. BLUTH:

11 Q I guess I'm saying have you done the best as you can to remember
12 certain things?

13 A Yes, I feel like I have.

14 MS. BLUTH: Okay. Thank you. Nothing further.

15 THE COURT: Anything else, Mr. Momot?

16 MR. MOMOT: No, Your Honor.

17 THE COURT: All right. Thank you, ma'am, for your time. You're free to go.

18 THE WITNESS: Thank you.

19 THE COURT: Next witness, please.

20 MS. BLUTH: Gilbert Lindsey.

21 THE COURT: When you get to the top of the stairs, please raise your right
22 hand to be sworn in.

23 **GILBERT LINDSEY**

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

25 THE COURT CLERK: Please be seated. Would you please state and spell

1 your first and last name for the record.

2 THE WITNESS: Gilbert Lindsey, G-I-L-B-E-R-T L-I-N-D-S-E-Y.

3 **DIRECT EXAMINATION**

4 BY MS. BLUTH:

5 Q Good afternoon, Mr. Lindsey. How are you employed?

6 A I'm a maintenance personnel of maintenance.

7 Q And where do you work at?

8 A Mesa Ridge Townhomes.

9 Q And the female that just left the courtroom as you were walking in, do
10 you know her?

11 A Yeah, she's my boss or manager.

12 Q And you work at the Mesa townhomes together?

13 A Yes.

14 Q How long have you been working at that location?

15 A I think it will be eight years.

16 Q And in your position if you could just briefly describe for the Court your
17 job duties as the maintenance man?

18 A Yeah. I'm the maintenance supervisor. I do the maintenance of
19 mechanical things that break down: washer machines, dryers. If I can't fix it I call a
20 repairman. I do the plumbing if there's a backage of toilet, things of that nature.

21 Q Okay. And Gilbert, you're a little bit of a soft speaker and you're a really
22 fast talker.

23 A Oh, sorry. I didn't notice.

24 Q No, that's okay. There's just going to be somebody typing out
25 everything that you say --

1 A Oh, sorry.

2 Q -- at some point.

3 A Oh, sorry.

4 Q You're doing fine, you're doing fine. If you could just speaker just a little
5 bit slower. All right. Thank you. I appreciate that.

6 A Okay.

7 Q So, I'd like to turn your attention now specifically to November 1st of
8 2013. Were you working at the Mesa Townhomes on that particular day?

9 A Yes, ma'am.

10 Q And were you dealing with an alarm issue on that day?

11 A Yes, ma'am.

12 Q And can you explain to the Court how it was that you came to know
13 about that issue going on?

14 A I was in the vicinity. I got a call from Kathy and she said there was an
15 alarm or some alarm coming from one of the buildings I was near. We had a fire
16 before so we're pretty adamant about any of alarm. So, I always had to investigate
17 it and make sure it's a false alarm. And I went back to talk to her. I got the keys to
18 the building that supposedly near that area and then that's when I started to proceed
19 looking for the source of the noise.

20 Q Okay. Is this a fairly common issue that you have to deal with?

21 A Yes, ma'am.

22 Q Okay. Does it always turn out that it's an actual fire or what are some
23 of the reason that these type of calls come in to your guys so regularly?

24 A Sometimes it has to do with the heat or the cold, and some of these
25 smoke detectors tend to fail and they'll start chirping or occasionally they'll just -- I'll

1 fix them or they'll go off and then I have to go in there and either turn them off and
2 wait to see if they go back in the can because it will be faulty -- if one's faulty they'll
3 make noise. So, I find the source of the main one I'll replace it and then usually I
4 ask the people to monitor it and see if it will go off again. But most of the time -- a lot
5 of time it's the weather --

6 Q Okay.

7 A -- causing it.

8 Q And so when this type of issue arises, do tenants usually come to you
9 or do they call the front office and the front office calls you?

10 A It goes both ways, but this time I got a call.

11 Q And you stated that that call came from Kathy?

12 A Yes.

13 Q Did she let you know the general area that the complaints were coming
14 in from in? What information did she give you?

15 A I can't remember everything. I just remember that she said that it was
16 in that vicinity, that it was either Building 7 and maybe possibly 8 in that general
17 area. I remember the building so I was nearby there.

18 Q I'm sorry. I interrupted you.

19 A No, that's it.

20 Q But you said in the general area of 7 and 8?

21 A Yes, ma'am.

22 Q And then once you received that -- so you were already you said in that
23 general area of 7 and 8 but then you had to go get the key?

24 A Yes, ma'am.

25 Q And where are the keys?

1 A They're in the office in envelopes.

2 Q Okay.

3 A And they're numbered.

4 Q And when you said you got the keys for that building, what specific
5 building are you talking about?

6 A Building 7.

7 Q Okay. And after you -- when you went to the office to get the keys, was
8 there anyone else in the office or was it just Kathy or do you remember?

9 A I don't remember. It's just been one of those hectic days and I just
10 grabbed the keys and go. I have other priorities so sometimes when you get
11 something like that, you just kind of play it by ear and go.

12 Q So, you got the keys to Building 7, and then tell me what was the next
13 thing that you did?

14 A Oh, I went to the first building and knocked on the door. I had
15 permission when I first him, he said -- I had permission to enter without having to
16 call her. So, I knocked on the door, I opened up the --

17 Q May I interrupt you for one second before we get any further because I
18 need to have some clarification. When you say you knocked on the building --

19 A The door.

20 Q -- the door, we're talking about Building 7; is that right?

21 A Yes, ma'am.

22 Q And which apartment or which townhome are you talking about?

23 A 143.

24 Q Okay. And you said you had previously spoken to him and had
25 permission to enter; who are you referring to?

1 A When he first moved in, you know, sometimes we have -- certain
2 people don't maintenance or anybody going in there without their permission and
3 some -- you know, if they know me go ahead and do what you want to do. So, I had
4 that permission.

5 Q Whom did you have permission from?

6 A From the tenant.

7 Q From the tenant of 143?

8 A Yes, ma'am.

9 Q Do you know his name?

10 A I forgot his first name -- I mean, I know his first name, but usually I just
11 -- how do you call it -- I don't know him that well. I just know him by appearance.
12 I don't get involved with --

13 Q Sure. Do you see him in here in the courtroom today?

14 A Yes.

15 Q Okay. Can you just tell me what he's wearing?

16 A He's wearing blue.

17 MS. BLUTH: Okay. Your Honor, may the record reflect identification of the
18 Defendant?

19 THE COURT: It will.

20 BY MS. BLUTH:

21 Q And so you had previously received permission to enter from Mr.
22 Sprowson, the individual to your right in the blue?

23 A Yes.

24 Q Okay. All right. Thank you. And I apologize for interrupting you. You
25 knocked on the door. Did you identify yourself while you're knocking?

1 A Yes.

2 Q And how did you do that?

3 A My procedure is opening the door and just yelling maintenance,
4 maintenance, and I'll say it more than one time. I go in. And as I opened the door,
5 the TV is on the right and it's on and there's a couch there and there's a blanket and
6 something that somebody ate. Anyway, I don't know who ate. So, I kept yelling
7 maintenance. I went to the first smoke detector and there's no audibles.

8 So, I went upstairs, I go up the stairs, and again I yell maintenance,
9 maintenance because, I don't know, he might home sleeping. So, as I went up this
10 woman came up to me and I stopped, it kind of startled me, and I said I'm hoping
11 you're over 16 because by definition I'm not allowed to -- anybody in there under
12 that age I've got to leave or the person goes to the garage while I continue my
13 inspection. So, I asked her -- she said -- are you over age 16? She goes, no, I'm
14 18. That's fine. I'm not going to argue with that. And then she said I'm his niece.
15 Well I'm not going to sit there and ask for ID. And we have people visiting all the
16 time so I never questioned it. So, I went and checked the other alarms and
17 everything was good. So, I went back down the stairs and said thank you very
18 much.

19 Q Let me stop you right there. While you were inside the townhome, are
20 you communicating with Kathy what you're seeing and what's going on in the room?

21 A Yeah. In the beginning, as I recall; I'm just trying to remember because
22 a lot of times I'm just doing more visual and trying to hear then to talk anybody. I
23 just want to get this thing done because I have others to do. So, I'm trying to
24 remember. I can't really verify that. I'm trying to think if I talked to her or not. I
25 really can't remember.

1 Q If you can't remember at any point in time it's fine just to tell me you
2 can't remember.

3 A No; I can't remember.

4 Q Okay. And so you said that you checked the remaining smoke alarms
5 upstairs and there was no alarm going off; is that correct?

6 A No, no.

7 Q And then you exited the townhome?

8 A Pardon me?

9 Q And then you stated that you exited the townhome?

10 A Yes, I did, I did. She remained upstairs. So, I had left and
11 [indiscernible] looking the door and when I turned around there was a police officer
12 sitting there -- not sitting standing there. I was just kind of startled.

13 Q Now was he standing there or was he approaching as you were
14 leaving?

15 A He was standing when I turned around to look at him, and he said is
16 somebody there? And I said, yeah, there's a woman there. So, he did knock on the
17 door. So, he came down and sat next to me and knocked on the door -- I knocked
18 on the door and she answered the door and he said something. I'm ready to leave.
19 I don't know really what's going on. It's not my business. I wanted to continue doing
20 what I had to do and that was the last thing I remembered now that I'm sitting here
21 going what am I doing.

