

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

JOSE FERNANDO MONAY-PINA, )  
 )  
Appellant, )  
 )  
vs. )  
 )  
THE STATE OF NEVADA, )  
 )  
Respondent. )  
\_\_\_\_\_ )

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**APPELLANT'S APPENDIX VOLUME III**

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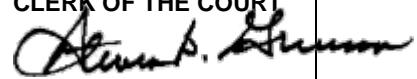
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RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

CASE NO. C313118-1  
C313118-2

v.

DEPT. VII

CASIMIRO VENEGAS,  
JOSE FERNANDO MONAY-PINA,  
AKA JOSE FERNANDO MONAYPINA

Defendants.

BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT JUDGE

TUESDAY, MARCH 14, 2017

**RECORDER'S TRANSCRIPT  
DESIGNATION OF RECORD  
JURY TRIAL DAY 2**

APPEARANCES:

For the Plaintiff: MARY KAY HOLTHUS, ESQ., ESQ.  
RYAN SCHWARTZ, ESQ., ESQ.  
Clark County District Attorney's  
Office

For the Defendant ADAM L. GILL, ESQ.  
Venegas: Aisen, Gill & Associates LLP

For the Defendant THOMAS D. BOLEY, ESQ., ESQ.  
Monay-Pina: Boley & Aldabbagh

RECORDED BY: RENEE VINCENT





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1 TUESDAY, MARCH 14, 2017 AT 10:11 A.M.

2 THE MARSHAL: Please rise for the jury.

3 [Jury In]

4 THE COURT: Ma'am, I'm going to ask if you can just scoot  
5 over one. Yep. There you go.

6 UNIDENTIFIED JUROR: Thank you.

7 THE COURT: Counsel can just go ahead and sit down.

8 Okay. Good morning, everyone.

9 We are back on the record in Case Number C313118,  
10 State of Nevada versus Venegas and Monay-Pina.

11 And let the record reflect the presence of our  
12 jurors, Defendants, and counsel. 10:12:55 - 10:

13 [Designation concluded at 10:12 a.m., recommencing at  
14 10:23 a.m.]

15 THE COURT: Could I have the attorneys approach for a  
16 minute?

17 [Bench Conference Begins]

18 THE COURT: I think to talk [indiscernible] jurors.  
19 Let's take a short break.

20 UNIDENTIFIED SPEAKER: Yeah.

21 [Bench Conference Ends]

22 THE COURT: Folks, we're going to take just a quick --  
23 the lawyers get set up for their openings. During this break,  
24 you are admonished not to talk or converse among yourselves or  
25 with anyone else on any subject connected with this trial or

1 read, watch, or listen to any report or commentary on the  
2 trial or any person connected with this trial by any medium of  
3 information, including, without limitations, newspapers,  
4 television, Internet, radio, or form or express any opinion on  
5 any subject connected with the trial until the case is finally  
6 submitted to you.

7           So don't go too far. It's just going to be about  
8 five minutes. And, Ms. Wellman, if you could just -- where'd  
9 Ms. Wellman go? There. If you could just hang out for one  
10 second?

11           All right.

12           THE MARSHAL: All right. Please rise for the jury.  
13 Leave your clipboard and all your items there.

14           [Jury Exits]

15           THE COURT: All right. So, Ms. Wellman, I had a note  
16 from the marshal that said that you let him know that you  
17 possibly know Mr. Monay-Pina and possibly one of the  
18 witnesses, but that you weren't sure?

19           MS. WELLMAN: Yes, ma'am.

20           THE COURT: Okay. Can you just tell me about that?

21           MS. WELLMAN: I possibly could have gone to, like, middle  
22 school with both of them, so it's not like -- it's not going  
23 to affect anything at all. I was friend with -- said that one  
24 person I might know in middle school, but that was, like,  
25 eight or nine years ago.

1 THE COURT: Okay. So who was it that you think that you  
2 know?

3 MS. WELLMAN: Cesar.

4 THE COURT: Okay.

5 MR. SCHWARTZ: That seems like Cesar probably wouldn't be  
6 in the same grade as she was. He's much younger.

7 MS. WELLMAN: It's just the name sounded familiar, but I,  
8 like, don't know unless, like, I saw that person.

9 MS. HOLTHUS: Cesar is, like, young. He hasn't been to  
10 middle school yet.

11 MS. WELLMAN: Oh. Well, then we're good.

12 THE COURT: Okay. And what -- Mr. Monay-Pina?

13 MS. WELLMAN: Same middle school. Like, I had maybe a  
14 class with him or something.

15 THE COURT: Okay.

16 MS. WELLMAN: But never associated. But I just wanted  
17 you guys to know that information.

18 MR. BOLEY: Mr. Monay-Pina went to school in California.

19 THE COURT: All right.

20 MS. WELLMAN: Then we're perfect.

21 THE COURT: All right. Then we're good. All right. So  
22 if you want to just step out, then we'll --

23 MS. WELLMAN: Awesome. Thank you.

24 MR. SCHWARTZ: Your Honor, if you'd like, I can give you  
25 a rundown of the witnesses we have scheduled to come in today.

1 THE COURT: Sure. That's great.

2 MR. SCHWARTZ: Mr. Richard DeCamp, officer Simmons,  
3 Officer Aguirre, Javier Colon, Adrianna Colon, Lizbeth Colon,  
4 Samantha Avina, Cesar Avina, Officer Spurling, and Adam  
5 Felabon, CSA.

6 THE COURT: What was the last one?

7 MR. SCHWARTZ: Felabon.

8 THE COURT: Okay. That's today?

9 MR. SCHWARTZ: That's for today. And then tomorrow we  
10 would anticipate if we got all those witnesses in tomorrow  
11 (sic), we would have three witnesses to complete our case  
12 tomorrow.

13 THE COURT: Okay.

14 MR. GILL: Your Honor, I don't know if you want us to do  
15 this now or when the jury's in, but we would invoke the  
16 exclusionary rule.

17 THE COURT: All right. Oh, thank you. I did not ask  
18 that. Generally, I do. Oh. Because I hadn't gotten quite  
19 there yet.

20 MR. GILL: Thank you.

21 THE COURT: Right.

22 MR. SCHWARTZ: And we did talk --

23 THE COURT: So if there's anyone present who -- I might  
24 have like two people in here, but if there's anyone present  
25 who expects to be a witness in the case who isn't a party,

1 please leave the courtroom and remain available in the hallway  
2 until you are called to testify.

3 MR. GILL: Thank you, Your Honor.

4 MR. SCHWARTZ: And, Your Honor, we did go through the  
5 exhibits. I believe all -- the majority, if not all of them,  
6 will be stipulated to.

7 MR. GILL: Well, we can clean that up, Judge. The --

8 THE COURT: Yeah. Can you tell me which ones --

9 MR. SCHWARTZ: If I can approach your clerk?

10 THE COURT: -- specifically, and I'll admit them now so  
11 that you have them when you're doing your opening?

12 MR. SCHWARTZ: 1 through 103, Your Honor, are stipulated  
13 to.

14 THE COURT: 1 through 103 will be admitted.

15 [Plaintiff's Exhibit 1 through 103 Received]

16 MR. SCHWARTZ: And then the 104 and 105, as well, Your  
17 Honor. That's all of them.

18 THE COURT: 104 and 105 will also be admitted.

19 [Plaintiff's Exhibit 104, 105 Received]

20 THE COURT: All right. So much better than our last jury  
21 trial already. Thank you.

22 MR. SCHWARTZ: The last thing, Your Honor, we do have two  
23 search warrants -- affidavits and search warrants for the  
24 Buccal swabs obtained in this case. My understanding is that  
25 the defense are going to stipulate that the buccal swabs and

1 search warrants were performed, as well?

2 MR. GILL: Yes.

3 MR. SCHWARTZ: And that we could make these two search  
4 warrants Court exhibits, if that pleases the Court?

5 THE COURT: Sure. So we'll make those Court exhibits.

6 MR. SCHWARTZ: 106 and 107?

7 THE COURT: No. They'll be Court exhibits. They won't  
8 go to the jury.

9 MS. HOLTHUS: Court Exhibits 1 and 2.

10 MR. GILL: Court exhibits. I'm sorry.

11 THE COURT: They'll just --

12 MR. GILL: Sorry.

13 THE COURT: -- Court exhibits.

14 MR. SCHWARTZ: May I approach real quick?

15 THE COURT: Yes.

16 MR. SCHWARTZ: Thank you.

17 THE COURT: All right. Anything else we need to take  
18 care of?

19 MR. SCHWARTZ: Not from the State, Your Honor.

20 MR. GILL: No, Your Honor.

21 THE COURT: Mr. Gill or Mr. Boley, anything we need to  
22 take care of before we bring the jury back in?

23 MR. BOLEY: No, ma'am.

24 MR. GILL: No.

25 THE COURT: All right. Jurors aren't taking us very



1 seriously. They're all dressed very nicely today.

2 MR. BOLEY: That's what I said.

3 [Pause]

4 THE MARSHAL: Please rise for the jury.

5 [Jury In]

6 THE MARSHAL: Please be seated.

7 THE COURT: Back on the record in Case Number C3 -- 3 --  
8 C3 -- there we go. I started with the wrong number. C313118,  
9 State of Nevada versus Venegas and Monay-Pina.

10 Let the record reflect the presence of all the  
11 jurors, Defendants, and counsel.

12 Right. And are we ready, Mr. Schwartz?

13 MR. SCHWARTZ: May I proceed, Your Honor?

14 THE COURT: Go ahead.

15 MR. SCHWARTZ: On January 12th, 2016, the Defendants,  
16 Casimiro Venegas and Jose Monay-Pina, victimized two different  
17 groups of people within 30 minutes of each other. They first  
18 went to 7-Eleven located at 5700 West Charleston. They went  
19 inside, and they robbed the store clerk, Richard DeCamp. They  
20 robbed him at gunpoint. Richard handed over approximately  
21 \$140 in cash.

22 Now, ladies and gentlemen, the evidence will show  
23 that the Defendants were wearing cloth face masks. They were  
24 wearing big-hooded coats covering their heads, and they both  
25 had black guns. Mr. Venegas also had red gloves on. Mr.

1 Monay-Pina had black gloves and blue shoes.

2           Now, after they robbed 7-Eleven, they went  
3 approximately one mile down the road to 504 Brush Street.  
4 Inside 504 Brush Street, Javier Colon was sleeping. His  
5 sister, Adriana, and her three children were sleeping. Both  
6 the Defendants broke into Javier's room and started attacking  
7 him, beating him, pistol whipping him, robbing him. Took his  
8 wallet and some collectible knives and other items that he  
9 had.

10           They also picked up an axe and started swinging it  
11 at him, hitting him with it. Swinging at his head. Javier is  
12 going to tell you that he just barely got his hand up to  
13 protect his head from being by the axe.

14           Now, at this time, Andriana was awoken by Javier's  
15 screams for help, and she yelled in to the Defendants to stop.  
16 And in response, they pointed the guns at her and threatened  
17 to kill her and her children if she called 9-1-1.

18           Fortunately one of the kids did call 9-1-1, and the  
19 police arrived a short time later, which caused the Defendants  
20 to flee into the neighbor's yard at 510 Brush Street, which is  
21 where they were eventually apprehended two houses down.

22           Now, when Mr. Casimiro Venegas was apprehended, he  
23 was hiding under a shed. And in that vicinity, officers found  
24 two black handguns. Ended up being BB guns. They also found  
25 a collectible knife. They found a face -- cloth face mask,

1 and they found bright red gloves.

2           On the other side of the yard, Jose Monay-Pina was  
3 apprehended. He was hiding in some bushes, in fact. Officers  
4 located, again, a cloth face mask in that area, a black glove,  
5 another black handgun, BB gun, collectible knife, \$140 in  
6 cash. Also, Javier Colon's wallet.

7           Ladies and gentlemen, the Defendants have been  
8 charged with robbing Javier Colon, robbing Richard DeCamp,  
9 trying to kill Javier Colon, and threatening to kill Adriana  
10 and her children. And at the conclusion of this trial, myself  
11 and Ms. Holthus are going to ask you to find them guilty for  
12 all the charges.

13           Thank you.

14           THE COURT: Thank you. Mr. Gill?

15           MR. GILL: Thank you, Your Honor.

16           Ladies and gentlemen of the jury, we do want to, on  
17 behalf of Mr. Venegas, Mr. Boley, and Mr. Monay-Pina, we want  
18 to thank you for your patience yesterday and returning today  
19 to listen to this case.

20           What I'm going to ask you to do is -- and the State  
21 often does this, and they try to make everything sound as  
22 simple as possible, and everything in the State's mind is just  
23 going to be as simple as that.

24           What I'm going to ask is that you pay attention as I  
25 know you will, but to pay attention to biases and reasons why

1 witnesses -- and it's your job to test their credibility and  
2 test -- you know, you're going to be able to view them and  
3 really decide whether or not you believe what they're telling  
4 you. And we're asking that you do that, and you take your  
5 jobs very seriously this week and really listen to what comes  
6 out during this trial. Because ultimately I'm going to get up  
7 here one more time when it's all over, and the State's going  
8 to get up two more times when it's all over because it is  
9 their burden, but I'm going to get up here again at the end,  
10 Mr. Boley will get up here again at the end, and we're going  
11 to ask you to return not guilty verdicts, and it's going to be  
12 based on the evidence or lack of evidence that the State  
13 presents.

14           So what I'm asking you for this week, I don't think  
15 that we'll be here past Friday. I know the NCAA tournament  
16 starts, and it's St. Patrick's Day, but we're not going to be  
17 here over the weekend or anything like that, so for this short  
18 time that we're here this week, we are asking that you give  
19 this case your whole attention; you give Mr. Venegas, Mr.  
20 Monay-Pina, the fair shake that they deserve.

21           So with that, you know, I'll have one more  
22 opportunity to speak to all of you at the end of the case, but  
23 we are at the end of the case going to ask that you return not  
24 guilty verdicts as to both.

25           Thank you.

1 THE COURT: Mr. Boley?

2 MR. BOLEY: Yes, ma'am.

3 Ladies and gentlemen, over the next few days I'll  
4 try not to be duplicative because we do have two co-Defendants  
5 in this case represented by separate counsel.

6 So, you know, I'd ask you to consider all the things  
7 that Mr. Gill asked you to consider. However, as these  
8 witnesses testify and as the State presents its evidence, I  
9 want you to listen to each piece of the evidence and give each  
10 Defendant a separate burden because these two are separate  
11 individuals, and they're accused of committing a crime  
12 together. What does that mean? Each witness that saw  
13 something will describe an identification of each person, and  
14 I want you to pay attention to the details of those  
15 identifications, each one, and consider them separately.

16 Of course, just like Mr. Gill, I'd ask that you stay  
17 engaged, and we thank you for your service as jurors in this  
18 case, and we'll try to make this as painless and not  
19 duplicative as possible.

20 Thank you.

21 THE COURT: Okay. State, please call your first witness.

22 MS. HOLTHUS: Richard DeCamp.

23 [Pause]

24 MR. SCHWARTZ: Your Honor, may I approach real quick?

25 THE COURT: Absolutely. Hang on just a second, sir.

1 Please raise your right hand to be sworn.

2 RICHARD DECAMP, PLAINTIFF'S WITNESS, SWORN

3 THE CLERK: Thank you.

4 THE COURT: Good morning, sir. Go ahead and have a seat.

5 THE WITNESS: Thank you.

6 THE COURT: Could you please state your name and then  
7 spell it for the record?

8 THE WITNESS: Richard DeCamp, R-I-C-H-A-R-D D-E capital  
9 C-A-M-P.

10 THE COURT: Thank you, sir.

11 DIRECT EXAMINATION

12 BY MS. HOLTHUS:

13 Q Richard, where do you work?

14 A 7-Eleven.

15 Q Which one?

16 A Or right now I work the 4950 West Charleston  
17 Boulevard.

18 Q How long have you been working at 7-Elevens?

19 A About four years.

20 Q Back in January of 2015, were you working at the  
21 5700 West Charleston --

22 A Yes.

23 Q -- location? And is that in Clark County, Nevada?

24 A Yes.

25 Q How long had you been at that location?



1 A Over -- a little over a year, year and a half.

2 Q What shift did you work?

3 A Graveyard.

4 Q What --

5 A 10 to 6.

6 Q I'm sorry?

7 A 10 to 6, graveyard shift.

8 Q 10 p.m. to 6 a.m.?

9 A Yeah.

10 Q Is that still the shift you work now?

11 A Yeah.

12 Q In fact, did you work last night until 6 a.m.?

13 A Yes.

14 Q And we dragged you out of bed to come down here this  
15 morning; is that right?

16 A Yes.

17 MS. HOLTHUS: Court's indulgence.

18 BY MS. HOLTHUS:

19 Q Richard, I think I misspoke. I said 2015, but we're  
20 talking about January of 2016; is that right?

21 A Right.

22 Q On January 12th of 2016, you were working grave?

23 A Yes.

24 Q Did something happen that causes you to come to  
25 court today?

1           A     Yeah. Like right around 3 o'clock in the morning I  
2 got -- these two guys came in the door with -- they have their  
3 mask and covered up, and all you could see was eyes. It was a  
4 tall guy and a little short guy.

