

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER ROBERT KELLER,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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Case No. 73871

RESPONDENT'S APPENDIX
Volume 3

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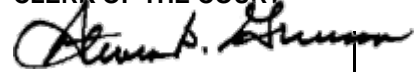
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	.	CASE NO. C-16-312717-1
	.	
Plaintiff,	.	DEPT. NO. XIX
	.	
vs.	.	TRANSCRIPT OF
	.	PROCEEDINGS
CHRISTOPHER ROBERT KELLER,	.	
	.	
Defendant.	.	
.	

BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE

**ROUGH DRAFT TRANSCRIPT OF
JURY TRIAL - DAY 4**

THURSDAY, MARCH 9, 2017

APPEARANCES:

FOR THE STATE:	MATTHEW T. BUNNETT, ESQ. MICHAEL DICKERSON, ESQ. <i>Deputy District Attorneys</i>
FOR THE DEFENDANT:	KENNETH G. FRIZZELL, III., ESQ.

RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

RA 0358

1 LAS VEGAS, NEVADA, THURSDAY, MARCH 9, 2017, 9:14 A.M.

2 (Outside the presence of the jury)

3 THE MARSHAL: Please be seated.

4 THE COURT: Is there anything that needs to be put
5 on the record or we just want to bring the jury?

6 MR. DICKERSON: We can go ahead. Ken, do you want
7 to put anything on the record at this point in time?

8 MR. FRIZZELL: Well, Your Honor, we were listening
9 to --

10 THE CLERK: Wait. Sorry. He need to call the case.

11 MR. FRIZZELL: Oh, I'm sorry.

12 THE COURT: You ready, Christine?

13 THE COURT RECORDER: Yes, sir.

14 THE COURT: Okay. We're back on the record in the
15 State of Nevada versus Christopher Keller in C-312717. I'd
16 like the record to reflect the presence of the defendant and
17 his counsel, as well as State and their counsel. We're
18 outside the presence of the jury. Does anyone need to make a
19 record at this point? Mr. Frizzell?

20 MR. FRIZZELL: Yes, Your Honor, only because there
21 was some discussion yesterday on the record about potential
22 witnesses that my client wanted me to attempt to call. And I
23 obtained a number for one of them, and the other one, as I
24 believe that I may have told you, was my investigator, who was
25 also the investigator on the case prior to my being appointed

ROUGH DRAFT TRANSCRIPT

RA 0359

1 to this.

2 And neither the witness that I was given the
3 information on last night nor Mr. Maston (phonetic) were able
4 to tell me the information that we were attempting to elicit
5 regarding occupants of the house prior to the -- prior to
6 Mr. Keller's arrest.

7 Secondly, as you may know, we were back listening to
8 some redactions out of a -- out of some jail calls from the
9 night of the arrest or right around the night of the arrest,
10 and while I have agreed and I think we've stipulated to the
11 authenticity of the jail call itself, I do have at least an
12 objection to certain parts of that conversation as being a
13 hearsay objection that I don't know if there's a -- I don't
14 know what the State's opposition to my objection would be,
15 but --

16 THE COURT: Okay.

17 MR. FRIZZELL: -- I believe it's a hearsay
18 objection.

19 MR. DICKERSON: Your Honor, there's a certain
20 portion of the redacted call that we just listened to that
21 Mr. Frizzell's going to be logging his hearsay objection to,
22 which is statements coming from the individual that
23 Mr. Keller's talking to, statements that include that
24 individual telling Mr. Keller that she popped off the rounds
25 out when she ran away from the scene as he was getting

1 arrested.

2 And it was a conversation between the both of them
3 that is about this entire event. So it's the State's position
4 here that any of her statements are admissible for the purpose
5 of showing his knowledge and his consciousness of guilt under
6 the hearsay exception for the residual hearsay given that
7 their truthfulness and reliability isn't really challenged
8 here. Given that it's corroborated by the events in this case
9 and Mr. Keller's conversation and response himself.

10 So for those reasons, any of her statements really
11 are admissible and they do go to show -- they are relevant for
12 the fact that they show Mr. Keller's knowledge and his
13 consciousness of guilt.

14 THE COURT: Mr. Frizzell, why would they need be
15 considered adopted admissions?

16 MR. FRIZZELL: Because they were not elicited by my
17 client. It was -- they were offered by the person on the
18 other -- by the person on the other end who Mr. Keller -- you
19 know, who the jail call is between Mr. Keller and this person
20 and --

21 THE COURT: I know, but was there not a discussion
22 over that? What type of response did Mr. Keller have when
23 that was represented to him?

24 MR. FRIZZELL: He said I -- I think the actual word
25 is, I heard the thing, meaning I heard some shots. I heard --

ROUGH DRAFT TRANSCRIPT

RA 0361

1 that's the context of the conversation. But it wasn't like he
2 said anything to the effect of, quote, "thank you for popping
3 off shows shots," or anything like that. It was offered to
4 him. He did not know that that's what -- that that what was
5 happening. This person, this woman offered that information
6 and Mr. Keller just simply said yeah, I heard some -- I heard
7 the thing, which referring to the shots.

8 THE COURT: Okay.

9 MR. DICKERSON: And Your Honor, there is some basis
10 for an adopted admission here, given that you'll hear in the
11 call, if we can play it for you as an offer of proof, that
12 Mr. Keller acknowledges seeing this individual run from the
13 scene, and then they have the conversation right after he says
14 acknowledges seeing her run, he says, yeah, I heard the little
15 thing, and then she says, yeah, I popped off those rounds, and
16 then he says, yeah, the cops are saying it was a distraction,
17 and then she says, yeah, it was.

18 And in his response, it's not like why would you do
19 that, you got me in more trouble. It's basically, without
20 saying, thank you, like, yeah, I understand why you did that.

21 THE COURT: Okay. He acknowledges that he heard
22 them. He acknowledges what the police officers were concerned
23 about. Okay. All right. So I understand your objection.
24 You've lodged your objection.

25 MR. FRIZZELL: Okay.

1 THE COURT: I'm going to overrule the objection. I
2 do believe it would be admissible. So all right, other than
3 that, are we ready to go?

4 MR. DICKERSON: I believe so, Your Honor.

5 MR. FRIZZELL: Yes, Your Honor.

6 THE COURT: All right. Okay. Call the jury in.
7 Who's going to be your next witness?

8 MR. BUNNETT: Steven Hough.

9 THE DEFENDANT: Your Honor, I had a witness that was
10 here -- that's here right now that was here on the first day
11 that was just jury selection --

12 THE COURT: Uh-huh.

13 THE DEFENDANT: -- and we didn't know that -- I
14 wasn't aware -- we didn't know that she couldn't like come to
15 the thing, if she was going to be a witness or something.

16 THE COURT: So have them stop real quick. Don't let
17 them come in. Ed, hold them out a minute, okay? Just hold it
18 right there. Right there, just hold them out right there.

19 All right, no one has asked the Court to invoke the
20 exclusionary rule.

21 MR. DICKERSON: That's true, Your Honor. And in
22 large part that's due to the fact that we were never put on
23 notice by defense that they would have any witnesses in this
24 case. So there was no reason that we believed we needed to
25 invoke the exclusionary rule on our part because we didn't

1 believe the defense had any witnesses besides maybe the
2 defendant himself.

3 THE COURT: Okay. So how -- I guess, it's the young
4 lady that's seated right there?

5 MR. FRIZZELL: Yes, Your Honor.

6 THE COURT: All right. How long -- was she
7 throughout the whole day of first day.

8 MR. DICKERSON: I believe she was here for two days,
9 Your Honor.

10 THE COURT: Was she here for the opening statements?
11 Here for any testimony?

12 MR. FRIZZELL: She was here for the -- no, she was
13 here for the first day of jury selection.

14 THE COURT: Okay.

15 MR. FRIZZELL: She was not here yesterday.

16 THE COURT: All right.

17 MR. FRIZZELL: My client's mother was here.
18 Obviously, she's not going to be a witness.

19 THE COURT: Okay. All right. Who is the witness?

20 MR. FRIZZELL: Mary Silva.

21 THE COURT: All right.

22 MR. FRIZZELL: Mary Silva.

23 THE COURT: Okay. Notwithstanding the fact that the
24 State was not put on notice of these witnesses, I'm going to
25 allow you to call her if you choose to. But you need to make

1 her available to the State to give them an opportunity to
2 question her to see what, if anything, she's going to be
3 offering.

4 MR. FRIZZELL: And that is fine, Your Honor. I
5 actually just learned of her potential as a witness yesterday
6 evening from an e-mail, which I received.

7 THE COURT: Okay. So --

8 MR. FRIZZELL: And --

9 THE COURT: -- she wasn't even somebody that
10 defendant was telling you previously that we discussed before
11 we started the trial?

12 MR. FRIZZELL: No, Your Honor.

13 THE DEFENDANT: I didn't know. I thought the
14 witness --

15 THE COURT: Well, let me ask you this, I'm going to
16 have her exit the courtroom, okay? All right. Ma'am, go
17 ahead and go out.

18 (Witness exits the courtroom)

19 THE COURT: What's your proffer?

20 MR. FRIZZELL: That she can testify that there was a
21 woman that was living there because she cleaned -- it was --
22 cleaned the condominium unit. Cleaned -- had been cleaning --
23 like a cleaning lady for Unit F. And so that she was going to
24 be able to say that yes, a woman was living there, and she was
25 the -- this was the woman who hired me to come clean the house

1 a few times and --

2 THE COURT: She hired her to come clean the house?

3 MR. FRIZZELL: The woman that was living in that
4 unit hired her, Ms. Silva, to clean the house a few times
5 prior to the -- prior to this arrest, and so she was going to
6 verify, testify that there was, indeed, someone else living in
7 that residence. There was a woman living in that residence.

8 THE COURT: Okay. All right. Like I said, she'll
9 need to make herself available to the district attorneys'
10 investigators to discuss with them her testimony, give names.
11 Is she the one, then, is this the young lady who was popping
12 off the rounds?

13 MR. FRIZZELL: No, no, no, no, no.

14 THE COURT: It would be the cleaning lady, then?

15 MR. FRIZZELL: No, no, no. It was neither.

16 THE COURT: Somebody else.

17 MR. FRIZZELL: Neither. It was a third person.

18 THE COURT: Okay. All right.

19 MR. DICKERSON: And just for the record, Your Honor,
20 we object to --

21 THE COURT: No, I understand, I understand.

22 THE DEFENDANT: Your Honor, can I say --

23 THE COURT: Okay.

24 THE DEFENDANT: -- one thing?

25 THE COURT: Mr. Keller, the witness is going to be

ROUGH DRAFT TRANSCRIPT

RA 0366

1 able to testify.

2 THE DEFENDANT: I was just going to say because the
3 reason I -- I thought we were going to be able to bring in the
4 HOA because she had knowledge that we had the issues with the
5 same person that we had to end up getting evicted that was
6 living in there before -- like, before I came to jail, you
7 know. Then she was -- she was still there after, and we had
8 to get her evicted, and the HOA -- that's who we were trying
9 to call for a witness, which would obviously be -- has but he
10 said that --

11 MR. FRIZZELL: Your Honor, I was given the number by
12 Mr. Keller's mother last night. After we left, I went back to
13 my office. I called her, we had a probably a 15 to 20 minute
14 conversation. While she did say that she recalls that there
15 was an eviction process done, she specifically told me that
16 there was no way that she could testify that this -- that a
17 woman was living in that residence prior to this arrest.

18 And so with that being said, and she told me this, I
19 was -- there was -- there's no reason to call her because she
20 can't offer the evidence that we would otherwise need to get
21 out, and then I received this e-mail yesterday evening
22 probably around 8:00 o'clock.

23 THE COURT: Who is that person?

24 MR. FRIZZELL: I'm sorry?

25 THE COURT: I know her name to be Michelle. I think

1 the last name is Rodriguez is the alleged woman who was living
2 there.

3 THE DEFENDANT: That's understandable, because I
4 never met the HOA lady before. I just know that she had a
5 problem with the girl that was living with me, you know, once
6 I -- once I came here.

7 THE COURT: The lady that you gave the name to -- to
8 him about?

9 MR. FRIZZELL: Well, my mom gave him the number, but
10 I've never -- I don't know who the lady is. She doesn't know
11 who I am, so it would be understandable that she doesn't know
12 what was going on before I came.

13 THE COURT: Well, you're saying that there was an
14 issue involving you getting evicted and the person --

15 THE DEFENDANT: No, no.

16 THE COURT: -- represent --

17 THE DEFENDANT: The lady -- the lady -- because she
18 knows that she had to evict the girl I was speaking about.

19 THE COURT: Well, according to --

20 THE DEFENDANT: There's eviction on the --

21 THE COURT: -- Mr. Frizzell, he spoke to the lady
22 representing, I guess --

23 MR. FRIZZELL: The HOA.

24 THE COURT: -- the -- the HOA --

25 MR. FRIZZELL: President of the HOA.

ROUGH DRAFT TRANSCRIPT

RA 0368

1 THE COURT: -- -- that says that she knows nothing
2 about that, and you're saying that she does.

3 THE DEFENDANT: Well, all she knows about is that
4 there was an eviction on someone, but I guess, I thought maybe
5 she was more clear about the details of it, but obviously,
6 she's not.

7 THE COURT: Okay. All right. Anything else?

8 MR. FRIZZELL: I don't believe so, Your Honor.

9 THE COURT: All right. Okay, so at this point in
10 time, I'm going to invoke the exclusionary rule on behalf of
11 the parties, and so anyone that's a witness in this matter
12 would have to wait outside, could not discuss the case.

13 MR. DICKERSON: What's your last name, ma'am?

14 UNIDENTIFIED SPEAKER: Graham.

15 MR. DICKERSON: We would ask that Nancy Graham step
16 out.

17 MR. FRIZZELL: She's been here the whole time so
18 there's no way --

19 MR. DICKERSON: There's a chance --

20 MR. FRIZZELL: -- I can call her anyways.

21 MR. DICKERSON: -- that she's called in this case.

22 THE COURT: What's that?

23 MR. DICKERSON: There's a chance that she may be
24 called in rebuttal, Your Honor.

25 THE COURT: All right.

ROUGH DRAFT TRANSCRIPT

RA 0369

1 MS. GRAHAM: I'm his mother.

2 THE COURT: Okay. What's your name, ma'am?

3 MS. GRAHAM: I'm his mother.

4 THE COURT: No, I know, but I'm going to announce
5 you, not his mother, I'm going to announce your name on the
6 record. What's your name?

7 MS. GRAHAM: Nancy Graham.

8 THE COURT: Nancy Graham?

9 MS. GRAHAM: Yes, sir.

10 THE COURT: Ms. Graham, the State has represented to
11 me that there's a chance they may be calling you in rebuttal,
12 so for that reason, then I'm going to ask that you step out,
13 not discuss this case with anyone while you're out in the
14 hall.

15 MS. GRAHAM: Your Honor, I could be called to
16 testify against my son?

17 THE COURT: Not necessarily against your son, but
18 yes, you could. There's no privilege that you have that you
19 can represent so -- okay. All right. Go ahead and get the
20 jury in.

21 THE MARSHAL: All rise for the presence of the jury.

22 (Jury reconvened at 9:27 A.M.)

23 THE COURT: Okay. We're back on the record in the
24 case of State of Nevada versus Christopher Keller in Case No.
25 C-312717. Everyone have a seat, please. I'd like the record

1 to reflect the presence of the defendant and his counsel as
2 well as the State and their counsel.

3 (COURT CALLS ROLL OF THE JURY)

4 THE COURT: All jurors have answered to the call.
5 Will the parties stipulate to the presence of the jury?

6 MR. DICKERSON: State stipulates, Your Honor.

7 MR. FRIZZELL: Defense stipulates, Your Honor.

8 THE COURT: Okay. Ladies and gentlemen, before we
9 took a break last night, the State was still in their case-
10 in-chief. Do you have any further witnesses, Mr. Dickerson
11 or Mr. Bunnett?

12 MR. DICKERSON: Yes do, Your Honor.

13 MR. BUNNETT: Yes, Your Honor. The State's going
14 to call Officer Steven Hough.

15 THE COURT: Okay.

16 OFFICER STEVEN HOUGH, STATE'S WITNESS, SWORN

17 THE CLERK: Thank you, please be seated. Please
18 state your full name, spelling your first and last name for
19 the record.

20 THE WITNESS: My name is Steven Hough, S-t-e-v-e-n.
21 Hough is H-o-u-g-h.

22 THE COURT: Your witness.

23 MR. BUNNETT: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. BUNNETT:

1 Q Good morning, sir.

2 A Morning, sir.

3 Q This may be an obvious question based on what
4 you're wearing, but what do you do for a living?

5 A I'm a police officer with the Las Vegas
6 Metropolitan Police Department.

7 Q What's your current assignment?

8 A I'm a street cop in Northeast Area Command.

9 Q Okay, so you're a patrol officer?

10 A Yes, sir, I am.

11 Q And how long have you been a police officer?

12 A I've been a police officer for just a little over
13 ten-and-a-half years.

14 Q Okay. And were you a police officer on January
15 28th, 2016?

16 A Yes, sir, I was.

17 Q And were you working that day?

18 A Yes, sir, I was.

19 Q Okay. Were you working in the morning hours?

20 A I worked the day shift, yes, sir.

21 Q Okay. What's your shift?

22 A My shift is at 6:30 in the morning until 4:30 p.m.

23 Q All right. And during your shift, did you respond
24 to 265 North Lamb Boulevard, Unit F?

25 A Yes, sir, I did.

ROUGH DRAFT TRANSCRIPT

RA 0372

1 Q Why did you respond there?

2 A When I got on duty, I asked if anybody needed relief.
3 I was directed to a patrol unit working on graves and needed
4 relief.

5 Q Okay. And what did they need relief from?

6 A They needed just to either -- either transport for
7 me to assist. I didn't know until I got there.

8 Q Okay. Did you end up assisting?

9 A Yes, sir, I did.

10 Q Okay. And at that specific address, how did you
11 assist?

12 A I assisted with taking digitals when they did a
13 follow-up on a search warrant.

14 Q Okay. And when you said taking digitals, what do
15 you mean by that?

16 A I have a digital camera, and I did take digital
17 pictures of the scene where the detectives were going to go
18 in and do their search warrant.

19 Q Okay. So by the scene, did you eventually figure
20 out what the scene was?

21 A Yes, sir.

22 Q What was the scene?

23 A The scene was an apartment, sir.

24 Q Okay. And can you give us a general layout of that
25 apartment?

ROUGH DRAFT TRANSCRIPT

RA 0373

1 A The apartment is a series of three or four.
2 They're -- it's what they call the Crossroads, but there's a
3 series of four. I guess, you could say they're condos
4 because they're connect. And the door faced towards the
5 east. There was an apartment to its left and there was
6 another apartment to its right.

7 Q Okay. And how about inside the apartment?

8 A Inside the apartment, well, as you go into the
9 door, there was the living room on my left as you go into the
10 door you're facing west now. There was a living room, a
11 dining room and then to the right was a kitchen and directly
12 to my right was a door to a bedroom.

13 Q Okay. Was -- how many bedrooms were in the
14 apartment?

15 A Just the one, sir.

16 Q Okay. And was there a bathroom in the apartment?

17 A Yes, sir, there was. The bathroom was located
18 adjacent to the bedroom.

19 Q All right. So when you say you're out there taking
20 digitals, when you're at the scene taking digitals, do you
21 just -- how do you decide what pictures to take?

22 A The procedure, sir, is to initially take a picture
23 of the event that I'm on, and that would be on the computer
24 in my control vehicle and then it shows the location where
25 I'm at. And then I take a picture of the door. Actually,

ROUGH DRAFT TRANSCRIPT

RA 0374

1 I'm going to take the picture of the apartment entrance then
2 the address, if it's on the door, if it's on the side of the
3 house. And then once we open the door, then I'm going to
4 start taking pictures on the interior.

5 Q Okay. And as you mentioned, you did that in this
6 case?

7 A Yes, sir.

8 Q Okay.

9 MR. BUNNETT: Your Honor, I have in my hand what's
10 been marked as State's 40 through 51 and 78 through 79, and
11 I'm going to show them to Mr. Frizzell.

12 THE COURT: These are all photos?

13 MR. BUNNETT: Yes.

14 THE COURT: Okay.

15 MR. BUNNETT: And may I approach the witness, Your
16 Honor?

17 THE COURT: Yes.

18 BY MR. BUNNETT:

19 Q Sir, I'm showing you these exhibits that I've
20 previously mentioned. I'm going to let you look through
21 those for a second. I know there's a couple.

22 A Yes, sir.

23 Q But just look up when you're done looking at them.

24 A (Witness reviewing photographs). Yes, sir.

25 Q Do you recognize this photograph?

1 A Yes, sir, I do.

2 Q Okay. What are those photographs of?

3 A Those are photographs or digital photographs that I
4 took of the apartment where the detectives were doing a
5 follow-up search warrant.

6 Q Okay. And did those photographs fairly and
7 accurately depict the condition of the apartment as you found
8 it?

9 A Yes, sir.

10 Q All right.

11 MR. BUNNETT: And Your Honor, at this time, I'd
12 move for the admission of State's 40 through 51 and 78
13 through 79.

14 THE COURT: Any objection?

15 MR. FRIZZELL: Only to there's a couple of pictures
16 in there that I think we saw yesterday of the storage unit
17 outside.

18 THE COURT: Let me see it.

19 THE WITNESS: Yes, sir.

20 MR. FRIZZELL: The two pictures of the outside
21 storage unit.

22 THE WITNESS: Yes, sir.

23 THE COURT: Yeah, 42 and 40, 43. All right, so
24 what's your objection?

25 MR. FRIZZELL: Well, the testimony was that he took

ROUGH DRAFT TRANSCRIPT

RA 0376

1 these of the interior of the apartment, and those aren't the
2 interior of the apartment or the condo. I just want to make
3 sure that those were ones that he took as well as opposed
4 to --

5 THE WITNESS: Thank you, sir.

6 MR. BUNNETT: I can follow up on it, Your Honor.

7 THE COURT: Well, just ask him.

8 BY MR. BUNNETT:

9 Q Did you take those pictures?

10 A Yes, sir, I did.

11 Q All right. Those have already been admitted into
12 evidence, but those are also of a part of the -- that's
13 actually on the exterior of the condo, but that was --

14 MR. FRIZZELL: Objection. Is there a question?

15 BY MR. BUNNETT:

16 Q -- at the scene, what you took?

17 A That is correct.

18 THE COURT: So the --

19 MR. FRIZZELL: Objection was --

20 THE COURT: -- 40 -- 41 and 42 -- or 42 and 43, I'm
21 sorry, have already been admitted.

22 MR. FRIZZELL: Right.

23 THE COURT: So the motion would be to admit 40
24 through 41, 44 through 51, 78 and 79.

25 MR. BUNNETT: Okay.

1 THE COURT: Any objection to that?

2 MR. FRIZZELL: No objection to those, Your Honor.

3 THE COURT: All right, they will be admitted.

4 (State's Exhibits 40 through 41,
5 44 through 51, 78 and 79 admitted)

6 MR. FRIZZELL: All right.

7 THE COURT: Okay. And just so we're clear,
8 Officer, you took all these photos, correct?

9 THE WITNESS: Yes, sir, you did.

10 THE COURT: Okay. Let me have those. All right.
11 There you go. Do you need them?

12 MR. BUNNETT: Yes, please. And permission to
13 publish?

14 THE COURT: Yes.

15 BY MR. BUNNETT:

16 Q All right. I'm going to start with State's 40.
17 What are we looking at here?

18 A Well, sir it's the address on the door.

19 Q Okay. And so that was the address of the unit that
20 they were searching?

21 A Yes, sir.

22 Q All right. I'm going to show you State's 41 now.
23 What's that look like?

24 A That is the door with the letter D on it.

25 Q Okay. And was that the unit that you went inside?

ROUGH DRAFT TRANSCRIPT

RA 0378

1 A Yes, sir.

2 Q Okay. And I'm going to skip around a little bit
3 and show you State's 45. What's this image of?

4 A Yes, sir. As you go into the door, directly in
5 front, this again, is the living area, living room and then
6 the dining room.

7 Q Okay. And in terms of the kitchen, what side of
8 the picture would that have been on?

9 A Okay. As you're going in -- for me, I'm facing
10 west, and the kitchen is going to be further up next to the
11 -- where the chairs are and then to the right or to the
12 north.

13 Q Okay. So by where that trash can is?

14 A Yes, sir, past the trash can.

15 Q Okay. I'm going to show you State's 47.

16 A Yes, sir.

17 Q What's this picture of?

18 A That is the kitchen.

19 Q Okay. I'm going to show you State's 48. Where's
20 this?

21 A That is the closet, sir.

22 Q Okay. Is that the -- where is that closet?

23 A I believe, that there's a closet right before you
24 get into the living room -- or to the bedroom. I know that
25 there was a closet in the bedroom as well.

ROUGH DRAFT TRANSCRIPT

RA 0379

1 Q Okay. Show you State's 49. Where is this in the
2 unit?

3 A Yes, sir. This is also in the living room. You'll
4 see that there's the door to the right of the television, and
5 as you -- you're coming in, this is where the television and
6 the closet is obviously in the living room.

7 Q Okay. I'm going to show you State's 51.

8 A Yes, sir. This is the bedroom.

9 Q Okay. And I'm going to show you State's 52.

10 A Yes, sir. Here is the nightstand. You'll see the
11 lamp on that, and then you'll see the bath -- the sink,
12 excuse me, sir, the -- the sink, along with the drawers and
13 the mirror. And that's directly to the left of the bed if
14 you're facing the bed.

15 Q Okay. Show you State's 53. What's -- what area is
16 that?

17 A That is also, I believe, the -- the bedroom because
18 it is a wall. As soon as you come in the bedroom, there's a
19 very smart wall -- small wall, and then if you continue on
20 around to the left of that, then, I guess -- I believe, you
21 go into the bathroom --

22 Q Okay.

23 A -- area.

24 Q Now I'm going to show you State's 79. Where is
25 this in the apartment?

ROUGH DRAFT TRANSCRIPT

RA 0380

1 A That is also in the -- the bathroom.

2 Q Okay. I'm going to show you State's 78. What's
3 this?

4 A All right, yes, sir. That is going to be an
5 entrance that's through from the apartment directly to the
6 north of where -- between one bathroom to the other.

7 Q Okay. So where -- is that -- I mean, is that
8 visible if you're just walking in the bathroom?

9 A No, sir. I believe, the detectives when they
10 looked underneath there, they noticed that there was a cut
11 out between the two apartments. The one to the north was no
12 longer habitated and being used. So when they looked
13 underneath there, they found that there was a hole between
14 the two apartments or the two condos.

15 Q Okay. But that is under the bathroom sink?

16 A Yes, sir.

17 Q Now, we've previously talked about a shed. Did you
18 take any photographs of any items found in the shed?

19 A Yes, sir. The shed was directly to the -- to the
20 right of the main entrance as you're facing it, and there was
21 a small little shed or a little patio. Again, you take
22 digitals of the exterior to show what the detectives want to
23 have pictures of or where you're going into.

24 Q Okay. Did you take a picture of anything inside
25 the shed, though, in terms of items?

ROUGH DRAFT TRANSCRIPT

RA 0381

1 A When we took pictures of inside there, I -- I
2 couldn't tell you right off the top of my head what the
3 detectives found.

4 Q Okay. I'm going to show you a photograph that's
5 been previously marked as State's Proposed 62.

6 MR. BUNNETT: May I approach?

7 THE COURT: Yes.

8 BY MR. BUNNETT:

9 Q All right. I'm show you go State's Proposed 62.
10 Do you recognize that?

11 A Yes, sir, I do.

12 Q Okay. What's that?

13 A These are boxes of ammunition. It states here
14 directly what kind of ammunition it is, and these little
15 baggies.

16 Q Okay. Do you recall where these were found?

17 A According to the picture, this would have been
18 inside the -- the shed, sir.

19 Q Okay. And is that a fair and accurate depiction of
20 the -- what you saw inside the shed?

21 A Yes, sir.

22 MR. BUNNETT: Move for admission of State's 62,
23 Proposed 62.

24 THE COURT: Any objection?

25 MR. FRIZZELL: No, Your Honor.

ROUGH DRAFT TRANSCRIPT

RA 0382

1 THE COURT: It will be admitted.

2 (State's Exhibit 62 admitted)

3 MR. BUNNETT: And permission to publish.

4 THE COURT: Yes.

5 BY MR. BUNNETT:

6 Q So could you just -- so if you look to your left,
7 there's a screen there, could you just circle what you're
8 talking about when you're talking about ammunition.

9 A All right. Excuse me, yes. Yes. (Indecipherable)
10 each individually here there's -- okay, I'll do the whole
11 circle. Those are boxes of the green and the yellow. The
12 Remington brand of the .22 caliber short pistol round.