22 Q And now you're sitting here, is that what you said?

23 A Yeah.

24 Q Now you knocked -- I apologize. So, when you exited there was a
25 police officer there? Is that a yes? You shook your head.

1 A I'm sorry, yes. I'm sorry, ma'am.

2 Q That's all right. I know it's hard to get used to. Now you said that after
3 the door was knocked on, the same female that you saw upstairs opened the door
4 voluntarily?

5 A Yeah -- yes.

6 Q Okay. So, you did not open the door 143 for the officer?

7 A No; she opened the door.

8 Q And he did not open the door?

9 A Negative -- no, he didn't open it.

10 Q She opened the door?

11 A Yeah, she opened the door.

12 Q Okay. And then you don't know what transpired after that because you
13 left?

14 A I left. Yeah, I left because that's not my business to whatever it might
15 be.

16 Q Now did you continue working on this alarm issue throughout the rest of
17 the morning or day or whatever?

18 A I recall trying to finish it up, yeah. I think I had another priority to do but
19 that that was the first priority was to make sure everything was up to par. And then I
20 just assuming it was an alarm that -- somebody's personal one went off. I don't
21 know. People get snoop when they hear things at our place.

22 Q But I guess my question to you is, is after you cleared 143, did you and
23 Kathy still continue to look for the source of the alarm?

24 A Yeah. I continued to go looking and it came out with a negative.

25 THE COURT: Hold on a second. After you went into 143, did you go into any

1 other units?

2 THE WITNESS: Yeah. I recall -- I've gone to so many units. I'm trying to
3 remember.

4 THE COURT: I'm sorry.

5 THE WITNESS: I'm sorry. Yeah, I went to a couple of 'em. I'm trying to
6 remember which ones I went through. I'm just trying to remember.

7 THE COURT: You actually went inside of the units?

8 THE WITNESS: Yeah, you have to go physically look. That's what I'm trying
9 to remember. Sometimes I get a flashback of trying remember which one I went
10 into.

11 THE COURT: Okay.

12 THE WITNESS: But, yeah, I'm just trying to remember.

13 BY MS. BLUTH:

14 Q But I guess what the -- I shouldn't say what the Court's asking -- but my
15 question is, is you, A, you continued to look for the source of the alarm?

16 A Yes.

17 Q And, B, you went into other apartments looking for the source of the
18 alarm?

19 A Yeah, I did.

20 Q Okay. At any point in time did that officer ever ask you to go into
21 Apartment 143?

22 A No; I'm sorry, no.

23 Q Okay. When you -- when was the first time you saw him that day on
24 November 1st?

25 A I'm trying to remember. I just remember him staying there.

1 Q After you exited?

2 A Yeah.

3 Q Okay.

4 A I'm trying to remember. Let me clarify something. I saw a lot of blue
5 cars going by. So, I, you know, trying to remember who is who and what days they
6 were because there were quite a few going in. And like I said before, I don't know
7 what they're for and it's out of respect.

8 Q I'm talking about that specific officer though.

9 A I don't remember seeing him. That was the first time I saw him.

10 Q When you exited?

11 A I'm trying to think, yeah, it might have been the first time I saw him but I
12 can't remember.

13 Q Okay. I guess -- I'm sorry because I recognize what you're saying that
14 the officers do come and go, but what I'm referencing is specifically on November
15 1st, that day, not whether you had seen him before that day --

16 A Yeah.

17 Q -- but on November 1st was the first time that you saw Officer Abbott
18 was when you left Apartment 143?

19 A Yeah, I think, yeah, I think that's what I saw. Yeah, I'm trying to think
20 because I remember seeing another one with freckles and glasses too. I can't
21 remember.

22 Q Okay. But that wasn't Officer Abbott?

23 A I can't say they all look the same but that's all I remember.

24 MS. BLUTH: Okay. All right. Okay. Thank you so much, Mr. Lindsey. I
25 pass the witness, Your Honor.

1 THE COURT: All right. Cross.

2 **CROSS-EXAMINATION**

3 BY MR. MOMOT:

4 Q Now, Mr. Gilbert, you said that you've been checking this various units
5 during this time period or smoke detectors going off; correct?

6 A Yes, sir.

7 Q Do you keep a record of those that you check, those units that you
8 check?

9 A Pardon me, sir.

10 Q Do you keep a record of which units you check?

11 A No, sir, I don't unless I do find a problem replacing something, yes, I will
12 make a job order.

13 Q Make what, a report?

14 A A job order, yeah, and say it's faulty.

15 Q Okay. But you check these units at the request of the manager?

16 A Yeah.

17 Q That would be Kathryn; right?

18 A Yes.

19 Q That was the blond lady that as here before; correct?

20 A Yes.

21 Q She tells you, Gilbert, go to Building 8 and check unit so and so and
22 you would go to Building 8 and go the unit she tells you to?

23 A Yes, sir.

24 Q And you would check it out; correct?

25 A Yes.

1 Q Right?

2 A Yes, sir.

3 Q Now you don't have a pass key to all these units; do you?

4 A No, sir.

5 Q You have to go back to the office, the manager's office to get to the

6 keys to go into units; correct?

7 A Yes, I know where they're at, yes sir.

8 Q All right. And on November 1st when you were requested to check out

9 these units in Building 7, did you go back to the office?

10 A Yes, I did.

11 Q And you got the keys; right?

12 A Yes, sir, yeah.

13 Q And did she give you the keys?

14 A No, I get them myself.

15 Q You get them yourself. Okay. Where do you get them from?

16 A The office.

17 Q Where in the office?

18 A In the drawer.

19 Q Okay. In the kitchen?

20 A Yeah, okay, kitchen.

21 Q Okay. Fine. And is that what you did this particular day, November 1st?

22 A Yeah; yes, sir.

23 Q You went to the drawer --

24 A Yeah, I get them.

25 Q -- and you went and you got the keys and then you left the office and

1 went to Building 7; right?

2 A Yes, sir -- sorry -- yes, sir.

3 Q She has to take this down.

4 A I'm sorry. I'm just not used to this.

5 Q Now when you went into the building to get the keys, did you see a
6 police officer?

7 A I'm trying to think. I remember seeing a blue car -- I don't remember,
8 sir, in other words, I don't remember. Okay. I don't remember.

9 Q You don't remember.

10 A I don't remember.

11 Q But you remember seeing Kathy; right?

12 A Yeah, I see her every day.

13 Q On November 1st, 2013 when you went to get the keys, did you
14 remember seeing Kathy?

15 A Yes, I saw Kathy.

16 Q Okay. You got the keys and was that her request that you went to
17 Building 7, Unit 143?

18 A At the beginning, sir. There's four buildings, there's four townhomes
19 there so I went to the first one.

20 Q But she asked you to check each of 'em?

21 A Yes, sir. That's the one -- all of 'em have 'em so I had to check 'em.

22 Q What did you say?

23 A I had to check 'em, sir.

24 Q You have to check each unit in Building 7 and check all?

25 A Yes, sir.

1 Q Did she say that she heard that all the alarms are going off in these
2 buildings?

3 A No; they said something had heard them and I had to go check if -- it
4 was in that vicinity. That's all.

5 Q Okay. It was in the vicinity.

6 A Yeah. We don't have red lights flashing outside the building, sir.

7 Q So, you have to hear the alarm going off; correct?

8 A Yes. Depending on how loud it is, sir. There's people -- you have
9 people go by and say they heard a noise. It sounds like chirping or it sounds like a
10 smoke alarm. I had to go by what Kathy says to me. So, I don't know. It's a guess.

11 Q She's telling you to go to Unit 143?

12 A She told me to go to Building 7 and check 'em all out.

13 Q She said to check 'em all out?

14 A Yes, sir.

15 Q So, you went over to Building 7 with all the keys to check 'em all out;
16 correct?

17 A Yes, sir.

18 Q And you started with Building -- with Unit 143?

19 A Yes, sir.

20 Q But the nearest one to you from the office is Unit 146; isn't it?

21 A Yeah; but I went around the other way because it's closer for me to go
22 the other way around to 150. I would have no purpose of going to [indiscernible].

23 Q You just automatically went to 143 first?

24 A Yeah. I worked there a long time so I know what I can do and shortcuts
25 to get there so I took that route instead.

1 Q Shortcut?

2 A Well it's kind of like a shortcut. It's easier than going to crisscross. I
3 went one way and that's easier for me to do.

4 Q All right. Now when you went over to 143, you didn't hear anything; did
5 you?

6 A Well I'm not going to hear anything unless I investigate. I mean, if a
7 tree falls down in a forest am I supposed to hear it? I went down there and I had to
8 go and investigate it.

9 Q When you went to the front door of Unit 143, did you hear anything?
10 Yes or no.

11 A No; how could I hear anything with the door closed, sir.

12 Q That's why I'm asking. You didn't hear nothing; did you?

13 A No; I have to go investigate.

14 Q Did you hear anything else from any other units?

15 A I start from the first one, sir. I don't put my ear against the door.

16 Q Let me finish the question, please. In that line of units, you got Unit
17 143, 144, 145, 146. Did you hear anything coming out of any of those units?

18 A No; because I started from 143. I didn't go down [indiscernible]. I just
19 went to the first one.

20 Q Yes or no. Did you hear anything from any of the four units?

21 A No, no.

22 Q You didn't hear anything from 143 and that's where you started;
23 correct?

24 A Yes, sir.

25 Q You went to Unit 143 and you saw somebody there; correct?

1 A Yes, sir.

2 Q Were you -- you knocked on the door first to 143; did you hear anybody

3 or anything?