5           Q     Was there --

6           A     Then they asked me for all -- all the money.

7           Q     Was there anybody in the store when they came in?

8           A     No.

9           Q     It was just you?

10          A     Just me.

11          Q     Is that -- are you the only one that works grave  
12 or --

13          A     Yes.

14          Q     So what happened then?

15          A     Then they asked me for -- for the money, then I -- I  
16 gave it to them. Then they asked me -- well, for the second  
17 register, so I went over there and gave that to them, too.

18          Q     When you say "they" asked you, you said there was a  
19 taller one and a shorter one?

20          A     Yeah. They both had guns.

21          Q     Did one versus the other do most of the talking?

22          A     The taller guy was the one that was kind of giving  
23 the instructions.

24          Q     What about build-wise? Was one --

25          A     One was a little taller and pretty well built --



1 pretty good built. The other one was short and a little bit  
2 skinnier.

3 Q Do you know approximately how much money you gave  
4 them out of register one, the first register?

5 A No. I -- I never keep a lot of money, so somebody  
6 told me it was hundred and some odd dollars. I can't  
7 believe -- I can't believe that, but apparently it was. I  
8 don't know.

9 Q Okay. When you say you "don't usually keep a lot of  
10 money in there", so what do you try to keep the drawer at?

11 A Well, I don't -- first of all, I don't keep no 20s.  
12 Second of all, I don't -- I try to keep less than ten fives.

13 Q Well, why do you keep no 20s?

14 A Because just in case you get robbed.

15 Q So what do you do when you take in 20s?

16 A I drop it in the safe.

17 Q Is that something that you can put stuff in, but you  
18 can't get out?

19 A Yeah. Right.

20 Q So no matter what, if somebody came in to rob you  
21 and held a gun to you, you couldn't access the money in that  
22 safe?

23 A No.

24 Q Do you know how much money came out of the second  
25 register?

1           A     There wasn't that much in there either. I mean I  
2 don't even use that register.

3           Q     So what is "not that much"?

4           A     Thirty-some dollars, I think it is.

5           Q     Okay. So you're -- you think about a hundred in the  
6 first, and maybe 30 in the second?

7           A     No. I -- I read in the newspaper there was a  
8 hundred-some dollars --

9           MR. GILL: Objection, Your Honor.

10          THE WITNESS: -- but I -- I -- I didn't think --

11          THE COURT: Sustained.

12          THE WITNESS: -- there was that much in there.

13 BY MS. HOLTHUS:

14          Q     And I want to know what you believe there to have  
15 been in there, not what you read somewhere else, but of your  
16 own --

17          A     Oh.

18          Q     -- personal knowledge.

19          A     I thought there was only like 30, \$40 in there.

20          Q     Okay. What -- did you tell the police how much  
21 money you thought was in there?

22          A     No. They didn't ask.

23          Q     So what happened then? You gave them the money out  
24 of the second register. Can you kind of describe the  
25 interaction between you?

1           A     Well, when they pointed the guns at me, I just gave  
2 them the money, and then they told me to lay on the floor and  
3 don't -- don't until -- until they're gone, and that's what I  
4 did.

5           Q     After you gave them the money from the first  
6 register, did they specifically talk about the second  
7 register? And, again, they -- if you can recall which one was  
8 saying what, that would help. If you can't --

9           A     The taller guy was the one that was doing all the  
10 talking. The little short guy wasn't doing any talking.

11          Q     So after you gave them the money from the first  
12 register, what did the -- what did --

13          A     That's when they asked for the second register.

14          Q     And when you say "they", you're talking about the --

15          A     The -- the -- the tall guy.

16          Q     Okay. And what did he say about the second  
17 register?

18          A     Huh? He said --

19          Q     What did he say?

20          A     -- he said give me the money out of the second  
21 register, so I did.

22          Q     Did he tell you how to give it to him or anything  
23 else?

24          A     No.

25          Q     Okay. Did they, at some point -- did he, at some

1 point, tell you not to throw it?

2 A Yeah.

3 Q Tell me about that.

4 A Because I threw some of the -- the -- some singles,  
5 I threw on the floor, and he said don't throw it at me.

6 Q Were you frightened?

7 A Yes.

8 Q So then what happened after that? You gave them  
9 money from both registers?

10 A Yeah.

11 Q What about from your own person? Your own person?

12 A He asked me for my wallet, and I showed him my  
13 wallet was empty.

14 Q Okay.

15 A So --

16 Q But they didn't --

17 A Can't --

18 Q -- take that.

19 A -- can't get blood out of a turnip.

20 Q So they took the money from the two registers, and  
21 then they left together?

22 A Yeah.

23 Q And what did you do?

24 A I -- I called 9-1-1, and I called my boss, and then  
25 I called the owner of the store.

1 Q And I think you indicated earlier that they told you  
2 to get down on the floor?

3 A Yeah.

4 Q And did you?

5 A Yeah.

6 Q How long did you stay on the floor?

7 A Just for a couple of minutes. I -- they were out of  
8 sight. They didn't take that long.

9 Q And so as soon as you got up, did you lock the door?

10 A Yeah.

11 Q And then you called 9-1-1 first?

12 A Yeah. Then I called the manager, and then I called  
13 the owner of the store.

14 Q And who arrived?

15 A The -- the cops arrived first. I mean it wasn't --  
16 it wasn't that long before the cops arrived.

17 Q Okay. "That long", seconds, minutes?

18 A No more than ten minutes.

19 Q Okay. And what happened when the police came?

20 A The police, they -- they started asking me questions  
21 and then stuff like that, and then -- then one of the younger  
22 cops asked me to come take a look at this guy that's down the  
23 street, and so -- so I did.

24 Q How long after?

25 A Oh, it was -- they -- they were pretty well into the

1 invest -- investigation before this younger cop came up and  
2 asked me to take a ride down -- down the street.

3 Q Are we talking --

4 A Maybe ten, 15 minutes.

5 Q Okay. After the -- you -- they left?

6 A Yeah. Because they were -- they were there for  
7 awhile.

8 Q So how far down the street did you go?

9 A Oh, it was about nine blocks, eight or nine  
10 blocks --

11 Q Approximately --

12 A -- give or take.

13 Q Pretty close?

14 A Yeah. It was close.

15 Q And when you got there, what did you see?

16 A They asked me if that's the jacket that guy had on,  
17 and I said that looks like the jacket the guy was wearing that  
18 robbed me.

19 Q How many guys did you see?

20 A They only showed me one. I mean that -- there was a  
21 whole scene down there, but, no, I only saw one. The one that  
22 stood out.

23 Q And what did they specifically ask you? Did -- what  
24 did they tell you?

25 A They just said take a look at him and see if that's

1 the same jacket, and I said, yeah, that's the same jacket.

2 Q Did they read to you from a sheet of paper with  
3 instructions what was going to happen?

4 A Yeah. I don't remember the instructions. I  
5 wasn't -- I -- I get real -- I get really nervous when --  
6 at -- at that point. I haven't calmed down yet.

7 MS. HOLTHUS: Can I get this marked State's next, please?  
8 7?

9 [Pause]

10 BY MS. HOLTHUS:

11 Q Richard, I'm showing what we've had marked as  
12 State's Proposed Exhibit 106 and ask you to take a look at  
13 that and see if you recognize it.

14 A Oh. I didn't bring my glasses. Yeah. That's the  
15 clothing match the suspects. Yeah. That's the -- yeah.  
16 That's the signed statement that I signed.

17 Q Okay. And is this -- was this top portion read to  
18 you prior to your signing here?

19 A Yeah. I -- yeah.

20 MS. HOLTHUS: I'd move to admit State's Proposed 106.

21 MR. GILL: No objection.

22 MR. BOLEY: No objection.

23 THE COURT: 106 will be admitted.

24 [Plaintiff's Exhibit 106 Received]

25 BY MS. HOLTHUS:

1           Q     So basically in this exhibit, they told you they  
2 were going to show you a person that's being detained that may  
3 or may not be the person, and just take a look and see what  
4 you think?

5           A     Yeah.

6           Q     And then it's at that point that you indicated that  
7 the clothing matched the suspect, but you couldn't identify by  
8 face because the face was covered during the robbery?

9           A     Right. Exactly.

10          Q     Richard, I want to just kind of go through State's  
11 Proposed Exhibit -- well, not proposed. It was actually in by  
12 stipulation, photos 1 through 8. Okay?

13          A     Okay.

14          Q     I'm going to ask if you can tell me if you recognize  
15 it and what it is?

16          A     Front of the store.

17          MS. HOLTHUS: Is it -- can I turn it?

18          THE COURT: Can you do me a favor? And can you tap on  
19 the bottom, left or the right? I just want to make that --

20          THE CLERK: It's not working.

21          MS. HOLTHUS: The tapper's not working --

22          THE COURT: It's not working?

23          MS. HOLTHUS: -- Judge. We were trying it earlier.

24          MR. SCHWARTZ: Do you know how to make it long ways?

25          [Pause]



1 BY MS. HOLTHUS:

2 Q Okay. This is front of the store --

3 A Yes.

4 Q -- 5700?

5 A Yeah.

6 Q Would this be the door that they came in?

7 A Yeah.

8 Q And now State's Exhibit 2. Can you get your  
9 bearings on that? Do you know where this is?

10 A Yeah.

11 Q Can you indicate on there where you would have been  
12 standing when the individuals came in?

13 A I was back there in the back.

14 MS. HOLTHUS: Is it working to mark on it or no?

15 THE CLERK: Try it.

16 MS. HOLTHUS: Of course if we mark on it, though, we  
17 can't mark off it, can we?

18 THE CLERK: No.

19 THE COURT: Uh-uh.

20 BY MS. HOLTHUS:

21 Q All right. Back here?

22 A Back in that area.

23 Q Right here?

24 A Yeah.

25 Q Okay.

1 THE COURT: Could you describe that just a little bit  
2 better for the record?

3 MS. HOLTHUS: I'm sorry. I'm indicating in the back  
4 upper right corner --

5 THE WITNESS: Yeah. I was working --

6 MS. HOLTHUS: -- of the photo --

7 THE WITNESS: -- back there. I was doing something.

8 BY MS. HOLTHUS:

9 Q And this over here to the right, what's right here?

10 A The register is right there.

11 Q Is this ultimately where you came to hand out the  
12 money?

13 A Yeah. I heard the bell, and that's when I heard --

14 MR. GILL: Objection, Your Honor.

15 THE COURT: Hang on, sir. Just wait until she asks you a  
16 question.

17 THE WITNESS: Okay.

18 BY MS. HOLTHUS:

19 Q You wanted to say something about the bell. What  
20 about the bell?

21 A Well, the thing that tells you there's somebody in  
22 the store. That's when I came to the front.

23 Q So there's a bell on the door --

24 A Yeah.

25 Q -- to let you know? Is that the reason it's there

1 to alert you that someone's coming --

2 A Yeah.

3 Q -- into the store? State's Exhibit 3. That's just  
4 another angle; is that right?

5 A Right.

6 Q These doors, again, are the doors where the  
7 individuals came in?

8 A Yes.

9 Q These -- this is the register that you were standing  
10 over here on that counter?

11 A Yeah.

12 Q Those are the \$2 that were left on the floor after  
13 they left; is that right?

14 A Yes.

15 Q And that was Exhibit 4. State's Exhibit 5. What's  
16 that?

17 A That's the front of the register.

18 Q And I'm going to kind of put these -- is this  
19 register 2 and this is register 1?

20 A Yeah.

21 Q So this is the first one you went to in State's  
22 Exhibit --

23 A Yeah. That's right.

24 Q -- 6 and State's Exhibit 5 would be the second  
25 register?

1 A Right. See that black spot?

2 MR. GILL: Objection, Your Honor. Nonresponsive.

3 BY MS. HOLTHUS:

4 Q Is there something --

5 THE COURT: Objection sustained.

6 BY MS. HOLTHUS:

7 Q -- there?

8 A That's where -- that's where --

9 MR. GILL: Same objection, Your Honor.

10 THE WITNESS: -- that's where we --

11 THE COURT: She asked a question.

12 THE WITNESS: -- that's where we drop the money.

13 BY MS. HOLTHUS:

14 Q Which black spot?

15 A The black in front of the register. That's --

16 Q This?

17 A That -- that goes to the safe.

18 Q This does?

19 A Yeah.

20 Q And it's a one-way in --

21 A Yeah.

22 Q -- only?

23 A Yeah.

24 Q And State's Exhibit 7. This is kind of just a

25 pulled-back view showing both the registers. Now, is this a

1 third register?

2 A No.

3 Q What's this? There's three monitors.

4 A There's a monitor there.

5 Q This is the middle --

6 A That's for the machines -- slot machines.

7 Q So you're able to watch the slot machines from this  
8 middle screen?

9 A No. That's -- that -- this -- they have two  
10 different payoffs. I -- I mean I have -- they have payoffs.  
11 That machine will pay them off.

12 Q I see. If somebody hits something?

13 A Yeah.

14 Q And then last, is that you that night?

15 A Yeah.

16 Q Not looking too happy.

17 MR. GILL: Objection, Your Honor.

18 THE COURT: Sustained.

19 MS. HOLTHUS: And for the record, that was State's  
20 Exhibit 8.

21 BY MS. HOLTHUS:

22 Q Oh, Richard, you had an opportunity to review  
23 security tape in this case; is that correct?

24 A Yes.

25 Q And did you recognize yourself in the red shirt that

1 we saw --

2 A Yeah.

3 Q -- you wearing in the picture. Did you, in fact --  
4 I'm showing you State's Exhibit 104. Did you write your  
5 initials there?

6 A Yes.

7 MS. HOLTHUS: Judge, we're going to go ahead and publish  
8 this.

9 THE COURT: All right.

10 MR. SCHWARTZ: Could we please switch over to the  
11 computer?

12 THE WITNESS: Huh?

13 THE COURT: Go ahead.

14 MR. SCHWARTZ: Thank you.

15 [Pause]

16 MS. HOLTHUS: And, Judge, for the record, we're going to  
17 first play File 147.

18 [Video being played]

19 BY MS. HOLTHUS:

20 Q Okay. Richard, this is -- what are we looking at  
21 this angle? I guess it's self-explanatory, isn't it?

22 Is that you in the back in the red?

23 A Yeah.

24 Q And just before we go on to the next one, this is  
25 where you're describing one is larger, one is smaller,

1 correct?

2 A Yeah.

3 MS. HOLTHUS: And we're going to play 148.

4 [Video being played]

5 BY MS. HOLTHUS:

6 Q Place where there's different cameras getting  
7 different angles at all times, correct?

8 A Right.

9 Q Now, this is after -- this as you're calling 9-1-1?

10 A Yes.

11 MS. HOLTHUS: 106.

12 [Video being played]

13 BY MS. HOLTHUS:

14 Q These are the doors, obviously. Do you recognize  
15 the clothing there, at least? The big brown coat --

16 A Big brown coat.

17 Q -- and the red gloves? Did you see that customer  
18 try to come in?

19 A There must have been a customer. I didn't see that  
20 customer.

21 MS. HOLTHUS: 107.

22 [Video being played]

23 MS. HOLTHUS: Now with this overhead angle, 127.

24 [Video being played]

25 BY MS. HOLTHUS:

1 Q You're just handing the money to the smaller guy?

2 A Yeah.

3 Q And that's you on the ground like you were told?

4 A Yeah.

5 Q And then at that point, you call 9-1-1.

6 MS. HOLTHUS: Judge, we're going to go ahead and publish  
7 the 9-1-1 tape admitted by stipulation.

8 [9-1-1 call being played]

9 MS. HOLTHUS: And with that, we'll pass the witness.

10 THE COURT: Mr. Gill?

11 MR. GILL: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. GILL:

14 Q All right. Mr. DeCamp, you had a chance that night,  
15 and we saw the video of everything, and you obviously lived  
16 it, but you described both of their coats on the 9-1-1 tape.  
17 Do you remember that or you just heard it?

18 A Yeah.

19 Q And how did you describe the coats?

20 A Dark, dark --

21 Q Dark coats?

22 A -- coats, and they had -- the clothing was dark,  
23 too.

24 Q I'm sorry?

25 A Their clothing was dark, too. And it wasn't a



1 hoodie, it was --

2 Q And that was the description you gave?

3 A Yeah.

4 Q Not hoodies and -- but something that had a hood; is  
5 that right?

6 A Yeah.

7 Q And you also remembering testifying in this case  
8 previously?

9 A Yes.

10 Q And it was last year at some point, correct?

11 A Yeah.

12 Q And you may not recall me. I was not the attorney  
13 present, but you do recall testifying, correct?

14 A Yes.

15 Q And do you recall describing the coats then?

16 A Yeah.

17 Q And it was a very similar description, correct?

18 A Right.

19 Q Dark coats. I think back then you maybe said they  
20 were brown; is that --

21 A Yeah.

22 Q And you had also testified -- well, you did testify  
23 today that you showed them your wallet, correct?

24 A Yeah.

25 Q Do we see that on the video?

1 A Yeah. You saw it on the video --

2 Q Okay. Is that --

3 A -- at the first register.

4 Q The first register?

5 A Yeah.

6 Q And if I could get those?

7 MR. GILL: Do you still have those or did you guys put  
8 them back? 1 through --

9 MS. HOLTHUS: The pictures were up there.

10 MR. SCHWARTZ: The stills? Yeah. They're up there.

11 MR. GILL: Court's indulgence.

12 BY MR. GILL:

13 Q So, Richard, Ms. Holthus had gone over some photos  
14 with you. I'm just going to get one that shows the registers,  
15 and that's State's 7. I'm going to show that to you.