13 Q Okay. Did you also take photographs inside the
14 kitchen?

15 A Yes, sir, I did.

16 Q What did you take photographs inside the kitchen
17 of?

18 A Inside the kitchen there was located some
19 narcotics, and we did take pictures -- or I did take pictures
20 of those.

21 Q Okay. And what kind of narcotics did you believe
22 to be in the kitchen?

23 A Well, not what I believed. What the detectives
24 found, sir, but the point is when I took a picture of it,
25 there was a large plastic canister of a green leafy substance

ROUGH DRAFT TRANSCRIPT

RA 0383

1 that was later tested for marijuana.

2 Q Okay. So I'm going to show you --

3 MR. BUNNETT: And Your Honor, I have in my hands
4 State's Proposed 60. I'm showing it to Mr. Frizzell. May I
5 approach the witness with it?

6 THE COURT: Yes.

7 BY MR. BUNNETT:

8 Q Okay. I'm showing you State's Proposed 60. Do you
9 recognize that?

10 A Yes, sir.

11 Q And what's depicted there?

12 A In the freezer, when it was opened up, it swings
13 open, there is a small canister on the lower shelf, and it
14 was inside there, the -- the large amount of marijuana.

15 Q Okay. And is that a fair and accurate depiction of
16 what you found in the freezer?

17 A Yes, sir.

18 Q All right.

19 MR. BUNNETT: State moves for the admission of
20 Proposed 60.

21 THE COURT: Any objection?

22 MR. FRIZZELL: No, Your Honor.

23 THE COURT: It will be admitted.

24 (State's Exhibit 60 admitted)

25 MR. BUNNETT: And permission to publish again, Your

1 Honor?

2 THE COURT: Yes.

3 BY MR. BUNNETT:

4 Q Okay. So here's -- showing you State's 60.

5 A Yes, sir.

6 Q Using that screen again, could you please indicate
7 where the green leafy substance was?

8 A Yes, sir.

9 Q Okay. So it looks like it's the bottom rack of
10 the freezer?

11 A Yes, sir, it is. It's on the bottom rack. It's
12 about like 12 inches long.

13 Q Did you also take photographs inside the bedroom?
14 I mean, we've already seen some, but did you take other
15 photographs?

16 A I took all the digitals --

17 Q Okay.

18 A -- for this event, sir.

19 MR. BUNNETT: And Your Honor, I have in my hand
20 what's been previously marked as State's 54 through 59, and
21 I'll just start with 54 through 59 right now. For the
22 record, I'm showing them to Mr. Frizzell. May I approach?

23 THE COURT: Yes.

24 BY MR. BUNNETT:

25 Q All right. I'm showing you State's 54 through 59.

ROUGH DRAFT TRANSCRIPT

RA 0385

1 A Yes, sir.

2 Q Take a look through those and look up when you're
3 all done.

4 A (Witness reviewing photographs). Yes, sir.

5 Q Do you recognize those?

6 A Yes, sir.

7 Q What are they photographs of?

8 A These were photographs that I took inside the
9 bedroom, and it shows very specific narcotics, narcotics,
10 paraphernalia.

11 Q All right. And are those fair and accurate
12 depictions of what you found in the bedroom?

13 A Yes, sir, they are.

14 MR. BUNNETT: State moves for the admission of
15 Proposed 54 through 59.

16 THE COURT: Any objection?

17 MR. FRIZZELL: No objections, Your Honor.

18 THE COURT: They'll be admitted.

19 (State's Exhibits 54 through 59 admitted)

20 BY MR. BUNNETT:

21 Q Okay. I'm going to start with State's 54, that's
22 been admitted into evidence. What are we looking at in this
23 photograph?

24 A Yes, sir. This is as you were facing the bed,
25 you've come in the bedroom, you're facing the bed, and to the

1 left there is -- looks like there's paraphernalia. There's a
2 scale in the ground. You'll see the chest of drawers, and to
3 the left of that there's a scale with some other
4 paraphernalia right there and showing on the floor by
5 (indecipherable).

6 THE COURT: Why don't you blow it up some.

7 MR. BUNNETT: Okay.

8 THE COURT: Does that help?

9 THE WITNESS: Yes, sir.

10 BY MR. BUNNETT:

11 Q All right. I think you mentioned some -- did you
12 mention some scales?

13 A Yes, sir, there's going to be a -- you'll see the
14 digital scale where -- right here, I'm going to circle a
15 digital scale.

16 Q Okay.

17 A There's also another scale right here to the left
18 of that. There is some narcotics paraphernalia here on the
19 floor.

20 Q All right. And anything else of significance in
21 this photo?

22 A Just other than -- from this photograph, just the
23 paraphernalia sir, and the narcotics.

24 Q Okay. I want to show you State's 55. I'm going to
25 zoom out a little bit at first. What did you find in this --

ROUGH DRAFT TRANSCRIPT

RA 0387

1 or what's depicted in this photograph?

2 A Here are the chest of drawers. Directly to the
3 left of the bed, the detectives located several other items
4 of paraphernalia.

5 Q Okay. And I'm going to show you a close-up, I
6 think it's in the same frame, though, of State's 56.

7 A Yes, sir.

8 Q What's here?

9 A Again, this right here, there's some narcotics on
10 the CD -- on the CD container.

11 Q Okay. Could you circle that?

12 A Yes, sir.

13 Q Looks like that bag with the white stuff in it?

14 A Yes, sir.

15 Q All right. I'm going to show you State's 57.

16 A Yes, sir.

17 Q And what's depicted here?

18 A Yes, sir. Directly next to these hats and
19 underneath the lamp there's a mirror with some -- some
20 narcotics that have been chopped up and then there's also a
21 smoking pipe, a clear smoking pipe with residue.

22 Q Okay. I'm going to show you State's 58. What's
23 depicted here?

24 A Also, this is the -- a small square of aluminum
25 foil and a straw that through my training and experience on

1 the street is used for narcotics.

2 Q Okay.

3 A Paraphernalia.

4 Q And I'm going to show you State's 59.

5 A Yes, sir.

6 Q What's depicted here?

7 A There's also some more paraphernalia, sir, on the
8 counter.

9 Q Okay. Is there also a bag in that photograph?

10 A There's a small bag on the counter.

11 Q Okay. What is your background, training and
12 experience as it relates to the sale of narcotics?

13 A In the sale of narcotics, if there's several
14 baggies, other narcotics, then I would infer through my
15 training and experience that it's used for -- for sales.

16 Q Okay.

17 A Distribution.

18 Q So several baggies would tell you that?

19 A Yes, sir.

20 Q Okay.

21 MR. BUNNETT: And Your Honor, I have in my hand
22 what's been previously marked as State's 63 through 80.
23 Showing these to Mr. Frizzell.

24 THE COURT: Does that include 79 -- 78 and 79?
25 Because that's already --

1 MR. BUNNETT: 78 and 79, which have already been
2 admitted.

3 THE COURT: So 63 through 77, and then 80?

4 MR. BUNNETT: Yeah, let's do that.

5 THE COURT: Okay.

6 MR. BUNNETT: May I approach?

7 THE COURT: Yes.

8 BY MR. BUNNETT:

9 Q All right. I'm showing you State's 63 through 77,
10 and then I'm showing you -- or that's proposed, and State's
11 Proposed 80. There's a couple of these so I'm just going to
12 give you an opportunity to look at those, and look up when
13 you're done.

14 A (Witness reviewing photographs). Yes, sir.

15 Q Do you recognize those?

16 A Yes, sir, I do.

17 Q And what are those photographs of?

18 A Well, these pictures I took, again, when the
19 detectives are doing their search warrant, when they located
20 items, I would take pictures of the items that were located
21 and where they were located at, sir.

22 Q Okay. And were those fair and accurate depictions
23 of the items you found?

24 A Yes, sir, they are.

25 Q All right.

ROUGH DRAFT TRANSCRIPT

RA 0390

1 MR. BUNNETT: State moves for the admission of
2 Proposed 63 through 77, and 80.

3 MR. FRIZZELL: No objection, Your Honor.

4 THE COURT: They'll be admitted.

5 (State's Exhibits 63 through 77 and 80 admitted)

6 THE WITNESS: Here you are, sir.

7 BY MR. BUNNETT:

8 Q Okay. I'm going to show you State's 63.

9 A Yes, sir.

10 Q What's here?

11 A This is a box of laser ammunition for .9 millimeter
12 Luger and 115 grain full metal jacketing round.

13 Q So is the caliber of that 9 millimeter?

14 A Yes, sir.

15 Q Okay. I'm going to show you State's 64. What's
16 this?

17 A This is a tray of ammunition from that box showing
18 15 rounds of a 9 millimeter ammunition.

19 Q Okay. I'm going to show you State's 65.

20 A Yes, sir.

21 Q What's this?

22 A And this is again, a picture of the floor. You're
23 going to see the two scales, the yellow container on the
24 digital scale. There's narcotics on the floor and there's
25 some other small scales or other items on the floor directly

1 to the left of the bed as you're facing the bed and the
2 nightstand.

3 Q Okay. Could you circle what you identify as
4 narcotics?

5 A Yes, sir. There's going to be some narcotics right
6 here.

7 Q Okay.

8 A And there's believed to be narcotics here and then
9 there -- of course, there are the three different scales.

10 Q Okay. Showing you State's 66. What are we looking
11 at here?

12 A This is showing that this is the actual address
13 with the name of the subject, Mr. Christopher Keller, and his
14 address showing as 265 North Lamb.

15 Q Okay. And is that the address you searched?

16 A Yes, sir, it is.

17 Q All right. Show you 64. 67, I'm sorry. What are
18 we looking at here?

19 A Okay. We're now looking down from the side of the
20 bed. The -- excuse me, as you'll notice on the right side of
21 the screen, there's a chest of drawers, if we're looking down
22 from the bed. And again, the detectives just wanted another
23 picture of -- from the side of the bed on down showing the
24 items that were -- like I say, the shoes.

25 Q Okay. I'm going to turn it around and --

ROUGH DRAFT TRANSCRIPT

RA 0392

1 A Yes, sir.

2 Q -- that might make it a little easier to explain.

3 So if we're looking at the right side of this photograph --

4 A Yes, sir.

5 Q -- we're looking at the bed?

6 A This is again, the bed and you'll notice that
7 toward the top of the -- of the photograph is a chest of
8 drawers. And this is going to be as you're facing the bed,
9 the left side of the bed, and these are the shoes.

10 Q Okay. Showing you State's 68.

11 A Yes, sir.

12 Q It's a little difficult to see --

13 A Yes, sir.

14 Q -- right here.

15 A And apologize for the quality of that photographs,
16 sir.

17 Q It's okay. You're not a professional photograph
18 taker, are you?

19 A No, sir.

20 Q Okay. What are we looking at here?

21 A This was a list of names that the detectives found
22 with names and numbers next to those names.

23 Q Okay. And did this -- did these documents have any
24 significance to you?

25 A To me, no, personally not to me.

ROUGH DRAFT TRANSCRIPT

RA 0393

1 Q Okay.

2 A To my detectives, that were doing the search, yes,
3 they felt it was imperative so I took pictures of it.

4 Q Okay. So it just has names and numbers next to
5 them?

6 A Yes, sir.

7 Q Okay. I'm going to show you State's 69.

8 A Yes, sir.

9 Q What are we looking at here?

10 A We're looking at a small tray of several baggies.

11 Q All right.

12 A And be those are -- these were clear plastic
13 baggies.

14 Q And you had mentioned previously that the presence
15 of a good amount of bags would suggest narcotic sales?

16 A Yes, sir, if we have a large amount of bags and a
17 large amount of narcotics, yes, the training and experience
18 (indecipherable) or state that they were being used for
19 distribution of sales.

20 Q Okay. So looking at these, are those consistent
21 with narcotic sales?

22 A Yes, sir, they are.

23 Q Okay. I'm going to show you State's 70.

24 A Yes, sir.

25 Q What's that?

ROUGH DRAFT TRANSCRIPT

RA 0394

1 A This is a Century Safe that was located by one of
2 the detectives. He wanted me to take a picture of that
3 specific safe showing --

4 Q Okay. State's --

5 A -- (inaudible).

6 Q -- 69, State's 70 opened up?

7 A Yes, sir.

8 Q Showing you State's 71.

9 A Yes, sir.

10 Q What's that?

11 A This is more paraphernalia. This is we're in the
12 bathroom now. You can see the mirror and the back. There's
13 a bong. There's several bongs here, a smoking pipe.
14 Actually, there's several smoke -- a couple of smoking pipes.

15 Q Okay. I'm going to show you State's 72.

16 A Yes, sir.

17 Q What's this?

18 A This is in the closet. See, this is the corner of
19 the bed here. It's going to be at -- if you're facing the
20 bed, it's going to be to the right, and there's a closet.
21 Inside the closet was located the Ruger firearm.

22 Q Okay. And State's 73, is that that Ruger firearm?

23 A Yes, sir, that is the firearm. There is a
24 detective holding that showing the serial number, and I was
25 taking a picture of the firearm and the serial number.

ROUGH DRAFT TRANSCRIPT

RA 0395

1 Q Okay. This is State's 74.

2 A Yes, sir.

3 Q What is this?

4 A That is a -- a magazine showing some loaded rounds,
5 and you see at the top two rounds in the magazine.

6 Q Okay. State's 75. What's depicted here?

7 A Yes, sir. There's some more information here.
8 Looks like there's some syringes right there, sir. And
9 you'll see that the -- this here's the box of syringes right
10 here. If I may, Your Honor.

11 THE COURT: Yes.

12 THE WITNESS: And then there's another syringe
13 right here, sir.

14 BY MR. BUNNETT:

15 Q Okay. And do those syringes -- are you familiar
16 with how heroin is ingested?

17 A Yes, sir, I am.

18 Q How is heroin typically ingested?

19 A Typically heroin is injected through the use of
20 needles into the bloodstream.

21 Q Okay. And so would these be consistent with
22 heroin?

23 A Yes, sir, they would be.

24 Q I'm going to show you State's 76. Do you recognize
25 what's depicted here?

1 A Yes, sir. Again, it looks like there's -- looks
2 like there's more paraphernalia for the use of narcotics.

3 Q Okay. So when you say paraphernalia, what in that
4 photograph is paraphernalia?

5 A Okay. We're looking at the baggies here, but in
6 the bags -- those aren't baggies that I recall. And again,
7 this is plastic paraphernalia, the bags that the detectives
8 found that they thought was relevant to their search.

9 Q Okay. So I'm going to -- it looks like you circled
10 that zip lock.

11 A Yes, sir.

12 Q And maybe it's just looking at the photograph from
13 the screen, but are those baggies?

14 A No, sir, those are not baggies.

15 Q Okay, what are those?

16 A At the look to be like smoking pipes.

17 Q Did they look to you --

18 A Or spoons.

19 Q Okay. Did they look to you to be used?

20 A No, sir, not at the time they did not look to be
21 used.

22 Q All right. But you had mentioned previously that
23 there are other smoking devices around the apartment, right?

24 A Yes, sir, several.

25 Q Were those clean or were those dirty?

ROUGH DRAFT TRANSCRIPT

RA 0397

1 A Those were dirty, sir.

2 Q Okay. But these ones are clean?

3 A Yes, sir.

4 Q All right. Do you see some elastic bands?

5 A Yes, sir. There appear to be some elastic bands on
6 the right-hand side.

7 Q Would you consider those to be paraphernalia?

8 A Depending, yes, sir, on the use.

9 Q How is it paraphernalia?

10 A You can use the paraphernalia to either wrap
11 balloons. You can use it to wrap the baggies. You can use
12 it to wrap your pipes together. How your going to package
13 your sales.

14 Q Okay. I'm going to show you State's 77, and I
15 think we've seen this image before.

16 A Yes, sir, we have.

17 Q I think you mentioned like two --

18 A Yes, sir.

19 Q -- for ingesting narcotics?

20 A Yes, sir.

21 Q Okay. I'm going to show you State's 80. What are
22 we looking at here?

23 A That again, is going to be looking inside the box,
24 there's the baggy, there's a smoking pipe, there's some more
25 paraphernalia in there, sir.

ROUGH DRAFT TRANSCRIPT

RA 0398

1 Q I've got one more photograph to show you. And I
2 have in my hand State's Proposed 95, and I'm showing this to
3 Mr. Frizzell.

4 MR. BUNNETT: May I approach?

5 THE COURT: Yes.

6 BY MR. BUNNETT:

7 Q Showing you State's Proposed 95. Do you recognize
8 that?

9 A Yes, sir, I do.

10 Q All right. What is that?

11 A There is a multi-colored bong, and there's
12 balloons, the small -- small balloons, and a ziplock baggy
13 directly to the left of the balloons.

14 Q Okay. And does this picture show items that you
15 found in the apartment?

16 A Yes, sir, they do.

17 Q Okay. And are these where they were found?

18 A Yes, sir, they are.

19 MR. BUNNETT: State moves for the admission of
20 State's Proposed 95.

21 MR. FRIZZELL: No objection.

22 THE COURT: It will be admitted.

23 (State's Exhibit 95 admitted)

24 BY MR. BUNNETT:

25 Q All right. I'm going to show you State's 95.

1 A Yes, sir.

2 Q Can you just point out where that pipe is?

3 A Yes, sir, the pipe's going to be right here at the
4 lower right corner.

5 Q Okay. And the balloons?

6 A These are the balloons, yes, sir.

7 Q Could you identify what the pipe could be used for.

8 A The pipe could be used for smoking marijuana, it
9 could be used for smoking meth.

10 Q Okay. So it could be used for ingesting multiple
11 forming of narcotics?

12 A Yes, sir.

13 Q Okay. Did the balloons have any significance to
14 you?

15 A The balloons have significance in the sense of
16 being used for packaging -- typically we use -- we find
17 heroin in balloons.

18 Q Okay. So I'm just going to finish up with you by
19 moving on to something a little bit different. Later on in
20 the day, did you go back to your command?

21 A Yes, sir, I went back to the Northeast Area
22 Command.

23 Q Okay. So you -- where is the Northeast Area
24 Command?

25 A The Northeast Area Command is going to be at 3750

ROUGH DRAFT TRANSCRIPT

RA 0400

1 Cecile Avenue (phonetic), and that is area as you go on --
2 it's like say Pecos and the Boulevard.

3 Q Okay. And at Northeast Area Command, did you come
4 into contact with anybody that you see in court today?

5 A Yes, sir, I do.

6 Q Okay.

7 A Yes, sir, I did.

8 Q Can you please point out that individual and
9 identify an article of clothing that he or she's wearing?

10 A Yes, sir, it's the male here wearing, looks like
11 the light blue colored shirt. He's got the long-ish hair,
12 white male.

13 MR. BUNNETT: And Your Honor, I'd ask that the
14 record reflect that the witness has identified the defendant.

15 THE COURT: It shall.

16 BY MR. BUNNETT:

17 Q And how did you come into contact with him?

18 A Excuse me, myself and other officer were watching
19 him on the monitor while the other officer was taking care of
20 the paperwork. And while we were watching the monitor,
21 because we want to have our -- when our prisoners or people
22 who are going to be interviewed and interrogated they're
23 going to be in an interview room, and that is monitored audio
24 and visually.

25 So we have a monitor set up to where while we're

1 doing whatever paperwork we have to do, we can watch our
2 subject. And in this particular date and time, the -- the
3 defendant was reaching into his pants and another officer
4 thought that maybe he might be doing -- actually, the words
5 he used is he's going to masturbate. So as he came out with
6 his hand, he did come out with a small baggy, and by that
7 time I started running down the aisle, and by the time we got
8 into the room, he had white powdery substance on his nose and
9 his mouth, and we -- I had him stand up, and since he had
10 gotten it into his pants, I did open up his pants, pull open
11 his shorts and find another small bag of white powder
12 attached to his testicle.

13 Q Okay. So to be anatomically correct, it would have
14 been attached to his scrotum?

15 A His scrotum, yes, sir.

16 Q Okay.

17 A His left side of his scrotum.

18 Q And what did you do with that?

19 A I removed it.

20 Q Okay. And did you do anything with it after that?

21 A It was impounded as evidence.

22 Q Okay.

23 (Pause in the proceedings)

24 MR. BUNNETT: And may I approach, Your Honor?

25 THE COURT: Yes.

ROUGH DRAFT TRANSCRIPT

RA 0402

1 BY MR. BUNNETT:

2 Q All right. I'm showing you State's 83, and there's
3 a bag inside of its contents, which is State's 83-A. Do you
4 recognize this?

5 A Yes, sir.

6 Q And what are we looking at?

7 A That looks like a small baggy. Actually, there's a
8 baggy inside this baggy here where there was an item that was
9 taken from the defendant.

10 Q So that was the item that was taped to his scrotum?

11 A Yes, sir.

12 Q All right. Could you hold that up for the jury,
13 please?

14 A Yes, sir.

15 MR. BUNNETT: And I have nothing further, Your
16 Honor.

17 THE COURT: Cross.

18 MR. FRIZZELL: Oh, I thought he was still getting
19 another piece of evidence. Just a couple, Your Honor. I do
20 need some of the photos.

21 (Pause in the proceedings)

22 CROSS-EXAMINATION

23 BY MR. FRIZZELL:

24 Q All right. Officer, we're going to go through
25 these -- a couple of these photos here --

ROUGH DRAFT TRANSCRIPT

RA 0403

1 A Yes, sir.

2 Q -- which you took.

3 (Pause in the proceedings)

4 BY MR. FRIZZELL:

5 Q All right. Now I'm showing you what's been
6 admitted as State's Exhibit 40.

7 A Yes, sir.

8 Q And you had identified this as the unit?

9 A Yes, sir.

10 Q Is that the unit or is that the address of the
11 entire complex?

12 A No, sir. That's going to be the address of that
13 unit.

14 Q Okay. When we're talking about a unit, then we
15 look at State's 41, and you see that there is a D on that
16 door. So --

17 A Yes, sir.

18 Q -- would it be fair to say it's 265-D?

19 A Well, at the time, yes, sir, they said it was
20 265-D, but they located the fact there is actually two
21 different letters were attached to the door. In other words,
22 the door -- the letter had been taken from another door and
23 attached to his door. So the number 265 represents the
24 actual address where we're at, sir.

25 Q Okay. So --

ROUGH DRAFT TRANSCRIPT

RA 0404

1 A And there's 265 --

2 Q -- there's an -- so there was an F. Are you
3 familiar with that there was a unit F?

4 A F and a D, yes, sir.

5 Q Okay. So which one are we looking at here?

6 A This is D, and 265 should be above that, sir. And
7 you'll see the 265 on your previous photo.

8 Q Okay, I'll show the --

9 A Yes, sir.

10 Q -- previous one.

11 A 265, yes.

12 Q Here it is. So that would have been above say on
13 the second floor because obviously --

14 A No, there's --

15 Q -- it looks like D here is totally in shade,
16 correct?

17 A Yes, sir. And that's going to be --

18 Q Okay. So where would --

19 A -- on the outside.

20 Q -- that have been?

21 A This is on the outside as you pull back, you would
22 see the 265 showing the address, and then the doors are
23 numbered A, B, C, D, E, F.

24 Q Okay. So you went in a D and not an F; is that
25 what we're --

ROUGH DRAFT TRANSCRIPT

RA 0405

1 A We went into --

2 Q -- is that what you're telling me?

3 A -- the -- the door where they did the search
4 warrant for the -- the defendant, yes, sir.

5 Q Okay. Was this door D and not F?

6 A That was -- that was a number -- excuse me, the
7 letter on the door, yes, sir.

8 Q All right. And then moving to this next set of
9 photographs. Show you what was admitted as State's 48. Do
10 you recall what you said that was?

11 A Yes, sir, that's a closet.

12 Q Okay. Now, did you have occasion to search through
13 that closet at all?

14 A I did not search anything, sir.

15 Q Okay. So you were just strictly taking pictures?

16 A I was doing the digitals, yes, sir.

17 Q Okay. Does it appear in there it looks like some
18 girl's clothes are hanging in there?

19 A Could be, sir, yes, sir.

20 Q Okay. I'm specifically looking at one that's kind
21 of in the middle here, and I'll point to it with my pen.
22 Looks to be white with a flowery pattern on it. Do you see
23 it right there?

24 A Yes, sir, I do.

25 Q Okay. Does that appear to you that it could very

ROUGH DRAFT TRANSCRIPT

RA 0406

1 well be a lady's -- some lady's clothing?

2 A Yes, sir, it could appear so.

3 Q Okay. And how about the white sleeve that's right
4 next to it as you go up it turns into a blue?

5 A Yes, sir.

6 Q The cuff at the bottom, you see the cuff at the
7 bottom?

8 A Yes, sir.

9 Q That appears that it could be a woman's outfit as
10 well?

11 A Yes, sir.

12 Q And again, I apologize, but I guess we can use this
13 one. Showing you now what's been admitted as State's 52.

14 A Yes, sir.

15 Q Okay. You said that that was a picture of kind of
16 the bedroom/bathroom, correct?

17 A Yes, sir.

18 Q And the photos that you took, you see this bright
19 flowery box dresser looking item?

20 A Yes, sir.

21 Q Okay. And I believe, that we saw you open those up
22 and take pictures of the items that were inside of those,
23 correct?

24 A No, sir, I did not open anything up. I just took
25 pictures of what the detectives located.

ROUGH DRAFT TRANSCRIPT

RA 0407

1 Q Okay. So when you went to take pictures of the
2 items that were in drawer/box units, it was --

3 A Yes, sir.

4 Q -- these boxes, but you did not physically pull
5 them open?

6 A That is correct, sir, I did not physically pull
7 them open.

8 Q Okay. And real flowery boxes. Could they have
9 been a girl -- could they have been girl's drawers?

10 MR. BUNNETT: Objection, Your Honor. Calls for
11 speculation.

12 THE COURT: Sustained.

13 BY MR. FRIZZELL:

14 Q Did you find anything of a feminine nature in any
15 of those drawers?

16 A The only items I took pictures of, counselor, were
17 what the detectives found. I did not see anything that were
18 feminine in nature with what was located in the picture, sir.

19 Q Okay.

20 A I apologize.

21 Q Fair enough, fair enough, fair enough. Showing you
22 what's been admitted as State's 71.

23 A Yes, sir.

24 Q Okay. Did you happen to see this little heart
25 shape box on the left side of the picture where my pen is?

1 A Yes, sir, I do.

2 Q Okay. Did you have occasion to look at that at
3 all?

4 A I did not have to look at anything, sir. I took
5 digitals of what the detectives were looking for and looking
6 through.

7 Q Okay. Would you have had any reason to think that
8 that wasn't girl's facial powder of some sort?

9 A I wasn't there to determine what was male or
10 female, sir. I was there to take pictures of what detectives
11 saw.

12 Q But you do see this heart-shaped --

13 A Yes, sir, I do. Yes, sir, I do.

14 Q -- item there?

15 A I see the -- the pipes as well, sir.

16 Q Okay, fair enough. Just a couple more. Showing
17 you State's Exhibit -- admitted Exhibit 54.

18 A Yes, sir.

19 Q Okay. Now, were you the one that would have laid
20 out of these items?

21 A They weren't laid out, sir, but, no, I did not lay
22 anything out.

23 Q Okay. So when you came in to take the picture, is
24 this -- does this depict what the room looked like as you
25 were taking the picture?

ROUGH DRAFT TRANSCRIPT

RA 0409

1 A Yes, sir.

2 Q You didn't have anybody move anything so that it
3 would be something you could get all in the picture?

4 A No, sir. Took a picture of exactly how we came
5 across it. I did not -- I did not have anybody move anything
6 or change anything or put anything in a specific sequence or
7 order, sir. I took the pictures as we found them.

8 Q Okay. And you -- so I guess, what I'm getting at
9 is they were -- all these things that we've identified as
10 scales were all in this line --

11 A Yes, sir.

12 Q -- when you got there?

13 A Yes, sir.

14 Q Did you see any other officers move anything to
15 kind of set it up for the picture anyway?

16 A No, sir.

17 Q Okay.

18 A Not that I -- not that I recall --

19 Q All right.

20 A -- at all.

21 Q All right. No, no, no, fair enough.

22 MR. FRIZZELL: Court's indulgence. I wrote down
23 the numbers I need, but they're not all in order here, and I
24 apologize.

25 I'm showing you what's been admitted as State's 65.

ROUGH DRAFT TRANSCRIPT

RA 0410

1 THE WITNESS: Yes, sir.

2 BY MR. FRIZZELL:

3 Q And that's just a little closer shot of the
4 previous one that we -- the previous shot that we were just
5 talking about?

6 A Yes, sir.

7 Q Okay. And you see all the scales were in a line,
8 basically?

9 A Yes, sir.

10 Q Okay. And you're telling us that you did not touch
11 any of what we see in this picture?

12 A No, sir, I took digitals.

13 Q And you did not witness anyone move these --

14 A I don't recall anybody --

15 Q -- in other words, set them up for the picture?

16 A -- moving -- counselor, I --

17 Q Okay.

18 A -- I don't recall anybody moving --

19 Q Fair enough.

20 A -- anything at the time.

21 Q Fair enough.

22 MR. FRIZZELL: Court's indulgence.

23 BY MR. FRIZZELL:

24 Q Moving to when you went to the area command,
25 Northeast Area Command, and you said that you were watching

ROUGH DRAFT TRANSCRIPT

RA 0411

1 my client on a monitor?