4 A No, I didn't hear anything.

5 Q You entered 143 with the key; correct?

6 A Yes, sir.

7 Q When you opened the door, did you hear anything?

8 A No, sir, just the TV was on.

9 Q Okay. You didn't hear anything; correct?

10 A No.

11 Q Okay. Is the kitchen on the ground floor of that unit?

12 A I didn't hear anything, no.

13 Q Is the kitchen on the ground floor of that unit?

14 A Yeah.

15 Q Is there a smoke alarm there?

16 A It's on the hallway toward the garage.

17 Q On the ground floor?

18 A Yes, sir.

19 Q Did you hear anything?

20 A I had to go investigate it and look at it.

21 Q You went to the hallway on the ground --

22 A No; I didn't hear anything. I had to take a look at it first, sir.

23 Q -- floor; did you hear anything.

24 A I didn't hear anything. I had to go investigate first and wait until

25 something sounded off.

1 Q Okay. You didn't hear anything?

2 A No.

3 Q Now a young lady comes out; correct?

4 A Upstairs.

5 Q She comes out -- she shows herself; correct?

6 A Yes; upstairs.

7 Q And you say hello, that you're there to hear about a smoke alarm;

8 correct?

9 A I said about smoke alarm, yes.

10 Q She tells you there's no smoke alarm going off; correct?

11 A No; she didn't say anything to me. I asked her a question.

12 Q Did she tell you there's no smoke alarm going off?

13 A No, no, I don't remember her saying, no, she is nothing.

14 Q Did you say to her in so many words I just have to check because there

15 was a fire alarm going off?

16 A Yes, I did.

17 Q You said that to that person; right?

18 A I believe so. I can't remember. I just know I said something to her.

19 Q Well I'm refreshing your recollection. You said yes you did.

20 MS. BLUTH: Judge, I want to object to argumentative but also I'm really

21 worried about this record. I don't know which one is speaking over which one but if

22 we could just because otherwise we're not going to be able to get a clean record.

23 THE COURT: I think that's true. Maria's nodding her head that she's having

24 trouble keeping up. So, we do need to let each person complete their statements.

25 BY MR. MOMOT:

1 Q You said to the person I have to check because there's a fire alarm
2 going off?

3 A I might have said that. I can of remember. I know she's standing right
4 in front of me. That's all I can say. I remember her standing because the reason I
5 was there in the first place.

6 Q But that's what she said?

7 A Yes, I believe so.

8 Q And she said to you no there isn't; correct?

9 A I don't remember her saying that because I asked her first questions. I
10 don't remember saying anything to her except how old she was.

11 MR. MOMOT: May I have Court's indulgence?

12 THE COURT: I'm sorry.

13 MR. MOMOT: Can I get Court's indulgence, please?

14 THE COURT: No problem.

15 MR. MOMOT: I'm sorry, Your Honor.

16 THE COURT: That's okay.

17 BY MR. MOMOT:

18 Q Were you told by Kathryn to check apartments 144 and 143 on
19 November 1st?

20 A I check 'em all of the whole building.

21 Q You said you were there to check 'em all in that building?

22 A Yeah.

23 MR. MOMOT: Okay. I'm just looking for something, Your Honor.

24 THE COURT: Sir, are you just observing? I just want to make sure you're not
25 a witness.

1 UNKNOWN SPEAKER: I'm not a witness.

2 THE COURT: Okay.

3 BY MR. MOMOT:

4 Q Did you radio -- when you were inside that apartment 143, did you radio
5 back to the -- you have a radio with you; correct?

6 A Telephone.

7 Q Telephone to call back to the office?

8 A Yeah, if I need to, yes.

9 Q To Kathryn; correct?

10 A Yes.

11 Q Did you tell her that you found the young girl in the apartment?

12 A I don't remember, I don't remember. I'm trying to think.

13 Q Okay.

14 A I don't know. I can't remember.

15 Q On that particular morning, November 1st, did you check any other
16 buildings or units prior to going over to Building 7?

17 A All I can remember is Building 7.

18 Q You don't remember?

19 A No, I can't remember. I know -- seven comes in my mind, seven comes
20 in my mind more than anything else.

21 Q Okay. How about October 31st; do you recall?

22 A No; I just remember my daughter's birthday. I'm sorry. That's all I
23 know.

24 Q That's a no?

25 A I don't know.

1 Q Okay. Thank you. Your testimony as I understand it is that morning
2 you went to Building 7 first; correct?

3 A Yes, I did.

4 Q You didn't go to Building 8 first or number 2 first?

5 A No.

6 Q Okay. When you were leaving that building, that door when you shut it
7 behind you coming out of Building -- Unit 143, the police were there?

8 A When I closed the door --

9 Q You closed the door the cop was there?

10 A Yeah. He was standing on the sidewalk and it surprised me.

11 Q Okay. Let me get this straight. You went to Building 143 first. Did you
12 ever go to building -- unit 146 that morning?

13 A Yeah; it's the same building.

14 Q I know. Did you go over to 146?

15 A It's the same building, yeah, as I recall.

16 Q Did you go inside 146?

17 A Yeah. They got barking dogs, yes; yes sir, I did.

18 Q Did you talk to anybody outside?

19 A I don't recall anybody outside.

20 Q You went into 146?

21 A Yes; I know them.

22 Q Did you use your key to go in?

23 A No; they were home.

24 Q You knocked on the door and they let you in?

25 A Yes, yes.

1 Q And you checked it out and there was no alarm going off?

2 A No.

3 Q Did you go into 145?

4 A It was all the same, yes.

5 Q One forty-five you checked?

6 A I trying to remember, yeah, I'm trying remember, yeah. Yes, sir.

7 Q Do you remember or not?

8 A I don't remember. As I said, my mind was all highlated [sic]

9 to seven, I mean, 143.

10 Q Just 143?

11 A That's the first incident that happened so it's kind of different.

12 Q Okay. When you go to these apartments or these units, after you go to

13 a particular unit, do you radio back Kathryn and tell her what you did?

14 A No.

15 Q You just go and start checking 'em yourself?

16 A It depends on what -- what are you trying to tell me. If something's

17 broken and I got to check it?

18 Q No, no, no, no, no, no. When you go around to check these units to

19 see whether or not any alarms are going off, you go to Building 8, whatever the unit

20 is, you look inside, you call Kathryn. I just checked unit so and so of Building 8.

21 Everything's clear. I'm going to go over to Building 2 now. Do you --

22 A Yeah, I'll do that, yeah. If something, yeah, if there's something wrong,

23 yeah then I'll repair it. That's about it, yeah. I'll go back in the office and tell her or

24 I'll write it up.

25 Q But do you tell her on an ongoing basis I just left Unit 146 and

1 everything is fine?

2 A Yes.

3 Q I'm going over to 145 now?

4 A Yeah -- yes, sir.

5 Q You report back and forth, you communicate to her; right?

6 A Yes, sir. Or I go down -- back and talk to her personally depending on
7 what the situation is.

8 Q Okay. But if it's clear you want her to know that everything is clear;
9 right?

10 A Yes.

11 Q Okay. Did you tell Kathryn that there was no alarm going off in 143?

12 A Say it again.

13 Q Did you tell Kathryn that there was no alarm going off in 143?

14 A Yeah, yes; oh, yeah, at the time that happened, yes.

15 MR. MOMOT: No further questions.

16 THE COURT: All right. Redirect.

17 MS. BLUTH: Just one.

18 **REDIRECT EXAMINATION**

19 BY MS. BLUTH:

20 Q Mr. Lindsey, I just want to be clear. After you left 143, did you check
21 the rest of the townhomes in Building 7 --

22 A Yes.

23 Q -- to make sure there was no alarm going off?

24 A Yeah.

25 Q Yes?

1 A Yes, ma'am, yes.

2 MS. BLUTH: That's it. Thank you so much.

3 THE COURT: Anything else? Anything else from Mr. Momot?

4 MR. MOMOT: No, Your Honor.

5 THE COURT: Sir, you're free to go. Thank you very much. And we have
6 one more witness.

7 MS. BLUTH: Yes. The last witness is Officer Abbott, Your Honor.

8 THE COURT: Can I just take a five minute break to use the facilities, please.

9 [Recess taken at 12:44 p.m.]

10 [Proceedings resumed at 12:50 p.m.]

11 THE COURT: Let's call the next witness, please.

12 MS. BLUTH: The State calls Officer Abbott.

13 **GARY ABBOTT**

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

15 THE COURT CLERK: Please be seated. Would you please state and spell
16 your first and last name for the record.

17 THE WITNESS: Gary Abbott, G-A-R-Y A-B-B-O-T-T.

18 THE COURT: When you're ready.

19 MS. BLUTH: Thank you.

20 **DIRECT EXAMINATION**

21 BY MS. BLUTH:

22 Q Good afternoon, sir. How are you employed?

23 A I'm a detective with the Clark County School District Police Department.

24 Q How long have you been employed with the Clark County School
25 District?

1 A Eighteen years and three months.

2 Q I'd like to turn your attention specifically to the timeframe of August
3 through November of 2013. During that time period, were you involved in the
4 investigation of a missing person, Jaysenia Torres?

5 A Yes.

6 Q And because the scope of this hearing is so limited, I'm kind of going to
7 narrow you to a very specific part of that investigation. Through your investigation,
8 did an individual by the name of Melvin Sprowson become a person of interest?