16 You had stated that this is a -- for the record,  
17 this is a photograph from behind the cash registers where the  
18 employees would stand, correct?

19 A Yeah.

20 Q So this is where you get your work done, and there's  
21 three monitors, correct?

22 A Right.

23 Q There's a left, middle, and a right monitor. Right  
24 being kind of the closest to the person [indiscernible],  
25 correct?

1 A Right.

2 Q So -- and monitor -- or excuse me. Cash register  
3 one is farthest to the left in this photograph.

4 A Right.

5 Q And then you had mentioned that the middle monitor  
6 is for the slot machines, and we can see those in the back  
7 there.

8 A Yeah.

9 Q And then cash register two is the far right.

10 A Right.

11 Q So you -- your testimony is you pulled out your  
12 wallet --

13 A Yeah. I showed it to them.

14 Q And there's nothing in it, correct?

15 A Nothing in it.

16 Q And that was after cash register one was emptied?

17 A Yeah.

18 Q And you emptied it, correct?

19 A Right.

20 Q Now -- and on the 9-1-1 tape, you described more of  
21 their clothing, correct?

22 A Right.

23 Q And that was their gloves, correct?

24 A Right.

25 Q And you described those as black gloves, correct?

1 A Yeah.

2 Q And then did they ask you to describe the weapons on  
3 that 9-1-1 tape?

4 A Yeah. And I said I thought it was a .45. I had no  
5 idea what a weapon --

6 Q Okay. So to clarify, on the -- if you said on the  
7 9-1-1 tape you thought it was a .45, you weren't exactly sure.

8 A No.

9 Q But you knew it was some sort of firearm.

10 A Yeah.

11 Q Is that fair?

12 A Right.

13 Q Just not the caliber.

14 A No.

15 Q Now, you described the show-up when Ms. Holthus was  
16 asking you questions. A show-up is when the younger cop took  
17 you about a mile away, you --

18 A Right.

19 Q Or eight, nine blocks away. Now, you -- and I wrote  
20 down some of your quotes. One was looked like the same  
21 jacket, correct?

22 A Looks like the same jacket. Yeah.

23 Q Right. And that you were really nervous.

24 A Yeah.

25 Q Still kind of -- and we heard some of that

1 nervousness on the 9-1-1 tape. You're still kind of nervous  
2 because it was ten or 15 minutes later?

3 A Yeah.

4 Q So the cops took you. Did they have a person in the  
5 jacket? I'm not asking which person or who, but did they have  
6 somebody in a jacket or did they show you a jacket?

7 A No. They showed -- there was -- there was a person  
8 in the jacket.

9 Q Okay. And your description was it looks like the  
10 same jacket.

11 A Yeah. It looks like the same jacket.

12 Q Okay. And I think Ms. Holthus made the point that  
13 you weren't able to ID the faces. They were covered --

14 A No.

15 Q -- correct?

16 A Right.

17 MR. GILL: Court's brief indulgence.

18 Nothing further, Your Honor. Thank you.

19 THE COURT: All right. Mr. Boley?

20 MR. BOLEY: Nothing further.

21 THE COURT: All right.

22 MS. HOLTHUS: Nothing else, Judge.

23 THE COURT: All right. Sir, you're free to leave.

24 THE WITNESS: Thank you.

25 THE MARSHAL: Your Honor? Judge, I think there's a

1 question.

2 THE COURT: Oh, I'm sorry. Sir? Hang on just a second.  
3 The jurors might have a couple questions for you.

4 THE WITNESS: Okay.

5 THE COURT: I forgot to ask them. We have questions from  
6 the jury. Counsel approach. So sorry.

7 Make sure you fill out the top and don't write in my  
8 space.

9 [Bench Conference Begins]

10 UNIDENTIFIED SPEAKER: A couple questions.

11 UNIDENTIFIED SPEAKER: You had to know we would have jury  
12 questions with this bunch.

13 THE COURT: I need my space. [Indiscernible].

14 MR. SCHWARTZ: That's brilliant. Yes. That's the exact  
15 crime scene was it by car or foot? He's not going to know  
16 that..

17 MR. GILL: No foundation [indiscernible].

18 MR. SCHWARTZ: And you covered this with him when you  
19 gave [indiscernible].

20 MS. HOLTHUS: [Indiscernible].

21 MR. GILL: [Indiscernible].

22 MR. SCHWARTZ: I'm so sorry. I'm so sorry.

23 MR. GILL: [Indiscernible].

24 MS. HOLTHUS: I never had anything end up like that.

25 MR. SCHWARTZ: These are okay.

1 MS. HOLTHUS: I've never ever had that happen before.

2 [Indiscernible]?

3 MR. GILL: No. I mean it says something about where the  
4 jury's head is.

5 MS. HOLTHUS: And they haven't seen anything yet.

6 THE COURT: [Indiscernible].

7 MR. GILL: No. I misread it. I apologize.

8 THE COURT: [Indiscernible].

9 MR. GILL: I'm good with both of them.

10 MS. HOLTHUS: I think you need to lay the foundation.

11 MR. GILL: Sorry. I misread it.

12 [Bench Conference Ends]

13 THE COURT: Sir, we're going to get you out of here real  
14 soon. I just have a couple questions.

15 So I'm going to ask you a question, and you're going  
16 to want to look at me and answer like you are right now. I'd  
17 ask you to look at the jury when you answer so they can hear  
18 you, okay?

19 So what was the exact time it took for the witness  
20 to get to the next crime scene? Was it by car or foot?

21 So when they took you from the store to the next  
22 place, how long did it take, and was it by car or foot?

23 THE WITNESS: It was -- it was by -- it was by car, and I  
24 probably could have walked there, so it wasn't -- it wasn't  
25 that far away.

1 MR. GILL: Your Honor, if I --

2 THE COURT: Hang on a second. I'll let you ask a follow-  
3 up when I'm done.

4 If the second person didn't talk, how did you know  
5 it was male? And if the face/body was covered, how did you  
6 know it was male?

7 THE WITNESS: I -- I just knew by the belt that it was  
8 male.

9 THE COURT: Okay. Any follow-up from the State?

10 REDIRECT EXAMINATION

11 BY MS. HOLTHUS:

12 Q No. I think one of the things that -- the question  
13 was do you know the exact time it was that you were taken to  
14 the show-up to identify that guy?

15 A Not the exact time. No.

16 Q But sometime after you --

17 A Yes.

18 Q -- called 9-1-1?

19 MS. HOLTHUS: That's all.

20 THE COURT: Mr. Gill?

21 MR. GILL: Thank you, Your Honor. Just very briefly.

22 RECROSS-EXAMINATION

23 BY MR. GILL:

24 Q And I think, Mr. DeCamp, you had said the cops  
25 arrived to 7-Eleven within about ten minutes?



1 A Yes.

2 Q And then ten or 15 minutes later you took that  
3 ride --

4 A Yes.

5 Q -- is that correct?

6 A Right.

7 MR. GILL: Nothing further, Your Honor. Thank you.

8 THE COURT: Mr. Boley, anything?

9 RECROSS-EXAMINATION

10 BY MR. BOLEY:

11 Q Just to clarify. You took that ride in a police  
12 car?

13 A Yes.

14 Q And I know you just received a question about  
15 whether or not the smaller person was male. You described  
16 them as thinner and shorter, right? So that could have been a  
17 slight built female.

18 A Possible. Anything's possible.

19 THE COURT: Okay. Anything else? No?

20 Thank you, sir. You're now free to go.

21 THE WITNESS: Thank you.

22 THE COURT: State, please call your next witness.

23 MR. SCHWARTZ: And, Your Honor, the State's going to call  
24 Officer Simmons.

25 MR. DECAMP: You all have a nice day.

1 MR. SCHWARTZ: Thanks, Richard.

2 THE COURT: Please, sir, if you'll stand up and raise  
3 your right hand?

4 MR. SIMMONS: I'm sorry.

5 THE COURT: The clerk's going to swear you in.

6 MR. SIMMONS: I'm sorry?

7 THE COURT: The clerk's going to swear you in.

8 MR. SIMMONS: Okay.

9 ISAIAH SIMMONS, PLAINTIFF'S WITNESS, SWORN

10 THE COURT: Why don't you be seated.

11 THE WITNESS: Thank you.

12 THE COURT: Good morning.

13 THE WITNESS: Good morning, Judge.

14 THE COURT: Would you state your name and then spell it  
15 for the record?

16 THE WITNESS: Yes. Isaiah Simmons, I-S-A-I-A-H S-I-M-M-  
17 O-N-S.

18 THE COURT: Thank you.

19 MR. SCHWARTZ: May I proceed?

20 THE COURT: Uh-huh.

21 MR. SCHWARTZ: Thank you.

22 DIRECT EXAMINATION

23 BY MR. SCHWARTZ:

24 Q Sir, how are you employed?

25 A LVMPD.



1 Q And how long have you been with Metro?

2 A Approximately three years.

3 Q And in those three years, have you been working  
4 patrol?

5 A Yes, sir.

6 Q Okay. I want to direct your attention to January  
7 12th, 2016. Did you have occasion to respond to a 7-Eleven at  
8 5700 West Charleston?

9 A That's affirm [sic throughout].

10 Q And that's here in Clark County?

11 A Yes.

12 Q Thank you. Do you recall the nature of that call  
13 when you responded?

14 A Yes. It was a robbery call. When I responded, the  
15 suspects were already gone. As soon as I arrived, I spoke  
16 with the victim, collected suspect information, broadcast it  
17 over the radio, secured the scene, and got him started on  
18 voluntary statement.

19 Q And was the victim that you spoke to there a Richard  
20 DeCamp?

21 A That's correct.

22 Q And do you recall the time you responded to this  
23 location?

24 A I don't -- I don't remember the exact time. No.

25 Q Would looking at the CAD printout refresh your

1 recollection as to when you would have responded?

2 A Yes.

3 MR. SCHWARTZ: May I approach, Your Honor?

4 THE COURT: Yes.

5 BY MR. SCHWARTZ:

6 Q Sir, I'm showing you a CAD log. Can you tell me --  
7 look at that, and if it -- look up when you're done, and let  
8 me know if that did, in fact, refresh your recollection as to  
9 when you responded.

10 A Yes, it did. Approximately 3:50 in the morning.

11 Q And a CAD log is just something that kind of keeps  
12 track of where different officers are and when they respond to  
13 a call, for instance?

14 A Correct.

15 Q You spoke to Richard, and you said you got him  
16 started on a statement. Did he give you a written, voluntary  
17 statement?

18 A Yes.

19 Q Okay. What was his demeanor like when you were  
20 speaking to him?

21 A He was very frightened; took him awhile to calm  
22 down. He was shaking, wanted to call his wife and let her  
23 know what happened. She was -- he was pretty scared.

24 Q And you mentioned that you secured the scene, as  
25 well. Did you have a chance to look at the surveillance

1 video?

2 A I did.

3 Q Okay. And do you recall documenting in your report  
4 how much money was taken that night?

5 A Yes, sir. I believe, if I remember correctly, \$139.

6 Q And after you, you know, looked at the surveillance  
7 video, spoke to Mr. DeCamp, did you -- what did you do after  
8 that?

9 A After I spoke with Mr. DeCamp, I spoke with a couple  
10 units that were arriving, and I told them the suspect  
11 description, put up crime scene tape so no one else could  
12 enter in the building, and then started getting on the -- on  
13 the report.

14 Q Do you recall the suspect description that you  
15 relayed to officers?

16 A I -- I don't remember it a hundred percent.  
17 Vaguely, I know it was two Hispanic males that enter in the  
18 building brandishing large firearms, dark clothing, gloves,  
19 masks. One had a puffy jacket. I don't recall the color  
20 without looking at the report.

21 Q Okay. Did you subsequently learn later that morning  
22 that a potential suspect could be in custody?

23 A Yes.

24 Q And tell me about that.

25 A While I was at the call at 7-Eleven, we had another

1 alert tone come out of another dangerous call around the  
2 corner. Units responded. I'm not really sure exactly how it  
3 went down because I wasn't there.

4 Q Right.

5 A They had a -- two suspects in custody, and we did a  
6 show-up, and Mr. DeCamp was able to identify those as people  
7 coming into the store.

8 Q So if I understand you correctly, while you're at 7-  
9 Eleven, another call for police response came out --

10 A Correct.

11 Q -- and it was in the same area?

12 A It -- correct. It was a -- it wasn't, like, a block  
13 down, but it was literally each -- it was in walking distance.  
14 You could've got there pretty quickly.

15 Q And officers there -- and based on what happened  
16 there, you took Mr. DeCamp over to that scene to see if he  
17 could possibly identify someone there as the people who robbed  
18 him?

19 A Correct.

20 Q And that's what you called a show-up, I believe,  
21 right?

22 A Yes, sir.

23 Q And tell me about the show-up.

24 A A show-up form is what we do with Metro when we have  
25 a possible suspect in custody that matches a description of a

1 certain crime. We have them fill out the -- the sheet, and  
2 then if they can identify the suspect, they tell us in their  
3 own words that yes, it is, or no, it's not.

4 MR. SCHWARTZ: Could I approach your clerk, Your Honor?

5 THE COURT: Uh-huh.

6 MR. SCHWARTZ: Thank you.

7 BY MR. SCHWARTZ:

8 Q And do you have what's called "Officer Show-up  
9 Witness Instruction Form" that you give the witness?

10 A Yes.

11 Q And is that something you would have gone over with  
12 Mr. DeCamp?

13 A Yes, sir.

14 Q I'm showing you what's been marked as State's  
15 Exhibit 106. This would have been information at the top that  
16 you would have filled out?

17 A That is correct.

18 Q And is this you here, I. Simmons?

19 A Yes, sir.

20 Q And then the rest, the witness would sign and date  
21 acknowledging that he understood the instructions?

22 A That's affirm.

23 Q And then the witness would put down whatever  
24 statement they wanted about the potential identification; is  
25 that correct?

1 A Correct.

2 Q And then he'd sign it?

3 A Correct.

4 Q And then is this your signature, as well?

5 A Yes, it is.

6 Q So are you with the witness as he's completing this  
7 show-up identification?

8 A I am.

9 Q After you conducted that identification -- show-up  
10 identification with Mr. DeCamp, what did you do next?

11 A I took him back to the store, and I knew -- I think  
12 he was going to go home, and he called his boss, and I  
13 finished the report.

14 Q And was that -- once you finished the report, that  
15 would have been the completion of your duties at that scene?

16 A Correct.

17 [Counsel confer]

18 MR. SCHWARTZ: Court's indulgence.

19 [Counsel confer]

20 BY MR. SCHWARTZ:

21 Q Just a couple points of clarification, Officer.

22 When we were talking about the time that you would  
23 have responded to the call, was that 3:53 you indicated you  
24 responded or could you refresh my recollection on that?

25 A Approximately around that time. Yes, sir.



1 Q Okay. And the call would have come out a minute or  
2 two before that, do you -- if you recall?

3 A The -- are you -- are you talking about the second  
4 one?

5 Q The call for 7-Eleven --

6 A Uh-huh.

7 Q -- before you actually initiated your response where  
8 it would go in the CAD --

9 A Uh-huh.

10 Q -- do you recall when the actual call would have  
11 come out?

12 A I don't remember a specific time, but I do remember  
13 clearing off another call to respond.

14 Q Okay. And if I showed you the CAD report, would  
15 it -- would you be able to tell -- would it refresh your  
16 recollection when the first call came out --

17 A Uh-huh.

18 Q -- and when you initiated your response to 7-Eleven?

19 A Yes.

20 Q Okay.

21 MR. SCHWARTZ: If I could approach, Your Honor?

22 THE COURT: Uh-huh.

23 BY MR. SCHWARTZ:

24 Q So just those two times. Officer, what time did the  
25 first call initially come out?

1 A 3:52.

2 Q And you responded at?

3 A 3:52.

4 Q Okay. And you mentioned that you spoke with Mr.

5 DeCamp at the scene, you secured it, and then later on you

6 took him down the street for the potential show-up

7 identification?

8 A Correct.

9 Q Would this form show the time that that happened at?

10 A Yes.

11 Q Okay. So again showing you 106, State's Exhibit

12 106. Is this the time that Mr. DeCamp would have signed it?

13 A Yes.

14 Q And that is 5:19?

15 A Correct.

16 MR. SCHWARTZ: Your Honor, at this time we'll pass the  
17 witness.

18 THE COURT: Mr. Gill?

19 MR. GILL: Thanks, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. GILL:

22 Q So, Officer Simmons, there was some discussion

23 regarding the time, and you get out there about 3:52, right?

24 Or you respond about 3:52.

25 A That's correct.

1 Q You were nearby, I would imagine?

2 A Somewhat. Yes.

3 Q And that's your area?

4 A Uh-huh.

5 Q And just --

6 THE COURT: I'm sorry, sir. Could you just answer yes or  
7 no, please?

8 THE WITNESS: Sorry.

9 THE COURT: Thank you.

10 BY MR. GILL:

11 Q And just for the jury, when I say "area", Metro is  
12 kind of broken up into different command centers or areas,  
13 correct?