2 A Yes, sir.

3 Q Okay. Is that -- were those recorded? Are those
4 video shots recorded?

5 A Yes, sir, audio and video. Yes, sir.

6 Q Okay. Did you bring those with you today?

7 A No, sir, I'm not the recorder. Not -- it's
8 directly as like we're here right now, there's like audio and
9 video so I could be sitting in looking at this monitor, and
10 if there was anything being said or seen, then I'm seeing it
11 and hearing it in realtime. If there's any actual recording
12 or data that is recorded and stored somewhere, I have no
13 idea.

14 Q Okay. So is it fair to say that as you're watching
15 it, it was just simply a live feed, if you will?

16 A Yes, sir.

17 Q And you don't know if that was recorded -- a
18 recorded feed or not?

19 A No, sir.

20 Q Did you have occasion to, what I believe was
21 State's 83, did you have an occasion to weigh the small baggy
22 that you took off of my client's person?

23 A No, sir, I did not.

24 Q Okay. Based on your training and experience, how
25 much did it appear in that little baggy?

ROUGH DRAFT TRANSCRIPT

RA 0412

1 A In that little baggy that we took off, it could
2 have been maybe a gram to -- or .1 grams, maybe .3 grams. It
3 was a very small bag, and it was filled with a wide powder
4 substance, crystal substance.

5 Q .1 gram more like a -- so that's a 10th of a gram?

6 A Yeah, .1 to .3 grams. That would be gross weight.

7 Q It's kind of a puff? Just kind of a puff almost?
8 Not very much at all?

9 A Oh, no, I wouldn't know about that, sir. It's
10 obviously, enough for some people to use.

11 Q Okay.

12 MR. FRIZZELL: Pass the witness.

13 THE COURT: Redirect?

14 MR. BUNNETT: Very briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. BUNNETT:

17 Q I'm not going to go through this the photographs
18 again with you, but do you recall seeing basketball shoes in
19 some of the photographs?

20 A Yes, sir.

21 Q Do you recall seeing baseball caps in some of the
22 photographs?

23 A Yes, sir, I did.

24 Q Okay. And before I move on -- or actually, I'm
25 going to jump ahead a little bit. You mentioned on

ROUGH DRAFT TRANSCRIPT

RA 0413

1 cross-examination that you thought that amount that you found
2 taped to the defendant's scrotum was a usable amount of
3 methamphetamine or of a narcotic?

4 A Yes, sir.

5 Q Okay. And is that the typical amount you'd see on
6 the street?

7 A Yes, sir.

8 Q All right. And then you mentioned this a couple
9 times on cross-examination. You didn't do any searching
10 inside the apartment?

11 A That is correct.

12 Q All right. And you didn't go around and try to
13 figure out whether the unit that said D on it was, in fact,
14 unit D of the apartment collection, right?

15 A That is correct, I did not. One of the other
16 detectives made that determination.

17 Q Because you're the photographer?

18 A Yes, sir.

19 Q Your job's not to search?

20 A That is correct.

21 Q Okay. The only thing you did search was the
22 defendant's person?

23 A Yes, sir.

24 Q And you found that tape -- that narcotic substance
25 taped to his scrotum?

ROUGH DRAFT TRANSCRIPT

RA 0414

1 A Yes, sir.

2 MR. BUNNETT: Nothing further.

3 THE COURT: Mr. Frizzell, anything further?

4 MR. FRIZZELL: No, Your Honor.

5 THE COURT: Okay. Officer, thank you so much for
6 your testimony. You can step down. You can step down.
7 You're excused.

8 THE WITNESS: Yes, Your Honor, thank you.

9 THE COURT: Call your next witness.

10 MR. DICKERSON: State's next witness will be
11 Elizabeth Quintero.

12 OFFICER ELIZABETH QUINTERO, STATE'S WITNESS, SWORN

13 THE CLERK: Thank you. Please be seated. Please
14 state your full name, spelling your first and last name for
15 the record.

16 THE WITNESS: Elizabeth Quintero,
17 E-l-i-z-a-b-e-t-h, Q-u-i-n-t-e-r-o.

18 THE COURT: Your witness.

19 MR. DICKERSON: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. DICKERSON:

22 Q How are you employed, ma'am?

23 A Through LVMPD as a police officer.

24 Q Okay. And what is your duty as a police officer?

25 A To serve and protect.

ROUGH DRAFT TRANSCRIPT

RA 0415

1 Q What's your particular assignment in serving and
2 protecting the community?

3 A I'm currently assigned as an FTO, which is a field
4 training officer.

5 Q So January 28th, 2016, did you have that same
6 assignment?

7 A Yes, I did.

8 Q And where you assigned geographically?

9 A Northeast area command.

10 Q Where's Northeast Area Command?

11 A It's Las Vegas Boulevard and Pecos area.

12 Q Were you assigned to any particular shift?

13 A Day shift.

14 Q So that morning of January 28th, 2016, what time
15 would you have come on to the shift?

16 A 6:30 a.m.

17 Q What happens when you come onto shift then?

18 A We sit through briefing, patrol briefing. So
19 there's usually a projector and we talk about events that are
20 going on, things to look out for, be on the lookout and
21 things like that.

22 Q And then what happens after briefing?

23 A We go and hit the street. So we get in our patrol
24 vehicle and start patrolling and we get assigned calls for
25 service.

ROUGH DRAFT TRANSCRIPT

RA 0416

1 Q So do you sit in briefing that morning on January
2 28th?

3 A I did.

4 Q And what happened after briefing?

5 A I went to go hit the street, and I got assigned to
6 relieve graveyard.

7 Q Relieve graveyard where?

8 A At the station.

9 Q So you were already at the station?

10 A I was still at the station. I was in the parking
11 lot. I was about to leave, and I got told to just stay there
12 by dispatch.

13 Q So now you're assigned to the station. What are
14 you assigned to do there?

15 A I was going to transport the suspect, but they
16 still working on a search warrant so I was tasked with
17 watching him.

18 Q When you say the suspect, is that an individual
19 that you see here in the courtroom today?

20 A Yes.

21 Q If you could please point to that individual and
22 identify a particular clothing that they're wearing.

23 A Blue shirt.

24 MR. DICKERSON: If the record will reflect that
25 Officer Quintero's identified the defendant, Your Honor.

ROUGH DRAFT TRANSCRIPT

RA 0417

1 THE COURT: It shall.

2 BY MR. DICKERSON:

3 Q So you were possibly going to be transporting the
4 defendant, but that changed?

5 A Correct.

6 Q And what did that change to?

7 A Watching him my entire shift.

8 Q And so where was he?

9 A He was in an interview room that's got a video
10 camera in it, so I was sitting in another room close by
11 watching on a computer monitor.

12 Q Okay. So you're not in the same room as him?

13 A No.

14 Q How big is the room that he's in?

15 A Pretty small. Just like this area, maybe a little
16 smaller.

17 Q You're indicating like the --

18 A Yeah.

19 Q -- well of the courtroom here?

20 A Yes.

21 Q Okay. And what does that room look like?

22 A Just tile floors, desk with a bar so that we can
23 handcuff onto the bar and to the wall.

24 Q So there's a bar to handcuff on the desk?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

RA 0418

1 Q And was the defendant handcuffed?

2 A Yes.

3 Q Both hands?

4 A Just one.

5 Q Okay. And where are you?

6 A It's hard to explain because it's a -- a station.
7 So there's different rooms. I believe, we had like four
8 interview rooms there. So there was one that was close to
9 the parking lot and I was closest to the briefing room in
10 another just little computer room.

11 Q Okay. And you said there was computers in there?

12 A Yes.

13 Q Is that how you're watching the defendant?

14 A Yes.

15 Q What's the system that you're watching the
16 defendant on?

17 A I honestly don't the name of the system, but it's
18 just there's a video camera in there and there's a program on
19 the computer that allows you to watch that room.

20 Q Like a live feed of the room?

21 A A live feed, yes.

22 Q So is the room the defendant's in, is the door
23 closed?

24 A Yes.

25 Q And so you're just sitting there just watching this

ROUGH DRAFT TRANSCRIPT

RA 0419

1 camera?

2 A Yes.

3 Q How long did you watch the camera for?

4 A Approximately, eight hours.

5 Q Really?

6 A Throughout -- yes, throughout the whole shift.

7 Q So what happened when you first got assigned to
8 start watching defendant?

9 A He was sleeping for the most part because it was --
10 obviously 6:30 in the morning was very early. I don't
11 remember when the call came out. It was a car stop, I
12 believe. I don't know whether that started, but it had been
13 a long time so he was asleep for the better part of the
14 morning.

15 Q Because the call actually (inaudible) graveyard
16 shift?

17 A Correct.

18 Q And when does graveyard shift start?

19 A Graveyard starts at 10:00 -- or I'm sorry, 10:00
20 p.m.

21 Q Okay. So it was a whole shift before you?

22 A Correct.

23 Q So at what point in time does the defendant wake
24 up?

25 A I couldn't tell you the hour because I don't really

ROUGH DRAFT TRANSCRIPT

RA 0420

1 remember. I remember that he had to use the restroom so I
2 had to call for a male officer to come and observe him while
3 he uses the restroom to make sure he wasn't getting rid of
4 any contraband.

5 So I believe that was around anywhere from 10:00 to
6 12:00.

7 Q Okay.

8 A A.M.

9 Q And did you or any other officer provide the
10 defendant anything?

11 A Detectives did, I believe.

12 Q What did they provide?

13 A They provided him with a bottle of water, a granola
14 bar and a magazine.

15 Q Okay. In that little interview room?

16 A Yes, during the time -- again, I can't tell you
17 what time that was but somewhere in the course of me watching
18 him.

19 Q And is he still handcuffed?

20 A Yes.

21 Q One hand only?

22 A Correct.

23 Q So after he's provided the water and the granola
24 bar and the magazine, does anything happen?

25 A Yes. So I believe, the day shift officers that

ROUGH DRAFT TRANSCRIPT

RA 0421

1 were assisting the graveyard officers returned to the station
2 because they had done a search warrant on his vehicle, I
3 believe, and then a piggyback on to his residence. And so
4 the officers returned, and it was close to the time for swing
5 shift. Swing shift starts around 2:30 p.m., to start their
6 shift. So they found, I believe, methamphetamine and heroin.

7 Recently, we've been -- we've gotten an ODB test,
8 which is just a way to test heroin rather than sending it to
9 a lab. And only a certain amount of officers were like put
10 through this certification so --

11 Q Were you one of those officers?

12 A Yes, I was.

13 Q So this is approximately, at 2:00 in the afternoon
14 or so?

15 A Yes, around there.

16 Q Okay, so what -- what do you do at that time?

17 A So some of the other day shift officers came in,
18 and because I was one of the only ones certified to test the
19 -- the heroin, I was a witness for the officer that recovered
20 it.

21 Q Okay.

22 A We were still watching the video surveillance, the
23 live feed, and he was awake at this time.

24 Q Well, who are you talking about is awake?

25 A The defendant.

ROUGH DRAFT TRANSCRIPT

RA 0422

1 Q Okay. Still in that interview room?

2 A Yes. So as we're testing the narcotics, I'm
3 watching the -- the video still and it appears that the
4 defendant is masturbating.

5 Q And how did it appear like that?

6 A He had his hand in his pants and was moving his
7 hand around in that motion.

8 Q Is he standing up or sitting down?

9 A Sitting down still.

10 Q Okay.

11 A So --

12 Q And then what do you see him do?

13 A The water bottle comes closer to him and --

14 Q How does the water bottle come closer to him?

15 A Not by magic, I'm sorry. He -- he pulls the water
16 bottle over to him and sets it in front of him, and then I
17 see him rip off a piece of the magazine --

18 Q Okay.

19 A -- and roll it. And so I'm obviously, watching now
20 wondering what he's doing, and he takes the water bottle and
21 starts smashing something on the -- on the desk. So I'm
22 alerted because I -- you know, I don't know what he has. So
23 then I -- I tell -- I tell one of the officers hey, like, go
24 let him know we're watching him with the, you know, maybe
25 possibly touching himself, and -- and as he does that, I see

ROUGH DRAFT TRANSCRIPT

RA 0423

1 him take the rolled up magazine and it looks like starts
2 snorting something.

3 So at that point I'm thinking, oh, my goodness, he
4 has drugs.

5 Q So he has the rolled up magazine in one hand?

6 A Piece of paper, yes.

7 Q The hand that's not handcuffed?

8 A Like has a straw. The hand that's not handcuffed.

9 Q And what does he do with his head?

10 A With his head?

11 Q With his head, yes.

12 A He leans down and he snorts something off of the
13 desk.

14 Q Okay.

15 A So at that point, I don't want to lose visual of
16 the monitor, but I don't want to allow him to continue using
17 drugs.

18 Q Is that a concern for you?

19 A Yes, absolutely because street narcotics, we don't
20 know, and now he's in our custody, I don't want him to get
21 hurt or anything like that. So I shout for someone, and we
22 all kind of run in there, and so there's several people in
23 the room now with him. And you can see like through my
24 training and experience what appears to be crystal meth, like
25 just a small residue on the desk still.

ROUGH DRAFT TRANSCRIPT

RA 0424

1 Q What did that look like?

2 A Just like clear crystals, crystal substance.

3 Q On the desk?

4 A Just small -- yeah, almost like salt.

5 Q Okay. And it's just sitting there on the desk in
6 the interview room?

7 A Yes.

8 Q Is it in that same general area where you saw the
9 defendant smashing?

10 A Yes.

11 Q And at this point in time, what happens?

12 A We obviously stand him up. I believe, an officer
13 took him out of handcuffs, and they went to search him at
14 that point, which I stepped out due to the nature of where we
15 believed the narcotics was located.

16 Q Okay. And where did you believe it was located?

17 A Somewhere in his pants.

18 Q Okay. And that's --

19 A Probably --

20 Q -- why you stepped out?

21 A Correct.

22 Q Did you -- after this call concludes and the search
23 happens, did you, officers, take any precautionary measures?

24 A Yes. I actually called for medical to make sure
25 that he didn't overdose or -- because you just never know.

ROUGH DRAFT TRANSCRIPT

RA 0425

1 It's a narcotics, and obviously, we hadn't tested it yet, so
2 we didn't know what it was that he -- you know, you just
3 assume because training and experience, but at the same time
4 you don't know.

5 Q And that was just precautionary?

6 A Correct.

7 Q And he didn't overdose?

8 A No, clearly.

9 MR. DICKERSON: State will pass the witness.

10 MR. FRIZZELL: No questions, Your Honor.

11 THE COURT: I have a question just to clarify. You
12 indicated that there was -- while you were at the station,
13 you said they had found meth and heroin and that because you
14 were certified to do that or there's certain number of
15 officers to do so, are you talking about in this case they
16 found meth and heroin or they found meth and heroin and
17 brought it back and you needed to test it or --

18 THE WITNESS: I'm sorry.

19 THE COURT: Okay.

20 THE WITNESS: I'll clarify. Yes, they had found
21 meth and heroin, I believe, in his vehicle, but I know for
22 sure at his residence.

23 THE COURT: Okay. So we're talking about the
24 difference. We're not talking about you testing the meth or
25 heroin or something found on him in the room? You're talking

ROUGH DRAFT TRANSCRIPT

RA 0426

1 about something was found other where?

2 THE WITNESS: Correct.

3 THE COURT: Okay. So I'm clear, the only thing
4 that was found on him in the room was --

5 THE WITNESS: Meth.

6 THE COURT: -- meth?

7 THE WITNESS: Yes.

8 THE COURT: Okay. No heroin?

9 THE WITNESS: Not -- I -- I didn't check so I can't
10 speak to that --

11 THE COURT: Okay.

12 THE WITNESS: -- but from what I know --

13 THE COURT: All right.

14 THE WITNESS: -- no.

15 THE COURT: Okay. Any questions as a result of my
16 questions?

17 MR. DICKERSON: No, Your Honor.

18 THE COURT: Mr. Frizzell?

19 MR. FRIZZELL: No.

20 THE COURT: All right. Officer, thank you so much
21 for your testimony. You can step down. You're excused,
22 okay?

23 THE WITNESS: Thank you.

24 THE COURT: Thank you. All right. Call your next
25 witness.

ROUGH DRAFT TRANSCRIPT

RA 0427

1 MR. BUNNETT: Your Honor, could we approach?

2 THE COURT: Yes.

3 (Off-record bench conference)

4 THE COURT: All right. Ladies and gentlemen, we're
5 going to take a quick 15-minute break, give the parties an
6 opportunity to get the next witness lined up.

7 During this break, you're admonished not to talk or
8 converse amongst yourself or with anyone else on any subject
9 connected with this trial, read, watch or listen to any
10 report or commentary on the trial or any person connected
11 with this trial by any medium of information, including
12 without limitation, newspapers, television, the Internet or
13 radio. Or form or express any opinion on any subject
14 connected with this trial until the case is finally submitted
15 to you.

16 It's 25 'till. Be ready to start at 10:00 'till,
17 all right? We'll be at ease while the jury leaves the room.

18 (Jury recessed at 10:51 A.M.)

19 THE COURT: Okay. We're outside the presence of
20 the jury. Is there anything that needs to be put on the
21 record at this time?

22 MR. FRIZZELL: Not from the defense, Your Honor.

23 MR. DICKERSON: Not at this point in time, Your
24 Honor.

25 THE COURT: All right. We're on a 15-minute break.

ROUGH DRAFT TRANSCRIPT

RA 0428

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MR. DICKERSON: Thank you for the break.

(Court recessed at 10:34 a.m. until 10:53 a.m.)

(Outside the presence of the jury.)

THE COURT: Okay. We're back on the record in the case of State of Nevada versus Christopher Keller in C-312717. I'd like the record to reflect the presence of the defendant, his counsel, as well as State and their counsel.

Before we bring the jury back in, we're out -- well, for the record, we're outside the presence of the jury. Mr. Keller, you understand that under the Constitution of the United States and under the Constitution of the State of Nevada you cannot be compelled to testify in this case? Do you understand that?

THE DEFENDANT: Yeah.

THE COURT: They can't make you testify. Do you understand?

THE DEFENDANT: I understand.

THE COURT: Okay. You may at your own request give up your right and take the witness stand and testify. If you do so, you will be subject to cross-examine by the deputy district attorney, and anything that you may say, be it on direct or cross-examination, will be subject of fair comment when the deputy district attorney speaks to the jury in his or her final argument. Do you understand that?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: If you choose not to testify, the Court
3 will not permit the deputy district attorney to make any
4 comments to the jury because you have not testified. Do you
5 understand that?

6 THE DEFENDANT: Yeah.

7 THE COURT: Okay. If you elect not to testify, the
8 Court will instruct the jury, but only if your attorney
9 specifically requests me to do so, this is how I'll instruct
10 them: The law does not compel a defendant in a criminal case
11 to take the stand and testify and no presumption by -- may be
12 raised and no inference of any kind may be drawn from the
13 failure of a definite to testify. Do you understand what
14 those rights are and how that plays into part?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Okay. You are further advised that if
17 you do have a felony conviction and more than ten years have
18 not elapsed from the date you have been convicted or
19 discharged from prison, parole or probation, whichever is
20 later, and the defense has not sought to preclude that coming
21 before the jury and you elect to take the stand and testify,
22 the deputy district attorney, in the presence of the jury,
23 will be permitted to ask the following questions: Have you
24 been convicted of a felony? What was that felony? And what
25 did it happen? However, I won't let them get into the

ROUGH DRAFT TRANSCRIPT

RA 0430

1 details of the felony; do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Okay. So you'll need to think about
4 that before we get to the time and point where I'm going to
5 ask you again whether or not you choose to exercise your
6 right to not testify or waive that and testify, okay?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right. Okay.

9 THE DEFENDANT: Can I ask one quick question before
10 we get started?

11 THE COURT: Sure.

12 THE DEFENDANT: Okay. I was wondering how come I
13 can't enter any new evidence but the DA can? Like as far
14 as --

15 THE COURT: What new evidence do you wish to enter?

16 THE DEFENDANT: Well, I wanted to -- I wanted to
17 eviction notice and the -- and the information -- the other
18 information that -- that showed the -- what went on with
19 the --

20 THE COURT: Do you have somebody that could present
21 that?

22 THE DEFENDANT: Well, my mom has it.

23 THE COURT: But do you have somebody that can
24 present it?

25 THE DEFENDANT: That --

ROUGH DRAFT TRANSCRIPT

RA 0431

1 THE COURT: That can say this is a true and
2 accurate copy?

3 THE DEFENDANT: Well, that's -- that's why I had a
4 problem getting my witness. I could have also -- if I had
5 known that, I would have called whoever works for the county
6 in that department, I would have called them as a witness.

7 THE COURT: Okay. So what are you trying to admit?
8 That's what I don't --

9 THE DEFENDANT: The eviction notice, and then also
10 I wanted to -- I wanted to admit the person that was living
11 in that house record, how that they caught -- they caught a
12 trafficking case, you know, with guns and heroin and meth
13 within a week of me --

14 THE COURT: So you want to put a --

15 THE DEFENDANT: -- getting arrested.

16 THE COURT: -- record of somebody that's not even
17 here to testify that you claim is living in your house? Is
18 that -- just so I know?

19 THE DEFENDANT: Well, I mean, I just wanted to show
20 that --

21 THE COURT: That's a easy question.

22 THE DEFENDANT: -- the person that was living in my
23 house at the time of this, is that they had the same --

24 THE COURT: Okay.

25 THE DEFENDANT: That they had --

ROUGH DRAFT TRANSCRIPT

RA 0432

1 THE COURT: What eviction notice do you have? Do
2 you have it?

3 THE DEFENDANT: I don't have it with me. I'm sure
4 my mom has it.

5 THE COURT: When did the eviction occur?

6 THE DEFENDANT: Well, it didn't occur until like
7 maybe two months after because she didn't -- she wouldn't pay
8 any, you know, the mortgage or rent.

9 THE COURT: Two months after what?

10 THE DEFENDANT: Two months after the case, but I
11 mean -- I mean I can have --

12 THE COURT: I don't understand what you mean.
13 We're in the case right now so it hasn't --

14 THE DEFENDANT: Two months -- two months after my
15 arrest, but I mean --

16 THE COURT: Oh, okay. Okay, that's --

17 THE DEFENDANT: -- I could have people test -- I
18 mean, I could have several people testify that, you know, she
19 was there before and right after, you know, my arrest.

20 THE COURT: Okay. So that's where I think you
21 tried to contact somebody. So what are you saying? You have
22 a right to present evidence, Mr. Keller. I'm not preventing
23 you from doing so. You have an obligation to do it
24 legally --

25 THE DEFENDANT: I just --

ROUGH DRAFT TRANSCRIPT

RA 0433

1 THE COURT: -- and --

2 THE DEFENDANT: I didn't -- I mean, because, you
3 know, the -- because the communication problem and stuff, I
4 didn't -- we never discussed -- we never discussed my -- you
5 know, my defense on the case. We never have, you know what I
6 mean? So it's like I --

7 THE COURT: Well, Mr. Keller, just so that it's
8 clear --

9 THE DEFENDANT: I understand you're making him -- I
10 understand that, I mean, that it's falling on me at this
11 time, but you know what I mean, but I just -- I thought I was
12 going to get another -- I thought I was going to get a paid
13 lawyer, but the -- the thing was I don't -- my -- my stepdad
14 got cancer, and I couldn't -- and I couldn't be like oh, mom,
15 forget, you know, he just got -- he just got cancer, you
16 know, and then I can't be like oh, you know, mom, forget my
17 stepdad, you know, and get me a lawyer when she's having to
18 go to chemo with him and his blood cell counts are so low
19 that he can't even go through a chemo and stuff.

20 THE COURT: Mr. Keller, how old are you?

21 THE DEFENDANT: 32.

22 THE COURT: Okay.

23 THE DEFENDANT: I was working -- I was working
24 before I came here to -- I mean, I was working before I came
25 here, but not no type of way where I could pay for a lawyer,

ROUGH DRAFT TRANSCRIPT

RA 0434

1 you know what I mean? I was making \$9 an hour, and I had two
2 jobs working at Smith's and Mario's Market.

3 THE COURT: Okay. So what's your point? I mean,
4 what --

5 THE DEFENDANT: I just -- I'm just saying that's
6 why I couldn't -- that's why -- that's why the problem with
7 the lawyer wasn't --

8 THE COURT: Well, you have a lawyer. One was
9 appointed to you numerous times. You've had a lawyer every
10 single time you've been in this courtroom you've had a
11 lawyer. Because you choose not to discuss things with your
12 lawyer that's been appointed to you can't be begrudging the
13 state for that.

14 THE DEFENDANT: No, I'm --

15 THE COURT: So -- okay, so you've made your record.
16 Anything further?

17 MR. DICKERSON: Two things briefly. The first
18 thing is going to be the jail calls. We've stipulated to the
19 authenticity as we told Your Honor. Those have all been
20 provided, all the jail calls that we're looking at admitting
21 have been provided to defense counsel in August.
22 Specifically, as to the defendant's concerns about the
23 eviction and everything, I think we'll put a lot of that to
24 bed because the jail calls within a day or two after his
25 arrest, he's telling a female individual to move into his

1 house.

2 So we'll establish that through the jail calls.
3 We'll also establish that he says that he doesn't have a job
4 at the time, that he had lost his job. So we'll establish
5 those things through the jail calls. There's three in
6 particular. We would just -- we just want to bring that to
7 Your Honor's attention that we're going to be moving those in
8 and hoping to play those right after this last witness.

9 MR. FRIZZELL: Well, and my objection to those is
10 obviously a hearsay objection. Likewise, what it purports to
11 say is that this individual begin paying rent and not that
12 she -- not anything one way or the other that she's -- that
13 she hadn't already been residing there.

14 MR. DICKERSON: And that's fine for argument, but I
15 don't think it goes to the hearsay element, and the hearsay
16 is all taken care of because it's the defendant's own
17 statements and the adopted admissions throughout those two
18 calls -- two other calls that we haven't already spoke of,
19 Your Honor.

20 THE COURT: Okay.

21 MR. FRIZZELL: And again, I'm just lodging my
22 objection for the record, notwithstanding that --

23 THE COURT: Okay.

24 MR. FRIZZELL: -- it probably meets the same
25 criteria as the prior jail call.

1 THE COURT: Mr. Frizzell, my clerk has pulled the
2 eviction notice so --

3 MR. FRIZZELL: Yes.

4 THE COURT: -- I'll give that to you. Just for the
5 record, it was filed July 5th, 2016.

6 MR. FRIZZELL: Okay.

7 THE COURT: So --

8 MR. FRIZZELL: Thank you.

9 THE COURT: -- if you want to look at it for what
10 it's worth. If that's something that you think you might be
11 able to use in your defense based on what was represented to
12 you.

13 MR. FRIZZELL: Okay. I appreciate that. Thank
14 you, madam clerk.

15 THE COURT: Okay.

16 MR. BUNNETT: Your Honor, we have just a couple
17 more things to put on the record.

18 THE COURT: Okay.

19 MR. BUNNETT: Apparently, State's 52 and 53,
20 although, I believe I authenticated them, they were two
21 images, were inadvertently admitted -- not admitted into
22 evidence. State at this time, would move for admission of
23 State's 52 and 53.

24 THE COURT: Do you have any objection to 52 and 53?

25 MR. FRIZZELL: I'm sorry, and what were those?

ROUGH DRAFT TRANSCRIPT

RA 0437

1 I --

2 THE COURT: It's -- you both -- you used them. You
3 used this one in yours, and this one here was -- there was a
4 question about that as well.

5 MR. FRIZZELL: Oh, yes. Yes. No objection.

6 THE COURT: All right. So that will be admitted.

7 (State's Exhibits 52 and 53 admitted)

8 MR. BUNNETT: And the other thing, Your Honor, is I
9 think Mr. Frizzell's probably going to want to litigate this.
10 I'd just rather do it now than later.

11 The forensic chemist is here today, and he provided
12 both of us copies of his internal lab notes, as well as a
13 copy of his reports, and it looks raw data. After speaking
14 to Mr. Althnether, who's the chemist, he's indicated to me
15 that he does not need the raw data for any purpose during his
16 testimony, and he wouldn't be shown that during his
17 testimony. But I do just want to put on the record that both
18 of us received this today.

19 Mr. Frizzell has, however, received the forensic
20 report previously, on previous occasion, so he's had that for
21 quite a while.