9 A Yes, he did.

10 Q And did you obtain his address?

11 A Yes, I did.

12 Q Okay. And after doing those steps, I'm going to turn your attention to
13 specifically on November 1st of 2013, did you go to that address where you believed
14 him to be residing?

15 A Yes, I did.

16 Q And what was your purpose for doing that that day?

17 A I wanted to see who lived there, if he had any other roommates, if they
18 knew -- if they've ever seen this missing girl.

19 Q And so on that day you did in fact go the address; correct?

20 A I did.

21 Q And we've heard previous testimony where the Mesa Townhomes are
22 located, but that is where you went; is that right?

23 A Correct.

24 Q And when you went onto the property on November 1st of 2013, who did
25 you initially make contact with?

1 A I made contact with the apartment manager. Her name was --
2 Q I apologize.
3 A Her name was Kathryn. I don't really remember her last name.
4 Q How you seen her here earlier this morning?
5 A Yes, I did.
6 Q Okay. And when you made contact with Kathy, did you let her know
7 why you were on the property?
8 A Yes, I did.
9 Q And then what was it that you explained to her?
10 A I told her that I was investigating a missing person and that a person of
11 interest of was one of her tenants and I had asked her if there was more than one
12 person on the lease and she basically said no, it's just him.
13 Q Okay. Did you ask whether or not she had ever seen anyone else
14 coming and going from the apartment?
15 A I did. I asked if there was other people coming and going, if she's
16 anything else.
17 Q Now when you met with her, where exactly on the property -- I
18 apologize if you already testified to that -- where exactly on the property were you?
19 A I was in her -- in the manager's office.
20 Q Was there anyone else present in the office when you guys were
21 having this conversation?
22 A I don't believe so.
23 Q At any point during your conversation with Kathy in the office, did you
24 become aware that there was some type of alarm issue going on on the property?
25 A She mentioned to me that there might have been an alarm in Unit 143

1 or 144. The two apartments are back to back, 143 being on the end and then the
2 next one to it was 144.

3 Q Okay. And in your presence was she communicating with another
4 individual over the phone about those apartments?

5 A She was -- they use a radio, they had like a walkie-talkie.

6 Q Okay.

7 A So, she had sent the maintenance guy to go down and check.

8 Q Okay. At any point in that conversation with Kathy, did you ever ask
9 her to check Apartment 143 or 144?

10 A No, I did not.

11 Q Okay. Did you ever ask her for access into Apartment 143 or 144?

12 A No, I did not.

13 Q Okay. So, she explained to you that there was some type of alarm
14 issue?

15 A Yes.

16 Q And then you heard her say something about checking 143 and 144?

17 A Yes.

18 Q And what was the next thing that happened after that?

19 A Shortly after that he radioed back that there was a young lady in the
20 Apartment 143.

21 Q Okay. And so could you hear their communications?

22 A Yes.

23 Q Okay. And when he -- when you hear him radio that to Kathy, what do
24 you do?

25 A I just told her that I'm going to go down there. So, I went down to the

1 apartment at that time.

2 Q Did you make contact with the maintenance man?

3 A Yes.

4 Q And was that the first time you had seen him on that day?

5 A I believe so.

6 Q And where was it that you made contact with him at?

7 A Right at the front door.

8 Q When you made contact with him, has he completely exited the door?

9 A Yes, he did.

10 Q Okay. And do you identify yourself or what goes on from that point?

11 A Well I was in a uniform. He's standing outside the door. So, I -- we
12 knocked on the door and she opened the door and it was at that time that I
13 recognized who she was because I did have a photograph of her. So, I knew who
14 she was immediately when she opened the door.

15 Q Okay. Now did she open the door at her own free will?

16 A Yes.

17 Q And when she opened the door and you identify her, what's the next
18 thing that happens?

19 A She starts yelling; she's upset. She's saying you can't come in, you
20 don't have a warrant, you have no business being here. And I told her basically that
21 I know that you're a missing person because I know who you are from your
22 photograph.

23 Q And you had been working on the investigation of finding her for some
24 time at that point; is that right?

25 A Yes.

1 Q And so, you know, after you guys have that communication, what
2 happens then? Do you flee the premises? Explain to me what happens after that.

3 A Well as soon as I see her in there, I contact our dispatch to send
4 another unit, and I've asked for a female unit. I asked for them to contact local and I
5 wound up contacting my sergeant who is over investigations, Mitch Maciszak and he
6 came out with Detective Schell.

7 Q Now after backup units came, did other officers speak to the minor
8 Jaysenia?

9 A The only one there was Sergeant Schell, Officer Schell of Detective
10 Schell and Sergeant Maciszak at the time.

11 Q And then was the child transported to what's referred to as Child
12 Haven?

13 A Yes. I wound up transporting her to Child Haven to speak with a child
14 advocate and did an interview at that time.

15 Q Now were there any pieces of property that Jaysenia identified as hers
16 that she asked to take with her?

17 A I believe it was a lap top and a cell phone. Sergeant Maciszak and
18 Schell took those into custody.

19 Q While you were there on November 1st, there was no search warrant
20 conducted on the premises at all; correct?

21 A No, there was not.

22 Q And nothing of Mr. Sprowson's was taken on November 1st?

23 A That's correct.

24 THE COURT: I need for you to step back. I need to know what happened
25 when he knocked on the door. You knocked on the door, a woman came to the

1 door, she started yelling, and then what transpired after that before you called for
2 backup?

3 THE WITNESS: Well I entered the apartment at that time and told her I said,
4 look, I know who you are.

5 THE COURT: You entered the apartment?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: All right.

8 THE WITNESS: Do you want me to continue?

9 THE COURT: I do.

10 THE WITNESS: I entered the apartment. I said, look, I know who you are.
11 You've been missing for two months and I'm aware of that and I'm contacting my
12 dispatch to send another officer. A female officer came -- I don't know how long it
13 was because she was dressed in only a tee shirt and panties. When the female
14 officer came, she wound up taking her upstairs to get some other clothes on. By
15 that time. Sergeant Maciszak arrived, Detective Schell arrived.

16 THE COURT: Okay. So, stepped back still. So, you entered the apartment.
17 Did the woman tell you -- give you permission to enter the apartment or did you just
18 step through the opening of the door? What did you do?

19 THE WITNESS: When she opened the door, I did step through the opening
20 of the door. I was not invited in. She was just screaming at me that I can't come in;
21 I don't have a warrant. You have no business being here. This is my home. And
22 she's just kind of -- what's the word I'm looking for -- she's frantic, she's like -- she
23 doesn't want to leave at that point.

24 THE COURT: Okay. So, when you stepped inside the apartment, what
25 happened next?

1 THE WITNESS: She just stood there by the couch, like I said, yelling at me
2 and I'm pretty much -- I tried to calm her down. I said, look, we're going to be
3 contacting your mom eventually. Eventually she calmed until the other officer
4 arrived but, I mean, I didn't go any further than just inside the door.

5 THE COURT: Okay. Did the door close behind you in the apartment?

6 THE WITNESS: No.

7 THE COURT: The door was open?

8 THE WITNESS: Yes.

9 THE COURT: Did you sit down while you were waiting for the other units?

10 THE WITNESS: No.

11 THE COURT: How long until the other units arrived?

12 THE WITNESS: I can't remember exactly. I mean, it could have been as
13 much as ten to 15 minutes. I don't know. I mean, we'd have to go back and check
14 dispatch for how long it took for that unit to arrive.

15 THE COURT: Okay. While you were standing there, you said you stood only
16 by the door. You don't go around the apartment at all?

17 THE WITNESS: No, ma'am.

18 THE COURT: Do you have any conversations with this woman?

19 THE WITNESS: Not really, just trying to keep her calm while I'm waiting for
20 somebody else to show up.

21 THE COURT: Okay. Were you there when Officer Schell and Sergeant
22 Maciszak --

23 THE WITNESS: Mac-is-zak.

24 THE COURT: Maciszak arrived?

25 THE WITNESS: Yes.

1 THE COURT: And were you there the entire time that they were at the
2 apartment where the victim was located?

3 THE WITNESS: No. Eventually I stepped outside. They did conduct an
4 interview with her.

5 THE COURT: That was my next question. So, tell me what happened when
6 Officer Schell and Maciszak arrived?

7 THE WITNESS: I just remember because it's been a couple years now, but
8 they came in. They did an interview with her. I was outside. By this time, my
9 sergeant arrived, my patrol sergeant arrived by then, and I was talking to him until
10 they finished their interview, and then by the time they finished their interview that's
11 when -- from there I took her to Child Haven. After the interview at Child Haven, I
12 brought her back to her residence. I mean, we did contact -- like I said I had asked
13 dispatch to contact local from the very beginning. After I found her there on scene
14 because it was -- it was their -- it was Henderson Police Department's investigation.
15 It was their case. They took the missing person's report.

16 THE COURT: Thank you. Counsel can continue.

17 MS. BLUTH: Thank you.

18 BY MS. BLUTH:

19 Q And at this point in time that we're talking about I know you identified
20 her as a woman, Jaysenia Torres is a 15 year old minor?