14 A Yes, sir.

15 Q And yours would include the 7-Eleven at 5700 West  
16 Charleston, right?

17 A Yes, sir. Correct.

18 Q And then you first arrive and make contact with Mr.  
19 DeCamp, correct?

20 A Yes, sir.

21 Q And then you say you secured the scene, right?

22 A Yes, sir.

23 Q What do you mean by you "secured the scene"?

24 A When we secure a scene, we put up crime scene tape  
25 so nobody can enter the store.

1 Q Okay. So you just put that --

2 A Uh-huh.

3 Q -- on the front door?

4 A Correct.

5 Q Okay. And what else did you do?

6 A Made sure there wasn't any evidence around -- laying  
7 around the property, had him step outside, and then I waited  
8 until a couple other officers got there, but I started talking  
9 to Mr. DeCamp.

10 Q Mr. DeCamp himself, right?

11 A Uh-huh.

12 Q And is that a yes?

13 A Yes, sir.

14 Q And you also testified that \$139 was taken, correct?

15 A Yes, sir.

16 Q How did you come up with that number?

17 A Mr. DeCamp informed me of the number that was taken  
18 from the register.

19 Q Okay. So it was a simple how much was taken, and he  
20 said 139?

21 A Correct.

22 Q And you have him fill out the -- State's 106, which  
23 was the show-up witness instructions, correct?

24 A Yes, sir.

25 MR. GILL: And I'm going to just publish that.

1 BY MR. GILL:

2 Q Now, you filled out some of this, correct?

3 A Yes, I did.

4 Q And is that your signature -- oh, sorry. I got to  
5 zoom out. Is that your signature anywhere on the page?

6 A No.

7 Q Okay. So this -- and specifically under Mr.  
8 DeCamp's, that's not your signature, correct?

9 A Correct.

10 Q Okay. Do you recognize your handwriting on any part  
11 of this document?

12 A Yes.

13 Q And where would that be?

14 A The very top and the statement.

15 Q Okay. So you actually wrote this part here, the  
16 top, which is name, address, phone number, event number,  
17 interviewed by, location, date, and time?

18 A Correct.

19 Q And then you wrote his statement, as well?

20 A Correct.

21 Q And just for the record, the statement itself,  
22 closing -- clothing matches suspects, and it's S-U-S-P-E-C-T  
23 apostrophe S, but could not identify them by their face  
24 because suspects' face were covered during robbery, correct?

25 A Correct.

1 Q And that was from Richard DeCamp, right?

2 A Yes.

3 Q Did you guys do this before or after the show-up? I  
4 mean -- I'm sorry. The show-up occurred, correct?

5 Strike everything I just said.

6 You arrive, correct?

7 A Correct.

8 Q 3:53-ish, 3:55, whatever it is. And then you secure  
9 your -- the scene. You talk to Mr. DeCamp.

10 A Correct.

11 Q And you have him do a voluntary written statement,  
12 correct?

13 A Correct.

14 Q And that was all the while still at 7-Eleven?

15 A Yes, sir.

16 Q You then decide to do the show-up, correct?

17 A Correct.

18 Q And how much time had elapsed from when you arrived  
19 -- and I'm not asking for exact times. I know you don't know  
20 them and --

21 A Correct.

22 Q -- nor do any of us, but approximately how much time  
23 from when you arrived to when you guys got in the car? You  
24 being you and Mr. DeCamp.

25 A I would say at least approximately maybe 30 minutes.

1 Q Okay. And then you responded -- you didn't have a  
2 partner with you, correct?

3 A No. No, sir.

4 Q You responded alone in your car.

5 A Correct.

6 Q And then you took him alone in your car.

7 A Yes, sir.

8 Q Did you show him one or two suspects?

9 A Two suspects.

10 Q Okay. And before you did that, you had read him the  
11 instructions in 106, correct?

12 A Yes, sir.

13 Q Did you have him read them or did you read them to  
14 him?

15 A I read them to him.

16 Q And where were you when you did that?

17 A I was still at 7-Eleven.

18 Q Okay. So but you -- basically before we go on our  
19 little trip or little excursion down the street, I need to  
20 read this to you?

21 A Correct.

22 Q Okay. And you read him every word?

23 A Correct.

24 Q And he indicated he understood?

25 A Yes.

1 Q Is it common in a show-up of this type, and  
2 specifically in a show-up where you use this form and these  
3 instructions to write it in yourself or do you normally have  
4 the witness write it up?

5 A Sometimes the witness will write it, but Mr. DeCamp  
6 did not want to write it.

7 Q And so you said I'll write it for him?

8 A Correct.

9 Q Okay. And these were his words that you  
10 transcribed, essentially?

11 A Correct.

12 Q Now, you had also stated when he gave you a  
13 description, and, again, this was at the 7-Eleven, you'd  
14 stated that he described large guns. Did I hear that  
15 correctly?

16 A Yes, sir.

17 Q Did he go into any detail on these large guns?

18 A I have no recollection if he got into any detail  
19 about color.

20 Q Okay. Did he give you quantity?

21 A They -- I believe he said they -- they both had  
22 guns.

23 Q They both had guns.

24 A Right. Yes.

25 Q And did he go into any more detail about the size?



1 You described them as large, right?

2 A Correct.

3 Q Or he described them to you as large.

4 A Yes.

5 Q Did he go into any more detail about the size of the  
6 guns?

7 A No, sir.

8 Q He just said large.

9 A Correct.

10 Q Did he describe them as pistols, revolvers, anything  
11 like that? Did you guys even discuss that?

12 A He stated handgun.

13 Q He did say handgun and large.

14 A Correct.

15 Q Okay.

16 MR. GILL: Nothing further, Your Honor.

17 Actually, Court's brief indulgence.

18 Thank you, Your Honor. Pass the witness.

19 THE COURT: All right. Mr. Boley?

20 MR. BOLEY: Yes, ma'am.

21 CROSS-EXAMINATION

22 BY MR. BOLEY:

23 Q Officer, very briefly. You indicated in your  
24 testimony that Mr. DeCamp told you that these two males that  
25 entered his store were Hispanic males, right?

1 A Yes, sir.

2 Q Did he describe why he thought they were Hispanic?  
3 Did he say dark eyes?

4 A He didn't get into detail, sir.

5 Q Dark skin? Did he say anything about an accent?

6 A He -- he did not get into detail, sir.

7 Q Fair enough.

8 MR. BOLEY: Thank you.

9 MR. GILL: Your Honor, if I could just approach real  
10 quick?

11 THE COURT: Sure.

12 MR. GILL: I stole an exhibit.

13 THE COURT: Mr. Schwartz, anything?

14 MR. SCHWARTZ: Just a brief redirect, Your Honor.

15 If I could approach?

16 THE COURT: Yes.

17 REDIRECT EXAMINATION

18 BY MR. SCHWARTZ:

19 Q Officer, you mentioned with Mr. Gill that you  
20 were -- responded to 7-Eleven. You made sure there wasn't any  
21 evidence laying around; is that correct?

22 A Yes, sir.

23 Q Do you recall seeing two dollar bills that were on  
24 the ground at 7-Eleven?

25 A Yes, sir. I would.

1 Q I'm showing you State's Exhibit 4. And these were  
2 later collected by a crime scene analyst who arrived, as well?

3 A That's correct.

4 MR. SCHWARTZ: Thank you. No further questions, Your  
5 Honor.

6 MR. GILL: Nothing on that, Your Honor.

7 THE COURT: Mr. Boley?

8 MR. BOLEY: Nothing further.

9 THE COURT: Anything from the jury? No?

10 All right. Thank you, sir. You are free to go.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: State, please call your next witness.

13 MR. SCHWARTZ: State calls Sergeant Aguirre.

14 [Pause]

15 MR. SCHWARTZ: Your Honor, may I approach your clerk?

16 THE COURT: Sure.

17 How long do you think this witness is going to be?

18 THE MARSHAL: You will remain standing up here. Raise  
19 your right hand to be sworn in by the clerk, please.

20 ABRAHAM AGUIREE, PLAINTIFF'S WITNESS, SWORN

21 THE COURT: Good morning, sir. Go ahead and have a seat.

22 If you could state your name, please, and spell it  
23 for the record?

24 THE WITNESS: My name is Abraham Aguirre. That's A-B-R-  
25 A-H-A-M, Aguirre, A-G-U-I-R-R-E.

1 MR. SCHWARTZ: May I proceed, Your Honor?

2 THE COURT: Go ahead.

3 DIRECT EXAMINATION

4 BY MR. SCHWARTZ:

5 Q Mr. Aguirre, how you doing today, sir?

6 A Good. How are you?

7 Q Pretty good. And, sir, how are you employed?

8 A I am a sergeant with the Las Vegas Metropolitan  
9 Police Department.

10 Q And how long have you been with Metro?

11 A Eleven years, approximately.

12 Q How long as a sergeant?

13 A Two -- almost two years now.

14 Q So if I'm directing your attention to January 12th,  
15 2016, you would have been a sergeant at that point?

16 A Correct.

17 Q And did you have occasion to respond to a 7-Eleven  
18 at 5700 West Charleston?

19 A I did.

20 Q And do you recall if you were the first responding  
21 officer or was Mister -- Officer Simmons there, as well?

22 A If I remember correctly, I think I was the first one  
23 to arrive.

24 Q And did Officer Simmons arrive shortly thereafter?

25 A Correct.

1           Q     And what was your role sort of in assessing the  
2 scene at that point?

3           A     My initial role as being the primary responding  
4 officer, the first one on the scene, is to make everything  
5 static from a dynamic call, which is -- the call came out as a  
6 high priority possible robbery that occurred. Normally,  
7 then -- typically some of those calls do come out as a, you  
8 know, false alarm, and when we get there, we -- we tend to  
9 find that out. But in this particular case, I found the clerk  
10 outside pretty frantic and substantiated the fact that it was,  
11 indeed, an actual robbery had occurred.

12          Q     And was that a Mr. Richard DeCamp?

13          A     It was.

14          Q     And what did you do with regard to Mr. DeCamp when  
15 you arrived?

16          A     I quickly try to brief him/debrief him, try to get  
17 the suspect information out to the other responding units  
18 because I wasn't the only one that was -- just as a role as  
19 the primary unit that arrived, trying to get that description  
20 out to other officers out in the field. If they were in the  
21 area to possibly stop the suspects because as far as I  
22 remember they were last seen on foot heading east on  
23 Charleston.

24          Q     And after you gathered that information from him,  
25 what is it that you do next?

1           A     Shortly -- as I'm debriefing him, Officer Simmons  
2 arrived and started taking that role of debriefing him, and I  
3 continue to secure the scene. Being the only two officers at  
4 the scene, I started putting up crime scene tape and ensuring  
5 the integrity of the crime scene.

6           Q     And is it fair to say at some point you left the  
7 scene and Officer Simmons sort of took over the scene?

8           A     Yes.

9           Q     And why is it that you left the scene?

10          A     Well, while I'm putting up tape, and I'm calling my  
11 lieutenant and notifying him of the incident, there was  
12 another high priority call that came across the air -- the  
13 radio, which was, I would say, approximately three blocks away  
14 from the 7-Eleven, so I was just up the -- right -- right  
15 around the corner of the call.

16          Q     And so when you get that call, what do you do?

17          A     I immediately make sure Telway [phonetic] just make  
18 sure you -- you know, what he needed to do since he was a  
19 fairly --

20          Q     Is that Officer Simmons?

21          A     Yes. I'm sorry.

22          Q     Okay.

23          A     Officer Simmons. Told him what needed to be done as  
24 far as the reports and all that stuff at that point, and then  
25 I quickly got in my vehicle and went around to Brush -- the

1 Brush address. I believe it was a 504 Brush.

2 Q And is that the location that the other call came  
3 out from?

4 A Yes.

5 Q And I'm sorry. Did you describe sort of the nature  
6 of that call --

7 A Well --

8 Q -- as it came across the radio?

9 A Right. Normally, we get -- when we get a -- a high  
10 priority call, there's a tone alert indicating that there is a  
11 high priority incident, and the details that were broadcast  
12 over the radio were that two Hispanic males wearing dark  
13 clothing had forced their way into one of the -- into the home  
14 and were pistol whipping the uncle, and the person that was  
15 calling was the niece that lived in the actual main home.

16 Q Do you recall what time that call came out  
17 specifically?

18 A That call came out approximately at 4:22 a.m.

19 Q And do you recall how soon after that call came out  
20 that you would have responded?

21 A I would say anywhere between two to three minutes I  
22 was there --

23 Q Would the CAD report help you --

24 A It would.

25 Q -- refresh your recollection?

1 MR. SCHWARTZ: May I approach, Your Honor?

2 THE COURT: Go ahead.

3 BY MR. SCHWARTZ:

4 Q So if you could look at this and see if that  
5 refreshes your recollection as to when you responded to the  
6 504 Brush Street address?

7 A It was at -- is this it? Right here. 4:22:49.

8 Q And does that refresh your recollection?

9 A Yes.

10 Q While I have -- while I'm up here with you, do you  
11 recall the time exactly that you would have responded to 7-  
12 Eleven?

13 A I know the call came out at approximately 3:52 a.m.

14 Q And --

15 A And, no, I don't remember exactly the time lapse  
16 between the time initiation and me arriving.

17 Q And would that -- the CAD log --

18 A It would.

19 Q -- assist you in determining that?

20 A Looks like I arrived at 4:02.

21 Q Officer, approximately how far is 504 Brush Street  
22 from 5700 West Charleston 7-Eleven?

23 A It's approximately one mile.

24 Q I'm showing you State's Exhibit 91. Does that  
25 appear to be a map?



1 A It does.

2 Q Okay. Let me zoom in on some pieces for you here.  
3 Do you see the address marked there for the 7-Eleven?

4 A I do. 5700 West Charleston.

5 Q And there's some blue dots on this map and some  
6 other numbers along here. Does this appear to be a Google  
7 Maps printout with a distance between --

8 A It does.

9 Q -- the two locations?

10 A It does.

11 Q Okay. So then the other location here, does that  
12 appear to be 504 Brush Street?

13 A Yes.

14 Q And looking at this map, approximately how far are  
15 those two locations?

16 A It says one mile --

17 Q Okay.

18 A -- on the Google Maps.

19 Q And do Google Maps also indicate it's  
20 approximately -- Google says about 19 minutes to walk there;  
21 is that right?

22 A Correct. To walk.

23 Q And when you arrived at the 4 -- 504 Brush Street  
24 address, other officers had responded first?

25 A Yes.

1 Q And what happened when you arrived?

2 A When I arrived, Officer Ivan Duron was attempting to  
3 render aid to the victim in the carport, which was made into  
4 one of the bedrooms as an extension of the home. I  
5 immediately noticed the amount of blood on the bedding, walls,  
6 and floor, along with a bloody axe near the carport entrance,  
7 and that he was by himself, so I immediately asked where his  
8 partner was, which was just -- Officer Justin Spurling. He  
9 said he had ran around the corner. At that point, I heard  
10 radio traffic from Officer Spurling that he had two suspects  
11 in the back yard of 510 Brush.

12 Q Okay. Let me stop you right there. You mentioned  
13 you responded to 504 Brush.

14 A Correct.

15 Q I'm showing you State's Exhibit 10. Does that  
16 appear to be the address?

17 A It does.

18 Q And you mentioned that there was sort of a converted  
19 carport, something that would -- where the potential victim  
20 was located.

21 A Correct.

22 Q And showing you State's Exhibit 20. Does that look  
23 familiar?

24 A It does.

25 Q Okay. And what are we looking at here?

1           A     That looks like the entryway into the converted --  
2 extension to the rear of the -- of the home.

3           Q     And you mentioned when you went inside that you  
4 noticed inside this room that there was a lot of blood.

5           A     Yes.

6           Q     Okay. You also mentioned that there was an axe?

7           A     Yes.

8           Q     Where was the axe located; if you remember?

9           A     If I remember correctly, it was near the doorway,  
10 and I'm not -- I'm -- I'm pretty sure it's right there by  
11 the --

12          Q     If I zoom in on this --

13          A     -- by the frame.

14          Q     -- exhibit for you --

15          A     Yes.

16          Q     -- is that where you recall seeing the axe?

17          A     Correct.

18          Q     Officer Duron was there with the victim?

19          A     Correct.

20          Q     Okay. And you mentioned that as you were there  
21 assisting, you got a call over the radio from Officer  
22 Spurling.

23          A     Right.

24          Q     And as a result of that, did you leave this room --

25          A     I did.

1 Q -- that we're looking at? And where did you go?

2 A I immediately went around that corner on the north  
3 side of the home to -- into the back yard where I saw Officer  
4 Spurling over the south wall of that -- the adjacent wall  
5 right there into the back -- looking into the back yard of 510  
6 Brush.

7 Q And as you're looking into the back yard of 510  
8 Brush, which -- what did you see?

9 A I did a quick peek. I jumped up, and I see him  
10 illuminating the bushes. I -- at that point, I didn't see  
11 anybody. I just saw him -- somebody -- him illuminating  
12 somebody and -- and making some verbal commands, challenging  
13 the person there to exit. But, again, I didn't see anybody  
14 there.

15 Q So what did you do in response to that?

16 A So I assisted Spurling to jump -- because it was a  
17 pretty tall wall. I'd say maybe 7 or 8 feet. I help --  
18 helped him get over that ledge, and then I went -- ran out  
19 back into the front of this -- the home into the front -- back  
20 over to 510 Brush, and then jumped the wall there along with  
21 Officer Matt Carter (phonetic), who had arrived as I was  
22 running into the front of the home.