22 MR. FRIZZELL: And that is correct, Your Honor.
23 While I don't have an issue, I just want -- and what the
24 State and I talked about was similar to what Officer Lopez,
25 the issues we had with his testimony originally. Was it

ROUGH DRAFT TRANSCRIPT

RA 0438

1 Lopez or was it the first one?

2 Well, it wasn't -- whoever we had objections about
3 reading from the report and --

4 THE COURT: And so you were doing that with Daniel
5 Lopez.

6 MR. FRIZZELL: Okay, that's what I thought was with
7 Officer Lopez.

8 THE COURT: Okay.

9 MR. FRIZZELL: And so we had talked about that and
10 that my main objections would be if he's just sitting there
11 reading from his report.

12 THE COURT: Okay. That's fine. We'll deal with
13 that if it comes to that point.

14 MR. BUNNETT: Okay.

15 MR. FRIZZELL: But I don't think the State is
16 actually looking to admit this as an exhibit.

17 MR. BUNNETT: Not at all. That's not what I want
18 to do. I think he may -- there may be a point where he would
19 have to refresh his recollection with it. It would be -- I
20 mean, as I said, the large amount of it is raw data. The
21 first 12 pages are of the report and then basically his
22 notes. So --

23 THE COURT: Well --

24 MR. BUNNETT: -- that -- those 12 pages.

25 THE COURT: -- Mr. Frizzell, because of the

ROUGH DRAFT TRANSCRIPT

RA 0439

1 objection you made in looking at the past recollection,
2 reported statute, it basically says that if the individual
3 can't remember or it's not refreshed his memory, then he can
4 read from the report. The report is not admitted in its
5 entirety unless you ask for it. That's the statute.

6 MR. FRIZZELL: Right. And you just remember the
7 issue we had yesterday was the questioning was on refreshing
8 recollection versus past recorded recollection.

9 THE COURT: But if he can't -- I mean, if he makes
10 it -- if they set the proper foundation as to them preparing
11 it when they put it down and if they're the ones that wrote
12 it, and then later they say that doesn't refresh my memory,
13 then they can read directly from the report.

14 MR. FRIZZELL: Right, right, but yesterday it was
15 just that was my issue. That was my only issue --

16 THE COURT: Okay.

17 MR. FRIZZELL: -- was that the foundational
18 elements for past recollection recorded was not that they
19 were doing it for the refreshing recollection --

20 THE COURT: Okay.

21 MR. FRIZZELL: -- exception (inaudible).

22 MR. BUNNETT: I think the approach maybe was for
23 the refresh recollection, but then upon after the approach,
24 the elements for a past recollection recorded were --

25 THE COURT: All right. Okay, we've made a record.

1 MR. FRIZZELL: Yeah, that was his -- well --

2 THE COURT: Anything further?

3 MR. BUNNETT: No.

4 THE COURT: All right. Go ahead and get the jury
5 in.

6 THE MARSHAL: All rise for the presence of the
7 jury.

8 (Jury reconvened at 11:06 A.M.)

9 THE COURT: Okay. Go ahead and get seated and get
10 comfortable. We're back on the record in case State of
11 Nevada versus Christopher Keller in C-312717. I'd like the
12 record to reflect the presence of the defendant, his counsel,
13 as well as State and their counsel. All right, ladies and
14 gentlemen, when we left, State was still in their case-in-
15 chief. Mr. Dickerson, Mr. Bunnett, call your next witness.

16 MR. BUNNETT: State calls Jason Althnether.

17 THE COURT: What's his name?

18 MR. BUNNETT: Jason Althnether.

19 THE COURT: Thank you.

20 JASON ALTHNETHER, STATE'S WITNESS, SWORN

21 THE CLERK: Thank you. Please be seated. Please
22 state your full name, spelling your first and last name for
23 the record.

24 THE WITNESS: Jason Althnether, J-a-s-o-n.
25 Althnether, A-l-t-n-e-t-h-e-r.

ROUGH DRAFT TRANSCRIPT

RA 0441

1 THE COURT: Your witness, Mr. Bunnett.

2 MR. BUNNETT: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. BUNNETT:

5 Q Good morning, sir.

6 A Good morning.

7 Q What do you do for a living?

8 A I work as a forensic scientist for the Las Vegas
9 Metropolitan Police Department forensic laboratory.

10 Q And by forensic scientist, what do you mean?

11 A Basically, what that entails is I receive evidence
12 for analysis, I perform analysis, I write a report and in
13 certain cases such as today testify as to the results on
14 those reports.

15 Q Do you have a speciality that you are assigned to?

16 A I work in the controlled substances unit, which
17 means I analyze evidence for the presence or absence of
18 controlled substances.

19 Q So in general, testing for the presence or absence
20 of controlled substances, what does that encompass?

21 A I basically, just again, analyzing -- receiving
22 evidence and analyzing it and testing those pieces of
23 evidence to see if anything's there, whether it be controlled
24 or an uncontrolled.

25 Q Okay. And before we get to the specifics of this

ROUGH DRAFT TRANSCRIPT

RA 0442

1 case, what is your background, your training and your
2 experience that qualifies you to do the job that you do?

3 A I graduated from Arizona State University, and I
4 studied chemistry. Shortly after I graduated from Arizona
5 State University, I was hired by the Mesa Police Department
6 in Mesa, Arizona, at which time I began training in the
7 analysis of controlled substances section. I was with Mesa
8 Police Department for approximately five years in that
9 capacity. I've been with Las Vegas Metropolitan Police
10 Department in the same capacity for about over seven years
11 now.

12 Q Okay. Have you testified in court before?

13 A Yes, I have.

14 Q How many times, approximately?

15 A Approximately, maybe 60 or so.

16 Q All right. And are you a member of any
17 professional organizations that relate to your profession?

18 A Yes. I'm a member of the Southwestern Association
19 of Forensic Scientists also known as SWAS, and the
20 Clandestine Laboratory Investigating Chemist Society or CLIC.

21 Q Do you update yourself in the methods and the
22 science behind your job?

23 A Yes. As members on those professional
24 organizations, I receive updates, e-mails, correspondence
25 with other chemists throughout the world as far as emerging

ROUGH DRAFT TRANSCRIPT

RA 0443

1 trends and how to analyze things.

2 Q Okay. So I want to talk first about -- or second
3 about some general principles of forensic testing for the
4 presence or the absence of controlled substances. How do you
5 obtain items that you test?

6 A I obtain the evidence from our evidence technician
7 who is in house at the laboratory. So I go to our evidence
8 technician, the evidence technician has the evidence that I
9 called up, which means I make a list of items that I need to
10 test that are in my queue to test. I call them up, they come
11 to our evidence technician, the technician then puts them
12 into my custody.

13 Q Okay. And then once they're in your custody, do
14 you have a work space that you bring them to?

15 A I have a work space and a secure locker that I can
16 put evidence into if I'm not currently working it.

17 Q Okay. In terms of your work space, what steps do
18 you take to prevent any cross contamination?

19 A Well, I only have one case open at a time on my
20 bench, I keep my tools clean, I keep my bench clean using
21 various solvents again, just making sure that it's free of
22 contaminants, dust, et cetera and again just keeping things
23 separate.

24 Q And do you take any precautions in terms of what
25 you wear to prevent cross contamination?

ROUGH DRAFT TRANSCRIPT

RA 0444

1 A I change my gloves in between items, I wear a lab
2 coat, things like that.

3 Q Okay. You also mentioned that once they come into
4 your -- they come into your custody and you also have a
5 locker.

6 A Yes.

7 Q Do you take any steps to indicate your custody and
8 any -- anything you do with the evidence?

9 A As far as marking the actual evidence, if I enter
10 the evidence, once I seal it back up, I'll put a piece of
11 tape on it. On that piece of tape I'll mark it with what's
12 known as my employee number or P number and the date in which
13 I seal it, and then on the front of the package there's also
14 what we call a chain of custody in which I'll write my name,
15 again, my P number, the date I seal it and the time. So that
16 should also be on the front of the package in addition to the
17 tape.

18 Q So for the package, and you mentioned tape --

19 A Yes.

20 Q -- what color tape do you use?

21 A Typically, we use blue tape.

22 Q All right. Now, in terms of testing for certain
23 controlled substances, do you always use the same test?

24 A Not necessarily. Again, it's kind of based on
25 training, knowledge and experience. You know, if something

ROUGH DRAFT TRANSCRIPT

RA 0445

1 looks like an off white powder, I might treat it differently
2 than say green leafy substance because obviously, it's
3 different. My route of analysis is going to be different
4 based upon that right away.

5 Q Have you previously tested a substance for the
6 presence or absence of purported methamphetamine?

7 A Yes, I have.

8 Q How about purported heroin?

9 A Yes, I have.

10 Q How about purported marijuana?

11 A Yes.

12 Q Purported cocaine?

13 A Yes.

14 Q So specifically here, were you tasked to examine
15 several items that were booked into evidence under event
16 number 160128-0259?

17 A Yes, I was.

18 Q All right. And then do you have an internal lab
19 number?

20 A Yes, we do. So any time that a request comes in,
21 in addition to the event number that has been assigned, we
22 assign a laboratory internal number.

23 Q And was there a lab number in this case?

24 A Yes, there was.

25 Q Do you recall it off the top of your head?

ROUGH DRAFT TRANSCRIPT

RA 0446

1 A I do not, no.

2 Q Would it refresh your recollection to look at your
3 report?

4 A Yes, it would.

5 Q All right. So I'm going to have you take a look at
6 that, and just turn it over when you're done or close-up
7 your --

8 A Okay.

9 Q All right. You ready?

10 A Yes.

11 Q Did that refresh your recollection?

12 A Yes, it did.

13 Q All right. So what's the lab number?

14 A 16-02608.

15 Q Okay. So and you mentioned previously that you
16 assigned certain items lab item numbers.

17 A Right, that is correct.

18 Q Okay. So I'm going to start with what's been
19 previously admitted as State's 82. And I'm going to start
20 with 82-B. I'm going to bring up 82 and 82-B specifically.

21 MR. BUNNETT: May I approach, Your Honor?

22 THE COURT: Yes.

23 BY MR. BUNNETT:

24 Q So I'm first going to show you what's been marked
25 as State's 82. I'm just going to have you take a look at

ROUGH DRAFT TRANSCRIPT

RA 0447

1 that.

2 A Okay.

3 Q Okay. And do you recognize that?

4 A Yes, I do.

5 Q What is that?

6 A So this is Las Vegas Metropolitan Police Department
7 evidence package with the event number 160128-0259. It has
8 blue evidence tape that I placed on the package. Again, it
9 has my P number, my employee number, and the date in which I
10 sealed it, in which in this case was April 13th of 2016. On
11 the front of the package there's also the chain of custody
12 that I talked about which includes my signature, my employee
13 number, the date and the time in which I sealed this package.

14 Q Okay. And just in general, just for identification
15 purposes, what was -- based on your reading of that, what was
16 in the package?

17 A Based upon the evidence label that's on the front
18 of the package, there are items 1 through 7 in this package
19 which is marked number 1. Or I'm sorry, 1 through 9. Excuse
20 me, 1 through 9.

21 Q Okay. Did you test particular items that were in
22 this package?

23 A I did test a few of the items, yes, not all of
24 them.

25 Q Okay. What were the item numbers of the items you

ROUGH DRAFT TRANSCRIPT

RA 0448

1 tested?

2 A If I may refer to the report again.

3 Q Okay, but, yeah, just -- if that would refresh your
4 recollection.

5 A It would refresh my memory.

6 Q Okay. So --

7 A So in this case, it was items 1, 2, 3 and 5 that
8 are listed on the front of the package here.

9 Q Okay. So I'm going to show you 82-B-1.

10 A Okay.

11 Q I'm going to show you 82-B-2, 82-B-3, 82-B-4,
12 82-B-5 and 82-A-3.

13 A Okay.

14 Q Do you recognize all those?

15 A Yes, I do.

16 Q Okay. And first off, how do you recognize them?

17 A So on each of the bags there's a piece of Scotch
18 tape that's wrapped around the top of the bag on all of the
19 items. And on each of these I've written the event number,
20 the internal lab number, which was assigned to it, the item
21 number, and in this case because there were multiple
22 submissions for that item, I also have an additional number
23 meaning one of in this case 7. So they're 1 through 7, along
24 with my employee number and the date in which I put this tape
25 flag on it.

ROUGH DRAFT TRANSCRIPT

RA 0449

1 Q Okay. And did you test these substances?

2 A Yes, I did.

3 Q And what -- specifically how did you test them?

4 A With something like this I'd start with a few
5 chemical color tests just to sort of give me an idea of what
6 I might be dealing with. In this case, it's a white
7 crystalline substance. I'll do a couple -- couple chemical
8 color tests, and that point, based upon those, I'll then
9 extract a portion of the sample, representative sample, and
10 I'll analyze it with our instrument, a gas chromatograph mass
11 spectrometer in which case I'll be able to identify what is
12 in this substance.

13 Q Okay. So what does the color test entail?

14 A Color test again is just sort of it gives me an
15 idea of what I might be dealing with. So I mean, different
16 things turn different colors with these particular color
17 tests that have been around for years, and with that, we can
18 sort of develop a work flow to get us to what's inside of it
19 and make that determination of what's the best extraction to
20 use in order to identify what is actually in the -- in
21 substance.

22 Q So basically, this color test helps guide your use
23 of the next step, which you mentioned was the gas
24 chromatograph?

25 A Gas chromatograph mass spectrometer, yes.

ROUGH DRAFT TRANSCRIPT

RA 0450

1 Q Okay. So gas chromatograph mass spectrometer?

2 A Correct.

3 Q What is a gas chromatograph mass spectrometer?

4 A It's actually two instruments in one. So the first
5 part of the Gas chromatograph is basically like a -- you can
6 think of it as sort of racetrack in which I take a sample, I
7 put it into a liquid form and then I inject it into this
8 instrument, which is basically a big oven with a tube inside
9 of it.

10 And what we do is we monitor how fast it goes
11 through this. Sort of like a racetrack. Again, kind of
12 setting these things all off at the same time but based upon
13 how they interact inside that instrument, they're going to
14 come out at different times. Not only are they going to come
15 out at different times, but that compound's going to come out
16 the same time every time.

17 So, you know, if you have like a motorcycle or a
18 four-wheel car, an 18-wheeler and you set them down the
19 highway, you're going to think that the motorcycle's going to
20 finish the highway first, right? The same thing that's going
21 to happen here. The lighter compounds are generally going to
22 come out and then the medium ones, then the heavier ones.
23 And it's consistent. We can run samples repeatedly and they
24 have the same what we call a retention time or how long
25 they're inside that instrument. That's the first part of the

1 instrument that separates things out, excuse me.

2 The second part of the instrument is called the
3 mass spectrometer. What happens is once they get -- they
4 complete that sort of racetrack, as we called it, we bombard
5 them with electrons. We break those molecules apart, and the
6 really handy thing about this is that these molecules will
7 break apart the same way every time creating what we call
8 a fragmentation pattern.

9 And based upon how it breaks apart, we can put it
10 back together and identify what it is. So again, using the
11 motorcycle, the car and the 18-wheeler, if we take those and
12 disassemble them, you know, I'd be able to tell which one is
13 the motorcycle, which one's the race car, which one's the
14 truck based upon the parts that are, excuse me, lying around.
15 I can put those back together and say hey, this was a
16 motorcycle or hey, this was a car. And that's how we do it
17 is based upon how fast it goes through the instrument and how
18 it breaks apart, we can make that -- make that
19 identification.

20 Q Okay. So did you perform both the color test and
21 the gas chromatograph mass spectrometer as to those items
22 that are in front of you right now?

23 A On all seven items, yes.

24 Q Okay. And in terms of the color test, did it give
25 you an idea of what substance you might be dealing with?

ROUGH DRAFT TRANSCRIPT

RA 0452

1 A Yes, it did.

2 Q And what was that substance?

3 A Based upon the color test that I thought that I
4 received from that, it indicated that might be
5 methamphetamine.

6 Q Okay. And then you ran the second step that gas
7 chromatograph mass spectrometer?

8 A Yes, I did, and it did confirm that methamphetamine
9 was present in each of the seven samples.

10 Q So based on your findings from both those tests, do
11 you have an opinion as to the nature of the substance that's
12 before you right now?

13 A So in each of the seven items identified that
14 methamphetamine was present.

15 Q And so for the record, again, that's items -- those
16 are Exhibits 82-B-1, 2, 3, 5, and 82-A-3?

17 A A-3, B-2, B-3, B-1, B-4 and B-5, yes.

18 Q Okay. Did you also weigh those substances?

19 A Yes, I did.

20 Q Okay. And how do you weigh them?

21 A So with -- with something like this, I'll empty out
22 the plastic bag and I'll weigh the material on a piece of
23 weigh paper, which we have in our laboratory. I'll place the
24 weigh paper on the balance, I'll tear the balance and then
25 I'll put the material on it so I'm taking what's called a net

ROUGH DRAFT TRANSCRIPT

RA 0453

1 weight, meaning, without the packaging.

2 Q Okay. Did you weigh all of them separately first
3 or together?

4 A Yes, the first -- one of the first things I do
5 after I received the evidence and I'm starting my worksheet
6 and taking notes on things, from one of the first things I'll
7 do is take a net weight of the material as I receive it.

8 Q Okay. And did all of those packages weigh the
9 same?

10 A No, they did not.

11 Q Okay. They had different weights?

12 A Yes, they did have different weights.

13 Q All right. But after doing that, did you weigh
14 them all together?

15 A No. So what happens is I'll weigh each one
16 individually and then at the end I'll add the weights because
17 then I'll be able to say that while each of them -- in this
18 case, each one contained methamphetamine so I'll combine it
19 as one -- I'll combine the weights because it's now one item
20 and still list it as item one.

21 So the totality of item one has a total net weight,
22 and that's just each of these weights added together.

23 Q So did you determine the net weight of those items?

24 A Yes, I did.

25 Q And what was the net weight?

ROUGH DRAFT TRANSCRIPT

RA 0454

1 A I don't recall off the top of my head.

2 Q Would it refresh your recollection to --

3 A Yes, it would.

4 Q -- refer to your report? All right.

5 A Yes, it would.

6 Q Just look up when you're done. Did that refresh
7 your recollection?

8 A Yes, it did.

9 Q And what was the weight total?

10 A 344.29 grams.

11 Q All right. Is there a margin of error?

12 A It's what we call an uncertainty of measurement.
13 Yes, there is.

14 Q Okay. What is the margin of error?

15 A So margin of error or again, uncertainty of
16 measurement is what I call sort of a give or take. So if I
17 were to cut a piece of string about one foot long, I could
18 probably get pretty close, but (indecipherable) give or take
19 on it is a couple inches, couple fractions of an inch, and
20 that's what we do with our balance, and this is only for the
21 balances is, is the weight that I'm recording the actual true
22 weight of that substance? So what we've done is we've done
23 these studies on our balances that sort of quantify that give
24 or take and in this case, there's a certain range of
25 uncertainty of measurement, again, as we call it, associated

ROUGH DRAFT TRANSCRIPT

RA 0455

1 with each weight.

2 So the weight that I record could be plus or minus
3 a little bit here or little bit there.

4 Q Okay. So what was the uncertainty of measurement
5 that you utilized in terms of these items?

6 A Again, it's balance specific.

7 Q Okay.

8 A It's on the report that's associated with the
9 weight.

10 Q Is it going to be a gram?

11 A I don't believe so. I think it's a fraction of a
12 gram. Again, without referring to my report, I don't know.

13 Q So it's not going to be anywhere near 10 grams?

14 A No.

15 Q Okay. It would be a fraction of a gram?

16 A Correct.

17 Q Okay. And what do you do with the evidence after
18 you're finished with it?

19 A So after I've completed my analysis, again, I'll
20 put this piece of Scotch tape back on it, I'll have all the
21 markings on it, I put it back together, and once everything's
22 done, I'll put it back into the original evidence package and
23 then again, I'll seal it up, I'll mark it, mark the tape that
24 I use and then mark the front of the back, put chain of
25 custody on it, and then I will return it to our evidence

ROUGH DRAFT TRANSCRIPT

RA 0456

1 custodian or evidence technician, excuse me, that's in our
2 laboratory.

3 Q Okay. And then I do want to go back to the
4 uncertainty of measurement really quickly.

5 A Okay.

6 Q That relates only to the weight?

7 A Yes, that is only for the weight.

8 Q There is no uncertainty of measurement as to
9 whether or not it's methamphetamine?

10 A No. That was identified. Methamphetamine was
11 identified.

12 Q Okay.

13 MR. BUNNETT: Your Honor, I have in my hand State's
14 82-A-1, which has already been admitted. May I approach with
15 it?

16 THE COURT: Yes.

17 BY MR. BUNNETT:

18 Q All right. I'm showing you State's 82-A-1.

19 A Okay.

20 Q And I'll have you take a look at that.

21 A Okay.

22 Q Do you recognize that?

23 A Yes, I do.

24 Q And how do you recognize it?

25 A On the front here that's inside of -- inside this

1 bag there's another plastic zipper bag, and on it is marked
2 the event number, the lab number. In this case, it's denoted
3 as item number 2. Again, it has the date, my employee number
4 and then it also indicates that this was a lab bag, meaning
5 it was a bag that came from our laboratory and I repackaged
6 the item inside of it.

7 Q Okay. And so that's an item you tested?

8 A Yes, it is.

9 Q And that was in -- before you tested it, it was
10 packaged in State's 82?

11 A Yes.

12 Q Okay. And in terms of testing this, what's the
13 method of testing that sort of item?

14 A So in it particular case, I'd probably start with
15 the same thing, again, I'm starting with a sort of a brown --
16 looks brownish/blackish material. Again, I'll start with
17 taking the weight, the initial net weight, and then I'll
18 start taking some samples for some color tests, and then
19 based upon those color tests, I'll use the instrumentation
20 again to make that identification of what is in that
21 substance.

22 Q And by instrumentation, you mean the gas
23 chromatograph mass spectrometer?

24 A Correct, yes the same instrument.

25 Q Okay. So what did the color test give you an idea

1 of what you were dealing with?

2 A So in this particular case, the color test
3 indicated that I might have something like heroin. So
4 instead of methamphetamine now it's pointing more to
5 potentially heroin. I'm not sure again. I'll have to
6 extract it and then run it on the instrumentation to confirm
7 that.

8 Q Okay. And did you use the instrumentation?

9 A Yes, I did.

10 Q And what did the instrumentation indicate to you?

11 A Based upon all the data, I was able to identify
12 heroin in these samples.

13 Q So based on the results from the instrumentation,
14 do you have an opinion as to the nature of that substance?

15 A Yes.

16 Q And what's your opinion?

17 A That it looks like two of them -- two different
18 packages -- were found to contain heroin.

19 Q Okay. Did you weigh those packages?

20 A Yes, I did.

21 Q And you had mentioned before that you get the net
22 weight?

23 A Correct.

24 Q And so you basically take it out of the package and
25 you weigh it?

1 A Correct.

2 Q By package and then add up the weights?

3 A That is correct, yes.

4 Q So what was the total net weight of that item?

5 A Again, without looking at my report, I don't know
6 that I --

7 Q So would looking at that refresh your recollection?

8 A Yes.

9 Q All right. Just look up when you're done.

10 A Okay. Okay. In this case, it was 33.92 grams.

11 Q All right. And in terms of the measurement of
12 uncertainty, was that anywhere near a gram?

13 A No. In this case, it was plus or minus .08 grams.

14 Q Okay. And what did you do after you tested this,
15 this item?

16 A In this particular case, again, I put a tape flag
17 on it marking it and then I also put both items into another
18 plastic zip bag and then again placed it back into the
19 evidence package and sealed it up.

20 Q Okay.

21 MR. BUNNETT: And Your Honor, I have in my hands
22 State's 82-A-4. May I approach with it?

23 THE COURT: Yes.

24 BY MR. BUNNETT:

25 Q All right. I'm show you go State's 82-A-4.

1 A Okay.

2 Q And I'll have you take a look at that and just look
3 up whether you're all done.

4 A Okay.

5 Q Do you recognize that substance?

6 A Yes, I do.

7 Q How do you recognize this?

8 A So again, there's a Scotch tape flag on the front
9 of the bag. Again, it has the information that I've talked
10 about before, event number with the laboratory number, the
11 item number, which in this case is item number 3 for our
12 laboratory, the date in which I put the tape flag on it and
13 my employee number.

14 Q Okay. And did you test this substance?

15 A Yes, I did.

16 Q And that was before you tested it, it was in this
17 package, State's 82?

18 A Yes, it was.

19 Q All right. And did you use the same methods that
20 we previously talked about to test it?

21 A The same thing. So again with the white powder
22 I'll start with several color tests before extracting it and
23 then running the sample on the instrument to make an
24 identification.

25 Q Okay. And just doing the color test, what did it

ROUGH DRAFT TRANSCRIPT

RA 0461

1 indicate to you might be dealing with?

2 A I don't have my notes. Without referring to them,
3 I don't know.

4 Q Okay. But did you subsequently test it using the
5 gas chromatograph mass spectrometer?

6 A Eventually, yes, I did use the instrumentation that
7 we talked about to make that identification.

8 Q And what did you do identify it as?

9 A Item 3. If I may refer to my notes again.

10 Q Sure. Just if it would refresh your recollection.

11 A Absolutely. Okay. In this case, it was cocaine
12 with a weight of 0.537 grams.

13 Q Okay. And in terms of the weight, once again, the
14 net wet?

15 A It is the net wet, yes.

16 Q So based on your findings from the instrumentation,
17 do you have an opinion as to the nature of that substance?

18 A Yeah. So I identified cocaine in this sample here.

19 Q Okay. And the weight again?

20 A I believe, I said .0537 grams.

21 Q Okay.

22 MR. BUNNETT: Your Honor, I have in my hands
23 State's 82-A-5.

24 THE COURT: Okay.

25 MR. BUNNETT: May I approach?

1 THE COURT: Yes.

2 BY MR. BUNNETT:

3 Q I'm showing you State's 82-A-5.

4 A Okay.

5 Q Do you recognize that?

6 A Yes, I do.

7 Q And is that something you recognize by the tape
8 that's on it?

9 A Yeah, again, the same thing, it's the event number,
10 lab item, date and my initials on it.

11 Q And that was in that -- this package --

12 A Yes, it was.

13 Q -- State's 82? And did you conduct testing on
14 that?

15 A Yes, I did.

16 Q The same methods we had previously talked about?

17 A Yes, sir.

18 Q Okay. So the color test followed by the gas
19 chromatograph --

20 A Right.

21 Q -- mass spectrometer?

22 A Right.

23 Q And based on those tests, did you come to a
24 conclusion about the nature of that substance?

25 A Yes, I did. So this one there's sort of a

ROUGH DRAFT TRANSCRIPT

RA 0463

1 white/orange/blue substance. And in this substance I
2 identified cocaine, methamphetamine and amphetamine in this
3 sample.

4 Q Okay. And did you weigh it?

5 A Yes, I did.

6 Q And do you recall the weight off the top of your
7 head?

8 A No. If I may refer to my notes.

9 Q Okay.

10 A And this one was 0.795 grams.

11 Q Okay. And was --

12 A That was the net weight, yes.

13 Q All right. So based on your findings from the
14 instrumentation, do you have an opinion as to the nature of
15 the substance that's been admitted as 82-A-5?

16 A Yes. So in this instance, I identified cocaine,
17 methamphetamine and amphetamine in this sample.

18 Q All right.

19 MR. BUNNETT: May I approach the witness again.

20 THE COURT: Yes.

21 MR. BUNNETT: And Your Honor, I have in my hand
22 what's been previously admitted as State's 83. May I
23 approach?

24 THE COURT: Yes.

25 MR. BUNNETT: And I'm also approaching with State's

1 83-A.

2 BY MR. BUNNETT:

3 Q So I'm showing you first State's 83. I'm going to
4 have you take a look at that. I'm going to ask you if you
5 recognize it?

6 A Yes, I do.

7 Q And what are we looking at?

8 A And again, that's another LVMPD evidence package.
9 It is marked with the chain of custody that I filled out with
10 my name, P number, date and time in which I sealed, along
11 with a piece of blue evidence tape that shows that I entered
12 the package that's marked with my P number and the date in
13 which I sealed it.

14 Q All right. And just for identification purposes,
15 what does the -- what's the supposed nature of assessments?

16 A In this particular one that's written on the
17 evidence package itself it is item 16 of package number 6,
18 and it is listed as a crystalline substance 3GG.

19 Q Okay. And I'm going to show you State's 83-A.

20 A Okay.

21 Q And I'm going to have you take a look at that.

22 A Okay.

23 Q Do you recognize that?

24 A Yes, I do.

25 Q And is that the item you would have -- that would

1 have been contained in here?

2 A It appears to be so, yes.

3 Q And was that an item that you tested in this case?

4 A Yes, it was.

5 Q All right. And when testing it, did you use the
6 same method that we've already talked about?

7 A Yes, I did.

8 Q Okay. Did you have an idea based on the color test
9 what you were dealing with?

10 A Again, without referring to my notes, I would --
11 I'd have to double check. I don't know what the color test
12 results were.