21 A As a child, yes.

22 Q And she was --

23 A Sixteen year old child.

24 Q Sixteen. She was wearing a tee shirt and underwear; correct?

25 A Yes.

1 Q And then you stated a female officer arrived?

2 A Yes.

3 Q And then did you say escorted upstairs and allowed her to change?

4 A Yes.

5 Q And then came back downstairs?

6 A Yes.

7 MS. BLUTH: I have nothing further, Judge.

8 THE COURT: Mr. Momot.

9 **CROSS-EXAMINATION**

10 BY MR. MOMOT:

11 Q Detective Abbott, when you on November 1st you went over to the
12 manager's office --

13 A Yes, sir.

14 Q -- and you met with Kathryn; correct?

15 A Yes.

16 Q And you said you didn't remember if anyone else was in that office at
17 that time; correct?

18 A I do not.

19 Q You had a picture of Jaysenia Torres with you?

20 A At that time, I briefly -- I had like a little card that her mom had given
21 me.

22 Q You had that with you?

23 A Yes.

24 Q Did you show it to Kathryn?

25 A I don't remember if I did or not.

1 Q Okay. And you had a discussion with Kathryn; correct?

2 A Yes.

3 Q And she told you about the other investigator coming out and looking

4 around, a civilian investigator?

5 A She did. She said that it was a private investigator that came by.

6 Q Okay. But she didn't remember how long ago that was; correct?

7 A Approximately a month ago, I believe she told me.

8 Q Oh, so a month ago. And then through your conversation with Kathryn,

9 she mentioned to you about smoke alarms going off; correct?

10 A Yes.

11 Q And namely that they --- there's some smoke alarms going off and then

12 she particularized it to Units 143 and 144?

13 A That's correct.

14 Q She then called her maintenance guy; correct?

15 A Yes.

16 Q Now the maintenance guy was out in the field?

17 A I believe he was.

18 Q Did he ever come back into the office to your recollection?

19 A Not at that time because the next time -- when I saw him was down in

20 front of the apartment.

21 Q Okay. That's what I thought. So, you didn't see him come back to the

22 office while you were there with Kathryn?

23 A No; because he used -- they had, like I said, a radio or a walkie talkie.

24 Q Okay. So, he was down there and he was going to go Building number

25 7; correct?

1 A I don't remember the building number. I just know that the apartment
2 number was 143 and 143.

3 Q Okay. And then ultimately he radios back and he was at 143; correct?

4 A Yes.

5 Q When she told you about the smoke alarm situation, she told you in
6 essence there may or may not be a smoke alarm going off, that she was going to
7 check Units 143 and 144; right?

8 A I believe that's correct.

9 Q Okay. And the next time that you hear anything is on the radio from the
10 maintenance guy; right?

11 A Yes.

12 Q When she told the maintenance guy to go to Units 144 and 143 she
13 said to the maintenance guy see if there is a smoke alarm going off; correct?

14 A Correct.

15 Q And then there's a call back when the maintenance guy is at 143 and
16 says over his radio there's a 18 year old girl there; right?

17 A He says there's a young lady there and she's claiming that she's 18.

18 Q Okay. But he radioed back, that maintenance guy radioed back and
19 said he found the young girl in the apartment; correct?

20 A Yes.

21 Q You say -- you went over there and the maintenance guy is now
22 standing outside of Unit 143; correct?

23 A Yes; the front door.

24 Q The door to the unit is shut; correct?

25 A Yes.

1 Q You talked to the maintenance guy?

2 A Briefly.

3 Q And there was a discussion about what he found inside the unit; right?

4 A Right.

5 Q And then you went up to the door and to be told that there is this girl

6 inside the apartment; right?

7 A Yes.

8 Q You knocked on the door, she opens the door?

9 A Yes.

10 Q You walked inside the apartment; right?

11 A Yes.

12 Q And she starts yelling at you, you need a search warrant, et cetera, et

13 cetera, et cetera; correct?

14 A Correct.

15 Q You stayed there and as you testified, you engage in a conversation to

16 keep her calm, as you said?

17 A Yes.

18 Q You then call back to your office; who did you talk to?

19 A I talked to one of our dispatchers. I used my radio and we talked to a

20 dispatcher who dispatched me to another officer.

21 Q And you talked to dispatch and did you talk to your superior or

22 somebody?

23 A Yes. After talking to dispatch and I asked them if they wanted to

24 contact local if they wanted to come out and --

25 Q And you spoke -- I'm sorry -- pardon me.

1 A Sure.

2 Q I apologize for interrupting you. When you got back to dispatch to see if
3 local wanted to come, is that to see if Henderson Police Department wants to come
4 out?

5 A Yes, sir, because I knew it was their case.

6 Q And the response that you got? They don't want to come out.

7 A They don't want to come out.

8 Q All right. So, then did you talk to somebody in your office?

9 A I talked to Sergeant Maciszak at that time.

10 Q And he said we're going to come out to see you?

11 A Yes.

12 Q So, then Mitchell Maciszak comes out?

13 A Yes.

14 Q Jeffrey Schell comes out?

15 A Yes.

16 Q David Platt comes out?

17 A No. I don't believe he came to the scene.

18 Q How about Caudwell?

19 A No.

20 Q Johnson?

21 A Excuse me?

22 Q Johnson.

23 A No; I'm not even sure who that is.

24 Q Scott Johnson.

25 A Oh, Scott Johnson. I can't remember if he showed up or not. It's

1 possible though.

2 Q Huh?

3 A He was a Green Valley officer. He may have come out but I don't
4 believe he stayed.

5 Q How about Michael Marshal?

6 A Yes, he did.

7 Q Okay. There came a time when you said you went outside?

8 A Yes.

9 Q But Sergeant Maciszak he's inside talking to Ms. Torres; correct?

10 A With Detective Schell.

11 Q With Detective Schell?

12 A Yeah. Both of them were inside talking to her.

13 Q And they looked around. I mean, when you go into an apartment,
14 you're going to do a sweep; aren't you?

15 A I never went more than right inside the door.

16 Q But these other cops they're going to do a sweep, that's your policy;
17 right?

18 MS. BLUTH: Objection; speculation to what other cops do or would do.

19 BY MR. MOMOT:

20 Q What's your policy?

21 A When they arrived, I left the apartment. What they did I couldn't tell
22 you?

23 Q But those two officers were in there?

24 A Yes.

25 Q Were there other officers in there besides those two fellows?

1 A Just Officer Miller came before them because she's the female officer.
2 She did take 'em -- she did take her upstairs while she got some pants on.

3 Q And what did you do when she up -- when somebody was upstairs?

4 A I was down just inside the door.

5 Q Just inside the door. So, Officer Miller is upstairs, you're inside the
6 door?

7 A Yes.

8 Q And then Maciszak comes along with Schell?

9 A Schell; yes.

10 Q And then those fellows went to the apartment; correct?

11 A Yes.

12 Q And they sit down and have a conversation with her?

13 A Yes.

14 Q Does it sound correct that like three officers, police officers were in the
15 apartment townhouse and then two guys dressed normal came in asking questions?

16 A Yes.

17 Q Does that sound right?

18 A Yes.

19 Q There could be a total of five people inside that townhouse?

20 A Well I'd say four if you count Jaysenia. Only three officers that I know
21 of.

22 Q Three police officers. How about Maciszak? Is he in civilian clothes?

23 A Yes.

24 Q And who else, Schell?

25 A Yes. They're in civilian.

1 Q They're both in civilian clothes?

2 A Yes.

3 Q So, police officers and two other officers in civilian clothes?

4 A No; just the two officers in civilian clothes, myself and Officer Miller.

5 We're the only two in uniform, but once they arrive I stepped outside.

6 Q Okay. You stepped outside?

7 A Yes.

8 Q Miller's outside with the other two plain clothes?

9 A While they were doing the interview, I don't remember her being inside.

10 Q Okay. Okey doke.

11 MR. MOMOT: I have no further questions.

12 THE COURT: I do. Officer.

13 MR. MOMOT: Okay.

14 THE COURT: Just let me ask a question and then I'll turn it back over to you.

15 Detective, do you have a procedure, is there a procedure when you're

16 looking for a missing person as far as how you handle it?

17 THE WITNESS: We normally do not taking missing person report. If there's
18 a missing person we always hand it over to local. So, if they take the initial report --
19 and in this case because the person that was missing, I'm very proactive. So, this
20 person turns up missing, she's in my jurisdiction or area of patrol; I run into the mom
21 once a week, a couple times a week because she's at two of my school. She has
22 children at two of my schools and I wind up asking her about her daughter because I
23 overhear her talking with the counsel and that's kind of how I got involved. She
24 saying well nobody's doing anything; they can't find her. I go well you have to
25 understand. Kids run away all the time. They only have so many people dedicated.

1 I said give me some names of friends and I'll start looking into it.

2 Now if you're referring to like when we went -- like when I went to the
3 residence as far as a procedure, there may or may not be one in our manual. I don't
4 recall exactly what we should do step by step, but I do know being an experienced
5 officer that the first thing I needed to do was get another officer there.

6 THE COURT: Okay. Thank you. Mr. Momot.

7 MR. MOMOT: I just wanted to check with Mr. Sprowson for a second, Your
8 Honor.

9 THE COURT: Of course.

10 [Pause in proceedings]

11 MR. MOMOT: Court's indulgence, Your Honor.

12 THE COURT: Of course.

13 BY MR. MOMOT:

14 Q Officer -- Detective Abbott, do you recall when you were in the office
15 with Kathryn, the manager, was the maintenance man there at any time?