23 Q Okay. So at this point, Officer Spurling's in the  
24 back yard of 510 Brush. You --

25 A By himself.

1 Q -- and Mis -- you and Officer Carter are going into  
2 the back yard --

3 A Right.

4 Q -- of 510 Brush. And what happens when you get into  
5 the back yard?

6 A I jump into the back yard. I see Officer Spurling  
7 taking a suspect into custody by the bushes that he was  
8 illuminating with his pistol drawn challenging the shed that  
9 was on the northeast corner of the -- the home.

10 Q So let me see if I understand this correctly.  
11 Officer Spurling is taking one suspect into custody  
12 near bushes.

13 A Correct.

14 Q And when you say he's "challenging a shed", what  
15 does that mean?

16 A Meaning he's giving verbal commands to another  
17 suspect that was hiding underneath the shed --

18 Q Okay.

19 A -- telling him to -- to exit.

20 Q I show you State's Exhibit 34. Does this -- let me  
21 zoom out for you. Does this appear to be the area that  
22 Officer Spurling was taking a suspect into custody at?

23 A Yes.

24 Q Okay. And you mentioned that he was directing his  
25 attention. Would it be then to his --

1           A     From looking at this perspective, it would be to the  
2 left.

3           Q     Okay. And there was a shed over there?

4           A     Correct.

5           Q     And so if I show you State's Exhibit 61, does that  
6 look like the shed that you --

7           A     It is.

8           Q     Okay. And you mentioned that he had his weapon  
9 drawn at that point?

10          A     Correct.

11          Q     So when you see Officer Spurling in this position,  
12 what is it that you do?

13          A     Immediately myself and Officer Carter get some --  
14 what we do is called a tactical L. If he's facing north, I'm  
15 immediately to his -- to his left. I angle out just to  
16 prevent any kind of crossfire situation, and then start  
17 focusing our attention on the shed, since that's a relative  
18 unknown.

19                Given the circumstances of the call, there were  
20 details indicating that there might have been -- the two  
21 suspects might have been armed with -- with firearms, so we  
22 had a -- an unknown threat, potentially a suspect underneath  
23 there, and we're trying to get him out while still making sure  
24 that Officer Spurling was in control of his suspect and was  
25 able to take him into custody.

1 Q So as we're looking at this shed from this angle, do  
2 you approach it from going towards the left of the --

3 A Correct.

4 Q -- photograph? And what is Officer Carter doing?  
5 Is he with you, as well?

6 A He's with me, as well.

7 Q And so what happens as you approach the shed?

8 A As we're approaching the shed, and we see a suspect  
9 crawling out from -- from -- looking at the perspective of  
10 this picture right now -- right underneath the doorway coming  
11 out to the right.

12 Q Would it be right around here if I'm pointing  
13 towards --

14 A Correct.

15 Q -- the right of the shed?

16 A Correct.

17 Q Okay.

18 A And he's exiting that way trying to keep his hands  
19 up, but in -- at the same time as we're challenging him, he's  
20 crawling -- trying to crawl forward to us. At some point  
21 when -- while he's still not completely out of the shed, I  
22 would say maybe his feet are still hidden within the thing --  
23 within the -- underneath the shed, he starts reaching for his  
24 waistband. We then direct him again, give him more verbal  
25 commands to show us his hands at which point he complies.

1 Eventually he does comply. He keeps kind of making some  
2 furtive movement towards his waistband, but then he finally  
3 does comply, at which point we approach, and Officer Carter  
4 takes him into custody while I maintain lethal coverage  
5 because we still don't know if he has a gun with him or not.

6 Q And you mentioned that there were some furtive  
7 movements towards the waistband area. That's concerning for  
8 officers?

9 A Absolutely.

10 Q And why is that?

11 A Because there, again, like I said, the details of  
12 the call initially stated that, you know, they might have  
13 been -- had armed with firearms, so we couldn't see his  
14 waistband because he was crawling on his stomach, so  
15 potentially he could have had any kind of weapon.

16 Q Did you have occasion to kind of search around that  
17 area where you apprehended him?

18 A Absolutely. After we took him into custody, we  
19 still have to render the scene static and make sure that we're  
20 -- there is nothing outstanding. And in -- by that, seeing  
21 any evidence, any outstanding suspects. So once we had those  
22 two contained or in custody, we -- we -- I made sure that  
23 there was another officer, I believe it was Officer Spurling  
24 that stayed with both suspects or escorted them out of the  
25 property.



1           Then myself and I can't remember who or what other  
2 officer was there, we did a cursory search of the property or  
3 check of the property to make sure there wasn't anything  
4 outstanding at that point. We found -- where the first  
5 suspect was being taken into custody in the bushes, we found a  
6 wallet and some money, a wad of money.

7           Q     Okay. Let's start with that then, Officer.

8                   Did you ultimately -- did you and other officers  
9 ultimately able to identify the two suspects that you  
10 apprehended in 510 Brush Street?

11          A     Yes.

12          Q     And do you see them in the courtroom today?

13          A     I do.

14          Q     Let's first talk about the suspect that was  
15 apprehended in the bushes area by Officer Spurling.

16          A     Okay.

17          Q     Can you please point me to where he is sitting in  
18 the courtroom?

19          A     To the left -- to my left on the left side of the  
20 table.

21          Q     And the gentleman, what color shirt is he wearing?

22          A     He wearing a white shirt.

23          Q     And is that the far left of the table?

24          A     Correct.

25          MR. SCHWARTZ: And, Your Honor, could the record

1 please --

2 BY MR. SCHWARTZ:

3 Q And do you know what his name is?

4 A I do not remember.

5 Q He was the suspect near the bushes?

6 A Correct.

7 Q Okay.

8 MR. SCHWARTZ: Your Honor, could you -- the record please  
9 reflect that the witness has identified the Defendant?

10 THE COURT: The record will so reflect.

11 MR. SCHWARTZ: Okay. And that being the Defendant on the  
12 far left of the table if you're looking at the table.

13 MR. GILL: [Indiscernible] clean. Okay.

14 THE COURT: Yes.

15 MR. GILL: Thank you.

16 BY MR. SCHWARTZ:

17 Q And you mentioned that in that area of the bushes,  
18 you located a couple different items --

19 A Correct.

20 Q -- is that correct? I'm showing you State's Exhibit  
21 35. Does that appear consistent with what you recall  
22 observing in that area?

23 A It does.

24 Q Let's go through these quickly. 36. What does that  
25 appear to be to you?

1 A A black ski mask.

2 Q Number 38. And let me zoom out for you here.

3 A That was the victim's wallet from the home at 504  
4 Brush, a knife, a phone -- I'm sorry, two knives, a phone, and  
5 a set of keys.

6 Q Was there more than one wallet recovered from that  
7 area?

8 A There was.

9 Q Okay. So if we're looking sort of adjacent to that  
10 in the bushes, I'm showing you State's Exhibit 43. Do you  
11 recognize that?

12 A Yeah. I'm sorry. I misspoke. That is the victim's  
13 wallet --

14 Q Okay.

15 A -- along with a wad of cash.

16 Q And you said the victim, Javier Colon?

17 A Correct.

18 Q Colon. Do you recall what the other wallet was?

19 A I believe that was the Defendant's wallet.

20 Q Okay. And that was this wallet we were looking at,  
21 46, the -- with the XMen Wolverine different comic book on  
22 that?

23 A That's correct.

24 Q And then State's Exhibit 47, looking inside that  
25 wallet? Is that consistent with the Defendant, Mr. --

1 A Correct.

2 Q -- and that was Mr. Monay-Pina was the suspect in  
3 the bushes?

4 A Yes.

5 Q Okay. And you testified the other wallet that was  
6 recovered, as well, State's 50, that was in the bushes, and  
7 that was Mr. Javier --

8 A Correct.

9 Q -- Colon's wallet. And there was that -- we saw the  
10 picture with the wad of cash that was separate from the  
11 wallet; is that correct?

12 A Correct.

13 Q And just sort of a close-up picture of that on 53.  
14 Consistent with your recollection of what you saw, Officer?

15 A Yes, it is.

16 Q Do you recall there being a clothing item over  
17 there, as well? Another clothing item?

18 A The ski mask.

19 Q Okay. Showing you State's Exhibit 42. Recall  
20 seeing that item in the top part of the picture?

21 A No.

22 Q So you don't recall seeing that black glove there?

23 A No.

24 Q Okay. Let's move on to the other suspect that you  
25 helped apprehend with Officer Carter. Do you see him in the

1 courtroom today?

2 A I do.

3 Q And can you please point to him and describe an  
4 article of clothing he's wearing?

5 A He is sitting in the middle of the Defendant's desk  
6 with a white shirt, and he's got a moustache.

7 Q Okay.

8 MR. SCHWARTZ: Your Honor, could the record please  
9 reflect that the witness has identified Defendant Venegas?

10 THE COURT: The record will so reflect.

11 BY MR. SCHWARTZ:

12 Q And in that area where he was apprehended, you had  
13 occasion to look around, as well.

14 A Correct.

15 Q And what items -- do you recall locating a couple  
16 weapons over there?

17 A I did. I remember seeing --

18 MR. GILL: Your Honor, may we approach very briefly?

19 THE COURT: Come up.

20 [Bench Conference Begins]

21 MR. GILL: I'm trying to let the leading go a little bit,  
22 but there's an awful lot of leading him right what was at the  
23 scene. I'd rather it be asked that --

24 THE COURT: Uh-huh.

25 MR. GILL: -- what he found, if he knows because there

1 was some things that he's forgotten about, and he did admit  
2 it, but the objection is leading.

3 THE COURT: Okay. Sustained.

4 MR. GILL: Thank you.

5 [Bench Conference Ends]

6 BY MR. SCHWARTZ:

7 Q And, again, we're talking about the -- in the area  
8 where Defendant -- the suspect -- Defendant Venegas was taken  
9 out from the shed area. What items --

10 A Correct.

11 Q -- do you recall seeing over there?

12 A I remember there were a few knives, like, hunting  
13 knives in their sheaths, as well as set of red gloves. I  
14 think that there was another ski mask there and two handguns  
15 or replicas.

16 Q And you said "handguns or replicas". What do you  
17 mean?

18 A Because at the time as soon as I noticed what they  
19 potentially could be, I started making sure that -- to keep  
20 the integrity of the scene, just taping off and getting other  
21 officers to kind of move away from the area.

22 Q I'm showing you State's Exhibit 68. Is that  
23 consistent with your recollection of --

24 A It is.

25 Q -- those two guns? You mentioned, like, a replica

1 hunting knife. I show you State's Exhibit 67. What are we  
2 seeing in that photo?

3 A The two guns and the hunting knife, the sheathed  
4 hunting knife.

5 Q And State's Exhibit 74. Is that just a close-up of  
6 that hunting knife?

7 A It is.

8 MR. SCHWARTZ: Court's indulgence. I apologize.

9 BY MR. SCHWARTZ:

10 Q You mentioned also that you observed another ski  
11 mask and red gloves.

12 A I did.

13 Q Showing you State's 62. Is the location of those  
14 items consistent with your recollection?

15 A It is.

16 Q State's 63. Just a closer-up angle of those?

17 A It is.

18 Q Officer, once you sort of surveyed the back yard of  
19 510 Brush Street, what's the next thing you did?

20 A Once I knew that it was static, and I set an officer  
21 there for site security, then maintained the integrity of the  
22 scene to ensure that nobody, including the residents that  
23 actually occupied the residence, wouldn't trample over the  
24 evidence or contaminate it. So once I ensured that, I went to  
25 the front of -- the front of the residence to ensure that all

1 the proper steps were being taken place in order to facilitate  
2 the arrest, which means one show-up and reports.

3 Q You said "static" a couple times. When you keep --  
4 when you want to keep a scene static, what does that mean?

5 A Means just rendering it safe, make sure there's  
6 nothing out of the ordinary or anything dynamic happening that  
7 could jeopardize the -- the scene, meaning that there's no --  
8 there's -- there's nobody being taken into custody, there's  
9 nobody running around in the scene. We're just making sure  
10 that everything is just, I guess, calmed down.

11 MR. SCHWARTZ: Court's brief indulgence.

12 No further questions at this time, Your Honor.

13 THE COURT: Okay. Mr. Gill?

14 MR. GILL: You can leave it right there for now.

15 CROSS-EXAMINATION

16 BY MR. GILL:

17 Q Okay. And, Sergeant, let's start with this  
18 photograph here.

19 A Okay.

20 Q This is State's 63. This -- you were one of the  
21 first on the scene, correct?

22 A Not to this one.

23 Q Not to --

24 A I was with -- approximately the third officer there.

25 Q Okay.



1           A     Oh, the primary unit was a two-man unit, and I was  
2 the third person there on the scene.

3           Q     The two-man unit was Spurling and?

4           A     Officer Ivan Duron.

5           Q     And can you spell?

6           A     It's I-V-A-N, last of D-U-R-A-N [sic].

7           Q     Okay. But you had testified when Mr. Schwartz was  
8 asking you questions that you essentially were either  
9 contemplating --

10          A     Uh-huh.

11          Q     -- hopping -- and let me just finish my question.

12          A     Okay.

13          Q     You were contemplating hopping, but you went around  
14 510 and went into the back yard, correct?

15          A     Right.

16          Q     Then the suspects were apprehended, for lack of a  
17 better term, arrested.

18          A     One was. Yes.

19          Q     And you witnessed somebody crawling out of a shed?

20          A     Yes.

21          Q     And then from there my question is is this how they  
22 were left or did somebody kind of manipulate them into this  
23 photograph?

24          A     I don't know.

25          Q     Okay. And you didn't take the photograph?

1 A No.

2 Q This crime scene analyst appear --

3 A Correct.

4 Q -- and then take photographs, correct?

5 A Correct.

6 Q So you don't know whether or not the scene itself --

7 and also showing now 62, which is kind of a farther out view  
8 of the same gloves --

9 A Correct.

10 Q -- and hat or mask, you don't know if those were  
11 moved in some way, correct?

12 A Correct.

13 Q You didn't move them?

14 A No.

15 Q Okay. Same with State's 67, correct?

16 A Correct.

17 Q And when I say "correct", we're asking whether or  
18 not if you know if they were moved or not.

19 A No. No. I do not know.

20 Q You do not?

21 A I do not know if they were moved.

22 Q Okay.

23 A As far as I'm aware, everything was taken -- the  
24 pictures that were taken were in place and nothing was moved.

25 Q Well, I mean --

1           A     As far as I know.

2           Q     So do you know or not know whether or not these  
3 items were moved?

4           A     I don't know.

5           Q     And, again, that's the same with 68. Those --  
6 that's a close-up of 67. And this is 42, and I know we're  
7 skipping around just a bit, but 42 has wallet and money in the  
8 bottom left corner --

9           A     Correct.

10          Q     -- and then a black something in the top of the  
11 picture by the wall.

12          A     Correct.

13          Q     And I think you said you weren't sure what that was.

14          A     Right.

15          Q     Okay. Same with Number 43. Another wallet and some  
16 cash. Did you see that there?

17          A     No.

18          Q     Okay. And then on Number 38, we see the wallet with  
19 the cartoon characters or comic characters, two knives, keys,  
20 and a phone, correct?

21          A     Correct.

22          Q     You don't know if these were moved before being  
23 photographed.

24          A     If I remember correctly when I came around the  
25 corner and Jim -- while Officer Spurling was taking him into

1 custody, he was doing a cursory search of his immediate area,  
2 of the suspect's immediate area --

3 Q Okay.

4 A -- or the Defendant's, and some of those items may  
5 have been in that person -- on his person --

6 Q Okay.

7 A -- and were removed.

8 Q So Spurling may have put them on the floor or on the  
9 ground --

10 A Right. Right.

11 Q -- during that search. And then 36 is a -- what  
12 looks like a black mask. Do you know if that was moved or  
13 part of the search?

14 A I don't know.

15 Q You don't know? And then this is just a -- kind of  
16 an outer view. This is State's 35 of those same items,  
17 correct?

18 A Correct.

19 Q Now, take you back just a little bit to --

20 MR. GILL: Court's indulgence here.

21 BY MR. GILL:

22 Q Your testimony at the beginning of Mr. Schwartz's  
23 questioning was that -- and I wrote it down. That you got  
24 information that the suspects -- and this is from 7-Eleven.

25 A Uh-huh.

1 Q Suspects were last seen on foot heading east on  
2 Charleston. Do you recall that testimony?

3 A Right.

4 Q Where did you get that information?

5 A I believe it was from the clerk.

6 Q Okay. So the clerk told you that they were on foot.

7 A Either it was the -- correct. It would have been  
8 the clerk.

9 Q That they headed east?

10 A Yes.

11 Q And that they didn't have a car?

12 A Correct. Well, no. We don't know that.

13 Q Okay. And that's why I'm trying to clarify because  
14 your statement was that you have information that they were on  
15 foot and headed east on --

16 A Last seen on foot. Right. Unknown if they had a  
17 vehicle or not.

18 Q Unknown if they had a vehicle, and then heading east  
19 on Charleston.

20 A Right.

21 Q And when -- and I hate to parse this up so much, but  
22 when you get the information that they're heading east in an  
23 unknown vehicle -- but you don't know if they're walking or  
24 driving, correct?