13 Q That's okay. How about what was result from the
14 instrumentation?

15 A Again, I'd have to refer to my notes.

16 Q Okay. So I'll have you refer to your notes.

17 A Okay, thank you.

18 Q And just look up when you're finished. Okay.

19 A And so in this particular item, I identified
20 methamphetamine in this sample right here.

21 Q And did you weigh it?

22 A Yes, I did.

23 Q And --

24 A And it was 0.150 grams and that is net weight.

25 Q Okay. What did you do with that item after you

ROUGH DRAFT TRANSCRIPT

RA 0466

1 tested it?

2 A After I tested it and I again put the tape flag on
3 it with the Scotch tape with all the markings and then once
4 that was done, I put it back into the evidence package and
5 then sealed it up, marked it, signed the chain of custody and
6 then gave it back to the evidence custodian.

7 Q So based on your findings, what is your opinion as
8 to the nature of the substance that's State 83-A?

9 A Again, this item was found to contain
10 methamphetamine.

11 Q All right.

12 MR. BUNNETT: And may I approach the witness with
13 State's 87 and contents?

14 THE COURT: Yes.

15 BY MR. BUNNETT:

16 Q All right, sir, I'm showing you State's 87.

17 A Okay.

18 Q Do you recognize this?

19 A Yes, I do.

20 Q Okay. And how do you recognize it?

21 A Again, this is another evidence package. It has
22 the seal marked with my employee number and the date in which
23 I sealed it, and it also has the chain of custody filled out
24 with again, my signature, P number, date and time in which I
25 sealed it.

1 Q Okay. And just for identification purposes, what's
2 listed as the description of the item?

3 A So on the description of the label here is listed
4 item 4, glass jar with ODB positive marijuana, 188.4 grams
5 looks like net after that.

6 Q Okay. And did you test this substance inside this
7 bag?

8 A May I look inside of it?

9 Q Sure.

10 A Yes, I did.

11 Q Okay. And was that what's been previously marked
12 as 87-C?

13 A Yes. Yes, it is.

14 Q Okay. So that's the substance that you tested?

15 A Yes, inside the -- inside the bag here, yes.

16 Q Okay. So what's inside that bag?

17 A It feels like it's sort of a plant material.

18 Q Okay. So is that something consistent with what
19 you tested?

20 A Based upon the recollection of my notes, yes.

21 Q Okay.

22 MR. BUNNETT: Court's indulgence.

23 BY MR. BUNNETT:

24 Q So is there a item lab that's listed on that
25 package?

1 A Yes, it is. The lab item is right underneath the
2 evidence -- or the, I'm sorry, the event number. And again,
3 it's listed as 16-02608, lab item number 6.

4 Q So that's lab item number 6?

5 A Correct.

6 Q And you would have written that on the package?

7 A Yes, I would have.

8 Q And that blue tape, that's also --

9 A Yeah, the blue tape --

10 Q -- something you would have done?

11 A -- is also -- I didn't mark this one because again,
12 it's not the actual package, but in this case, I just put the
13 tape on there to keep the bag closed and to keep it from
14 spilling everywhere.

15 Q Did you conduct testing on lab item 6?

16 A Yes, I did.

17 Q And was that test the same test as the ones we were
18 previously talking about?

19 A May I refer to my notes?

20 Q Sure, if it refreshes recollection.

21 A Absolutely. Okay. So no, this testing would be a
22 little bit different.

23 Q So in terms of a little bit different, what do you
24 mean?

25 A So in this case, what's inside of here is sort of a

ROUGH DRAFT TRANSCRIPT

RA 0469

1 green/brown leafy plant material. So already it's different
2 than the other items that I've seen so far in terms of a
3 white crystalline substance or a brown sticky substance.
4 This is now more of a plant material and this's sort of going
5 to change how I have my method of analysis, my route of
6 analysis.

7 So in this particular case, with plant material,
8 the first thing I'm going to do is take a look at it
9 microscopically. Meaning with my unaided eyes, I'm just
10 going to look at it and based upon my training, knowledge and
11 experience, I'm going to determine does it look like a
12 marijuana sample that I've seen throughout my career?

13 Q Is that what you would call the duck test?

14 A It is. It's what I sort of call a duck test when
15 I'm testing for marijuana. So how we test for it is sort of
16 does it look like it visually with the unaided eye? I'll
17 look at it microscopically, I'll be looking for certain
18 characteristics and then I'll take a portion of the sample
19 and perform a chemical color test on it, and all these three
20 things, I can make that identification if it is marijuana.
21 So again, it's like the duck test. Does it look like a duck?
22 Does it walk like a duck? Does it quack like a duck? So
23 with all those combined, I can make that identification that
24 it is marijuana.

25 Q So did you perform that analysis in this case?

1 A So, yes, like I said, I performed a microscopic.
2 So to me it looked like the samples of the marijuana that
3 I've seen in the past. It had certain characteristics. I
4 looked at it under the microscope. I found characteristics
5 of marijuana and then I performed a chemical color test, and
6 with all of those combined, I was able to identify that the
7 material was marijuana.

8 Q So that item is marijuana?

9 A Yes.

10 Q And did you weigh the substance?

11 A Yes, I did.

12 Q And how much did that substance weigh?

13 A 175.00 grams.

14 Q Okay. And was that a net weight?

15 A That was a net weight, yes.

16 Q Do you know the measurement conversion between
17 grams and ounces?

18 A One ounce is 28.3 grams.

19 Q Okay. So one ounce is 28.3 grams. So this would
20 have been over one ounce?

21 A Correct, yes.

22 MR. BUNNETT: And Your Honor, I have in my hand
23 what's been previously admitted into evidence as State's 90
24 and 90 A through C. May I approach the witness with these?

25 THE COURT: Yes.

1 BY MR. BUNNETT:

2 Q Okay. I'm showing you State's 90. Do you
3 recognize this?

4 A Yes, I do.

5 Q And that's an evidence envelope?

6 A That is envelope. Again, the chain of custody is
7 filled out by me and then there's also a piece of blue
8 evidence tape that's marked by me with the date that shows
9 that I entered this package.

10 Q Okay. And I'm showing you State's 90 A through C.

11 A Okay. (Witness reviewing exhibits). Okay.

12 Q Are those substances that were inside that package?

13 A Yes, they were.

14 Q Okay. And did you test each of those substances?

15 A Yes, I did.

16 Q And did you use the same methods that we've already
17 talked about and --

18 A Yes. Yes, I did.

19 Q Okay. In terms of 90-A --

20 A 90-A, okay.

21 Q -- when were your conclusions as to 90-A?

22 A If I may refer to my notes?

23 Q Sure.

24 A Okay. So this one identified methamphetamine with
25 a weight of 3.818 grams net.

ROUGH DRAFT TRANSCRIPT

RA 0472

1 Q Okay. And how about 90-B?

2 A Again, may I refer to my notes? (Witness reviewing
3 evidence). This one was 2.357 grams net found to contain
4 methamphetamine.

5 Q And 90-C?

6 A And one more time?

7 Q Okay.

8 A This one was .895 grams found to contain heroin.

9 MR. BUNNETT: If I may approach the witness again?

10 THE COURT: Yes.

11 BY MR. BUNNETT:

12 Q So based on your instrumentation, you determined
13 that that package contained two packages of methamphetamine
14 and one package of heroin?

15 A That is correct, yes.

16 MR. BUNNETT: And I'll pass the witness, Your
17 Honor.

18 THE COURT: Cross.

19 MR. FRIZZELL: Just a couple questions,
20 Mr. Althnether.

21 CROSS-EXAMINATION

22 BY MR. FRIZZELL:

23 Q Now, on what you identified as impound item 5,
24 which was a mixture, you said, of amphetamine,
25 methamphetamine and cocaine --

1 A Yes.

2 Q -- you said it had a net weight of .795 grams; do
3 you recall that?

4 A That sounds correct, yes.

5 Q Okay. Now, that is the only packaging, the only
6 piece of evidence that you examined that had a mixture of
7 three different substances in it; is that correct?

8 A That sounds, correct.

9 Q Okay. Now, did you separate out those three
10 particular substances when you tested them, do you recall?

11 A So as for as the weight, I weighed it as one
12 because it was perceived as one item. The sample itself did
13 not lend itself to be separated out so I did test it. I do
14 believe I did some testing initially on the blue substance by
15 itself and the orange substance itself. But again, because
16 it was received as one item, I treated it as one item as most
17 as -- as best as I could.

18 Q Okay. So even though you separated it out for
19 testing, you didn't weigh it separately?

20 A No, I didn't. Again, it didn't lend itself to
21 separating out the --

22 Q So each individual one of these three substances
23 did not weigh .795?

24 A No, again, this was a total mixture of the sample.

25 Q Okay. And on what was impound item 4, which was

1 the marijuana that we talked about --

2 A Yes.

3 Q -- when you received it, what packaging was it in
4 when you received it?

5 A Without referring back to my notes, I'm not quite
6 sure what the packaging was. In just looking at the package,
7 I try to package it the way the -- it was received. In this
8 case, it was a brown paper bag. I don't know if it was
9 received that way or not, again, without referring to my
10 notes.

11 Q Okay. Would referring to your notes refresh --

12 A Absolutely.

13 Q -- your recollection?

14 A Yes, it would.

15 Q If you want to take a look at your notes.

16 A Thank you very much. Okay. In this particular
17 case, yes, I did receive it. It was rolled up in that brown
18 paper bag that we saw earlier with that piece of red evidence
19 tape on it that was unmarked and that's how I received the
20 evidence.

21 Q Okay. So when you received it, it was not in a
22 glass container or any other type of container?

23 A Not according to my notes, no. It was just in that
24 brown paper bag.

25 Q Okay. So other than the brown paper bag, that's

ROUGH DRAFT TRANSCRIPT

RA 0475

1 the different -- is that the difference in the weight from
2 what was written on the evidence bag versus the 175 that you
3 have here?

4 A I'm not sure what the weight that was written on
5 the bag.

6 Q Would looking at the bag again reflect your
7 recollection?

8 A Absolutely.

9 Q All right.

10 MR. FRIZZELL: And Your Honor, for the record --

11 BY MR. FRIZZELL:

12 Q I'm going to show you 87 and its contents.

13 A Okay.

14 Q State's 87 and its contents. I apologize it's
15 ripping a little bit --

16 A Oh, no worries.

17 Q -- so --

18 A I got it. Okay.

19 Q So would you look inside there?

20 A Absolutely.

21 Q Do you see what appears to be a glass cylinder?

22 A Can I pull it out?

23 Q Yes.

24 A These were also in the package. I did not analyze
25 it. It was just in the package that I noted and --

ROUGH DRAFT TRANSCRIPT

RA 0476

1 Q And it was not -- so when it came to you, it was
2 not in that container?

3 A No. Again, according to my notes, it was removed
4 and placed in this bag here.

5 Q Okay. So you didn't have any reason to look at
6 that, it's --

7 A No, I had no reason to analyze this.

8 Q For any evidentiary value?

9 A No. It was not requested.

10 Q All right. You can put it --

11 A Okay.

12 Q And so when you tested each one of these items that
13 are on your report, you removed them from the packaging to
14 just weigh just the substance, correct?

15 A That is correct, yes.

16 Q Now, is there -- any time you handle one of these
17 substances, do you get every bit of it out of a package or
18 every bit of it off the table when you are moving it from one
19 place to the other or is there some residual?

20 A Just for clarification, residual in the bag or on
21 my bench?

22 Q Either one.

23 A I mean, we try as best we can, at least I can only
24 speak for myself, try as best as I can to get everything
25 that's in the item that is submitted as the item and get that

ROUGH DRAFT TRANSCRIPT

RA 0477

1 onto -- onto my balance to weigh it. Sometimes there are
2 extenuating circumstances like the sample's too sticky and
3 it's sticking to the plastic or something like that. But in
4 which case, that's a special circumstance, I would probably
5 note it in my notes, and I might even take a gross weight
6 instead of a net weight and say this is the weight I received
7 as it is because I can't physically separate it.

8 But in this case, I have no notes to that, so I
9 would say yes, I tried to get as much as I can out of the bag
10 on to my balance and weigh it to get a true weight or to get
11 the most accurate weight of the item again as received.

12 Q And so when you remove it from a package, do you
13 remove it from the package and, I guess, for lack of a better
14 term, pouring it -- pouring it on your scale or do you put it
15 another container and then put it on the scale? What's your
16 procedure when you weigh these?

17 A That's a really good question. I've actually done
18 it both ways sometimes. If it suits itself, I can just,
19 again, as you said, kind of pour it on to that piece of weigh
20 paper that I have on my balance. Other times I might need to
21 pour it on to another piece of weigh paper that's on my bench
22 and then transfer it onto the balance that has another piece
23 of weigh paper.

24 So again, I don't have that written down in my
25 notes. I'm not sure which way it is, but again, I'm trying

1 to get the sample from the -- the packaging on to my balance
2 to get that net weight.

3 Q So if you're say transferring it a few times to a
4 few different weigh papers, if you will --

5 A Yes.

6 Q -- there is opportunity for residual to stay on one
7 weigh paper and you don't get it all off to the next weigh
8 paper?

9 A That's a really good question. I suppose there is.
10 I mean, if there's multiple transferences, I mean, if you
11 think about cooking and you're weighing at what you have or
12 using flour or something, there's always a little bit of
13 residual, but again, we try as best as we can to minimize
14 that.

15 Q All right. Thank you.

16 MR. FRIZZELL: Court's indulgence.

17 BY MR. FRIZZELL:

18 Q One last thing. When you were provided all of
19 these items for testing, were you told anything regarding
20 these items were found in one area and these items were found
21 in another area or was it just used -- get all the tests on
22 everything you were given?

23 A I generally don't have that kind of information.
24 We just have the lab case -- or the event number that's
25 assigned to us and the items that are sent to us that are

1 asked for analysis. The only reason I would know where it
2 came from is if it's listed on the package and again --

3 Q And so --

4 A -- if I went through each one, I wouldn't know.

5 Q -- so is it fair to say if it's not in your report,
6 you wouldn't have said where it was located?

7 A That is correct. Again, I don't know where the
8 evidence comes from. I just receive the evidence as it is in
9 the packages.

10 Q Okay. And did you find any -- is it your job to
11 test say, purity, impurity, that sort of thing?

12 A We can perform that analysis on certain substances,
13 but that was not done in this case.

14 Q Okay. So you wouldn't be able to tell whether or
15 not it was, say, cut with baby powder or something along
16 those lines?

17 A In it particular --

18 MR. BUNNETT: Objection. Relevance.

19 MR. FRIZZELL: I'm just asking.

20 THE COURT: No, I'm going to allow him. He can --
21 overruled. If he can answer it.

22 THE WITNESS: So in this particular case, no, it's
23 what we call sort of a quantitative analysis versus a
24 qualitative analysis. And with quantitative, we're
25 determining a purity, and I did not do this in this case. I

ROUGH DRAFT TRANSCRIPT

RA 0480

1 just merely performed what's called a qualitative. Again,
2 I'm identifying what's in this particular substance, not
3 necessarily purity.

4 MR. FRIZZELL: I have nothing further, Your Honor.

5 THE COURT: Redirect.

6 MR. BUNNETT: Yes, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. BUNNETT:

9 Q I want to focus with you on the weight. If you
10 recall, item 1 was I believe that methamphetamine that you
11 determined was 344.29 grams net?

12 A Yes.

13 Q Okay. What was the -- I'm forgetting the word, but
14 the -- essentially the difference in terms of the weight?
15 The one that I referred to previously as a margin of error,
16 but what was the term again?

17 A Oh, the uncertainty of measurement.

18 Q Okay. What was the uncertainty of measurement for
19 that item?

20 A Oh, gosh, I don't remember. May I refer to my
21 notes again?

22 Q Yes. Just look up when you're done.

23 A Yeah. Okay. On that particular item, the
24 uncertainty of measurement for all of them combined was 0.14
25 grams.

ROUGH DRAFT TRANSCRIPT

RA 0481

1 Q So based on that, the weight of that item would
2 have ranged from 344 -- if my math's correct, 344.15 to
3 344.43?

4 A That sounds correct.

5 Q Okay.

6 A Without doing it myself, yes.

7 Q And it wouldn't be outside of that range?

8 A It -- it can be outside of that range. Again,
9 we're doing a mathematical statistical formulation. In this
10 case, excuse me, if you think of sort of a bell curve, in
11 this case, we're not getting the entire bell curve, we're
12 getting about, I think, 98 percent of it. So there is a
13 little bit of outline. It could be a little bit more, it
14 could be a little bit less, but we're getting -- I forget the
15 percentage. I think it's 97.4 accuracy or confidence that
16 it's within that range. So it could be slightly lower or it
17 could be slightly less but this is the uncertainty that we've
18 associated with the balance and that we do report.

19 Q But it's not going to be significantly lower or
20 significantly --

21 A No.

22 Q -- less?

23 A It's not going to be significantly high or low.

24 Q Okay. And in terms of item 2, I think you had
25 testified that the -- that calculation that we've just talked

1 about was .08. Sound right?

2 A That sounds correct, yes.

3 Q Okay. So that means that within this 97-ish
4 percentage range --

5 A Correct.

6 Q -- it would be between 34 or 33.84 grams?

7 A Sounds correct.

8 Q Okay. And do you know whether controlled
9 substances dry up?

10 A They can dry, yes, through storage.

11 Q Okay. Would green leafy material, such as
12 marijuana, dry up?

13 A Absolutely.

14 Q Okay. Would methamphetamine dry up?

15 A In some cases if it's still fresh from being
16 manufactured, there is some solvent residue that's on top of
17 it and could evaporate over time. It's possible.

18 Q If something dries up, is it going to weigh more or
19 weigh less when testing?

20 A It's going to weigh less as another solvent or in
21 the case of marijuana, which there's moisture present because
22 it's a living plant has a moisture or solvent releases, it's
23 going to obviously, weigh less.

24 Q Okay.

25 MR. BUNNETT: I'll pass the witness, Your Honor.

ROUGH DRAFT TRANSCRIPT

RA 0483

1 MR. FRIZZELL: Nothing further, Judge.

2 THE COURT: What about heroin? Does that dry up,
3 too?

4 THE WITNESS: Your Honor, yes, it can.

5 THE COURT: Okay. Any questions? All right. No
6 further questions. Thank you so much for your testimony.
7 You can step down. You're excused.

8 THE WITNESS: Thank you very much, Your Honor.

9 THE COURT: Is there a bunch of evidence in front
10 of you right now?

11 THE WITNESS: There is no evidence in front of me.

12 THE COURT: Okay. All right. Thank you. Okay.
13 All right. State, call your next witness.

14 MR. DICKERSON: At this point in time, Your Honor,
15 the State's going to move for the admission of this CD that
16 we've spoke of regarding the stipulated authenticity of the
17 audio files on the CD.

18 THE COURT: What's the number?

19 THE CLERK: 96?

20 THE COURT: No. 96?

21 MR. DICKERSON: I'm asking to have it marked right
22 now. 96, State's Proposed 96, Your Honor.

23 THE COURT: Mr. Frizzell --

24 MR. FRIZZELL: Yes, Your Honor.

25 THE COURT: -- do you have any objection to it

1 being admitted?

2 MR. FRIZZELL: Let me ask the State. No, Your
3 Honor.

4 THE COURT: All right. So No. 96 will be admitted.

5 (State's Exhibit 96 admitted)

6 MR. DICKERSON: Court's brief indulgence while we
7 get the technical aspect of it.

8 (Pause in the proceedings)

9 MR. DICKERSON: On State's 96, the first file to be
10 played is the file date stamped 1/29/16, 1:31:34 to phone
11 number 702-595-6270.

12 THE COURT: Okay.

13 (Pause in the proceedings)

14 (Playing CD)

15 MR. DICKERSON: The next file played from State's
16 96 is marked date 12/9/2016, time 6:07:53 to phone number
17 702-595-6270.

18 (Playing CD)

19 MR. DICKERSON: And the final file from State's 96
20 is going to be date stamped 1/30/2016, time 7:33:56, phone
21 number 702-929-0880.

22 (Playing CD)

23 MR. DICKERSON: That concludes State's 96.

24 THE COURT: Mr. Dickerson, any other witnesses?

25 MR. DICKERSON: State has no further witnesses at

ROUGH DRAFT TRANSCRIPT

RA 0485

1 this time. We would just ask to take a look at the exhibits
2 and make sure they've actually been admitted.

3 (Pause in the proceedings)

4 MR. DICKERSON: At this time, Your Honor, the State
5 rests.

6 THE COURT: Okay. Ladies and gentlemen, it's
7 12:30. I'm going to give you a lunch and let you guys go to
8 lunch for about an hour and 15 minutes. So be back here by
9 quarter to 2:00.

10 During this recess, you're admonished not to talk
11 or converse amongst yourself with anyone else on any subject
12 connected with this trial, read, watch or listen to any
13 report or commentary on the trial or any person connected
14 with this trial by any medium of information, including
15 without limitation, newspapers, television, Internet or
16 radio, or form or express any opinion on any subject
17 connected with this trial until it's finally submitted to
18 you.

19 All right. We'll be at ease while the jury leaves
20 the room, okay?

21 (Outside the presence of the jury.)

22 THE COURT: Okay. We're outside the presence of
23 the jury. The State has rested. When we come back, well,
24 you know what I'd like to do is I'd like to take you all now
25 and we just -- and go through the jury instructions and

1 settle those. And then I'll put them back on the record
2 before we go back before you start your case, okay?

3 MR. FRIZZELL: Sounds great.

4 MR. DICKERSON: Fair enough.

5 THE COURT: All right. So all right, so have him
6 back by a quarter to 2:00.

7 CORRECTIONS OFFICER: Yes, Your Honor.

8 THE COURT: Is there anything you need to put on
9 the record, though, at this time, either party?

10 MR. FRIZZELL: No, Your Honor, I don't believe that
11 Mr. Keller's going to testify so --

12 THE COURT: Well, we'll find out when he comes
13 back.

14 MR. FRIZZELL: Okay.

15 THE COURT: All right? Okay, so a quarter to 2:00
16 have him back, okay?

17 CORRECTIONS OFFICER: Yes, Your Honor.

18 THE COURT: Thanks, officers.

19 CORRECTIONS OFFICER: Thank you.

20 THE COURT: All right.

21 (Court recessed at 12:29 p.m. until 1:53 p.m.)

22 (Outside the presence of the jury.)

23 (Pause in the proceedings)

24 THE COURT: All right. We're back on the record in
25 the case of State of Nevada versus Christopher Keller in Case

ROUGH DRAFT TRANSCRIPT

RA 0487

1 No. C-312717. I'd like the record to reflect the presence of
2 the defendant, his counsel, as well as State and their
3 counsel. We're outside the presence of the jury. I've went
4 through the jury instructions. Does the defense have a copy
5 of the jury instructions --

6 MR. FRIZZELL: I --

7 THE COURT: -- and the State have a copy of the
8 jury instructions?

9 MR. FRIZZELL: I do, Your Honor.

10 THE COURT: Okay.

11 MR. DICKERSON: State does, Your Honor.

12 THE COURT: Okay. For that, I'm going to ask is
13 the State familiar with jury instructions 1 through 23?

14 MR. DICKERSON: We are, Your Honor.

15 THE COURT: Do you have any objection to giving of
16 any of these instructions?

17 MR. DICKERSON: We do not.

18 THE COURT: Do you have any additional instructions
19 you'd like to propose?

20 MR. DICKERSON: Not at this time, Your Honor, no.

21 THE COURT: And is the defendant familiar with
22 instructions 1 through 23?

23 MR. FRIZZELL: Yes, Your Honor.

24 THE COURT: Do you have any objection to the giving
25 of these instructions?

ROUGH DRAFT TRANSCRIPT

RA 0488

1 MR. FRIZZELL: Well, in contemplation of what I
2 need to put on the record, we may need to take out a couple
3 of instructions. Specifically, 18 and -- well, I guess, just
4 18.

5 MR. DICKERSON: And I think under that same token,
6 then we would also need to add in the other two that we had
7 previously (inaudible).

8 THE COURT: All right. So are you telling me your
9 client wants to testify?

10 MR. FRIZZELL: Well, if I may put on the record --

11 THE COURT: Okay.

12 MR. FRIZZELL: -- what happened here. While you
13 were probably walking down the hallway to come in, I was on
14 the phone with the witness that you said you would allow to
15 testify, Mary Silva, who was on the road ostensibly heading
16 home, she told me. I asked her -- I said, we're ready and
17 it's now time and the judge isn't going to wait. How long
18 was it going to take you to get back?

19 And she said she could be back here by 3:00
20 o'clock, when I told her it was 1:55. I told her that you
21 were basically coming down the hallway and that I was not
22 going to -- that the judge was probably not going to want to
23 wait that long. And then you came on and I hung up the
24 phone. And so I have not had an opportunity to ask my client
25 if in light of the fact that she is now not going to be

1 there, if he has -- if he still wishes to exercise his 5th
2 amendment right or waive that and take the stand? So --

3 THE COURT: Okay. Well, do it.

4 MR. FRIZZELL: -- that's where I'm at right now.

5 THE COURT: Okay. Well, go ahead.

6 MR. FRIZZELL: So what do you want to do?

7 (Mr. Frizzell/Defendant conferring)

8 MR. FRIZZELL: Okay. No, he at this time, does not
9 wish to exercise his right to testify. He wants to -- he's
10 -- we'll keep those -- we'll keep the 18 in.

11 THE COURT: So once again, do you have any
12 objection to the instructions being proposed?

13 MR. FRIZZELL: No, Your Honor.

14 THE COURT: And do you have any additional ones
15 that you wish to offer at this time?

16 MR. FRIZZELL: No, Your Honor.

17 THE COURT: Okay. Are you familiar with the -- are
18 both parties with our verdict forms?

19 MR. FRIZZELL: Yes, Your Honor.

20 THE COURT: Is there any -- do you have any
21 objection to the verdict forms in their current state?

22 MR. FRIZZELL: Other than what you --

23 THE COURT: It's the same.

24 MR. FRIZZELL: Okay, then as long -- then, no, I
25 don't.

1 THE COURT: All right. Okay. So we're go ahead
2 and bring the jury back in, then.

3 THE DEFENDANT: And could I say one quick thing? I
4 was wondering, you know, the officers that I'm not -- I
5 thought that I would be able to like that each one of the
6 witnesses listed for the State, which would be specifically
7 the officer that wore the body cam and broke off the glove
8 box that -- that we would be able to cross-examine him and
9 stuff and now I'm not able to. I don't know. I won't call
10 that they're hiding him, but I can't -- I can't, you know,
11 question him -- we can't question him now, and that's a -- a
12 big witness in my -- in my case, you know?

13 THE COURT: Well, you've known about this witness
14 since the day that you were given a copy of the report.

15 THE DEFENDANT: I thought that he would be -- I
16 thought obviously that they would be calling him this whole
17 time. Why would they not call the main officer, the one that
18 had the body cam, the officer on the scene?

19 THE COURT: I don't know. I heard from an officer
20 that sounded like he was the one that took the case. So I
21 don't know. I don't control the State's case. So
22 Mr. Frizzell, did you do anything with regards to that
23 officer or what?

24 MR. FRIZZELL: Well, no, because, Your Honor, as
25 you'll know we litigated approximately three times that

1 although Officer Henry may have stated that he had a body
2 cam, that not -- we litigated it in a motion to suppress, and
3 in my Brady motion that you granted, and I believe I may have
4 -- we may have argued it at one point even prior tot motion
5 to suppress, and basically, what I've been told by State is
6 that no such -- there is no body cam footage from this case,
7 period.

8 THE COURT: Okay.

9 MR. FRIZZELL: So --

10 THE DEFENDANT: He's the officer that broke off my
11 glove box before issuing a warrant.

12 THE COURT: Okay, so what is the relevance of the
13 fact that -- I mean, that's up to you, but I don't know,
14 Mr. Frizzell, did you consider that? I mean, I understand --

15 MR. FRIZZELL: Well, he's spoken to me about it on
16 several occasions, and it's all -- it's the same that we have
17 photos of a glove box have been removed, the cover having
18 been removed, and everyone in this courtroom has seen
19 photographs of this hole. And that's all -- and Mr. Keller
20 seems to believe and unfortunately, there's no way it flesh
21 this out. I've talked with the State about it, asked if they
22 could talk with their officers. Mr. Keller claims that there
23 was a plastic piece that was covering up even that hole that
24 was part of that box that he thinks would have had to have
25 been broken off in order to actually expose that hole that we

1 saw that was inside the glove box.

2 I've talked with the State about that for the last
3 six, seven months, Your Honor, and there is no evidence that
4 exists or anyone that can testify other than Mr. Keller
5 because he's the one that's telling me these things that that
6 was the case with that door, coupled with the fact that I
7 instructed him, and this was not long after I took the case
8 over from Mr. Sanft even and had a long discussion with him
9 about the facts and evidence in the case, that they're just
10 -- there isn't any evidence, anyone that will testify or
11 could testify that there was more to that glove box than just
12 simply a cover.