16 A I don't recall. I don't believe he was.

17 Q You don't?

18 A I don't recall.

19 Q You remember testifying at a preliminary hearing in this matter?

20 A Yes.

21 Q And page 228, line 11: Question: Were you there when she placed the
22 call? Answer: Yeah, I was. He was actually in the room and then he went -- the
23 maintenance person was there. Do you know that person's name? Answer: I do
24 not. What did he look at? Was he young? Answer: I would say, you know, 50s
25 probably. I'm guessing. White male adult. Maybe Hispanic male adult. Does that

1 refresh your recollection?

2 A I recall testifying to that. I still don't recall if he was actually in the room.

3 Q Okay. When you went over to do your knock and talk and the
4 maintenance man was there; correct?

5 A Yes.

6 Q Did both of you enter inside the unit?

7 A No, sir.

8 Q Just you?

9 A Yes.

10 Q Did you make a statement when you were calling it to dispatch or to
11 anyone else when you actually entered into the unit that we found her?

12 A I'm sure I told somebody. Whether it was dispatcher or Sergeant
13 Maciszak on the phone, one of the two, yes.

14 MR. MOMOT: Okay. Thank you. Nothing further.

15 THE COURT: Ms. Bluth.

16 MS. BLUTH: I just have two questions, please.

17 **REDIRECT EXAMINATION**

18 BY MS. BLUTH:

19 Q Detective Abbott, I'd like to go back to when Mr. Momot was asking you
20 some questions when he was reading you your prior testimony?

21 A Yes.

22 Q The questioning actually continues after you say maybe a Hispanic
23 male adult and it says: Question: Okay. And then that person was there while you
24 were making these questions to the manager; right? And your answer was: I don't
25 know at what time he came into the building, no, sir. Question: I mean, when you're

1 talking to the manager about this is that person present? Answer: I don't
2 remember. Question: Okay. Well when the manager says about the smoke alarm
3 system was that -- was that person present? And you say: I don't remember if she
4 called him on the radio and he came up to the office and she talked to him or
5 whether or not he was there already. I don't remember. So, you don't -- you didn't
6 recall then and you don't recall now whether he was ever in the office?

7 A Correct.

8 Q Okay. And then lastly, when Kathy said to you, when Kathy the
9 apartment manager said to you we believe that there's a alarm going off in 143 or
10 144?

11 A Yes.

12 Q Did you believe her that she thought there was an alarm going off in
13 143 or 144?

14 A At the time, yes. I didn't ask her anything. She just said well we have
15 an alarm going off and I can send somebody down to check.

16 Q I guess I'm asking is did you have any reason to believe that she was
17 not being truthful in saying that?

18 A No.

19 MS. BLUTH: Okay. Nothing further.

20 THE COURT: Mr. Momot.

21 MR. MOMOT: Yes, Your Honor, just a minute, please.

22 THE COURT: Ms. Bluth, in the motions the issue of the probable cause for
23 the warrant is raised. Is there an issue -- is there anyone who is going to testify
24 regarding that?

25 MS. BLUTH: In regards to the -- I can't remember the date. I'm sorry. The

1 warrant that happens 30 days later; is that what we're talking about? Let me look at
2 the motion. I'm sorry.

3 THE COURT: Is that what you were talking about, Ms. Zheng?

4 MS. ZHENG: I'm sorry.

5 THE COURT: The warrant. There was just one warrant issued, wasn't there,
6 or is there more?

7 MS. ZHENG: I think potentially.

8 THE COURT: You reference the warrant and I think -- I'm looking at your
9 argument and you challenge the probable cause for that.

10 MS. ZHENG: I don't -- not specifically in this motion. I think probably the
11 State's response.

12 MS. BLUTH: Yeah. We brought that up sua sponte just to kind of -- and I talk
13 about that in argument if you want, Your Honor, and I also can bring in a witness. I
14 just was trying to separate the two issues. A search warrant didn't happen until
15 much later was my point. Maybe I shouldn't have brought it up in this motion.

16 THE COURT: Okay. And your big issues was just the detective entering into
17 the residence --

18 MS. ZHENG: The initial entry into --

19 THE COURT: -- despite the lack of consent, the lack of warrant, and the next
20 entrance by the other two or three officers; right?

21 MS. ZHENG: Correct.

22 THE COURT: Okay.

23 MR. MOMOT: Just to clarify a point if I may, Your Honor.

24 THE COURT: Okey doke.

25 **RECROSS EXAMINATION**

1 BY MR. MOMOT:

2 Q You had a conversation with this manager up in the office and your
3 conversation from the manager to you said well there may or may not be a smoke
4 detector alarm going off. I'm going to send my maintenance person down there to
5 check the two apartment buildings, the ones that are side by side. Did the
6 apartment manager actually send that person? You said: I was up in the manager's
7 office. He went down and radioed back that he found a young girl in the apartment.
8 That your was you testimony at the preliminary hearing?

9 A That's correct.

10 Q Now -- so that indicates that this maintenance person was in fact up at
11 the manager's office?

12 A Again, I couldn't tell you because I don't remember.

13 Q You don't remember showing him a photograph --

14 A I did not.

15 Q -- of the girl that you were looking for?

16 A I did not.

17 Q And then after that radioed back then you say you went down to the
18 apartment and he was waiting outside and that's when you knocked on the door and
19 you made entry; correct?

20 A Yes.

21 MR. MOMOT: Nothing further.

22 THE COURT: Any more from the State?

23 MS. BLUTH: No, Your Honor, thank you.

24 THE COURT: Thank you for your time. You're free to go, sir.

25 Okay. Any other witnesses by the State?

1 MS. BLUTH: No, Your Honor.

2 THE COURT: Okay. By the defense counsel, any witnesses?

3 MS. ZHENG: No, Your Honor.

4 MR. MOMOT: No, Your Honor.

5 THE COURT: All right. Do you guys want to just a brief summation?

6 THE DEFENDANT: Your Honor, may I speak?

7 THE COURT: You have to talk to your counsel, sir.

8 MR. MOMOT: Your Honor, Defendant wishes to testify as to one aspect.

9 He'll make it as part of the record that he never gave anybody permission to enter

10 his apartment.

11 THE COURT: Then he needs to be sworn in. Stand up and raise your right

12 hand to the best of your ability, sir.

13 **MELVIN SPROWSON**

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

15 THE COURT CLERK: Would you please state and spell your first and last

16 name for the record.

17 THE DEFENDANT: Melvyn Sprowson, M-E-L-V-Y-N S-P-R-O-W-S-O-N.

18 THE COURT: Yes, sir.

19 THE DEFENDANT: I just simply want to clarify the fact that --

20 MS. BLUTH: I apologize. I'm going to object to this. If he would like to testify,

21 then the questions need to come from Mr. Momot and the cross-examination needs

22 to come from me. I don't think he's entitled to make a statement.

23 THE COURT: I agree.

24 MR. MOMOT: Just one question.

25 **DIRECT EXAMINATION**

1 BY MR. MOMOT:

2 Q Did you give anybody in your apartment complex, an employee,
3 permission to enter your apartment?

4 A No, I did not.

5 Q Did you give any police officers any permission to enter your
6 apartment?

7 A No, I did not.

8 MR. MOMOT: No further questions.

9 THE COURT: Cross on that issue.

10 MS. BLUTH: Sure.

11 **CROSS-EXAMINATION**

12 BY MS. BLUTH:

13 Q When was it that you moved into the apartments?

14 A It was the beginning of July, July 1.

15 Q Okay. And explain to me the process, like the paperwork that you had
16 to fill out and who you met with?

17 A I met with Kathy and I signed a lease.

18 Q Okay. Kathy would be the individual you watched testify today; correct?

19 A Correct.

20 Q And in the lease, like how many pages is that lease? Tell me about the
21 information that's contained in the lease?

22 A I don't have a lease before me so I couldn't give you that information.

23 Q Okay. So, you don't remember everything that was in the lease in
24 which you signed?

25 A Not right off hand. I'd have to actually have it before me.

1 Q Okay. Are you saying that you never signed any document other than
2 the lease to have that apartment?

3 A Say again.

4 Q You never -- besides the lease that you've just testified to that you said
5 you signed, were there any other documents that you signed during your -- during
6 living there?

7 A I would have to actually see the documents. I can't recall whether there
8 were just the lease or any other documents, but I'd have to actually see them before
9 me before I could say yes or no.

10 Q Okay. But my question is, is do you, as you stand here today,
11 remember signing any other document --

12 A Besides the lease, no.

13 Q Okay. Mr. Gilbert Lindsey, did you recognize him today when he
14 testified?

15 A Yes, I did.

16 Q Did you ever have contact with him person to person?

17 A Yes, I did.

18 Q Okay. Do you ever remember signing anything in this presence?

19 A Not in his presence, no.

20 Q Do you remember that ever being a point of conversation with either of
21 those two individuals, hey, if there's an emergency do we have permission to enter;
22 do you remember that conversation ever transpiring with either of those individuals?

23 A No, not in those exact words, no.

24 Q Okay.

25 THE COURT: Hold on. What do you mean, in those exact words?

1 THE DEFENDANT: Well because sometimes I had a concern. So, I would
2 go up to him and I would say, look, you know what. Any time there was anything
3 going on in my apartment, I brought it to his attention and he would do it when I was
4 there. Never anything came up when I'm gone.