25 A No.

1 Q You do not?

2 A No. We do not know.

3 Q Now, the State showed you 91, which is the map.

4 A Uh-huh.

5 Q Right? And it does have a blue -- kind of a blue  
6 dot, correct?

7 A Correct.

8 Q And it has these -- I'm going to call them  
9 guesstimates on walking, correct?

10 A Approximations.

11 Q Did you create this map?

12 A No.

13 Q Okay. Do you know who did?

14 A As far as I'm aware, it's Google.

15 Q Google did. Okay.

16 A Some algorithm.

17 Q And do you know if the suspects took the blue route?

18 A No.

19 Q Took the bottom route that has some grey on it --

20 A Alpine.

21 Q -- and I'm pointing to the bottom of the exhibit.

22 A Right. It would be Alpine Place. No. I don't know  
23 if they took --

24 Q Okay.

25 A -- that as opposed to the other --

1 Q Okay.

2 A -- route.

3 Q Okay. Or Alta (phonetic), right? You don't know.

4 A Or Alta.

5 Q So -- and do you know how Google makes these  
6 estimates on time?

7 A No.

8 Q Okay. You don't know if they're accurate or not?

9 A No.

10 Q You've never walked from 5700 West Charleston to 504  
11 Brush Street, correct?

12 A No.

13 Q And I believe Mr. Schwartz showed you 93, as well,  
14 and I'll zoom out just a bit. Can you describe that?

15 A That's an aerial view of 504 Brush.

16 Q Okay. And then we can see 504 Brush in the --

17 A Right.

18 Q -- kind of top middle of that. And 510 Brush --

19 A Is to the south.

20 Q -- our indicator is not working. Well, indicator's  
21 not working, so I can't have you touch the screen and have it  
22 show up --

23 A Okay.

24 Q -- but is this a north -- as if we were looking at  
25 this from above, is north at the top of the picture?

1 A It is.

2 Q And south is the bottom of the picture?

3 A The bottom. Correct.

4 Q So 510 Brush is where on that?

5 A The south of the picture.

6 Q Okay.

7 A I'm sorry. Bottom of the picture.

8 Q Bottom of the picture. One or two houses away from

9 504 Brush?

10 A One.

11 Q So next door.

12 A No. Two -- two houses down. So I'm sorry. So it's

13 not the --

14 Q And if you can see me, we're going 504 Brush, 510

15 Brush, right?

16 A Yes.

17 Q The last from the bottom full picture of a home on

18 the map?

19 A Correct.

20 Q All right. Give me --

21 MR. GILL: Court's brief indulgence.

22 BY MR. GILL:

23 Q All right. Sergeant, I'm showing you what's been

24 marked as State -- or admitted as State's 20. You recognize

25 this, correct?



1 A Correct.

2 Q And what is that?

3 A That's the entryway into the addition to the house  
4 where the victim was residing.

5 Q At 504 Brush, right?

6 A Right.

7 Q So -- and, again, I wish we had the indicators, but  
8 where my pen is is the doorway, right?

9 A Yes.

10 Q And then you had testified regarding this axe that's  
11 here.

12 A Right.

13 Q And that's out in front of what looks like a  
14 sidewalk of some sort or a --

15 A Right. It basically leads into the driveway.

16 Q Okay. So that is cement behind this?

17 A Yes.

18 Q And when you arrived on scene, this is where the axe  
19 was?

20 A Yes.

21 Q Okay. And you were third on scene?

22 A Yes.

23 MR. GILL: Court's brief indulgence.

24 Nothing further, Your Honor. Thank you.

25 THE COURT: Mr. Boley?

1 MR. BOLEY: Briefly.

2 CROSS-EXAMINATION

3 BY MR. BOLEY:

4 Q Bear with me for just a moment, Sergeant. I want to  
5 point out some specific things here.

6 THE COURT: Mr. Boley, the side of the lectern comes up  
7 if you all need --

8 MR. BOLEY: Sure.

9 THE COURT: -- a little room to --

10 [Pause]

11 BY MR. BOLEY:

12 Q Sergeant, I'm going to show you State's Exhibit 43  
13 and 38. Well, I'll show you -- I'll start with Exhibit 38.

14 We already talked about the wallet with the comic  
15 book characters on it.

16 A Right.

17 Q And you testified that Officer Spurling had already  
18 possibly moved that wallet from where it was when you arrived.

19 A Correct.

20 Q And the same applies to the wallet in State's  
21 Exhibit 43, right?

22 A As far as I remember that was a little bit farther  
23 away from where he actually was taken into custody, so I  
24 wouldn't -- I wouldn't say that.

25 Q Okay. So the wallet with the comic book characters

1 on it was closer to the suspect than the black wallet?

2 A Correct.

3 Q That's accurate. Okay. So it's possible that one  
4 was in his possession and the other one wasn't --

5 A It's possible.

6 Q -- when he was taken into custody? Okay.

7 Were either -- when both suspects were taken into  
8 custody, was one of these weapons on either of them?

9 A No.

10 Q Were there any weapons on them?

11 A I can't testify for the first suspect that was --  
12 that was in the bushes. I could say that for the second  
13 suspect that he didn't have any weapons on him. Not that I  
14 remember.

15 Q Fair. And you testified that -- I believe it was,  
16 and forgive me, I'm paraphrasing. That the suspects from the  
17 7-Eleven were last seen heading east down Charleston.

18 A Correct.

19 Q Do you know where that information was collected?

20 A Again, I think I -- I testified as being the  
21 clerk -- the clerk. I'm sorry.

22 Q The clerk from the --

23 A The clerk.

24 Q -- 7-Eleven? Okay.

25 A From 7-Eleven.

1 MR. BOLEY: Thank you. No further questions.

2 MR. SCHWARTZ: Just a couple things, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. SCHWARTZ:

5 Q In going through these different photos of these  
6 items, you didn't move any of the items when you were on  
7 scene, correct?

8 A No.

9 Q And as far as you know, you didn't see anyone -- did  
10 you see anyone move any of the items?

11 A No.

12 Q The map that Mr. Gill showed you that has the  
13 different Google tracks through it, you said that you haven't  
14 walked that path, right?

15 A Correct.

16 Q Do you have any reason to believe that that's an  
17 inaccurate representation of how long it would take to walk?

18 A No.

19 Q But you did drive from 7-Eleven to 504?

20 A Yes.

21 Q Sorry. One more photo I want to show you. I just  
22 want to be clear about one thing. Showing you State's 34.  
23 Can we see on this photo the bushes that you observed Officer  
24 Spurling interacting with -- that's the other suspect in this  
25 photo?

1 A Yes.

2 Q Okay. And can you describe for me which bushes on  
3 the screen?

4 A The -- looks like five bushes --

5 Q So right here these --

6 A -- and they're -- they're either along the wall.  
7 Yeah.

8 Q Do you recall kind of where in these five bushes he  
9 would --

10 A It would have been in between the -- if I'm counting  
11 from the right, the -- the -- the first and the second bushes,  
12 in between.

13 Q Kind of right here?

14 A Yes.

15 Q Okay. And is that what's sort of represented in  
16 this photograph on page -- on State's 35?

17 A It is.

18 Q And when you walked this area after, that's where  
19 you found the majority of those items we looked at pictures  
20 of?

21 A Correct.

22 MR. SCHWARTZ: Nothing further, Your Honor. Thank you.

23 THE COURT: Anything else?

24 RECROSS-EXAMINATION

25 BY MR. GILL:

1 Q Give me one second, Sergeant. I'm just trying to  
2 find a -- State's 91. Okay. We're back on the map. Now, the  
3 State asked you do you have any reason to believe that these  
4 numbers are wrong? Do you remember that question?

5 A Yes.

6 Q You don't have any reason to believe they're right,  
7 do you?

8 A No.

9 Q Or wrong?

10 A No.

11 Q No knowledge as to how long it takes to walk that,  
12 correct?

13 A To walk it? No.

14 MR. GILL: Nothing further, Your Honor.

15 THE COURT: Mr. Boley?

16 MR. BOLEY: Just want to clarify one thing.

17 RECROSS-EXAMINATION

18 BY MR. BOLEY:

19 Q Sergeant, I'm going to draw your attention to  
20 State's Exhibit 35. You testified earlier that these items  
21 were in that position when you arrived.

22 A Correct.

23 Q And you're not aware if another officer,  
24 specifically Officer Spurling, had repositioned those items?

25 A No.

1 Q Okay.

2 MR. BOLEY: That's all.

3 THE COURT: All right. Any questions from the jury?

4 Counsel approach.

5 [Bench Conference Begins]

6 THE COURT: Okay.

7 MR. SCHWARTZ: I was going to say --

8 THE COURT: [Indiscernible].

9 MR. SCHWARTZ: Thank you.

10 THE COURT: [Indiscernible].

11 MR. SCHWARTZ: Sweet. Sweet. Why didn't he hide under  
12 the shed? Did that make you feel manly about hiding under the  
13 shed. The denominations of currency and the wad of cash  
14 specifically, were there 20s or were there large  
15 denominations? I mean I'm sure that's going to come out.  
16 There's [indiscernible], right?

17 MR. GILL: Yeah.

18 MR. SCHWARTZ: The CSA guy.

19 MS. HOLTHUS: [Indiscernible].

20 MR. SCHWARTZ: [Indiscernible].

21 MR. GILL: Yeah. I don't think he knows, but --

22 [Bench Conference Ends]

23 THE COURT: Okay, sir. I'm going to ask you questions.  
24 I'm going to ask you to look at the jurors when you answer so  
25 they can hear you.

1 THE WITNESS: Okay.

2 THE COURT: What were the denominations of currency for  
3 the wad of cash? Specifically, were there 20s or were they  
4 lower denominations?

5 THE WITNESS: I don't remember -- I don't know. As I --  
6 I saw the wad of money, I didn't go through the money. All  
7 I -- as far as I could see, there was a couple fives in -- on  
8 the top that I could actually see the denomination, but I  
9 didn't -- again, I didn't fan it out. I didn't do anything  
10 like that. I think that was crime scene analysts that did  
11 that after they took pictures of where everything was found.

12 THE COURT: Any follow-up?

13 MR. SCHWARTZ: No, Your Honor. Thank you.

14 THE COURT: Any follow-up?

15 MR. GILL: No, Your Honor.

16 THE COURT: All right. Thank you, sir. You are --

17 THE WITNESS: Thank you.

18 THE COURT: -- free to go. Okay, folks. We're going to  
19 go ahead and break for lunch. We will break until 1:30.

20 During this break you are admonished not to talk or  
21 converse among yourselves or with anyone else on any subject  
22 connected with this trial or read, watch, or listen to any  
23 report of or commentary on the trial or any person connected  
24 with this trial by any medium of information, including,  
25 without limitation, newspaper, television, Internet, and radio



1 or form or express any opinion on any subject connected with  
2 the trial until the case is finally submitted to you.

3 We'll see you back at 1:30. Have a good lunch.

4 THE MARSHAL: Please rise for the jury. Folks, leave  
5 your clipboards. Take all your personal items with you.

6 [Jury Exits]

7 THE COURT: All right. Anything that we need to take  
8 care of outside the presence of the jury?

9 MR. SCHWARTZ: Not from the State, Your Honor.

10 MS. HOLTHUS: Not from the State.

11 THE COURT: All right. Do we have jury instructions yet?

12 MR. SCHWARTZ: Almost.

13 THE COURT: Whenever I can get them, I'd appreciate it.  
14 If you also could email them to my JEA? Normally, we do that  
15 to the law clerk but we're not doing that in this case.

16 So if you could email them to my JEA because we do  
17 the final set so we can make copies for all the jurors and  
18 stuff.

19 MR. SCHWARTZ: Absolutely.

20 THE COURT: Okay. Fantastic. Do you have -- you can get  
21 her email.

22 MR. SCHWARTZ: What's her name?

23 THE COURT: Tina Hurdt.

24 MR. SCHWARTZ: Tina Hurdt. Yes. Oh, yes.

25 THE COURT: So it's Hurdt --

1 MR. SCHWARTZ: I have it.

2 THE COURT: -- H-U-R-D-T --

3 MR. SCHWARTZ: Yes. I have that.

4 THE COURT: Okay. All right. And any proposed  
5 instructions. Also, if you could email those, as well, I  
6 would really appreciate it.

7 [Recess at 12:27 p.m.]

8 THE COURT: We're ready, right? Ready for the jury? Are  
9 we ready for the jury?

10 MR. SCHWARTZ: One second maybe.

11 THE COURT: All right. You want to go get them? Like,  
12 gather them up and --

13 THE MARSHAL: They're lined up.

14 THE COURT: Oh, all right. They're lined up waiting for  
15 you all.

16 If you're talking about scheduling, you might want  
17 to include me because I might --

18 MS. HOLTHUS: I'm going to include you.

19 THE COURT: -- have an opinion.

20 MS. HOLTHUS: No. I was going to include you. I just  
21 wanted to clear it with them to see if they were the same.

22 MR. GILL: I don't think we're changing a thing --

23 MS. HOLTHUS: Here --

24 MR. GILL: -- Your Honor.

25 MS. HOLTHUS: Here was my request, Judge, is that I think

1 we're going to finish tomorrow --

2 THE COURT: Yes.

3 MS. HOLTHUS: -- and so I don't care when, but I was  
4 hoping to have a couple hours, either start later or ideally  
5 we'd like to finish tomorrow but agree not to close until  
6 Thursday morning so that we could work on our closings after  
7 close of evidence.

8 THE COURT: When are you going to finish tomorrow?

9 MR. SCHWARTZ: We --

10 MR. GILL: Should be all day with all -- I mean I don't  
11 speak for you --

12 MS. HOLTHUS: I don't think so --

13 THE COURT: You have three witnesses --

14 MR. SCHWARTZ: I think we anticipate two to three  
15 witnesses tomorrow --

16 MS. HOLTHUS: I think it's going to be, like, a half day  
17 tomorrow. That's why I was saying maybe we could --

18 MR. SCHWARTZ: And that would be -- it'd be the DNA  
19 analyst --

20 MS. HOLTHUS: Assuming it goes as fast as we think it  
21 will today.

22 MR. SCHWARTZ: -- the detective --

23 THE COURT: Well, let's see where we are. I mean what  
24 I'd rather do is just take a longer lunch and close  
25 tomorrow --

1 MR. GILL: Close tomorrow?

2 THE COURT: -- if we're going to be done in the morning.

3 MS. HOLTHUS: Just my request.

4 THE COURT: I know.

5 MS. HOLTHUS: I'm not real good with my PowerPoints and  
6 until we know exactly where everything is going and stuff,  
7 it's --

8 THE COURT: Right. I appreciate that, but I'd rather get  
9 it done and get the jurors out of here. All right.

10 MS. HOLTHUS: Could we at least get a 10:00 start?

11 THE COURT: Tomorrow?

12 MS. HOLTHUS: As far as target?

13 THE COURT: No. I have to do court in the morning.

14 MS. HOLTHUS: Okay.

15 THE COURT: Okay. All right. Bring them in.

16 [Pause]

17 THE MARSHAL: Please rise for the jury.

18 [Jury In]

19 THE MARSHAL: Please be seated.

20 THE COURT: Back on the record in Case Number 313118,  
21 State of Nevada versus Venegas and Monay-Pina.

22 Let the record reflect the presence of all of the  
23 jurors, Defendants, and counsel.

24 State, please call your next witness.

25 MS. HOLTHUS: Javier Colon.

1 MR. SCHWARTZ: Your Honor, may I approach your clerk?

2 THE COURT: Sure.

3 THE MARSHAL: Please raise your right hand, face the  
4 clerk to be sworn in.

5 JAVIER COLON, PLAINTIFF'S WITNESS, SWORN

6 THE COURT: Good afternoon, sir. Go ahead and have a  
7 seat.

8 THE WITNESS: Thank you, ma'am.

9 THE COURT: And if you'd state your name and then spell  
10 it for the record?

11 THE WITNESS: Okay. Javier Colon, J-A-V-I-E-R, Colon, C-  
12 O-L-O-N.

13 THE COURT: Thank you, sir. Whenever you're ready.

14 MS. HOLTHUS: Thank you.

15 DIRECT EXAMINATION

16 BY MS. HOLTHUS:

17 Q Javier, directing your attention to January 12th of  
18 last year, where were you living?

19 A I was living -- it was Brush Street. That was at  
20 4 -- I don't remember the -- the number --

21 Q Okay.

22 A -- when I get attack when I was sleeping.

23 Q Okay. Who were you living with?

24 A With my sister.

25 Q And what's your sister's name?

1 A Adriana Colon.

2 Q Can you kind of describe to me what the house living  
3 situation was?

4 A Yeah. I living in -- in the garage, and that was,  
5 like, 12 -- I mean 9 when these guys came --

6 MR. GILL: Your Honor, objection.

7 THE WITNESS: -- to the garage.

8 THE COURT: Okay. Let me just -- or do you want to go  
9 ahead and make your objection?

10 MR. GILL: Nonresponsive.

11 THE COURT: Sustained.

12 BY MR. GILL:

13 Q I just want to talk about who lived at the Brush  
14 Street address, okay?

15 A Uh-huh.

16 Q It was you in the garage.

17 A Yes.

18 Q Who lived in the house?

19 A My sister and her three kids.

20 Q And what are their names?

21 A Lizbeth Avina and Samantha Avina, Cesar Avina.

22 Q How long had you been living there?

23 A Probably for a little -- three months with her.

24 Q You moved in with your sister and her kids --

25 A Yes.

1 Q -- basically?

2 A Yes.

3 Q And obviously you know what we're here for. You  
4 wanted to start talking kind of about what happened that  
5 night, correct?