13 THE COURT: Mr. Keller, are you suggesting that the
14 officers -- is your suggestion that you need this officer
15 because you believe the officer placed those items in your
16 car?

17 THE DEFENDANT: I'm saying that for one thing the
18 improperness of breaking someone's glove box, for one. For
19 two, there has been no representation to the Court yet that,
20 you know, the glove box is -- this the part that they took
21 off was a box like this and it has sides on it in the back
22 and the front. And when that is on there, you cannot see
23 anything.

24 THE COURT: Okay, but you heard testimony about the
25 dog. You heard testimony about the dog hitting on that. The

1 simple fact -- there's two areas here, and I think you -- you
2 have some limited knowledge, I know you do, based on the way
3 you talked to me in this area because you've talked about
4 probable cause. It may be coming from your mom, I don't
5 know, but I mean, I know who your mom is so that's why I --
6 so -- but the thing is, is that in the case in 2013 our
7 Supreme Court changed the law that they -- they were
8 originally using when it comes to a vehicle stop. There was
9 two different portions of probable cause that's been
10 announced at least in this trial and in the previous hearings
11 that we had that the officer had probable cause to search
12 that vehicle.

13 The probable cause to search that vehicle doesn't
14 stop simply because they can't get into certain things. Once
15 they develop probable cause, then they can go into boxes and
16 glove boxes and so they could have removed that. But my
17 understanding was is the dog hit on that and then after that
18 was when they found that hole and then they were able to --
19 then they got a search warrant. Is that correct? Am I right
20 with that?

21 MR. FRIZZELL: Not quite, Your Honor.

22 THE COURT: Okay.

23 MR. FRIZZELL: I think that what happened was, was
24 remember the officer said that the open -- the glove box --
25 Lopez said the glove box was already off when he was there,

1 and he saw the hole he reached down in, but he could not pull
2 it out -- could not pull his handout.

3 THE COURT: I know, but hadn't the dog already been
4 there?

5 MR. FRIZZELL: No.

6 MR. DICKERSON: Yeah. The dog already had --

7 MR. FRIZZELL: No. Not --

8 MR. DICKERSON: And that's what you established in
9 the suppression hearing.

10 THE COURT: Right.

11 MR. DICKERSON: When we went actually back in CAD,
12 because in the CAD he announced at this point in time when he
13 thought there was a gun in the car.

14 THE COURT: My understanding was that he found the
15 baggies and he reached down between the seat and the console,
16 felt something he felt may be a gun or may be some other
17 contraband, then he got a dog there.

18 MR. DICKERSON: Actually, it was just the baggies
19 under the seat and next to the seat --

20 THE COURT: Okay.

21 MR. DICKERSON: -- and then the smell and visual of
22 marijuana and then he went in, but it was after -- excuse me,
23 it was the smell of visual marijuana that caused him to go
24 in.

25 THE COURT: Right.

ROUGH DRAFT TRANSCRIPT

RA 0495

1 MR. DICKERSON: Then the baggies under the seat
2 obviously, makes him realize there's something here with the
3 money that's in Mr. Keller's pocket gets him to call the dog
4 out. Dog comes out, gets in the car, hits on the glove box.
5 That's when Lopez sticks his hand into the glove box, feels a
6 hard object in there, what he believes to be a gun, backs out
7 and they get a search warrant.

8 THE COURT: Okay.

9 THE DEFENDANT: Yeah, that's why I need Henry
10 because they -- they broke the glove box -- they broke the
11 glove box off and then -- and then they -- and then they --
12 they created a hole. So now you -- now they could see
13 something --

14 THE COURT: So it's your testimony or your
15 statement that there was no hole there?

16 THE DEFENDANT: That's what -- that's what I'm
17 saying and that's -- you could not --

18 THE COURT: Okay. Well, there's --

19 THE DEFENDANT: Well, whether there was a hole or
20 not there, no one -- we have no way of knowing because there
21 was -- that's what I'm saying, the glove box had sides on it
22 that it was a hole square. It had sides on it that -- that
23 blocks any vision from that hole. And to me, it's like I
24 think the jury at this point thinks that when you open the
25 glove box that you could see a hole there, and that's not the

1 case. You have to -- you have to rip the glove box off
2 before you -- before that was actually visible because
3 there's sides on the glove box.

4 THE COURT: Okay. So what's your point?

5 THE DEFENDANT: Well, not only the improperness of
6 breaking off glove boxes before a warrant, but also the
7 fact --

8 THE COURT: Okay. I've already -- I already
9 addressed that.

10 THE DEFENDANT: All right, all right.

11 THE COURT: I already addressed that.

12 THE DEFENDANT: And also the fact that you --

13 THE COURT: They could go --

14 THE DEFENDANT: -- can -- you can -- I also want
15 the jury to know that I'm not -- that this was not something
16 that when I opened my glove box, you know, that I could just
17 see some hole right here because that would make it look
18 like, you know, that -- that I knew that it was there or
19 something, you know?

20 THE COURT: Okay. And you think this other officer
21 is going to be the one to address that? Is that what you're
22 saying?

23 THE DEFENDANT: Well, I mean, he -- he would say
24 yes, that the whole glove box would have been blocking any
25 visual of --

1 THE COURT: How do you know that? Have you talked
2 to him?

3 THE DEFENDANT: Well, because I know the glove box
4 blocks it so --

5 THE COURT: I know, but you're saying he would say
6 that. But there was another officer testified, there was the
7 officer that did the initial contact, Mr. Lopez -- Officer
8 Lopez.

9 THE DEFENDANT: But they -- they never got into
10 that, whether he seen it or not before --

11 THE COURT: Well, isn't that --

12 MR. DICKERSON: He did, Your Honor.

13 THE DEFENDANT: He said he seen it once the glove
14 box is off.

15 MR. DICKERSON: If you recall, Officer Lopez
16 testified before the glove box came off. You could just see
17 a small portion what he described as maybe an inch of this
18 hole, and then it was after that it came off that you had the
19 actual bigger hole.

20 THE DEFENDANT: Well, then I would have had
21 pictures of that same model vehicle as evidence in court
22 showing that that's a obvious lie because --

23 THE COURT: Then why didn't you?

24 THE DEFENDANT: -- that model --

25 THE COURT: Why didn't you? We've been going on

ROUGH DRAFT TRANSCRIPT

RA 0498

1 for over a year now.

2 THE DEFENDANT: I thought --

3 THE COURT: Over a year.

4 THE DEFENDANT: I thought that I was -- I thought
5 that I was going to have a different attorney and be able
6 to work my case with him.

7 THE COURT: You keep going back on that. You've
8 had an attorney appointed for you throughout this whole
9 proceeding, and at the very last minute -- I'm not going to
10 get into that anymore. Do you have this witness subpoenaed
11 to testify?

12 MR. FRIZZELL: The officer he's describing?

13 THE COURT: Yes.

14 MR. FRIZZELL: No.

15 THE COURT: Okay. So --

16 MR. DICKERSON: And just for the record, Your
17 Honor, any body cam concerns we addressed, we did follow your
18 order and looked for body cam. There was no body cam saved
19 on this case. From the day this case came into the DA's
20 office, we were unable to locate any body cam on this case.
21 We inquired with the Officer Henry, and though I believe he
22 just started wearing body cam at that time, it was none
23 saved. I think it has to do in talking to him with the way
24 body cam worked at that time. It wasn't connect today the
25 internal system of CAD where it automatically downloads. Now

ROUGH DRAFT TRANSCRIPT

RA 0499

1 it's --

2 THE COURT: Did you subpoena Officer Henry?

3 MR. DICKERSON: We did.

4 THE COURT: Is he here?

5 MR. DICKERSON: No, he's not.

6 THE COURT: When did you have him subpoenaed for?

7 MR. DICKERSON: We had him -- well, we subpoenaed
8 him for the first day of trial, which was Monday.

9 THE COURT: Okay. Do you have his phone number?

10 MR. DICKERSON: Yeah, we could -- we had him down
11 here, too. We can bring him back.

12 THE COURT: All right. We're going to do that.
13 All right. So we're at 10 after. I'll give you that
14 opportunity, you can put that officer on --

15 THE DEFENDANT: Thank you, Your Honor.

16 THE COURT: -- to your case desire, if you choose,
17 Mr. Frizzell. It's up to you. Your client's screaming about
18 him that he's going to change this whole case around, but
19 whatever you want to do.

20 MR. FRIZZELL: And candidly, in my professional
21 opinion, I do not think that this officer is going to be able
22 to add something to assist Mr. Keller in his case. But by
23 the same token, if he wants this officer to testify about
24 what he did and what he saw and that sort of thing in the
25 car, then I mean, I'm fine with calling him.

ROUGH DRAFT TRANSCRIPT

RA 0500

1 THE COURT: All right. Mr. Keller, I want you to
2 understand something. Strategic matters are usually left to
3 your attorney. But I'll give you this option, okay? You
4 want to call him or not?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you want to call him?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right. So how long will it take
9 him to get him down here?

10 MR. DICKERSON: I don't know. We released him from
11 his subpoena already so we'll see if we can get in touch with
12 him.

13 THE COURT: You have the number. Okay.

14 MR. BUNNETT: Yeah, I'm coordinating with him right
15 now.

16 THE COURT: All right. Are you communicating with
17 him?

18 MR. BUNNETT: Yes, I'm texting him right now.

19 THE COURT: All right. Just tell him the Court
20 says he needs to get here ASAP.

21 (Pause in the proceedings)

22 (Court went off the record at 2:10 p.m. until 2:50 p.m.)

23 (Outside the presence of the jury.)

24 (Pause in the proceedings)

25 THE MARSHAL: All rise for the jury.

ROUGH DRAFT TRANSCRIPT

RA 0501

1 (In the presence of the jury.)

2 THE COURT: Okay. This is continuation of jury
3 trial in case the State of Nevada versus Christopher Keller
4 in C-312717. I'd like the record to reflect the presence of
5 the defendant, his counsel, district attorney and their
6 counsel and all members of the jury. Will the parties
7 stipulate to the presence of the jury?

8 MR. DICKERSON: State will stipulate, Your Honor.

9 MR. FRIZZELL: Defense stipulates.

10 THE COURT: Okay. As we took a break, State had
11 rested their case. Mr. Frizzell, did you wish to present any
12 evidence on behalf of the defendant?

13 MR. FRIZZELL: Yes, Your Honor. Defense wishes to
14 call Officer Jacob Henry to the stand.

15 THE COURT: Okay.

16 OFFICER JACOB HENRY, DEFENDANT'S WITNESS, SWORN

17 THE CLERK: Thank you. Please be seated. Please
18 state your full name, spelling your first and last name for
19 the record.

20 THE WITNESS: Jacob Henry, J-a-c-o-b, H-e-n-r-y.

21 THE COURT: Your witness.

22 DIRECT EXAMINATION

23 BY MR. FRIZZELL:

24 Q Are you officer, detective? What is your title?

25 A Officer.

ROUGH DRAFT TRANSCRIPT

RA 0502

1 Q Officer Henry, what do you do for a living?

2 A I'm a police officer with Las Vegas Metropolitan
3 Police Department.

4 Q And how long have you been so employed?

5 A Today's date, approximately three years.

6 Q And where were you -- were you -- where are you
7 stationed now?

8 A Northeast Area Command.

9 Q Okay. And were you stationed that command on
10 January 28th, 2016?

11 A I was.

12 Q On that date, were you called out for any reason?

13 A I was.

14 Q Okay. And what was that reason?

15 THE COURT: Why don't you be a little bit more
16 specific.

17 THE WITNESS: Yeah, I was on multiple calls that
18 night.

19 THE COURT: Okay.

20 BY MR. FRIZZELL:

21 Q In the evening, were you called to 265 North Lamb
22 Boulevard for any reason?

23 A I was.

24 Q And do you recall why you were called to that
25 address?

1 A Affirmative. One of my squadmates, Officer Lopez,
2 had done a vehicle stop, and based on the circumstances of
3 the stop, he requested additional units.

4 Q And roughly, how long after that call would you say
5 you responded to the scene?

6 A I would say approximately, within five minutes. I
7 was not too far away when he requested help.

8 Q Okay. And when you arrived, what did you see?

9 A I saw Officer Lopez had a vehicle stopped as well
10 as he had a subject out of the vehicle in front of his -- his
11 vehicle in handcuffs.

12 Q Okay. And so at that point, what did you do? Were
13 you assigned something to do or what did you do?

14 A I was just there to assist him with anything that
15 he needed. I wasn't necessarily assigned anything.

16 Q Okay. So did he ask you to perform any particular
17 tasks on that evening?

18 A The only thing that he specifically asked me to do
19 was to read Miranda to the individual he had stopped.

20 Q Okay. Did you do that?

21 A I did.

22 Q Did you have occasion to do anything with the car
23 that Officer Lopez had stopped?

24 A Throughout the course of the investigation, I did
25 assist in searching. I wasn't assigned that duty. I just

ROUGH DRAFT TRANSCRIPT

RA 0504

1 helped out.

2 Q Okay. And when you say searched, can you be a
3 little bit more specific? What was it that you did or what
4 job did you perform on the vehicle?

5 A We were searching the vehicle for -- there was my
6 understanding probable cause to believe that there was
7 illegal narcotics inside the vehicle.

8 Q Okay. And what led you to believe that?

9 A I can't remember if it was specifically Officer
10 Lopez that saw or smelled, but I believe there was a hint of
11 marijuana that he smelled inside the vehicle.

12 Q Okay. So what part of the vehicle do you recall
13 searching?

14 A I specifically remember searching the driver
15 compartment, so the driver's seat and the passenger seat so
16 the front of the vehicle.

17 Q Okay. And did you have occasion to look into the
18 glove box?

19 A I did.

20 Q Can you describe with a you -- what, if anything,
21 you did to the glove box?

22 A I opened the glove box.

23 Q Okay. Did it open naturally? Did you have to pry
24 it open? How did you have to open it?

25 A Initially, it just opened naturally, from what I

ROUGH DRAFT TRANSCRIPT

RA 0505

1 remember.

2 Q Okay. So was that -- do you recall if it was a
3 pinching mechanism or a turning mechanism --

4 A I don't recall.

5 Q -- to open it?

6 A No, I don't recall.

7 Q Okay. And what did you do after you opened the
8 glove box, if you recall?

9 A I searched the inner compartment of the glove box.

10 Q Did you have to remove any part of the glove box
11 area?

12 A When I was searching the glove box, I based on my
13 training and experience, I know that places such as glove
14 boxes can be used conceal items. So I just pressed on the
15 walls around to see if anything gave way, and one of the
16 walls did.

17 Q And when you say one of the walls, were there side
18 -- can you describe the box configuration of the actual glove
19 box? Was it just -- in other words, was it just a door that
20 opened or was it an entire box unit; do you recall?

21 A I guess, I don't exactly understand what you're
22 asking, but from my recollection, it was just a standard
23 glove box in a four-door Sedan.

24 Q So did you remove the glove box door?

25 A Initially, no, I did not.

ROUGH DRAFT TRANSCRIPT

RA 0506

1 Q Okay. You say initially. Was there a time when
2 you did remove it?

3 A We did eventually obtain a search warrant based on
4 some of the items that we found inside the vehicle, and at
5 that point, in order to retrieve the items we were looking
6 for, we did have to manipulate the door further.

7 Q Okay. So when you say you pressed on the sides, if
8 you will, of the interior of the glove box, were there sides
9 that were attached to the glove box door? I guess, that's
10 what I'm trying --

11 A Not -- not the door itself, no. So when the door
12 flips down, the door is just one like independent flap, and
13 then once you go inside the glove box, it had like a -- I
14 guess, I understand what you're saying now -- like a box
15 configuration. So it had two sides, a top, a bottom and a
16 back. So it was like an actual like box.

17 Q Okay. Was it -- do you recall the material?

18 A I'm not a car manufacturer, but it felt like
19 plastic to me.

20 Q On the sides?

21 A Yeah.

22 Q So you say you reached and one of the sides gave
23 way; is that what you said?

24 A From what I can recall, so as you're looking at the
25 front of the vehicle sitting in the passenger seat, you're

1 looking inside the glove box on the right side, there was a
2 -- a little compartment that was right there.

3 Q Okay. So can you describe what you -- you're
4 calling a compartment?

5 A Yeah. So there was a little bit of a space between
6 the glove box and the actual like door and the frame of the
7 car.

8 Q Did you have to punch through something to get to
9 wherever it was you were ultimately attempting to go to?

10 A No.

11 MR. FRIZZELL: Court's indulgence.

12 BY MR. FRIZZELL:

13 Q At what point was there a search warrant request
14 made?

15 A I was able to reach my hand in the -- the little
16 compartment from inside the glove box, and I was able to feel
17 a pouch inside that -- that glove box compartment. Based on
18 my training and experience from manipulating the pouch, I
19 could feel something hard inside that felt like a firearm.

20 Q Okay.

21 A So we -- we stopped at that point and obtained a
22 search warrant.

23 Q All right. Now, were you wearing a body cam at
24 this juncture?

25 A I was.

1 Q And was it operational?

2 A It was.

3 Q Was it operational during the time that you're
4 describing to the jury?

5 A From my recollection, it was turned on, yes.

6 Q And was that body camera footage a recording, to
7 the best of your knowledge?

8 A To the best of my knowledge, it was.

9 Q After this incident was concluded, what, if
10 anything, did you do with the body camera?

11 A I just did what we normally at the end of a shift,
12 which is take it off and plug it into the docking system at
13 our area command and so it can upload the videos on to the
14 database.

15 Q And did you -- prior to the end of the
16 investigation, did you inform the suspect that you had the
17 body cam on and it was running?

18 A I do not recall specifically advising him that he
19 was -- he was being recorded by the body camera.

20 Q And so when you go back to the area command and you
21 put it in the docking station, what is the purpose of that?

22 A It uploads all the videos that were obtained
23 throughout the night into the -- the massive database that we
24 have that -- that saves and stores video.

25 Q Okay. Where actually on your body do you recall

1 that the body cam was mounted?

2 A At that time, I was actually wearing eyeglasses so
3 I -- it was my habit to wear it actually on my -- my glasses.

4 Q So wherever your head would have turned, the body
5 cam -- the camera would have picked up whatever you were
6 looking at essentially?

7 A Yes, sir.

8 Q Okay. So what, if anything, do you know what -- do
9 you know what happened to that footage?

10 A I've checked the database, and it doesn't appear to
11 be there any longer.

12 Q Okay. Was there a time when you checked the
13 database that it was there?

14 A No, not specifically when I checked it when I was
15 there. I know that our -- the way it's set up is there's
16 periods and there are time limits set to those videos where
17 they will automatically delete themselves based on length of
18 time so that way it doesn't get too, too big of a database
19 and we can continue to store videos for the future.

20 Q Do you know how long that time period is or was at
21 the time, I guess, I should say?

22 A Well, our standard procedure if a video at that
23 time, it's changed recently, but at that time if you did not
24 specifically tag a video to retain it for longer, it was 45
25 days and it would just auto delete itself.

ROUGH DRAFT TRANSCRIPT

RA 0510

1 Q Okay. And so are you the one that would tag the
2 video or would someone else tag it?

3 A At that time, the way that the procedures were set
4 up was it was incumbent upon the officer to tag those videos
5 themselves.

6 Q Okay. And did you tag the video?

7 A I cannot recall if I did or did not, but based on
8 it not being there anymore, I would say it's safe to assume I
9 did not.

10 Q Okay. And did -- would it have been your job to
11 make sure that the district attorney's office got that video?

12 A No, it's not my job to ensure they get it. They
13 have access to that database and can pull them it themselves.

14 Q Okay. And so it's not part of your duty? What
15 you're telling me it's not part of your duty other than
16 putting it on the docking station for you to be the one to
17 transfer it?

18 MR. BUNNETT: Objection, leading and asked and
19 answered.

20 THE COURT: Sustained.

21 BY MR. FRIZZELL:

22 Q You did not transfer the body cam footage to the
23 District Attorney's Office?

24 MR. BUNNETT: Objection, leading.

25 THE COURT: Sustained.

1 BY MR. FRIZZELL:

2 Q Did you transfer the footage to the District
3 Attorney's Office?

4 A Physically, no. By me plugging it into the
5 database that they have access to as well, it would have
6 transferred to them being able to obtain it. So I did not
7 physically walk it over here and hand the CD, no.

8 Q Okay.

9 MR. FRIZZELL: Court's indulgence. I'll pass the
10 witness, Your Honor.

11 THE COURT: Cross.

12 CROSS-EXAMINATION

13 BY MR. BUNNETT:

14 Q So on direct examination, you kept referring to a
15 suspect. Is that suspect here this court today?

16 A He is.

17 Q Could you please point to him and identify an
18 article of clothing that he or she -- he's wearing?

19 A It looks like he's sitting right beside the
20 attorney who was just questing me, and he's wearing a light
21 blue shirt.

22 MR. BUNNETT: And Your Honor, I'd ask that the
23 record reflect that the witness has identified the defendant.

24 THE COURT: It shall.

25 BY MR. BUNNETT:

1 Q Okay. So you responded to help Officer Lopez?

2 A Correct.

3 Q And showing you --

4 (Pause in the proceedings)

5 BY MR. BUNNETT:

6 Q So I'm going to show you State's 6. That's what
7 the car looked like in the parking spot, right?

8 A Yes.

9 Q Okay. And I'm going to show you State's 8. That's
10 that license plate that was on the car, right?

11 A From what I could recall, yes.

12 Q Okay. I'm going to show you State's 20. That's
13 that hole that you were talking about, right?

14 A Correct. There's actually a little like piece that
15 was blocking that, so it wasn't as obvious when you first
16 open it. But as I explained to the other attorney, once you
17 kind of touched it or tapped it, then it just it give away.

18 Q I mean, but you didn't punch a hole in the side of
19 the glove box, did you?

20 A No.

21 Q So that was -- safe to assume that there was there
22 before you guys started searching the vehicle?

23 A Yes.

24 Q And you found a lot of stuff in that car, didn't
25 you?

ROUGH DRAFT TRANSCRIPT

RA 0513

1 A We did, yes.

2 Q And that was a large amount of what you thought
3 were controlled substances?

4 A Correct.

5 Q Okay. And you gave the defendant a warning
6 pursuant to the Miranda decision?

7 A I did.

8 Q And after you did that, didn't he tell you that he
9 lived at the residence on his license?

10 A From what I can recall, he did.

11 Q Okay. And was that consistent with -- or was that
12 address 265 North Lamb, Unit F?

13 A I can't say definitively that it was Unit F.

14 Q Okay. But you knew that he lived that apartment
15 (indecipherable)?

16 A Correct. We found other documentation inside the
17 car that had that address on it as well.

18 Q Okay. And I want to talk about the body cam. You
19 didn't delete the body cam?

20 A No.

21 Q You -- okay.

22 A We don't have -- we don't have the ability to
23 delete body cam footage.

24 Q When were you -- at this time, was body cam
25 relatively new to you?

ROUGH DRAFT TRANSCRIPT

RA 0514

1 A It was, yes.

2 Q Okay. And why is that?

3 A My contract that I was hired under, I'm a mandated
4 body camera wearer, but UNLV was conducting a study at the
5 time. It just so happened that I was part of the controlled
6 group that they took the body camera away from. So I had
7 actually just got it -- my body camera back shortly before
8 that call because the study was completed at the time, at
9 UNLV.

10 Q And before the study at UNLV, had you been wearing
11 a body cam?

12 A Briefly. Momentarily. Maybe a week or two.

13 Q Okay. But besides those two weeks, around that
14 time, around January 28th, 2016, this was essentially, your
15 first experience with a body cam?

16 A I wouldn't say it'd be first, but it was one of the
17 first experiences, yeah.

18 Q Okay. And you uploaded that body cam?

19 A I did.

20 Q Okay. And you don't remember whether you tagged
21 it?

22 A I -- I don't remember if I did or not.

23 Q Okay. But it's not like you went into the
24 database. You can't go into the database, right?

25 A I can go into the database and I can review

ROUGH DRAFT TRANSCRIPT

RA 0515

1 footage, but we restricted from -- once it's uploaded, you
2 cannot delete a video.

3 Q Okay.

4 A Well, let me correct that. You cannot delete a
5 video period, whether it's uploaded or not because it's --
6 it's stored in the camera, which I don't have access to other
7 than viewing, and then once you upload it in the docking
8 system, the database that it goes to, I don't have authority
9 to delete them there either.

10 Q Okay. When you responded to 265 North Lamb, did
11 you at some point hear gunshots?

12 A I did.

13 Q Okay. And what did you do in response to those
14 gunshots?

15 A When I initially heard the gunshots, they were very
16 close in proximity of where we were. My initial thought was
17 that we just so happened to be in an area where another crime
18 was occurring. Based on the gunfire, I thought that it was
19 probably highly likely that somebody was injured and needed
20 our assistance. So I left Officer Lopez's location and went
21 in search for where the gun fires came from.

22 Q And once you went over there, you didn't see
23 anything, did you?

24 A I did not, no.

25 Q You didn't see anybody injured?

ROUGH DRAFT TRANSCRIPT

RA 0516

1 A I did not see anyone injured.

2 Q You didn't see Shell casings?

3 A Did not see anything at all.

4 Q You didn't see anybody with gun in their hand?

5 A Nope.

6 Q And you thought there was gunshots were
7 distractions, didn't you?

8 A Well, once I -- once I left Officer Lopez'
9 location, again, my initial thought was somebody just got
10 shot. As I'm looking for either a victim, a suspect, person
11 with a gun or shell casings, any kind of evidence that the
12 shots have been fired, I recalled that we're actually taught
13 these types of scenarios where depending on the nature of the
14 crawl, distract shots will be used to draw officers away so
15 that way other individuals and can go and assist the suspect
16 that we had in custody.

17 So at that time, I immediately stopped my search
18 and went back to Officer Lopez's location in the event that
19 somebody did double-back and he was in trouble.

20 Q Okay.

21 MR. BUNNETT: I have nothing further, Your Honor.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MR. FRIZZELL:

25 Q I just wanted to briefly show you again State's 6.

1 Excuse me, sorry. So State's Exhibit twenty (inaudible). So
2 I just want to make sure I understood your testimony on
3 cross-examination. This hole, as we're seeing it here, was
4 it in this condition that we're seeing it here when you first
5 reached in?

6 A It may not have been exactly in that condition, no.

7 Q Was there anything covering that hole?

8 A You mean initially when I found it or when this
9 picture --

10 Q Initially --

11 A -- was taken?

12 Q -- when you -- initially when you looked in and you
13 say that you pushed on something that gave way. What -- was
14 there something in that hole?

15 A Correct. There was something actually blocking
16 right there. So it didn't look like it does right there.
17 There was actually something that was --

18 Q So something then that was -- was -- it in that
19 hole?

20 A I mean, he was covering the hole so I can't tell
21 you if it was in the hole or like within the exact cut-out of
22 the hole or on the inside of it, but when you touched it, it
23 gave way almost immediately.

24 Q So would you describe it sort of like maybe a
25 puzzle piece that --

ROUGH DRAFT TRANSCRIPT

RA 0518

1 A That would be a good way to describe it, yes. So
2 like --

3 Q So there was some --

4 A -- something that fit there. Correct, something
5 that fit there to block the view inside so you wouldn't
6 necessarily notice at first glance that it was a hole, but
7 upon further examination, you can tell that, you know, it
8 didn't fit, if didn't belong there.

9 Q Okay.

10 MR. FRIZZELL: Nothing more, Your Honor.

11 THE COURT: Anything further?

12 MR. BUNNETT: No, Your Honor.

13 THE COURT: Officer, I just want to clarify
14 something. Is it your testimony that at least back in
15 January of 2016, with regards to body camera footage, that
16 would be up loaded into your document cams. And then if you
17 don't tag it within 45 days, it's your understand that it
18 would be copied over?

19 THE WITNESS: I'm not sure if it's actually copied
20 over or if it's just outright deleted from the --

21 THE COURT: Okay.

22 THE WITNESS: -- system.

23 THE COURT: Okay.

24 THE WITNESS: But it's no longer accessible. I
25 don't know what happens to it, it's not there anymore.

ROUGH DRAFT TRANSCRIPT

RA 0519

1 THE COURT: And you, based on requests from the
2 parties, have attempted to find that and you're saying that
3 there is none.

4 THE WITNESS: Correct. I have logged into the
5 database and looked and it's not there any longer.

6 THE COURT: Okay. Any further questions as a
7 result of my questions, Mr. Frizzell?

8 MR. FRIZZELL: No, Your Honor. Mr. Bunnett?

9 MR. BUNNETT: I just have, I think, probably one
10 question to follow up on.

11 THE COURT: Okay.

12 BY MR. FRIZZELL:

13 Q There -- actually, it's probably two. There's a
14 number system on unloading body cam, right?

15 A Correct, there is.

16 Q So how does it work now?

17 A So now it's actually tied into our CAD system,
18 which is a system that we use to actually assign us to a
19 call. So as soon as you are assigned a call, and you turn
20 your camera on, the two sync up and they took the -- the part
21 of the officer out of it.