5 THE COURT: Okay. Thank you.

6 BY MS. BLUTH:

7 Q So, he had permission to enter while you were there?

8 A When I was there, yes.

9 Q Did you ever have a conversation with either individual what was to
10 happen or what protocol was to be followed if something like an emergency did
11 happen, a fire alarm was going on in your house, et cetera?

12 A Can you clarify individual?

13 Q These two individuals that you've heard testify today.

14 A Which one?

15 Q Kathy and Mr. Gilbert.

16 A Kathy and Gilbert. I don't think -- I can't recall if I actually had a
17 conversation with them. I don't believe I did as far as an emergency because most
18 of the time -- I just moved in. So, there's really no issues of concern, and as we
19 went along, actually as I lived there, if something came up I would bring it to his
20 attention. But, you know, the apartment was -- I already inspected it when I went in
21 there and there was usually -- not usually -- there was nothing that I could see that
22 was wrong. I'm also capable of fixing minor things. So, it wasn't really my habit to
23 actually bother the maintenance guy to do anything.

24 Q So, who had permission to enter your home?

25 A I did.

1 Q Well and Jaysenia?

2 THE COURT: Hold on. We're going beyond the scope of direct.

3 MR. MOSKAL: Far afield, Your Honor.

4 BY MS. BLUTH:

5 Q Well beside that question I've kept it specifically to -- so you're saying
6 you have no memory of having a conversation with either of them, them being Mr.
7 Gilbert or Mr. Lindsey and Ms. Young about what were to happen if an emergency
8 took place? You don't remember ever having that conversation?

9 A In the lease.

10 Q It's a yes or no. Do you ever remember having that --

11 A A conversation, an oral conversation, no.

12 Q Yeah. Okay. And in the lease it states what?

13 A In the lease it says something about 24 hour notice and that's when I
14 was aware of this. He gave a 24 hour notice if there were any maintenance issues.
15 As a matter of fact, they told me that if there was anything going on to tell them and
16 they're create a work order and then they would do it.

17 MS. BLUTH: Okay. Thank you. Nothing further, Judge.

18 THE COURT: Anything else?

19 MR. MOMOT: No, Your Honor.

20 THE COURT: All right. Any quick brief summation?

21 MR. MOMOT: I think there's two levels to deal with in this motion, one is
22 Officer Abbott going to the manager's office and having a conversation with the
23 manager and through Officer Abbott's own testimony, the statements from the
24 manager are directed to Apartments 143 and 144 on whether or not smoke alarms
25 are going off. It's lot different than Kathryn's testimony about what was going on

1 that morning from her memory.

2 Suffice it to say, the maintenance man is notified and accordingly he
3 has to come up to the office to get the keys and then leave. So, whether or not he's
4 there at the manager's office, it appears to be obviously that he was there at one
5 point in time. He goes back down there with the idea of going into Units 143 and
6 144. That's according to Officer Abbott's previous testimony which he reaffirmed
7 here today that that's what his mission was is to go -- strike that.

8 Officer Abbott was in the manager's office. The conversation dealt with
9 an inspection of Units 143 and 144 as a suggestion from the manager or otherwise.
10 He knew Sprowson's address; he knew that he lived in 143. He's at the manager's
11 office purposely for this investigation of this young lady missing or otherwise. His
12 mission is to go to this unit. The manager suggested there are smoke alarm
13 problems, mainly 144 and 143. Nobody's living in 144 so it's only 143. The
14 maintenance guy, his testimony is that he never went back to the manager's office.
15 Officer Abbott doesn't recall yet the manager says he had to come back to get the
16 keys in order to go to the units and Building number 7 which include 143 and 144.

17 He takes the key, the maintenance man takes the keys and enters into
18 143. He doesn't hear of any alarms going off. There's no person reporting from 143
19 that there are problems with any alarms, there's no person from 144 to report there's
20 an alarm going off, and there's no person from 145 saying that there's an alarm
21 going off. The only person that reported anything about an alarm sometime during
22 that day was in 146 at the opposite end of the building and that man was outside
23 when it was checked on. There was no reason to go into 143 but for the purpose of
24 determining whether or not this young lady was there. The maintenance man did so
25 and radioed back accordingly that the girl is here with specificity. The 18 year old,

1 the 18 year old is here and that's where she's located.

2 Then it gets cloudy again between the testimony. Officer Abbott says
3 he then leaves the manager's office after he hears on the radio that -- that there was
4 radioed back. I asked him this. He radioed back that he found the young girl in the
5 apartment. That's a reference to the preliminary hearing transcript, page 225, lines
6 16 to 18 that the young girl, not a girl was found, the young girl and shows with
7 particularity the girl that was missing, the young girl in the apartment. He's found a
8 young girl in the apartment. Officer Abbott goes to the apartment and enters into it.
9 He enters into that apartment unlawfully. She says you need a search warrant to
10 enter. She does not grant him entry into the apartment. Nobody gave consent for
11 that officer to enter the apartment. He did so on his own and from there he calls
12 dispatch, radios other officers, and they all come and enter into this apartment and
13 do whatever else they're going to do there by way of interviews and walking around,
14 et cetera, et cetera.

15 Now once he enters the apartment there's no going back to get away
16 from or getting some type of an exception to a warrant requirement. If he had
17 knocked on the door and she answered the door and came out, we have a different
18 story. We don't have that here. There's a knock on the door and he enters the
19 apartment against the will of the occupant of the apartment and on his own volition
20 to go into that apartment which is a warrantless entry. I'll submit it on that.

21 THE COURT: Okay.

22 MS. BLUTH: Just briefly, Judge.

23 I think *State v. Miller* which is 110 Nevada 690 and *United States v.*
24 *Jacobson*, 466 U.S. 109 is very clear about the prongs that need to be established
25 in this. So, I'm just going to focus on those prongs really quickly, and that's number

1 one, that whether the government knew of and acquiesced in the intrusive conduct.
2 I mean, that's why I was talking to detective who was then Officer Abbott about this,
3 you know, when Kathy said to you that she believed that there was a fire alarm
4 going off in 143 or 144, did you believe that to be true? And he said yes. I followed
5 up. Did you have any reason to believe she was being dishonest with you? And he
6 said absolutely not. So, you can't even -- they can't even get to the second prong
7 but even if we did go to the second prong it's whether the party performing the
8 search intended to assist law enforcement efforts or to further his own end.

9 I think Kathy was pretty clear. Check Building 7. They checked
10 Building 8; they locked into Building 2. They had conversations with multiple
11 tenants, whether it be in person or on the phone. They continued to check for the
12 alarm even after this whole thing with Jaysenia -- with finding Jaysenia happened.
13 What motive do these individuals who work at this complex have to come in here
14 and lie? They came in here, they were under oath, and they discussed -- both of
15 them discussed about this fire alarm issue, and that they had continued throughout
16 the day. Gilbert, Mr. Lindsey, is the person who actually went into the apartment
17 and he even stated today that when he walked up the stairs he was surprised and
18 shocked to find a female. So, I don't know how we can make the jump that they
19 were working with law enforcement when Gilbert had no idea any of this was even
20 going on.

21 So, I don't think that they've met either prong. So, I'm going to go
22 straight to Detective Abbott entering the apartment. Once -- when he knocks on the
23 door and she opens the door, he can freeze the premise. I mean, you have a
24 missing child who has been missing for nine weeks and you have found her, I mean,
25 you're not going to just say, okay, go back inside and shut the door. He has the

1 right to walk in, freeze the premise, do a welfare check. Now I agree with the
2 defense if he would have gone and walked about and searched and seized items.
3 That would have been one thing, a completely different thing. But he did what he
4 supposed to do. He put her inside. He stayed in the entry of the home. He waited
5 for backup officers. There's absolutely no evidence to show or testimony to show
6 that they went in, they ever did a search, they ever confiscated any item.

7 In regards to Mr. Sprowson's testimony that, you know, he never gave
8 anybody permission to enter, that's a completely different issue. That's between Mr.
9 Sprowson and the apartment complex. I mean, whether or not he ever gave Kathy
10 or Gilbert, that's a completely non-related criminal issue -- I mean civil issue.

11 And then lastly, if Your Honor wants me to say anything about the
12 subsequent search warrant 30 days later, I am happy to either bring that up in my
13 motion but it is -- the reason why I brought it up in my motion because I found it to
14 be completely unrelated to this issue. But I know since I brought it up and you had
15 questions, I just wanted to make sure.

16 THE COURT: So, what would have been -- what was obtained when they
17 went into that apartment that day? They obtained --

18 MS. BLUTH: Correct.

19 THE COURT: Did she give a statement on that day?

20 MS. BLUTH: She gives a brief statement to Mr. Maciszak but then she's
21 transported to Child Haven where she gives a full interview, a full forensic interview.
22 But nothing was taken from the apartment except the belongings she identified
23 which was her cell phone and her computer.

24 THE COURT: So, the suppression would be with respect to what, her
25 statement and the computer and the cell phone because I didn't see where you

1 were challenging the subsequent entry with the warrant. I'm confused a little bit.

2 MR. MOMOT: If she's finished, can I finish an argument and then I can
3 address the Court on that?

4 THE COURT: Yeah. Are you finished, Ms. Bluth?

5 MS. BLUTH: Well as long -- I mean, if the Court has questions about the
6 additional search warrant, then I would like to be able to answer those. But in
7 regard -- what'd you say?