6 A Yeah. I'm a --

7 Q At the time were you working?

8 A I'm working in the -- in the mornings.

9 Q Okay. What --

10 A Yeah.

11 Q -- were you doing? What do you --

12 A I -- I'm working for this guy selling in cubicles in  
13 a -- for the hospital center, clinics.

14 Q Selling?

15 A Cubicles. Yeah.

16 Q Cubicles?

17 A Yeah. Cubicles. Yeah.

18 Q For --

19 A I sell the -- I sell the cubicles for -- for a guy  
20 for -- for the clinics.

21 Q For the -- and I'm sorry. I'm not --

22 A For the clinic. A clinic.

23 Q Clinics.

24 A Yeah. The clinics.

25 Q Clinics.

1 A Yeah.

2 Q Got it.

3 A Yeah.

4 Q Okay. Sorry about that.

5 A Okay. No problem.

6 Q So that's what you were doing, but that just in the  
7 mornings?

8 A Yes.

9 Q And so sometime that evening did something happen or  
10 that early morning, I guess it would be, that night you said.

11 A Uh-huh. Yeah. So I'm in there sleeping when these  
12 two guys came to the garage, and they attack me. They hit me  
13 with a pistol first right in my head.

14 Q Where were you when they attacked you?

15 A Asleep and in my bed.

16 Q What woke you up?

17 A The guy that opened the -- when he opened the door,  
18 that wake me up.

19 Q That woke you up?

20 A Uh-huh.

21 Q Yes?

22 A Yes.

23 Q Did they say anything to you?

24 A He only -- he came to screaming and say, "Javier,  
25 get up, get up".



1 Q You said there were two guys there.

2 A Yeah. There was two guys but one talk. One of the  
3 guys.

4 Q Did you know them?

5 A One? Yes.

6 Q Which one did you know?

7 A Casimiro Venegas.

8 Q Do you see Casimiro Venegas here in court?

9 A Yes.

10 Q Can you --

11 A No.

12 Q -- point to him and tell me where he's sitting and  
13 what he's wearing?

14 A He right here in front of me.

15 MS. HOLTHUS: Record reflect identification of Defendant.

16 THE COURT: The record will so reflect.

17 BY MS. HOLTHUS:

18 Q Did you know the other individual?

19 A I seen it -- I see before when -- because he  
20 working -- he working with us, too, before in -- in the  
21 landscaping.

22 Q In what?

23 A That he worked with us in the -- for landscaping  
24 before with me.

25 Q Okay. In housekeeping?

1           A     Yeah. But on that day I -- I -- I don't know if  
2 that was him because he got the face covered.

3           Q     So you -- did you get his -- did you get a look at  
4 him that day?

5           A     No. I don't -- I only -- I don't see his -- his  
6 face.

7           Q     Okay. So do you see the second individual here in  
8 court today?

9           A     Yes.

10          Q     And where -- can you point to that individual?

11          A     Right here.

12          Q     Which one? Describe something they're wearing --  
13 he's wearing.

14          A     That's -- that one -- that one with the white shirt  
15 right there.

16          Q     There's two guys at the table in white shirts.  
17 Well, I guess one you said was Casimiro Venegas --

18          A     Yeah. That was Casimiro Venegas and Jose was our  
19 fellow right here. Jose.

20          MS. HOLTHUS: Record reflect identification of Monay-  
21 Pina?

22          THE COURT: The record will so reflect.

23          BY MS. HOLTHUS:

24          Q     Now, you said he had his face covered. How do  
25 you -- how were you able to tell it was him?

1           A     Because I know -- after that, I know because that  
2 was him, the one with him.

3           Q     Did you see him that night?

4           A     No. I don't see his face.

5           Q     Do you see any part of his face?

6           A     No.

7           Q     So how was it that you're able to tell us that  
8 that's who was there that night?

9           A     Because somebody tell me that that was him.

10          Q     Okay. You didn't actually see that individual?

11          A     No. I don't see the -- I don't see his face.

12          Q     Was Venegas, his face was not covered?

13          A     No. Not him.

14          Q     So they come in, they yelled "Javier, get up".

15          A     Yes.

16          Q     Did you get out of bed?

17          A     No. I never did.

18          Q     What happened then?

19          A     So he came onward inside, and he started hitting me  
20 with the pistol in my head.

21          Q     Who? Which one?

22          A     Casimiro --

23          Q     Okay.

24          A     -- Venegas.

25          Q     He was hitting you. What was he hitting you with?

1           A     He hitting me in the -- in the head with the -- with  
2 the -- with a pistol.

3           Q     Where did he hit you? Where in the head?

4           A     He hit me probably like ten times all around on my  
5 head.

6           Q     And what were you doing while this was happening?

7           A     Nothing. I just stayed right there in my -- in --  
8 in my bed.

9           Q     Did you have any weapons?

10          A     Uh-uh. Who? Me? No.

11          Q     What were you wearing?

12          A     Just -- just my -- my shirt and my pants that day.

13          Q     And what was -- while Casimiro was hitting you with  
14 the pistol in the head, what was the other individual doing?

15          A     He pointed it to -- to my -- to my family with the  
16 other pistol, right to -- from -- through the windows.

17          Q     Where was your family?

18          A     Inside of the house.

19          Q     When you say "through the window", were the windows  
20 between the house and the garage?

21          A     Yes.

22          Q     So were you able to see your family inside the house  
23 from the garage?

24          A     Uh-huh. Yes. For the -- for the windows. Yes.

25          Q     And you're saying the other individual, who you

1 identified here, was aiming the pistol at them?

2 A Yes.

3 Q Was he saying anything to them?

4 A No.

5 Q Were you saying anything?

6 A No. I can see -- you know, I just told him to stop  
7 hitting me and just never, you know, stop. He never listen.

8 Q Okay. Then what happened?

9 A Then -- yeah. So he put --

10 Q Did he hit you with anything else?

11 A Yeah. Yeah. After that, with a -- he hit me -- he  
12 saw -- I got a axe next to me because I'm going to do a side  
13 job the next day, so I sharpen it, and he saw it, and he  
14 started hitting me with the -- with the thing. He grabbing it  
15 and started hitting me with the -- with the axe.

16 Q At the time that he was -- was he hitting you with  
17 the head of the axe with the blade?

18 A Yes. With the -- with the blade.

19 Q At the time he was hitting you, were you still in  
20 your bed?

21 A Yes.

22 Q Were you lying down, sitting up?

23 A No. Laying down.

24 Q You're still laying down?

25 A Yes.

1 Q Did you ever, at any point, get up during this?

2 A No. I never tried to get up because he -- he  
3 never let --

4 Q Where did he strike you with the axe?

5 A He hit me the first time in my leg, and he hit me  
6 one more time in my ribs, and the third one, he tried to hit  
7 me right in my head. Now, I -- I just put my -- I put my  
8 hand, and he hit me in my hand, so he cut me all right here in  
9 my --

10 Q Let's start with the first one. The first cut in  
11 the leg, did -- the first time he hit you in the leg, did he  
12 cut your leg?

13 A No. Because I got all my blankets, and they're --  
14 so, like, the blankets, they cover me.

15 Q What about the time in the ribs?

16 A No.

17 Q Also covered by blankets?

18 A Yeah. Yes.

19 Q And then the time that he went for your head, but  
20 you put your hand up --

21 A Yeah. I put my hand so -- and that hit me in  
22 this -- it went -- they -- they cut me right in my hand.

23 Q And you still to this day have the scars there for  
24 that?

25 A Yes. Still got that one.

1 MS. HOLTHUS: I don't know. Can we have him put his hand  
2 under this thing?

3 THE COURT: Sure.

4 THE MARSHAL: Come up here, sir.

5 MS. HOLTHUS: Javier, would you come up here?

6 I got -- is it on?

7 MR. SCHWARTZ: Uh-huh.

8 THE COURT: Yeah.

9 MS. HOLTHUS: Okay.

10 BY MS. HOLTHUS:

11 Q And now if you could show the jury, if you will,  
12 what you're showing is the end -- where the cut was.

13 A Right here.

14 Q Okay. And that's what got cut open?

15 A Yes.

16 Q Thank you.

17 A You're welcome.

18 Q What -- how did it start -- stop?

19 A When he saw the -- the police came, he -- he run  
20 away.

21 Q And why do you say that -- why do you think that  
22 that's what stopped it? Did you see the police?

23 A No. I -- I don't seen it. I don't seen it. I  
24 never seen it. No. I seen it when -- when that was inside  
25 already.

1 Q Okay. Did you hear the police come up?

2 A No.

3 Q Did you see any lights or anything?

4 A I -- I seen the lights.

5 Q And as soon as the lights came, that's when they ran  
6 away?

7 A Yeah. That's when they run away.

8 Q So what happened then?

9 A After that, the -- the officers, they came, and they  
10 saw me all full in blood, and he told me hey, you okay --

11 MR. GILL: Objection.

12 THE WITNESS: -- you okay? I said no.

13 THE COURT: Hang on a second, sir.

14 MR. GILL: Objection as to hearsay, Your Honor.

15 THE COURT: Sustained.

16 BY MR. GILL:

17 Q Just kind of tell me what was happening.

18 A Okay. So when the police, they came, and he saw me  
19 all -- all full and blood, and he told what happened, what  
20 happened?

21 MR. GILL: Objection, Your Honor, as to hearsay as to  
22 what the officer said.

23 MS. HOLTHUS: Not offered for the truth of the matter  
24 asserted. It's what -- the officer's kind of checking out  
25 what's going on. That's also excited utterance as his



1 response. He's just been axed in his bed.

2 MR. GILL: Would you like me to just respond here or at  
3 the bench, Your Honor?

4 THE COURT: The bench would be great.

5 [Bench Conference Begins]

6 MR. GILL: I know she is not trying to elicit anything  
7 from him, but it seems like he wants to give the description  
8 that the officer gave to him when he arrived, and I don't  
9 think it qualifies as an excited utterance.

10 Plus, they have the officers coming in to testify.

11 THE COURT: What the officer said is not an excited  
12 utterance.

13 MR. GILL: I'm not --

14 MS. HOLTHUS: We're not sure what you're objecting to.  
15 His answers to the officers or the answers to --

16 MR. GILL: The answer to your question is fine. He's  
17 about to say what all the officer said to them when they came  
18 up, and that's something that the officers can testify to.

19 MS. HOLTHUS: I thought he was going to say what he told  
20 the officers.

21 MR. GILL: No. And maybe just without saying what the  
22 officer's said, you know, maybe just give him the -- that  
23 head's up.

24 MS. HOLTHUS: What are you thinking the officer said?

25 MR. GILL: I have no idea what he's about to say.

1 THE COURT: All right. It's sustained just ask him  
2 something else.

3 [Bench Conference Ends]

4 BY MS. HOLTHUS:

5 Q Javier, did you tell the officer that got there what  
6 happened?

7 A Yes.

8 Q And then what happened with you?

9 A They take me to the hospital.

10 Q Did you go in an ambulance?

11 A Yes.

12 Q What happened to you at the hospital?

13 A The -- they -- they just all over in my head,  
14 stitches and staples all over in my -- in my head, and I got  
15 stitches in my hand.

16 Q How did your head feel?

17 A Not to the hundred percent, though, that's all  
18 right.

19 Q It's all right now?

20 A Yeah.

21 Q Did you have any pain?

22 A Not pain pill. I -- I don't move my fingers like --  
23 like before, you know, but that's all right.

24 Q But even now because of that you can't move your --

25 A Yes.

1 Q -- fingers like you used to?

2 A Yes.

3 Q Did Casimiro and the other individual take anything  
4 from you that night?

5 A Yes. He -- he take my wallet. They take one -- one  
6 camera, my MP3, and two knives, two collection knives.

7 Q How tall are you?

8 A Huh?

9 Q How tall are you?

10 A How tall is me?

11 Q How tall are you?

12 A Yeah. How tall? Like 5 feet.

13 Q And what do you weigh?

14 A Excuse me? Like a hundred-forty-two pounds.

15 MS. HOLTHUS: Court's indulgence.

16 BY MS. HOLTHUS:

17 Q Did you ever see either of the two individuals speak  
18 to your sister or your family?

19 A Yeah. Well, Casimiro just screaming to my sister,  
20 too, don't do anything, don't do anything, we're going to kill  
21 you, too.

22 Q And was that before, during, or after the other  
23 individual was pointing the pistol at them?

24 A Yes. It's not -- that was when it was -- he just  
25 keep pointing to -- to my -- to the family, too.

1 Q I'm showing you Exhibit 10. Is that the house that  
2 you were staying with on Brush Street?

3 A Yes.

4 Q What's that a picture of?

5 A My axe.

6 Q That's your axe? Is that the axe that was used on  
7 you that night?

8 A Yes.

9 Q That's Exhibit 13.

10 A Yes.

11 Q Exhibit 27.

12 A Yes.

13 Q What is that?

14 A Some more blood.

15 Q That's your blood. Is that your bed?

16 A Yes. My bed.

17 Q And 28. That's more of your bed?

18 A Yes.

19 Q Same with 29?

20 A Yes.

21 Q And 31.

22 A Okay. Yes.

23 Q And 32.

24 A And 32. Okay. Yes.

25 Q Is that your pillow with the blood on it?

1           A     Yes. Blood on my pillow. And that was me right  
2 there.

3           Q     Still in the hospital?

4           A     Yes.

5           Q     And that's Exhibit 79.

6           A     Uh-huh. That's my hand.

7           Q     After it was sewed up?

8           A     After -- after it was sewed up. Yeah.

9           Q     Close-up?

10          A     Yes. Yeah.

11          Q     And, again, this is the injury that you got when you  
12 put your hand up to protect your head?

13          A     Yes. Yeah.

14          Q     Another view.

15          A     Yes. Another view right there.

16          Q     That was 82. 83.

17          A     Yeah.

18          Q     And what's this? 34?

19          A     I don't know. I think that -- I think was  
20 scratched. I don't know. I don't remember those.

21          Q     That's your other arm, though?

22          A     Yes. With my hand.

23          Q     What about 85?

24          A     Oh, because I put -- when -- when he hitted [sic] me  
25 in the -- in the head with the pistol, I put my hands, too, to

1 -- to block my head, so they hit me with the pistol in my  
2 right hand -- my hands, too.

3 Q Okay. So that's an injury from the -- getting --

4 A Yes.

5 Q -- hit with the pistol?

6 A Yes.

7 Q And that's a close-up of your face that night?

8 A Yes.

9 Q And that's State's Exhibit 86.

10 A Uh-huh.

11 Q Here's 87.

12 A Yeah. See on my head, open right there?

13 Q Yeah. I -- stitches here. This is from --

14 A Yes.

15 Q -- what?

16 A From -- from the pistol. When he hit me with the  
17 pistol.

18 Q And here?

19 A Yes. And that one right there, too.

20 Q That's from the pistol?

21 A Yes.

22 Q And what about right here? Did you get stitches in  
23 your ear, as well?

24 A Yes. I got stitches all over right there, too.

25 Q Is there any other stitches in your hair?

1           A     And they got -- they put me staples right in my  
2 hair.  Yes.

3           Q     88.  That's a close-up of the ear?

4           A     Uh-huh.  Yeah.  The stitches right there in my  
5 head -- in my ear.

6           Q     89.

7           A     Yes.  You can see that -- the staples in my head.

8           Q     Where were the staples in your head be?

9           A     That's looking right here in front.  Yes.  One right  
10 there where you pointed.  There's one a little bit up, like,  
11 a -- probably like an inch.

12          MS. HOLTHUS:  Which -- we didn't fix that.

13          THE CLERK:  I think it is.

14          MS. HOLTHUS:  Oh, is it fixed?  See if -- touch the  
15 screen.

16          THE WITNESS:  Yeah.  Okay.  There's one right there.

17          MS. HOLTHUS:  There we go.

18          THE WITNESS:  And there's, like, three right there.

19 BY MS. HOLTHUS:

20          Q     And State's Exhibit 90.  Those are the close-up of  
21 the stitches that you got --

22          A     Okay.  Yeah.

23          Q     -- on your forehead?

24          A     Yes.  One, two, three, four, five, six in the front  
25 there, and a -- like, four in the top -- in the top.  Yeah.

1 Q Do you recognize State's Exhibit 74?

2 A Yes. That's one of my knives.

3 Q That's one of your knives?

4 A Yes.

5 Q Did anyone have permission to take that knife?

6 A No.

7 Q What about 58?

8 A Yes. One of my hunting knives.

9 Q And, again, did anybody have permission to take it?

10 A No. That was my wallet.

11 Q And where was your wallet that night before they  
12 came in?

13 A That was a -- I think, on top of my -- on one of the  
14 speakers that -- from my stereo.

15 Q And that was Exhibit 50. I don't know if I said.  
16 Exhibit 39? Recognize that?

17 A Yeah. That was my camera and cell phone.

18 Q And lastly, Exhibit 38. Do you recognize anything  
19 in that picture?

20 A Well, yes. That's my two knives right there, my  
21 cell phone, and I don't know the rest.

22 Q Which two knives?

23 A The -- the -- the brown one and the black one right  
24 there.

25 Q And can you point to them with --



1 A The black right here.

2 Q Which one?

3 A This one. The little one.

4 Q That one and which other one?

5 A Yeah. And this one.

6 Q I think if you tap bottom that'll go away.

7 A Oh. I see one more on the bottom. I can see.

8 Yeah. Right here on the bottom.

9 Q Where?

10 A Right here.

11 Q Is that yours, as well?

12 A Yeah. Yeah. That was for --

13 Q Those were all your knives?

14 A Yeah. Because I buy all that once in a -- for a  
15 collection -- collection knives.

16 Q And where were they before Casimiro and the other  
17 guy came in that night?

18 A I don't remember where was it.

19 Q Were they in the garage somewhere?

20 A Yeah. That was in the garage.

21 MS. HOLTHUS: Court's indulgence.

22 BY MS. HOLTHUS:

23 Q Do you still have scars left the staples and the  
24 stitches?

25 A Yes.

1 Q Had you ever had a problem with Casimiro that would  
2 have caused him to come over like this that night?

3 A I don't know. He -- she -- he came to say that I --  
4 I give flat tire -- and the flat tires for his sister or  
5 something -- something like that.