22 So now, when you upload that body camera at the end
23 of your shift, it's automatically uploaded with all of the
24 information from the call. If an arrest was made based on
25 the nature of the arrest, whether it be misdemeanor, gross

ROUGH DRAFT TRANSCRIPT

RA 0520

1 misdemeanor felony, it's automatically tagged with the
2 appropriate time stamps and all the information that's
3 required.

4 Q Is it fair to say the system's been proved to
5 prevent things from accidentally going missing?

6 A Yes.

7 Q Okay.

8 MR. BUNNETT: I have nothing further.

9 THE COURT: Mr. Frizzell.

10 MR. FRIZZELL: Nothing further, Your Honor.

11 THE COURT: All right, Officer, thank you so much
12 for your testimony. I appreciate you coming in like that. I
13 requested that you be here, so --

14 THE WITNESS: No problem.

15 THE COURT: All right, thank you.

16 THE WITNESS: Not problem at all.

17 THE COURT: Mr. Frizzell, any further witnesses?

18 MR. FRIZZELL: Court's indulgence.

19 No, Your Honor. Defense has no more witnesses.
20 Defense rests.

21 THE COURT: State, do you have any rebuttal?

22 MR. DICKERSON: Not at this time, Your Honor.

23 THE COURT: All right. Ladies and gentlemen, the
24 parties have rested their case. At this point in time, then
25 -- you've already put together your Power Points? Are you

1 prepared for closing arguments?

2 MR. DICKERSON: Yes.

3 THE COURT: All right. Ladies and gentlemen, my
4 marshal's going to hand you a copy of jury instructions that
5 you'll be using or utilizing in this case. Tell me when
6 ya'll have them, okay? Does everyone have one? All right.

7 (COURT READS JURY INSTRUCTIONS TO JURY)

8 THE COURT: Who's going to do the opening?

9 MR. BUNNETT: I am.

10 THE COURT: Or closing, I'm sorry. Opening
11 closing. Mr. Bunnett.

12 STATE'S CLOSING ARGUMENT

13 MR. BUNNETT: So when Jason Althnether testified
14 today, he talked about something that he called the duck
15 test. He said when he looks for something that is -- or when
16 he's looking at something to determine whether it's a
17 controlled substance and looks at it, and it's a, for
18 example, a leafy substance, just looks at the substance, see
19 if it's consistent with what he's seen before. The old
20 saying goes, if it looks like a duck, if it walks like a
21 duck, and it quacks like a duck, it's a duck.

22 Members of the jury, that saying is more than
23 applicable to the case you've heard during the past few days.
24 Defendant was found with drugs in his car, drugs in his house
25 and drugs on his person. He was found with over \$2,000 in

ROUGH DRAFT TRANSCRIPT

RA 0522

1 his wallet. He was found not only with that, but with pipes
2 throughout his house, with syringes, with baggies, both
3 baggies in the car, in the house, and he -- he's found with
4 all these items in the house, the car and on his person. And
5 that's why we're all here today.

6 And this case is exactly what it looks like. State
7 has proven beyond a reasonable doubt that the defendant
8 committed each of the crimes that he's been charged with. So
9 in every criminal case, State of Nevada is required to prove
10 two things. One, that the crimes that are charged occurred.
11 And two, that the defendant is the one who committed them.

12 So we've talked about this a lot, but the charges
13 that are in this case are count 1, trafficking in controlled
14 substance, that being methamphetamine. Count 2, trafficking
15 in controlled substance, heroin. Count 3, possession of
16 controlled substance, marijuana, over one ounce. Count 4,
17 possession of controlled substance with intent to sell
18 methamphetamine. Count 5, possession of controlled substance
19 with intent to sell heroin. Count 6, possession of
20 controlled substance with intent to sell cocaine. And count
21 7, possession with intent, marijuana.

22 Now, in each of these charges, each of these
23 charges, my burden and Mr. Dickerson's burden is to prove the
24 case beyond a reasonable doubt. And to prove the case to
25 you, we have to prove each of the elements of the offense.

1 And the way I like to think of elements are they're
2 ingredients to a recipe. If you're trying to bake cookies,
3 you need eggs, you need butter, you need sugar, you need
4 flour. If you don't have those, you don't have cookies. And
5 if you don't have the elements of the crime, the crime didn't
6 occur.

7 But in this case, members of the jury, we've proven
8 that on each of those counts, we've proven beyond a
9 reasonable doubt each of the elements of the offense.

10 So I'm going to go over some general principles,
11 and I know there's no way you're going to read it, but I'm
12 going to -- this instruction, but I'm going to break it down
13 a little bit as we go along. This instruction talks about
14 possession, and there's some general principles about
15 possession that are going to apply to each of the seven
16 counts that we've charged in this case.

17 So the first someone that there's two kinds of
18 possession. There's actual possession and there's
19 constructive possession. And as for actual possession, the
20 way it's defined is a person knowingly has direct physical
21 control over a thing at a given time is then in actual
22 possession of it. Something's in your pocket, something's in
23 your hand, that's actual possession.

24 Now, there's a second concept. It's called
25 constructive possession. And the way your instruction on

1 this reads, is that a person who, although not in actual
2 possession, has both the power and the intention to exercise
3 dominion over a thing either directly or through another
4 person is in constructive possession.

5 So for us to prove our case, we don't have to prove
6 that we caught defendant with drugs in his hand. We don't
7 have to prove that he possessed certain drugs that were
8 physically in his hand or in his pocket or anything like
9 that. But we do have to prove that he's got the power to
10 control the substance, he's got the intention to control it,
11 and that he intentionally did this.

12 Now, State is not required to prove that the
13 defendant possessed it alone. And your instructions read
14 that the law also recognizes that possession can be sole or
15 it can be joint. One person can possess an item, but two or
16 more people can possess an item. And if we prove that even
17 if somebody else was in possession of an item, the defendant
18 was as well and he had actual constructive possession of it,
19 then we've shown joint possession and we've satisfied
20 possession as an element of the crime.

21 We've also got to show knowing possession. And I
22 wanted to direct you specifically to this instruction because
23 it tells you that knowingly doesn't only mean that -- well,
24 you have to know the facts, but they can be inferred from the
25 knowledge of other facts that would put an ordinary person, a

1 reasonable person on notice.

2 Now, we also have to show for each of these charges
3 that the defendant knew the nature of the substance. We
4 don't have to show necessarily that he knew that the
5 substance was prohibited by law, we have to show that he knew
6 what the substance was. For example, we have to prove that
7 he knew it was methamphetamine, we have to prove that he knew
8 it was heroin, we have to prove he knew it was cocaine, we
9 have to prove that he knew it was marijuana.

10 And this instruction's important because what it
11 tells you is that you can look at both direct and
12 circumstantial evidence, look at that evidence and determine
13 based on the totality of that whether or not -- and you can
14 draw reasonable inferences as well. You can use all of that
15 to determine whether the defendant knew the nature of each of
16 the substances that we've charged. So he has to know what it
17 is. And I think I already talked about this.

18 All right. So let's go to count 1, trafficking in
19 controlled substance, methamphetamine. And before I do, I'm
20 just going to say that this and the rest of counts are each
21 going to have three elements in common. One, we have to show
22 possession. Two, we have to show that he knew the presence
23 of the drugs, knew that he was in possession of them. And
24 three, we have know that he knew the nature.

25 So this is the instruction on trafficking, and it

1 says that a person who knowingly or intentionally is in
2 actual or constructive possession, we've already talked about
3 that, of the scheduled one controlled substance or any
4 mixture which contains a scheduled one controlled substance
5 and that substance weighs 28 grams or more is guilty of
6 trafficking in controlled substance.

7 So a couple thing I want to focus on this
8 instruction. You're not required to determine whether the
9 drugs we charge in this case are schedule one controlled
10 substances. You've been instructed that methamphetamine and
11 heroin are both controlled substances and thus, that's not
12 something you're going to have to worry about when you
13 deliberate on this.

14 The other thing I want to point out is note that
15 the instruction says any mixture. Now, I know there was some
16 testimony about determining purity, but when the substance is
17 weighed, we're not required today show that the substance was
18 pure or had some level of purity or that the methamphetamine
19 or the heroin within the substance weighed 28 grams or more.
20 We just have to show that if the mixture that contains
21 methamphetamine or heroin weighs 28 grams or more, then we're
22 good.

23 So break it down again. You already showed
24 possession. Have to show knowledge of the presence,
25 knowledge of the nature. We have to show that the weight of

1 the substance or the mixture containing the substance was 28
2 grams or more.

3 So let's talk about methamphetamine. The testimony
4 you've heard today and throughout this trial was that
5 methamphetamine was found in three places. It was found in a
6 2002 Dodge Stratus with that license plate, that is
7 defendant's car. It was found in 265 North Lamb Boulevard,
8 Unit F. That's defendant's condo.

9 Lastly, you heard that it was found taped to
10 defendant's genitals. So let's start with the 2002 Dodge
11 Stratus. So Lopez searched the compartment that was in that
12 Dodge Stratus and found two packages of an off white -- or
13 I'm sorry, not two, but several packages of an off white
14 crystalline substance. That was State's Exhibit 82-A through
15 3 and 82-B through 5. Sorry, 82-A through 3 and 82-B 1
16 through 5. Althnether tested those items. You saw him
17 today. He talked about this. He confirmed that those
18 substances all together by themselves weighed 344.29 grams
19 and that those substances contained methamphetamine.

20 Also, you heard testimony that Lopez found that
21 plastic wrapper, the blue dust, that was State's Exhibit
22 82-A-5. Althnether confirmed that this contained
23 methamphetamine. It contained several other drugs. But
24 methamphetamine was in the substance and he testified as to
25 the weight of the substance. So that's that compartment.

ROUGH DRAFT TRANSCRIPT

RA 0528

1 Compartment's opened up from the other side. Bag
2 is opened up from within. Two bags are pulled out. Those
3 bags contained drugs, and that's the sum of everything that
4 Lopez found in that compartment.

5 You've also heard testimony that there was a
6 Beretta .22 caliber handgun found in that compartment, and it
7 was found along with the drugs. You've heard testimony that
8 .22 caliber's found in the car, and then after that, there's
9 .22 caliber ammunition found in a storage shed by the
10 defendant's house. And you heard CSA Thi testify as to her
11 description of the bullets that were found in the .22 caliber
12 that was found in the car, and she said that they were
13 Remington and that there were ammunition. And as you can see
14 here, that's Remington ammunition found in the defendant's
15 storage closet.

16 This is defendant's car. There is no question
17 about it. The registration in his car has his name on it.
18 DMV records say it's his, and he's driving it. He's got the
19 keys. Those are his records. That's State's Exhibit, I
20 believe, 1, and that's that DMV registration. Now compare
21 that to the pictures that we've shown you of both the VIN
22 number and the license plate that was on the car. They're
23 consistent.

24 Defendant has knowledge of the presence of the
25 methamphetamine in the Dodge Stratus. Think about his

1 behavior during the traffic stop. Think about how Lopez
2 described his behavior when he was stopped in the car. Think
3 about the amount of money on him and the denominations of
4 that money. It was over \$2,000, largely in \$20 bills. Think
5 about the amount of drugs found and think about whether or
6 not somebody can reasonably not know about those drugs if
7 they're in his car.

8 Think about the plastic baggies under the seat.
9 You heard defendant say on those calls that he had just
10 bought those baggies. Think about the other places
11 methamphetamine was found. We talked about the house. We
12 talked about where it was found on defendant's body.

13 I think all of those factors, and if you consider
14 all of those factors, you'll find that the defendant knew of
15 the presence of the methamphetamine in the Dodge Stratus.

16 Now, there's been some testimony about this secret
17 compartment. You heard some testimony about what it looked
18 like, where it was found, but it's in the side of the glove
19 box. Who, if anybody, is going to know about the presence of
20 a secret compartment containing drugs in their car? The
21 owner. Be reasonable here. Think about your common sense.
22 Apply that common sense and ask yourself how many cars are
23 out in the road driving with secret compartments that
24 somebody else put there that the driver and the owner doesn't
25 know about? Think about the time it would take to get that

1 hole in the compartment and put the drugs in there. And
2 consider whether somebody who would put the drugs in the car
3 would then just leave the drugs and let the defendant drive
4 the vehicle. It doesn't make sense.

5 And also, compare that compartment to the little
6 hole that was made under the defendant's sink. You'll see
7 that they were made in a similar way. They looked like they
8 were both punched out, and I think both of them, if you
9 connect them, show that defendant knew about this
10 compartment.

11 Now let's talk about the defendant's condo, 265
12 North Lamb Boulevard, Unit F. Now, it has unit D, but you've
13 heard testimony that explains that this was not unit D, it
14 was in fact, unit F. Lopez in the condo finds two bags of an
15 off white crystalline substance in the bedroom. That was
16 State's Exhibits 90-A and 90-B.

17 You heard testimony that Althnether tested and
18 weighed these. They were both methamphetamine, and one was
19 3.818 grams and the other was 2.357 grams. You also heard
20 where they were found, particularly in the bedroom. One's
21 found there on the scale. You can see it there right there.
22 And you also heard the testimony about the Ruger 9 millimeter
23 handgun recovered by Detective Embry that was in that closet.
24 The ammunition's also in plain view there.

25 And you've heard testimony from Allison Rubino, who

1 said that although she had some difficulty determining
2 further information, she could tell that there was a partial
3 profile of a male on the gun and magazine. Importantly, Ms.
4 Rubino cannot exclude the defendant as a contributor to the
5 DNA on that gun.

6 MR. FRIZZELL: Objection. That was never in that
7 report, Your Honor.

8 MR. BUNNETT: I believe that was the testimony.

9 THE COURT: Ladies and gentlemen, I remind you that
10 are the sole judge of the facts so it's up to you to remember
11 what the facts were what was testified here, okay.

12 MR. BUNNETT: The defendant owns and lives at 265
13 Lamb Boulevard, unit F. DMV records say it. Now, I know
14 that there was testimony about well, the DMV in the slip --
15 the slip in the car says one addresses but the records say
16 something else. I think you can look at those records and
17 you look back at them in the jury room, they'll explain --
18 the discrepancy will be explained to you because if you look
19 at the bottom here, it lists the name and address on the
20 registration. But if you look above, it shows that both the
21 defendant's physical and mailing address is 265 North Lamb,
22 unit F.

23 You've got the assessor's records. That's just the
24 part of it. I think that's State's Exhibit 2. He owns the
25 condo. The deed is in evidence. There's a pay stub in the

1 house that has his name on it and lists his address at 265
2 North Lamb, unit F.

3 Defendant's key say it. That's how they got in the
4 house. The defendant's actions say it. Think, if it's not
5 his condo, why is he parking directly in front of it? And
6 finally, the defendant says it. You heard those calls and
7 you heard defendant say in those calls to that lady, move
8 into my house, make that house your home.

9 Who, if anybody, is going to know about
10 methamphetamine in his bedroom? The owner and residents of
11 the house. As you saw from the picture that we've shown you
12 today and throughout this trial, drugs are in plain view.
13 They're next to the one bed in the one bedroom condo, and
14 they're just -- I mean, they're essentially right next to
15 that bed. There's smoking devices throughout the bedroom and
16 in that adjoining bathroom, both clean and dirty.

17 Finally, members of the jury, you heard testimony
18 about the methamphetamine found in defendant's underwear.
19 You heard testimony about Officer Quintero messing with his
20 underwear region or sorry, the defendant messing with his
21 underwear region. You see him rip off part of a magazine,
22 try to snort something. Then Officer Hough found some more
23 crystalline substance taped to the defendant's privates.
24 That's State's Exhibit 83-A. Althnether tests this, and this
25 is, in fact, methamphetamine as well.

ROUGH DRAFT TRANSCRIPT

RA 0533

1 So let's go over the elements of trafficking. We
2 have to show the defendant possessed methamphetamine either
3 actually or constructively. We have. The methamphetamine in
4 the car, we've shown you that it was in his dominion and
5 control. It's in his vehicle. In a place where the owner of
6 the vehicle would know where there was a secret compartment
7 and where drugs were stored.

8 There was methamphetamine in his condo.
9 Essentially, right next to the one bed in that one bedroom
10 condo. And there's methamphetamine in this case. He has
11 knowledge of his presence. This is where looking at the
12 circumstances and looking how all facts come in. They're in
13 plain view of the house. They're in the secret compartment
14 of the car. To think of the quantity of methamphetamine, the
15 fact that there's smoking devices in the house and that the
16 defendant has methamphetamine on his person.

17 The knowledge of his nature. Well, smoking
18 devices, plastic baggies, and he tries to use methamphetamine
19 while he's at northeast area command. Finally, the weight.
20 You got to show the weight greater than 28 grams. Well, that
21 weight was found in the defendant's car alone. So if you
22 found that even if the defendant didn't possess what was in
23 the house or what was in his privates, but you thought what
24 was in the car was his, that would be enough to find the
25 defendant guilty on this.

ROUGH DRAFT TRANSCRIPT

RA 0534

1 But we didn't stop there. There's more evidence of
2 methamphetamine, 6.175 grams in defendant's home, 1.15 grams
3 in the defendant's underwear. In total, you heard evidence
4 of 351.41 grams total of methamphetamine found in defendant's
5 house, car and on his person.

6 Based on this, the State has proven that the
7 defendant is guilty of count 1, trafficking methamphetamine,
8 and your appropriate verdict needs to be that he's guilty of
9 it.

10 So count 2 is also trafficking, and that is in
11 regard to heroin. We already talked about the elements.
12 There's four. So let's jump right to where the
13 methamphetamine is found -- or sorry, the heroin is found.
14 The heroin's found in that 2002 Dodge Stratus we talked
15 about. Clearly, is defendant's car. And it's found in the
16 defendant's condo, which it clearly hits.

17 The Stratus is found in that secret compartment
18 right next to methamphetamine. Lopez found the bags that he
19 thought were heroin, that's State's 82-A-1. And Althnether
20 weighs these and tests them and determined that it's 33.92
21 grams of per win. He's found with that gun match being the
22 ammunition that was found in defendant's shed.

23 At Lamb Boulevard there is heroin. There's a clear
24 plastic bag containing a brown substance in the bedroom.
25 That's Exhibit 90-C. That's tested, and it's .8955 grams of

1 heroin. There's clean syringes found in the drawers that
2 were photographed by Officer Hough. There's elastic bands
3 found in another drawer next to the bed, and there's balloons
4 found in the house.

5 And you heard testimony from Officer Hough that
6 heroin is ingested using syringes, that elastic bands can be
7 used to tie up bags and balloons can be used to package
8 heroin.

9 So we've shown that he's possessed heroin either
10 actually or constructively. We've shown that it's in his
11 house in plain view and that he was living there. There's
12 heroin in his car, there's heroin in his condo. We've shown
13 knowledge of his presence -- of its presence. Once again, in
14 plain view in the house in the secret compartment in the car,
15 which using your common sense, I think you'll find that he
16 had to know that it was in the car.

17 There paraphernalia in the house for utilizing that
18 heroin. Think about the quantity and that it was found
19 alongside methamphetamine in the car. Knowledge of its
20 nature. These go back to the same facts essentially.
21 Syringes, elastic bands, balloons. All these items show that
22 the defendant knew of the nature of the substance.

23 And finally the weight, the 28 grams. So 33.92
24 grams of heroin, more than 28 grams and then a much smaller
25 amount in defendant's house. So in total 34.815 grams. So

1 we've shown all four elements of count 2. Based on that, the
2 appropriate verdict is that defendant's guilty of count 2.

3 Now, count 3 is possession of controlled substance,
4 marijuana, over one ounce. Now, we've got to show four
5 elements here, but it's a little different because we've got
6 to show the possession, we've got to show knowledge of the
7 presence of the substance, we've got to show the knowledge of
8 nature of the substance, but the weight's different.

9 So here's the instruction. They're the elements of
10 possession of controlled substance, marijuana. And as I
11 said, these were those four elements. So let's talk about
12 possession and whether it was over one ounce and I'm going to
13 group those together.

14 Detective Belmont testified and told you he found a
15 jar of a green leafy substance in the freezer of defendant's
16 home, and he thought that to be marijuana. And that was
17 State's Exhibit 87.

18 Althnether tested this, determined that it was 175
19 grams of marijuana. He told you the rate of conversion, I
20 guess, between grams and ounces, and that conversion comes
21 out to 6.172 ounces, much more than one ounce.

22 Let's talk about knowledge of its presence. It's
23 in the defendant's freezer. It's where he -- food is found.
24 It's in his home. There's small baggies in his car. And the
25 defendant when stopped smelled like marijuana. And I mean,

1 this jar, you've seen the jar. The jar was displayed to you
2 during this trial. It's pretty hard to miss.

3 Knowledge of its nature. Look at the same facts.
4 Hard to miss, in his freezer in his house, that he smelled
5 like it. Those facts all show his knowledge of his nature --
6 of its nature. So based on this, we've proven that he
7 possessed marijuana over one ounce, that he knew of its
8 presence and he knew of its nature. The appropriate verdict
9 is guilty of count 3.

10 Now, count 4 through 7 are a little different
11 because that's possess of controlled substance with intent to
12 sell. And they each allege different drugs, but for each the
13 elements are going to be the same. And we're going to start
14 with methamphetamine just because it's a first. But each of
15 these elements are going to guide your decision when it comes
16 to count 4, count 5, count 6 and count 7.

17 The elements, once again, those three, common three
18 that are each of the crimes we've alleged, got to show actual
19 constructive possession, knowledge of its presence, knowledge
20 of its nature. We've got to -- so we've already talked about
21 those in regards to methamphetamine. So I direct you back to
22 when I talked about count 1. Think about the quantity of it.
23 Think about where it was found. Think about that it was
24 found in three places each that defendant had access to.
25 Think about the surrounding circumstances, including the

1 circumstances surrounding the stop, circumstances surrounding
2 what was -- what else was found in the house and the
3 circumstances of what else was found on defendant's person.

4 There's one additional element, and that's intent
5 to sell. But we don't need to prove that there was an actual
6 sale. We don't need to prove that defendant had a specific
7 quantity in this one. And we can look to the circumstances,
8 the quantity, the place and the circumstances where the drugs
9 were found and the manner of packaging, we can look to all of
10 those and determine whether the defendant had the intent to
11 sell.

12 Now, this is circumstantial evidence. You've been
13 instructed that circumstantial evidence, direct evidence, law
14 treats them as one in the same, and that there's also an
15 instruction about intent and how it's difficult to prove
16 through direct evidence, but circumstantial evidence can show
17 that.

18 So another thing I want to focus on is that
19 instruction says that he doesn't have to possess with intent
20 to sell all of the drugs he's got. He just has to possess
21 with the intent to sell any portion of the drugs that he's in
22 possession of. So let's look at the evidence of the intent
23 to sell methamphetamine.

24 Think about the money that was found in the
25 defendant's wallet. There's \$2,187 total. Sixty-eight \$20

1 bills. Officer Lopez testified to you that this was
2 consistent with the sell of narcotics.

3 I want you to compare that, when you go back into
4 the jury room, compare to the defendant's pay stub. It shows
5 \$275.63 net pay per week in November and consider that.
6 Making 275.63 a week and yet, he's got \$2,187 in his wallet
7 when he's stopped by Officer Lopez.

8 Think about the packaging and the placement of the
9 methamphetamine in the Dodge Stratus. It was in that secret
10 compartment. If drugs were for him, why would he put it in a
11 secret compartment? Why would he put it not only in a secret
12 compartment, but in a bag, in gold packages, in
13 individualized packages and then put a gun in there, too.
14 Think about the quantity. And remember Officer Lopez
15 testified as to the amount he commonly seized for personal
16 use. I submit to you, members of the jury, that that -- the
17 testimony you've heard today as to how much methamphetamine
18 was found in that car and in that house is not personal use.

19 Think about the multiple packages that they were
20 found in. Think about the fact that they were placed with
21 other drugs, including heroin and cocaine with the gun, as I
22 said before. And think about those baggies that were on the
23 floor that the defendant in his call said he had just
24 purchased.

25 The defendant, I think if you listen to that call

1 again, and you might have caught it the first time around,
2 but if you listen to it, he refers to a little business that
3 he wants to get back to. So the items in the house are also
4 evidence of intent to sell. We talked about the scales.
5 He's got four scales in his house. Maybe one scale might be
6 consistent with somebody possessing, but why would somebody
7 need four scales just for themselves to weigh out the drugs?
8 It's inconsistent with possession without intent to sell.

9 We have scales. We've got those small baggies.
10 The small baggies were found in the house. Once again, the
11 small baggies found in the car. And those clean pipes that
12 you saw in one of those drawers. Now, you saw the pictures
13 of the pipes in the house, and they are laying in a bunch of
14 places, but they're out in the open. These ones are stored
15 separately and they're clean.

16 Why would you need cleaned pipes when you've got so
17 many dirty pipes lying around that you can utilize? And I
18 want to direct your attention to the sheets. Notice that
19 they list names and they've got numbers next to them. When
20 you look at those, use your common sense. Look at those and
21 determine whether those are sheets showing who owes him
22 money, and consider that in conjunction with the phone call
23 that you listened to where defendant said, he was talking
24 about people owing money. This is all evidence of the
25 defendant's intent to sell methamphetamine.

ROUGH DRAFT TRANSCRIPT

RA 0541

1 So we've proved all four elements of count 4.
2 We've proved actually and constructive possession. Go back
3 to count 1. Knowledge of his presence, knowledge of its
4 nature, and we've shown intent to sell any portion of
5 methamphetamine. If you consider all this evidence and
6 consider the circumstances of the entirety of the evidence
7 you heard, it's clear that the defendant is guilty of count 4
8 and your verdict should be that the defendant's guilty.

9 Count 5, we're now onto the heroin, but we've got
10 to show intent to sell in this one, too. Same four elements
11 that we previously talked about, and refer you back to our
12 discussion at count 2 in regard to this. We have to talk
13 about intent to sell. And once against, the same factors
14 that I just talked about are the same factors that you should
15 apply here when considering count 5.

16 Think about the money. Think about of where the
17 heroin was found and the fact that it was found with other
18 drugs, the packaging of the heroin, the quantity and
19 Detective Lopez's testimony about the amount he had seen for
20 personal use, the gun was found with the heroin, and the
21 defendant's statements that you previously heard about.

22 You heard about scales, clean syringes, balloons.
23 As you heard Officer Hough testify, those are paraphernalia
24 used for heroin and that the syringes and balloons could be
25 utilized for packaging. That paper with names and numbers I

1 previously talked about. All of these, evidence of intent to
2 sell. We've proven all four elements in count 5, and the
3 appropriate verdict should be guilty.

4 Count 6, cocaine. We haven't talked about cocaine
5 yet. So same four elements, but before we move on, let's
6 talk about where the cocaine was found. The cocaine was
7 found in the Dodge Stratus. Secret compartment alongside the
8 methamphetamine and heroin, and that's everything laid out
9 right there.

10 Officer Lopez found one bag that contained a white
11 powdery substance believed to be cocaine. Althnether tests
12 this and confirmed that it was, in fact, cocaine. He also
13 found that blue substance that Althnether later tested and
14 determined that it was a mix of cocaine, methamphetamine and
15 amphetamine.

16 So let's break down the elements. Actual or
17 constructive possession. It's in defendant's car, alongside
18 the other drugs we previously talked about, the
19 methamphetamine, the heroin, the gun. It's in the car with
20 the baggies. He's got knowledge of its presence because it's
21 alongside the same drugs in that secret compartment in his
22 car. He's got knowledge of its nature. Think about the same
23 facts. Intent to sell, part of the same facts that we
24 previously talked about, including the facts that it was
25 alongside other drugs with the gun, secret compartment, not

ROUGH DRAFT TRANSCRIPT

RA 0543

1 easily accessible.

2 You heard the testimony from Officer Henry saying
3 that he had some difficulty getting in there, and the small
4 bags are found inside the (inaudible) of the car. I think if
5 you look at each of those, you're going to find that
6 defendant is -- (inaudible) as well. And you'll find that
7 the defendant is guilty of count 6, and we've proven that
8 beyond a reasonable doubt today.

9 Now, count 7's the final count, and it's possession
10 with intent, marijuana. We've talked about the four elements
11 ad nauseam. Go back to count 3 for the first three. But the
12 intent to sell, look at the same factors. Look at the money,
13 the scales in the house, the quantity, the fact that that jar
14 was filled with marijuana, and think about Detective
15 Belmont's testimony. Detective Belmont testified that that
16 was not personal use.

17 So we've proven each of those four elements beyond
18 a reasonable doubt, and the State has proven count 7,
19 possession with intent to sell marijuana, and the defendant
20 is guilty of that.