8 THE COURT: It depends on Mr. Momot.

9 MS. BLUTH: Okay, yeah. So, I'll let Mr. Momot go.

10 MR. MOMOT: I'd like to go back to the preliminary hearing transcript, and on
11 page 225. It really capsulizes what's going on here and what prompted this hearing
12 initially. And it's coming out almost exactly the way it said here by Officer Abbott's
13 testimony.

14 Page 225 says, I asked the manager how many people were on the
15 lease where he lived. Should have told me only one. Sir, what are you talking
16 about. Sprowson in Apartment 143, Unit 143. I asked that if she ever noticed any
17 comings and goings, any other people specifically a female. She told me that a
18 private investigator had been by, I don't know how long ago, but he also was asking
19 questions about a missing person named Jaysenia Torres. Through my
20 conversation with her, that's Detective Abbott and Kathryn, she eventually says well
21 there may or may not be a smoke detector alarm going off. I'm going to send my
22 maintenance person down to check the two apartment buildings, the ones that are
23 alike side by side. That's a suggestion and falls right into play of what the detective
24 wants.

25 Now did the apartment manager actually send that person? Answer:

1 Did he. I was -- it says did he. It probably means he did. I was up at the manager's
2 office. He went down and radioed back that he had found, quote unquote, the
3 young girl in the apartment. That's with particularity that they're looking for this
4 particular girl. And so what happened after that. I went down to the apartment and
5 he was standing outside. I knocked on the door. She came to the door. How did
6 you know that address? Was that given to you? No, I did a background check on
7 Mr. Sprowson first and we came up with his address. He knew the address ahead
8 of time. He goes to the manager's office. Now there's a suggestion about alarms
9 going off and it's Apartment 143 and 144 directed to by the manager which is on
10 page 229. Line 11 she says: Answer: She had told him to go check Apartment 144
11 and 143. One forty-four is vacant, 143 is Sprowson's apartment. That's where the
12 issue. This so called assistance by the management that falls into play for law
13 enforcement who goes out there and interesting in Apartment 143 and the manager
14 says, you know, maybe there's an alarm going off that we should check, and sends
15 the maintenance guy there.

16 THE COURT: Okay.

17 MR. MOMOT: That's why law enforcement wants it to be checked. The
18 maintenance guy goes there and he radioes back the young girl is here.

19 Now he goes down there, he enters into the apartment. He's there
20 without permission; no consent. His entry is unlawful at that point. Anything
21 thereafter should be suppressed. He, in turn, the detective calls other law
22 enforcement officers, four or five strong, that come into that very apartment. One of
23 them, Officer Miller, goes upstairs. The others are milling around downstairs and
24 they're making certain observations, and a month later we get search warrants
25 going into Mr. Sprowson's apartment looking to see certain items, computes,

1 papers, et cetera, et cetera. When you look into those search warrants, you're
2 going to find a *Franks versus Delaware* issue because absent in those search
3 warrants is a particularized paragraph, and the paragraph that is going to be missing
4 is anything that you heard today on how these officers got into the apartment in the
5 first place.

6 THE COURT: Sir, there is not -- well there wasn't probable cause is what
7 you're saying.

8 MR. MOMOT: This whole paragraph regarding this entry through smoke
9 alarms detection, walk and talk, maintenance man, that's not in any of those search
10 warrants. That is deleted. All they do is they go right in to the search itself. So, my
11 point is that we'll have to file a subsequent motion to suppress based on a *Franks*
12 hearing is going to be determined what we find out here today.

13 THE COURT: Okay.

14 MS. BLUTH: I just need to clarify the search warrant issue if I can, Judge.

15 THE COURT: And I'm sorry. I have to take a one minute break.

16 MS. BLUTH: Okay.

17 THE COURT: Someone is supposed to pick my son up to get him from point
18 A to point B and I just want to make sure he's safe. Give me one minute, please.

19 [Recess taken at 2:01 p.m.]

20 [Proceedings resumed at 2:05 p.m.]

21 MS. BLUTH: I just wanted to go over some timing issues, Judge. We filed
22 our criminal complaint on November 4th of 2013 in this case. I was contacted on
23 December 5th of 2013 -- and this is in my motion -- by the victim's mother who stated
24 that the victim had told her that the Defendant had asked her to send him nude
25 photos and told her how to pose in those photos. I then met with the victim who

1 confirmed this information to me and she told me where the photos could be found.

2 Based on that, I contacted Clark County School District and that's how
3 the search warrant came about. So, I just wanted to make sure that that was
4 completely clear. It didn't have anything to do with officers ever being present. All
5 the probable cause was from a subsequent conversation between the victim, her
6 mother and I over 30 days later when the victim disclosed that the Defendant had
7 asked her for nude photos. And that's where the probable cause for the search
8 warrant came from. So, I just wanted to make sure that the record was clear on how
9 that was --

10 THE COURT: I don't even have the warrant.

11 MS. BLUTH: I can get you a copy.

12 THE COURT: Okay.

13 MS. BLUTH: I can email a copy.

14 THE COURT: I'm assuming Mr. Momot already has it.

15 MS. BLUTH: Yes.

16 THE COURT: Yeah, I'd like to look at the warrant, please.

17 MS. BLUTH: Sure.

18 THE COURT: Okay. Is there anything else?

19 MS. BLUTH: No, Your Honor.

20 THE COURT: Thank you. I will get this out as soon as I can.

21 THE DEFENDANT: I have a question to ask my attorney.

22 THE COURT: You can ask your attorney. That's fine, sir. Thank you.

23 THE DEFENDANT: Am I allowed to address the Court on an issue?

24 THE COURT: Talk to Mr. Momot, please, first. And, Ms. Bluth, when can you
25 get me the warrant?

1 MS. BLUTH: Oh, I can have it to you today.

2 [Pause in proceedings]

3 MR. MOMOT: Your Honor, just a minute, please, Your Honor.

4 THE COURT: Okay. Maria, are we on?

5 THE COURT RECORDER: Yes.

6 MR. MOMOT: In the other issues, I don't want to start arguing those issues at
7 this hearing, I really don't, if it pleases the Court because if there is anything
8 regarding times, dates, a probable cause as to search warrants, I'd rather leave that
9 for a different day then to try to deal with that at this moment.

10 THE COURT: Okay. So, I mean, I just need to know exactly what you're
11 seeking -- item you're seeking suppression.

12 MR. MOMOT: What I'm looking to suppress is after that entry into the
13 apartment, anything that was found thereafter is fruits of the poisonous tree. It's an
14 illegal entry. It's just like having an illegal stop of a car and then you impound the
15 car and then you go through the car and you find all this other contraband. It all
16 stems back to an illegal stop in the first place. That's the same thing here. It's an
17 illegal entry going into that apartment and whatever is found by way of search
18 warrant or otherwise afterwards is actually the fruit of the poisonous tree from the
19 initial entry can cure a defect by a warrant later on. It's by the crossing the threshold
20 illegally and then a group of other officers come into the apartment and now on it's
21 on the burden of the defense to pick out which officer saw what or gave what
22 information from that apartment that is ultimately placed into a search warrant.

23 THE COURT: Okay.

24 MR. MOMOT: They were all there. There's at least four officers in the
25 apartment, one of which went upstairs with the young lady.

1 MS. BLUTH: Just so I'm clear. So, are we --

2 THE COURT: I have to see what's in the warrant.

3 MS. BLUTH: But are we suppressing her, like the girl and her statement and
4 then everything else? I'm just confused at what we're suppressing.

5 MR. MOMOT: Oh, what we seem to be confused about is anything that was
6 seized thereafter, her statements, information seized by any of the officers, anything
7 that found its way into these warrants that was seized from the apartment itself.

8 THE COURT: And that would probably be --

9 MR. MOMOT: Computers.

10 THE COURT: It sounds like everything prior to the warrant would be the
11 statements of the victim, the Galaxy phone, the computer; right? So, anything
12 obtained from that is what you're referring to because without that you're saying
13 there would not have been enough probable cause to give rise to the warrant.

14 MR. MOMOT: Exactly.

15 THE COURT: Got it.

16 MR. MOMOT: Any of the paperwork that was seized from his apartment later
17 on.

18 THE COURT: So, without these there's not a foundation. I understand.
19 There is no foundation for the warrant. No probable cause for a warrant. I'm sorry.
20 The warrants, those will be provided to me.

21 MS. BLUTH: Yeah. But the motions before Your Honor, there was never
22 anything about the search warrant. I mean, I got it in but the defense did not notate
23 anything about any of the evidence found in the December 5th search warrant. This
24 is the first I've ever heard that. That was not in the defense motion.

25 THE COURT: Okay. Anything else, any other argument?

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MS. BLUTH: Will you just be issuing a decision and we'll --

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THE COURT: I will. I need that warrant, please.

MS. BLUTH: Okay. Thank you.

[Proceedings concluded at 2:12 p.m.]

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


PATRICIA SLATTERY
Court Transcriber

1
2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3
4 MELVYN SPROWSON,) No. 73674
5 Appellant,)
6 v.)
7 THE STATE OF NEVADA,)
8 Respondent.)
9)

10 **APPELLANT'S APPENDIX VOLUME XV PAGES 3156-3257**

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17 **CERTIFICATE OF SERVICE**

18 I hereby certify that this document was filed electronically with the Nevada
19 Supreme Court on the 2 day of May, 2018. Electronic Service of the foregoing document
20 shall be made in accordance with the Master Service List as follows:

21 ADAM LAXALT
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23 I further certify that I served a copy of this document by mailing a true and
24 correct copy thereof, postage pre-paid, addressed to:

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