21 Now, I want to direct your attention to an
22 instruction, the common sense instruction. It says, you're
23 supposed to consider only the evidence in this case, but you
24 have to bring to consideration your everyday common sense,
25 your judgment as reasonable men and women. Mr. Frizzell said

ROUGH DRAFT TRANSCRIPT

RA 0544

1 it perfectly at the beginning of this trial, you don't check
2 your brain at the door. You don't check your common sense at
3 the door.

4 Members of the jury, the evidence you heard today,
5 I want you to apply your common sense. Is that amount of
6 drugs found in a secret compartment, using your common sense,
7 does defendant really not know about those? Are those scales
8 for sales? Is that something that the defendant would know
9 about, those drugs lying on the scale next to his bed? Those
10 balloons, those are consistent with the sell of heroin.
11 Those baggies, those are consistent with the sell of
12 narcotics. That marijuana, that's not personal use. Those
13 sheets, names next to numbers, coupled with defendant's
14 statements about people owing him money. Use your common
15 sense. And in doing so, you'll find that counts 1, 2, 3, 4,
16 5, 6 and 7 have all been proven beyond a reasonable doubt by
17 both of us today, and I'd ask you to find the defendant
18 guilty as charged. Thank you.

19 THE COURT: Thank you, Mr. Bunnett. Mr. Frizzell.

20 DEFENDANT'S CLOSING ARGUMENT

21 MR. FRIZZELL: Yes, Your Honor, thank you. Ladies
22 and gentlemen, I know this has been a long four days, and I
23 appreciate very much, as I know the State and everyone else
24 in here, appreciates your attentiveness and your patience
25 with the process. Oh, and I'm going to need the --

1 THE CLERK: That's what I was trying to find out.

2 MR. FRIZZELL: Now, as you'll recall, I told you
3 yesterday morning at the very beginning that we had two --
4 basically two areas that I really wanted you to pay attention
5 to. And basically, I was correct, and I'm going to go
6 through them and show you what I told you and what I was able
7 to show through both State's witnesses on our end and my one
8 witness, Officer Henry.

9 I told you first off that defendant didn't know
10 that drugs were in the car. And I told you that there wasn't
11 going to be one witness that was going to be able to tell you
12 that my client knew any of that was in the car or in the
13 house, that he knew what the nature of what was in the car or
14 in the house, that he was in either actual or constructive
15 possession because there's one instruction that I need you to
16 pay attention to when you go back there. It's instruction
17 number 16, and it's in here. The State --

18 Basically, it's talking about something called mere
19 presence. And as you can see, and when you get back in the
20 back, and take a look at it a little more, mere presence at
21 the scene of a crime or even knowledge that a crime is being
22 committed isn't enough to establish the defendant's guilt.
23 You have to be able to find that he was a participant and not
24 merely a knowing spectator.

25 Now, going back through some of the testimony

1 regarding the vehicle, there was a vehicle stop, and
2 basically, you heard -- let's start with Stephanie Thi.
3 Really wasn't much. She just mainly took all the pictures,
4 okay.

5 Now, I want you to understand something, we are not
6 necessarily contesting what we've gone through, the drugs and
7 whatnot, okay? All of this evidence, the officers found what
8 they found. We're not saying oh, they didn't really find
9 that. Okay. It's there. You saw it. Maybe some of you, if
10 it got close enough to you, you may have even smelled it. It
11 is what it is. We're not arguing that, and we're not arguing
12 that point.

13 But you heard Officer Henry say that that hole that
14 was in the State's Exhibit 6, the photo of the glove box
15 didn't look like that when he first got there. He said there
16 was something covering it, and you heard me ask him about
17 would it be fair to say akin to say a puzzle piece that was
18 fitting into that hole?

19 Now, is it my client's car? Yes. Was my client
20 driving it at the time? Yes. Was anyone able to say
21 conclusively, yes, Mr. Keller knew that there was a bag in
22 that secret compartment and it contained all the things that
23 you saw, the gun, the drugs, the bullets, all of those
24 things?

25 You actually heard Officer Lopez say that initially

1 he smelled some marijuana and thought he saw a green leafy
2 substance on the floor, but he never tested it. It was never
3 tested so we don't even know if it's marijuana or a crushed
4 leaf, we just don't know, or dirt or fuzz. It could be a
5 million different things, we don't know.

6 So if there is no one who can say that my client
7 knew about it, knew the nature of it, knew what it was, all
8 of these elements that the State went through, and using his
9 word, ad nauseam, there's nobody to say that he knew it was
10 there.

11 If he didn't know it was there, he's not a
12 participant. He's merely present at the scene of the crime.
13 And if you find that he's merely present at the scene of the
14 crime, when it comes certainly to the car, he's not guilty of
15 a crime. If he's not guilty of a crime, that knocks out most
16 of the State's first few charges with regard to the
17 trafficking and the other things that were found in the car
18 that were the photos that Stephanie Thi took, our very first
19 -- State's very first witness.

20 Now, also with the car, you will have the DMV
21 record, you will have that registration, and you will clearly
22 see two different addresses; the 265 North Lamb, unit F and
23 244 Molly Court.

24 The DMV recognized, because it put on the
25 documentation, that 244 Molly Court was part -- is part of

1 the DMV's record as to an address for this registration on
2 this car. Now, what does that tell us? Well, that tells us,
3 essentially, that there are two addresses. That my client,
4 Mr. Keller, must have had some connection with 244 Molly
5 Court or it wouldn't be mentioned in those documents.

6 So then it begs the question of where did he
7 actually live? Yes, you're going to see that the condo, 265
8 North Lamb, unit F, is in his name. He bought it, it's his
9 condo. But you also heard evidence, both from Officer Lopez,
10 that a young gal came up and asked him about getting a purse
11 or something out of the car, and they searched the car, and
12 didn't find the purse for the girl. You also heard and maybe
13 you can listen to a little bit more in those phone calls that
14 we played right before lunch that there was some conversation
15 about a girl who said all I do -- I have keys to your -- I
16 have keys to the house. I don't have your car keys.

17 And there was some garbled discussion about --
18 something about another set of keys that was in the center
19 console of the car. But you can clearly hear her say all I
20 have, babe, is the house keys. So somebody else had access
21 to that place. Somebody else had access.

22 Also, you heard Officer Lopez and I believe, it was
23 Officer Belmont, both of which said when we were in there we
24 didn't notice anything that looked even remotely close to a
25 girl's clothing or girl's item other than some purses. You

1 heard that, some purses.

2 Well, when you look at, I believe, it's Exhibit 47,
3 that the State's Exhibit 47, there's a picture of that
4 closet. And whether or not you could see it from where
5 you're sitting, you'll have access to it from when you go
6 back to the jury room, and you can make the judgment for
7 yourself. Does it look like there's girl's clothes that are
8 hanging in that closet or not?

9 It's the defendant's position that you can clearly
10 see there are girl's clothes in that closet in the flowery
11 drawers didn't look extremely manly either that were also in
12 the pictures. Likewise, you'll get as part of, remember the
13 close-up of the bathroom counter. And although, the State
14 wanted to focus on the pipes and some of the things that were
15 sitting on that counter, you'll notice, when you see that
16 exhibit, that there's clearly, clearly what appears to be a
17 heart shape box, a canister, if you will, that could very
18 well, it's our position that it's some makeup. And you can
19 make that determination when you go back there as well.

20 So there's definitely evidence of a girl in this
21 condo, in this unit. And evidence of a girl in this unit
22 that was there prior to January 28th, 2016 when this incident
23 took place. So then it kind of begs the question as to
24 credibility. And I believe, that that is -- that is
25 instruction, I believe, number -- bear with me here briefly

1 -- is instruction number 8.

2 And you'll have access to this as well to read it.
3 But basically, the credibility or believability of a witness
4 should be determined by his or her manner up on the stand,
5 his or her relationship to the parties, fears, motives,
6 interests or feelings. If you believe that a witness has
7 lied about any material fact in the case, you may disregard
8 the entire testimony of that witness or any portion of his
9 testimony, which is not proved by other evidence.

10 You heard two officers. And granted, Officer
11 Belmont said I don't recall, I don't believe I saw any
12 women's clothes. But you heard Officer Lopez, there were no
13 -- there was nothing of a girl other than a few purses.
14 There was no evidence of a girl in that house. Well, you'll
15 clearly get to see that there was.

16 Now, let's move to Allison Rubino. You remember
17 she was the gal at that tested the DNA. Now, mind you,
18 everybody else's testimony, everyone that was involved, the
19 police officers in retrieving and collecting all of this
20 evidence says the guns and the drugs and everything, they
21 were all found together in the car, that is.

22 Yet, number one, only DNA was even requested to be
23 tested on the two guns and the magazine, on the 9 millimeter
24 Ruger, the .22 Beretta and the magazine for 9 millimeter
25 Ruger.

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1 Those tests, if you'll recall her testimony, was
2 that they were partial samples and therefore, they were
3 inconclusive and the most she could do was say that there was
4 two contributors, at least one -- at least two contributors
5 and at least one being a male. Well, that is not the same,
6 ladies and gentlemen, as saying Mr. Keller's DNA was on those
7 items. Okay?

8 And mind you, she even says that they had a sample
9 with which to compare. You remember they said they took a
10 buccal swab? A buccal swab is basically just a Q-tip
11 brushing on the inside of your mouth and getting some of your
12 DNA.

13 So they had a known sample from Mr. Keller; yet,
14 what they tested, they couldn't -- she couldn't match up. It
15 came back inconclusive. Not that it could not exclude
16 Mr. Keller. She never said that. She said it was
17 inconclusive.

18 Now, because there was someone else who had access
19 to that house, and we can't say for 100 percent sure or we
20 can't say beyond a reasonable doubt our position, where
21 Mr. Keller actually resided, where he laid his head. You
22 definitely heard in those jail calls about Mr. Keller telling
23 the girl that was on the other end, well, maybe you -- you
24 know, maybe you should move in and pay rent. Didn't say
25 you're not staying there and now all of a sudden you can move

1 in, you know, because I'm not around anymore, because I'm not
2 there right now.

3 Ladies and gentlemen, it's our position that there
4 was someone else that had access to all that. And there was
5 someone else that was running that show, and it was not
6 Mr. Keller.

7 Now, lastly, let's talk just a little bit more
8 about Officer Henry. And I'm not laying any fault on Officer
9 Henry at all because we all know that back then body cams
10 were relatively new -- new invention, if you will, on
11 something that was being used more regular, based on things
12 that were happening nationally.

13 He acknowledged he had a body cam, it was
14 operational, it was recording that night. When he got back
15 to the northeast area command, he says he took it off of his
16 glasses, put it on the dock, the docking station to where it
17 would be uploaded to one of the Metro servers or however it
18 got uploaded at the time.

19 But what he also said, that I need you to think
20 about, he said, I don't have any access to delete it, but he
21 said what? If we want to keep it longer than the traditional
22 45 days, I could flag it as something that we might need for
23 later. And you heard me ask him, did you flag it? He says,
24 well obviously, some -- he didn't say no, I didn't flag it.
25 What he said was well, I've checked and because they're only

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1 kept 45 days if they're not flagged, and it's not there
2 anymore, that I must not have flagged it.

3 Probably would have help make everybody's job
4 easier if we could have seen what actually took place that
5 night, but we can't. It existed at one time, but it doesn't
6 now.

7 So ladies and gentlemen, when you go back there in
8 the jury room and you're deliberating, and you're remembering
9 what I said that I was going to show you, and what I have
10 shown you, which is basically everything that I said I was
11 going to show you, if you add all that up, it's our position
12 that that does not meet the State's burden of proving this
13 case beyond a reasonable doubt; the constructive possession,
14 the intent to sell, the knowledge of the drug, of what it
15 was, the nature of what it was. They haven't shown you that.

16 If they haven't shown you that, then going back to
17 instruction 16, he was merely present at the scene of a
18 crime. If he's merely present at the scene of a crime and
19 the State has not shown you beyond a reasonable doubt that my
20 client knew those things were there or that he had access to
21 them in a -- to prove constructive possession, then they
22 haven't met their burden.

23 And ladies and gentlemen, it comes down to if they
24 haven't met their burden, then when you go back there and you
25 ultimately come up with a decision, that your decision has to

1 be that he's not guilty on all counts.

2 Yes, we saw a lot of controlled substances, but the
3 State has never shown you beyond a reasonable doubt that the
4 defendant knew that that stuff was there or that he had
5 reason to believe it was there, that he knew what it was,
6 that he knew its nature or that he knew every single thing
7 that was in that house either, much less in the car.

8 And so when you go back and you apply the law that
9 you've been given to these facts, we feel that you're going
10 to be able to go back there and say, you know, State didn't
11 meet their burden, so Mr. Keller not only was not innocent
12 when he sat down, but that you find him not guilty and
13 therefore that he's innocent, and I'll submit it on that.
14 Thank you very much, ladies and gentlemen.

15 THE COURT: Thank you, Mr. Frizzell.
16 Mr. Dickerson?

17 STATE'S REBUTTAL CLOSING ARGUMENT

18 MR. DICKERSON: Yes, sir. The bottom line, ladies
19 and gentlemen, the defendant was moving. You heard it from
20 him himself. That's the password on his phone. What happens
21 when he gets the call from the lady, nice young lady that
22 he's going to allow to move into his house now that he can't
23 live there? Well, she has his phone, there's a lot of people
24 calling, what's going on here, the password's moving. That's
25 what I'm doing.

1 It's very clear. He even makes it clear to you
2 that he tells her I wish I had been F'ing your ass more
3 instead of worrying about getting money. Ladies and
4 gentlemen, you hear it from the defendant himself in those
5 calls. It's very apparent what's going on here.

6 Now, Mr. Frizzell tells you that, you know, nobody
7 could tell you that the defendant knew that stuff was there.
8 Ladies and gentlemen, nobody needs to tell you the defendant
9 knew that stuff was there. You have an instruction on this.
10 We can't just peer into the minds of people and tell you what
11 they know. So what do we do?

12 We have an instruction on this. We look at the
13 facts and circumstances surrounding the crime. And what are
14 the facts and circumstances of this crime? Well -- could I
15 get 82? The facts and circumstances are the defendant
16 driving down Lamb Boulevard just after 2:00 in the morning,
17 passes a police officer. You heard that from him as well.

18 And you heard that that police officer -- both from
19 the police officer and from him -- made a U-turn, got behind
20 him. That's when he dipped into the Crossing Wood Apartments
21 (phonetic). He was driving his car. His car registered to
22 him, registered to that address, regardless of what it said
23 on the registration that was in his car. You guys will have
24 the certified DMV records. We've looked at them, I think
25 it's pretty clear what they say. Physical address, mailing

1 address, both 265 North Lamb, unit F, right where he parked
2 in front.

3 His place of safety because where are you going to
4 go at 2:00 in the morning when you've got that much dope in
5 your car and a cop gets behind you? You're going to go to a
6 place of safety. You're going to try to get away. And
7 unfortunately, Mr. Keller couldn't do that. He couldn't get
8 away from all this meth in time to not have Officer Lopez
9 realize what was going on because it was very clear.

10 In the hurried fashion that Mr. Keller jumped out
11 of that vehicle, he was trying to run. So Officer Lopez came
12 up to him right at that vehicle. That's when he first smells
13 marijuana coming from both the vehicle and Mr. Keller. This
14 is where it all starts. From the moment Officer Lopez had
15 contact with Mr. Keller, there was the indicia of drugs from
16 the first moment that he has contact with him, he smells
17 drugs, and then it just goes on from there.

18 Ladies and gentlemen, if we are to believe that
19 Mr. Keller is a mere spectator, and I use that coming from
20 the instruction that Mr. Frizzell has showed you, mere
21 presence, merely and knowing spectator -- you must believe
22 that he's a mere spectator to his whole life, a life full of
23 coincidences and he's the unluckiest man in the world.
24 Because what did we have happen? Well, in addition to the
25 smell of marijuana, Officer Lopez then looks underneath the

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1 driver's seat and finds that fresh new pack of baggies.

2 Baggies that you heard are used for selling drugs.

3 And the defendant basically tells us in his call in
4 talking to the female, he found those baggies, those brand
5 new baggies I bought. Somehow off of that he got a search
6 warrant. Well, there's also another coincidental piece
7 missing here. Just a coincidence that when the dog comes
8 out, the dog also hits on that glove box, which led to the
9 search warrant, which led to the finding of all of this
10 methamphetamine.

11 In that 2002, silver Dodge Stratus there's 344
12 grams of methamphetamine sitting there in a secret
13 compartment in the glove box. The owner of the vehicle is
14 driving, and he has no idea what's in it? Ladies and
15 gentlemen, it makes no sense. Coincidence doesn't work that
16 way. To believe that, you would have to believe he is, in
17 fact, the unluckiest man in the world.

18 But it doesn't stop there because there's not just
19 methamphetamine in there. There is a ton of heroin as well.
20 1.19 ounces, 33.9 grams of heroin. That's 1.9 -- 19 ounces.
21 That is a lot of heroin. When you hear that heroin is
22 usually packaged in less than a gram and we have 33.92 grams,
23 that is a lot of heroin. That's not a coincidence.

24 How you just happen to have over an ounce of heroin
25 sitting in your car right next to your 12 plus ounces of

1 methamphetamine? Ladies and gentlemen, the only reasonable
2 thing to conclude here is that the defendant had this in his
3 car because this was part of his little business. His little
4 business that he was trying to get together so he and his
5 lady could start to chill, just like he said.

6 In addition to that, there's also cocaine in the
7 vehicle and a mixture of amphetamine, cocaine and
8 methamphetamine. Those two are not coincidences. He's not a
9 mere spectator here. He's not just watching life pass him
10 by. He's taking part in every aspect of what he's doing in
11 his life, and that's what leads into his house right where he
12 parked in front of.

13 Inside his home what do we find? No longer is it
14 in the secret compartment, but it is all over his home. His
15 one bedroom condo that he owns that he tells Officer Henry
16 that's where I live. I live at the place that's on my
17 driver's license. You can see these driver's license records
18 which show unit F, 265 North Lamb, that's where he lives, by
19 his own admission. And by what he says on the jail calls.
20 By what he says in the calls to the female that yeah, you can
21 move into my house. And she says, yeah, I might just do
22 that. I'll make sure I take care of your stuff.

23 It's not her stuff, it's his stuff. That's how
24 it's being referred to. All that's in there is his stuff.
25 Ladies and gentlemen, take a look at those pictures. Sure,

1 maybe there's a couple pieces of women's clothing or
2 something like that. We're not saying that the defendant
3 doesn't have ladies. That's not even an issue. I think that
4 the jail calls show us that there's something different.
5 We're seeing no, he's the one who lived there and the only
6 time somebody moved in was right after he got arrested here,
7 and that's very clear when you hear the jail calls, he's
8 arrested on the 28th of January, jail calls starting on the
9 29th, and he's saying, yeah, go ahead and move in. Call my
10 mom. She'll set you up with the alarm code.

11 Significant, because inside the house drugs are
12 located throughout. They aren't hidden anywhere. Everybody
13 who's lived with a roommate or somebody else knows that you
14 just have your own space, right? You have drawers for your
15 things. You've got to put things away. But if you're a
16 bachelor living in a one bedroom condo selling drugs, you can
17 just leave them wherever you want. And that's what we see
18 when we look at the pictures of the defendant's home. We see
19 bags of drugs on scales, scales out here, pipes here, you
20 know, just a collection of drug paraphernalia both used for
21 using and for dealing.

22 Dealing, for instance, being all these clean piped
23 the defendant has. Who better to have a stash of clean
24 methamphetamine pipes than a guy who's selling
25 methamphetamine? I don't know, but it seemed like the

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1 reasonable place to get that type of thing.

2 Now, ladies and gentlemen, once again, the
3 defendant is not merely present for this. He's not merely
4 present for his life. He is a knowing participant. Making
5 calculated moves to further his business. We know his moves
6 are calculated because we know putting a secret compartment
7 in your car is probably a pretty good idea if you're going to
8 be selling drugs. You can't just put it in the center
9 console because what's in the center console? Well, his
10 keys. His house keys. You heard about that from the girl on
11 the phone. That's where she got the house keys from. If you
12 listen to that, you'll hear that.

13 So why have them there? You can't because the
14 police are going to search there. But the secret compartment
15 inside your car, seems like that would probably be a standard
16 upgrade. This is the line of work that you're going into.
17 And what amounts to an escape route through the bathroom of
18 his own home into the apartment, a vacant apartment next
19 door, also seems like probably something that would be a good
20 idea to have if you're selling drugs. Defendant had both.

21 It doesn't stop there. The defendant goes on to be
22 taken to the northeast area command while they're preparing a
23 warrant for his home. That's where he's sitting in an
24 interview room sleeping and wakes up, and as he tells his
25 female friend on the phone, both of them, actually, he got

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RA 0561

1 bored so he pulled out that little thing that he had that
2 that guy wanted him to try. Listen to the calls. That's
3 what he says. And he puts it on the table and he crushes it
4 up and he rolls up a piece of magazine and he snorts it.
5 That's brazen right there at the police station.

6 Couldn't have known they were watching, but they
7 were. They come in, what do they find? Methamphetamine
8 taped to the defendant's scrotum. Just another step in the
9 defendant's knowing participation in his life of drug dealing
10 because why would you put it in your pocket, somebody might
11 search there.

12 We learned a lot from the calls the defendant made
13 from the people he spoke to. We learned that gunshots were,
14 in fact, a distraction. It was fake. Something that's
15 suspected all along by officers on scene. It turns out, too,
16 yeah, that's the case. And the defendant, when he's learning
17 that, on the phone is not surprised. He's not saying why
18 would you do that? You caused more attention to none of
19 that. What's the response? It's a laugh. It's a joke.
20 It's like I expected that. Who would expect it? Why would
21 you expect that?

22 There's only really one reason why you would expect
23 that. If you know that you have people out there, they know
24 you have stuff on you, they see you in a situation with the
25 police, and you got to go. That's the only reason you could

1 expect something like that. And that's why the defendant
2 expected it. When he heard those gunshots go off, he had to
3 expect it. That's just friends coming through.

4 It didn't work. The defendant ended up still being
5 there on scene. They found everything there. Now, we tend
6 to almost overlook one major piece of evidence in this entire
7 case when we see all these drugs, when we see these multiple
8 bags of crystal rock that's pulled out from the defendant's
9 car, from his home, from the heroin from his car, this black
10 tar substance.

11 We tend to almost not even pay the credit that is
12 due to the \$2,187 in the defendant's front pants pocket.
13 \$2,187. Sixty-eight \$20 bills folded in hundreds
14 meticulously. This is a man who paid attention the way he
15 carried his money.

16 As business people know, you've got to pay
17 attention to the cash register. For a drug dealer, the cash
18 register is a right front pants pact. For Mr. Keller that's
19 the case. So why is that significant beyond just the common
20 sense that yeah, normal people don't carry money that way or
21 in that amount? Well, you see the defendant's pay stub.
22 Year-to-date earnings in November, just over \$4,000. He's
23 carrying over half of the money that he paid for the entire
24 year in his pants pocket.

25 Well, we know also from listening to him on those

1 phone calls, his conversations, that he wasn't working.
2 You'll hear it specifically in the call from January 29th,
3 2016 at 1:31 a.m., ten minutes in, he's talking about getting
4 out, someone's mom getting him out. He says yeah, tell her
5 mom I got to go back to work. Her mom doesn't know I ever
6 stopped working. Yet, he still had money because he was
7 moving.

8 Ladies and gentlemen, the defendant was not a mere
9 spectator to his life. He was an active participant. He was
10 the leader of his own life and his own path. And where it
11 got him was right in spot 58 of 265 North Lamb with the Las
12 Vegas Metropolitan Police Department, almost 400 grams of
13 methamphetamine and over 30 grams of heroin as well as
14 cocaine, marijuana and mixtures of all, now in the possession
15 of the State.

16 Ladies and gentlemen, make no mistake about it, the
17 defendant is a drug dealer. He had the intent to sell all
18 those items, everything that he had in his possession. Well,
19 he may have intended to do some of it. Just because he tried
20 the products, doesn't mean that you're not going to sell some
21 of it. And that's all you need to do is sell some of it.
22 With that intent, that makes the defendant guilty of all the
23 possessions with intent to sell and with the clear fact that
24 the defendant had no choice but know of the 344 grams of
25 methamphetamine and the over 30 grams of heroin inside that

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RA 0564

1 secret compartment in his car, makes the defendant guilty of
2 trafficking a controlled substance for both methamphetamine
3 and heroin.

4 And it's for that reason that myself and
5 Mr. Bunnett ask you to find the defendant guilty of all
6 counts. Thank you very much.

7 THE COURT: Thank you, Mr. Dickerson. At this
8 time, I'm going to have the court clerk then swear my
9 officers to take charge of my jurors and alternate jurors.

10 (CLERK SWEARS OFFICERS OF THE COURT)

11 THE COURT: Ladies and gentlemen, at this point in
12 time, I'm going to send you out with my marshal to start the
13 deliberations. As I indicated, you will have the
14 instructions you have there as well as all the physical
15 evidence. My marshal will talk to you specifically about the
16 controlled substance and the gun, how we -- the guns -- how
17 we use those for you to view them.

18 Ladies and gentlemen, there's two of you here that
19 will not be deliberating in this process. You are my
20 alternates. I don't tell you who you are until the end
21 because it's been my experience that alternates won't pay
22 attention. They are late, they don't think that they're
23 important so they don't think that they need to pay as much
24 attention to the case. At this point in time, my alternates
25 are Ms. Cruz and Ms. Johnson, okay?

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RA 0565

1 But that doesn't mean that you are not important,
2 and I can't release you at this point, okay? Does the jury
3 wish to deliberate tonight or do you wish to come back
4 tomorrow, tomorrow morning to deliberate tomorrow? You want
5 to come back tomorrow?

6 UNIDENTIFIED JUROR: Yes.

7 THE COURT: Okay. Is everyone okay with that? All
8 right. So what I'm going to do is I'm going to have you exit
9 with my marshal, my marshal and my JEA. Ms. Cruz and Ms.
10 Johnson, I do need you to come back tomorrow. Although, you
11 won't be deliberating, I'm going to have you waiting, okay?

12 So we'll go ahead and have you back tomorrow by --
13 how early do you want to start? I'm here early?

14 UNIDENTIFIED JURORS: Early.

15 THE COURT: Would 8:00 o'clock be -- is that okay
16 with everybody? 8:00 o'clock? Okay. All right. So -- all
17 right. I need to -- once again, you're admonished not to
18 converse amongst yourself or with anyone else on any subject
19 connected with this trial or read, watch or listen to any
20 report or commentary on the trial by any person connected
21 with this case or by any medium of information, including
22 without limitation, newspapers, television, Internet or
23 radio.

24 You are further admonished not to form or express
25 any opinion on any subject connected with this case until the

1 case is finally submitted to you. And I'm going to direct
2 you to be back here tomorrow 8:00 o'clock. Just meet out
3 front. My marshal will meet you out front, okay?

4 Ms. Cruz, Ms. Johnson, I do need you to come back
5 as well, all right? Okay. Do you have any questions? All
6 right. Okay, so we'll go ahead and go out the back door with
7 my marshal. Take them all. All of you go out the back.
8 Take them all back, okay?

9 (Jury recessed at 4:54 P.M.)

10 (Outside the presence of the jury)

11 THE COURT: All right. We're outside the presence
12 of the jury. Leave your information with my Clerk. Also,
13 before we go, I want to address the jury instructions, if
14 need be, the second portion of this proceeding. Have you
15 received a copy of that, Mr. --

16 MR. FRIZZELL: I have, Your Honor.

17 THE COURT: Okay. So with respect to instructions
18 1 through 8, are you familiar with them?

19 MR. FRIZZELL: Yes, Your Honor.

20 THE COURT: Do you have any objection to those
21 being given?

22 MR. FRIZZELL: No, should they become necessary.

23 THE COURT: Okay. And do you have any additional
24 instructions to give in addition to the 1 through 8?

25 MR. FRIZZELL: No, Your Honor.

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1 THE COURT: Same with the State, are you familiar
2 with 1 through 8?

3 MR. DICKERSON: We are, Your Honor.

4 THE COURT: And do you have any additional
5 instructions that you proffer at this time?

6 MR. DICKERSON: We don't. We can use the
7 instructions from this round as well, correct, Your Honor?

8 THE COURT: Yes. Yeah, this is just in addition.

9 MR. DICKERSON: Yes.

10 THE COURT: And do you have any objection to these
11 being given?

12 MR. DICKERSON: We do not.

13 THE COURT: Okay. All right. So go ahead and, all
14 right, we're off the record. Is there anything you need to
15 put on the record? Nothing? Okay.

16 MR. DICKERSON: Nothing from the State, Your Honor.

17 THE COURT: All right, we're off the record. All
18 right.

19 (Court recessed at 4:57 P.M., until Friday,
20 March 10, 2017, at 10:33 A.M.)

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WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
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STATE'S EXHIBITS:

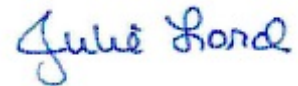
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ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.



JULIE LORD, INDEPENDENT TRANSCRIBER

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