6 Q He was accusing you having something to do with his  
7 sister's flat tire?

8 A Yes. Yes.

9 Q And did you, in fact?

10 A No. I never did it.

11 Q Did you have any idea what he was talking about?

12 A No.

13 MS. HOLTHUS: Thank you. We'll pass the witness.

14 THE COURT: Mr. Gill?

15 MR. GILL: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. GILL:

18 Q Now, Mr. Colon, I'm going to ask you some questions,  
19 but I'm going to ask you to wait till I finish asking the  
20 question before you answer, and then I'll wait until you're  
21 finished, as well. Okay?

22 A Yes.

23 Q Now, let's --

24 MR. GILL: Did you leave them all up here?

25 MS. HOLTHUS: I did.

1 MR. GILL: Court's brief indulgence. We do have quite a  
2 bit of these, Your Honor.

3 BY MR. GILL:

4 Q Now, the State just showed you --

5 MS. HOLTHUS: I left them in piles, by the way.

6 MR. GILL: Oh, good. Good. Yeah.

7 BY MR. GILL:

8 Q Showed you 38, and you had pointed out three knives,  
9 correct?

10 A Yes.

11 Q And why do you have three knives?

12 A Because I -- I've always -- the two black ones,  
13 they -- they came with my -- with my knives collect -- with my  
14 collection knives.

15 Q Okay. So it -- and, again, you can -- I can see two  
16 black ones. These -- if you can touch the monitor?

17 A Yes. This is one right here, and one right here.

18 Q Okay.

19 A That -- that was too little but this big.

20 Q And do that again.

21 A But this big.

22 Q Three inches or so?

23 A Yeah. That was the two big -- about this big.

24 Q Okay. So those two black ones are about three  
25 inches?

1 A Yeah. Yeah.

2 Q And you got those from a knife collection?

3 A Yeah. For -- for the knife collections. Yeah. I  
4 buy it in a -- for a TV.

5 Q Okay. So you purchased something on the television?

6 A Yes.

7 Q Those came free with whatever you purchased.

8 A Yes.

9 Q And what you purchased was a knife?

10 A Yes.

11 Q Okay. And what about this knife? Where did you get  
12 that knife?

13 A That one I buy it in a North Dakota when -- when I  
14 lived over there.

15 Q You bought it in North Dakota?

16 A Yes.

17 Q And it's -- it looks to be about twice the size, is  
18 that fair, as the other two knives?

19 A That was -- yeah. That was four inches. Probably  
20 not even.

21 Q Four inches?

22 A Yes.

23 Q Okay.

24 A Yeah. That was a --

25 Q And --

1 A And that was a legal -- legal knife.

2 Q Little?

3 A Legal.

4 Q Legal.

5 A Legal knife.

6 Q I'm sorry to repeat. I just want to make sure --

7 A No problem.

8 Q -- we understand.

9 A Uh-huh.

10 Q Legal knife?

11 A Yes.

12 Q And what do you mean by "legal knife"?

13 A Because it's -- we -- we can grab it and -- it was  
14 a -- that -- that pocket knife. You can have it in your  
15 pocket all the time.

16 Q Okay. And when -- we're just still talking about  
17 the knife with the wooden handle in State's 38, correct?

18 A Yes.

19 Q Okay. And you described that as legal, correct?

20 A Yes.

21 Q Now, State's 74, how big is that knife?

22 A No. That was a big one.

23 Q Okay. Is that legal, as well?

24 A No. Not that. I think that was not a legal -- it's  
25 a collection knives. You know?

1 Q Okay. And how big is the blade on that one,  
2 approximately, if you know?

3 A I don't know. Probably like six, seven inches,  
4 probably.

5 Q And it's obviously -- in State's 74 it's sheathed,  
6 correct?

7 A Yes.

8 Q And State's 58, did -- what's that one?

9 A Another knife.

10 Q And it's also sheathed, correct?

11 A Yes.

12 Q And how big is that one?

13 A Probably like 6 inches.

14 Q Okay. So would you describe that as another illegal  
15 knife?

16 MS. HOLTHUS: I'm going to object to the -- I know it's  
17 belated, but -- because he's been asking, but I'm going to  
18 object to the --

19 THE COURT: Sustained.

20 MR. GILL: Your Honor, could -- I want to understand the  
21 objection, whether or not they're legal or illegal?

22 MS. HOLTHUS: Correct. That's the objection.

23 MR. GILL: Can we approach?

24 THE COURT: Sure.

25 [Bench Conference Begins]

1 MR. GILL: I mean he's the one classified them as legal  
2 or illegal based on their size.

3 MS. HOLTHUS: I don't even know what it means. You --

4 MR. GILL: Well, I can ask him what it means.

5 MS. HOLTHUS: I mean sometimes [indiscernible]. It's not  
6 just to own them.

7 MR. GILL: Well, I think --

8 MS. HOLTHUS: They carry them on a person or what --

9 MR. GILL: Okay.

10 MS. HOLTHUS: -- are you talking about?

11 MR. GILL: Okay.

12 MS. HOLTHUS: I don't think they're [indiscernible].

13 MR. GILL: Yeah. I think he's talking about the size of  
14 the blade, but I can ask him --

15 MS. HOLTHUS: But in terms of what?

16 MR. GILL: -- what his understanding is.

17 MS. HOLTHUS: We can have big blades in our home. We  
18 just can't carry them in your pocket, right?

19 MR. GILL: Yeah. I mean I can ask him what he means or I  
20 can stop. Whatever the Court --

21 THE COURT: [Indiscernible].

22 MR. GILL: It was his own clarification, so --

23 THE COURT: [Indiscernible].

24 MR. GILL: Okay.

25 MS. HOLTHUS: Yeah. I think -- I don't think he has it.

1 Honestly, I have to give up, so I know he doesn't know.

2 MR. GILL: Okay. I can move on.

3 MS. HOLTHUS: [Indiscernible].

4 MR. GILL: It was originally sustained. I'll move on.

5 [Bench Conference Ends]

6 BY MR. GILL:

7 Q Now, Mr. Colon, again, we're looking at 58, I  
8 believe. 58. And I'm sorry. Did you say this was about six  
9 inches?

10 A Yes.

11 Q And that's -- we're describing the blade, correct?

12 A Yes.

13 Q And Ms. Holthus had shown you a couple -- a picture,  
14 which is 39, and you described that as your cell phone and  
15 camera, correct?

16 A Yes.

17 Q And then in 38 is a cell phone, as well.

18 A Yeah. That one took -- that was not -- not a  
19 collect.

20 Q I'm sorry?

21 A That was not -- that was not a collected -- not --  
22 not collect. That was of --

23 Q I'm --

24 A -- the cell phone right there? That white one?

25 Q Right. And I'm just having a hard time



1 understanding you. I apologize. It was not --

2 A The -- that one not -- not collected. Not collect.

3 THE COURT: It was not collected?

4 THE WITNESS: Uh-huh.

5 BY MR. GILL:

6 Q By the police it was not collected?

7 A No. No. No, sir. The -- that was of -- and they -  
8 - they don't got no -- no phone number.

9 Q Oh, it wasn't activated.

10 A Yeah. Activated. Thank you.

11 Q Okay.

12 A Sorry.

13 Q Okay.

14 A Sorry.

15 Q That's okay. So it wasn't -- it was in your area  
16 there in the brush.

17 A Yes. Yes.

18 Q But the phone that worked for you is the one  
19 depicted in 39.

20 A Uh-huh. Yes.

21 Q And then the phone depicted, which I think it has T-  
22 Mobile, and it's a Samsung in State's 38 was not activated.

23 A Not activated.

24 Q Okay. So no number assigned to it?

25 A No.

1 Q Now, you had described kind of this instance where  
2 two guys walk in and essentially them coming in wakes you up,  
3 correct?

4 A Yes.

5 Q Did you have any lights on in the room?

6 A No.

7 Q And it's about what time; do you think?

8 A Around 12 -- I mean night.

9 Q Around 12 midnight?

10 A Yes.

11 Q Late?

12 A Yeah. That was late.

13 Q And what were you working -- were you working the 6  
14 a.m. shift?

15 A Yes.

16 Q So you were asleep, correct?

17 A Yes.

18 Q And it was dark in your area in the garage?

19 A Yes.

20 Q Both men were wearing something on their face or  
21 just one?

22 A Just one.

23 MR. GILL: Court's brief indulgence. Just trying to --

24 BY MR. GILL:

25 Q You had testified previously in this case, correct?

1 A Yes.

2 Q And that was sometime last year? About this time  
3 last year?

4 A That was one -- yeah. Like a -- one year and a  
5 couple months.

6 Q Okay. And if I told you it was March of 2016, would  
7 that sound about right?

8 A Yes.

9 Q And the testimony you gave them, you described then  
10 the axe attack, if you will, correct?

11 A Yes.

12 Q Okay. And you described kind of the way that went  
13 down. Do you recall that line of testimony?

14 A Yeah. I recall it.

15 Q Okay. And you described then -- well, strike that.  
16 Today when Ms. Holthus was asking you questions, you  
17 described the leg, correct?

18 A Yes.

19 Q And then you had stated, and correct me if I'm  
20 wrong, but you stated that they didn't hit your leg, correct?

21 A No. They hit me with the -- in my -- in my -- in my  
22 leg.

23 Q Okay. You were hit in the leg, it was just under  
24 covers?

25 A Yes.

1 Q And then what about your rib?

2 A They hit me, too, in my rib, too.

3 Q You were hit in your rib?

4 A Yes.

5 Q Okay. Did you have any stitches in your rib?

6 A No. Because the blanket is there that cover my --  
7 my skin --

8 Q Okay. So --

9 A -- in open -- never -- they never open.

10 Q Okay. So you didn't have any pictures taken of your  
11 ribs or your leg?

12 A No.

13 Q Now, from the time that you woke up and the time  
14 that there was some talking going on, how long did that last  
15 before any strike with a pistol or an axe?

16 A He hit me with the pistol first.

17 Q Okay. But you guys spoke before that, correct? Or  
18 he spoke, correct?

19 A Correct.

20 Q And you didn't say anything.

21 A I don't say anything.

22 Q Not stop, nothing. You said nothing.

23 A No.

24 Q All right. And you did hear him say something to  
25 your sister, correct?

1 A Yes.

2 MR. GILL: Court's indulgence.

3 BY MR. GILL:

4 Q Now, before Ms. Holthus sat down, she asked you  
5 about if there were any issues that you and Casimiro had had.  
6 Do you remember that question earlier?

7 A [No verbal response].

8 Q And you had mentioned something about the tires.

9 A Oh, about the tires. Yes.

10 Q Okay. So -- and you got that information that  
11 night, correct?

12 A Yes.

13 Q Had there ever been anything else other than these  
14 tires between you and Casimiro?

15 A No.

16 Q Did you have any knowledge between anything him and  
17 your sister?

18 A No.

19 Q And you lived with your sister for a few months,  
20 correct?

21 A Yes.

22 Q At this time?

23 A Yes.

24 Q And you guys didn't talk about any problems with Mr.  
25 Venegas?

1 A No.

2 Q And you personally didn't have any?

3 A No.

4 MR. GILL: Court's indulgence.

5 BY MR. GILL:

6 Q Now, you had described the pistols.

7 A Uh-huh.

8 Q I think the was the term you used.

9 A Yes.

10 Q What color were the pistols?

11 A I don't know. That was dark. I think black.

12 Black.

13 Q I'm sorry.

14 A I think that was blacks.

15 Q Black?

16 A Black.

17 Q But you also said that you don't know, it was dark.

18 A Because no because that was dark.

19 Q So are you guessing that they were black?

20 A Yes.

21 Q Okay. So you don't know what color --

22 A I don't know what the color is.

23 MR. GILL: Nothing further, Your Honor. Thank you.

24 THE COURT: All right.

25 MR. BOLEY: Yes.

1 THE COURT: Mr. Boley?

2 CROSS-EXAMINATION

3 BY MR. BOLEY:

4 Q Mr. Colon, we won't be repetitive here, but I want  
5 to draw your attention to the person that you said was with  
6 Casimiro Venegas.

7 A Uh-huh.

8 Q You testified that his face was covered through the  
9 entire incident.

10 A Yes.

11 Q Did he speak to you?

12 A No. He never did.

13 Q He never did. Did he get close to you?

14 A No.

15 Q Did he strike you?

16 A No.

17 Q Now, you knew Jose Monay-Pina before this incident,  
18 right?

19 A Yes.

20 Q Would he have any reason to attack you?

21 A No.

22 Q So in reality, you don't know it was Jose Monay-Pina  
23 that attacked you that night?

24 A No.

25 MR. BOLEY: Thank you.

1 THE COURT: Any redirect?

2 MS. HOLTHUS: Court's indulgence.

3 [Pause]

4 MS. HOLTHUS: Nothing else. Thank you.

5 THE COURT: Any questions from the jury?

6 [Pause]

7 THE COURT: Counsel approach.

8 [Bench Conference Begins]

9 MR. SCHWARTZ: [Indiscernible] the Defendant if he did  
10 not see his face? [Indiscernible]?

11 Did you see this one? [Indiscernible].

12 MR. BOLEY: I'm going to object to this one.

13 MR. SCHWARTZ: No. Thanks. Judge Bell did not write in  
14 the bottom there, just for the record [indiscernible]. Goes  
15 to the substantial part.

16 MR. BOLEY: Not whether or not you work or find  
17 employment --

18 MR. SCHWARTZ: But if it is -- is his -- I mean --

19 THE COURT: I don't care [indiscernible].

20 MR. BOLEY: Okay. Thank you.

21 MR. SCHWARTZ: [Indiscernible] Mr. Venegas before this  
22 issue happened, did you ever have any problems with him?  
23 [Indiscernible] something wrong? Was the tougher guy wearing  
24 gloves?

25 THE COURT: [Indiscernible].



1 MR. SCHWARTZ: We'll object to Number 2. I have no  
2 problem if you don't want to ask [indiscernible]. See how  
3 that works. It's a good one. There's some very interesting  
4 [indiscernible] or was it unlocked?

5 MR. GILL: [Indiscernible]. I think you guys have  
6 somebody to testify later about the lock and something else,  
7 so I don't care.

8 THE COURT: [Indiscernible].

9 MR. SCHWARTZ: That's all I have [indiscernible].

10 THE COURT: [Indiscernible].

11 MS. HOLTHUS: Yeah. I think he answered somebody told  
12 him.

13 MR. BOLEY: What's that?

14 MS. HOLTHUS: He answered somebody told [indiscernible]  
15 from his eyes.

16 MR. BOLEY: [Indiscernible].

17 MR. GILL: That was what he said today. Yeah.

18 MR. BOLEY: [Indiscernible].

19 THE COURT: [Indiscernible].

20 MR. BOLEY: [Indiscernible].

21 MR. SCHWARTZ: But the question itself, if the Judge --  
22 it's almost a follow-up question because --

23 THE COURT: [Indiscernible].

24 MS. HOLTHUS: Correct.

25 MR. SCHWARTZ: We don't want --

1 MS. HOLTHUS: No. I'm fine [indiscernible] agree that  
2 they don't want it --

3 MR. SCHWARTZ: They don't want it.

4 MS. HOLTHUS: -- to come in.

5 THE COURT: [Indiscernible].

6 MS. HOLTHUS: I mean if they want it, though, I don't  
7 mind.

8 MR. BOLEY: We don't want it.

9 MS. HOLTHUS: 1 and 3 are fine. Are you going to go find  
10 that? Okay.

11 MR. SCHWARTZ: [Indiscernible].

12 MS. HOLTHUS: [Indiscernible].

13 MR. SCHWARTZ: [Indiscernible] with that pen.

14 MR. GILL: I think [indiscernible].

15 MS. HOLTHUS: When you're saying "cover guy", the guy  
16 that's holding the guy --

17 MR. GILL: [Indiscernible].

18 MS. HOLTHUS: That's what he's talking about.

19 MR. GILL: [Indiscernible]. I'd say no.

20 MS. HOLTHUS: He doesn't want it, so we're fine without.

21 THE COURT: What?

22 MS. HOLTHUS: He doesn't want it, so we're fine without.

23 THE COURT: Okay.

24 MR. GILL: Thank you. I mean I think it is, but that's  
25 fine. We're not going to --

1 THE COURT: [Indiscernible].

2 MR. SCHWARTZ: Goes to substantial bodily harm, but --

3 THE COURT: [Indiscernible].

4 MR. SCHWARTZ: That's fine. It's fine, Your Honor.

5 THE COURT: That's fine?

6 MR. SCHWARTZ: I think so. Yeah.

7 THE COURT: [Indiscernible].

8 MR. SCHWARTZ: That's your call. I don't care.

9 MS. HOLTHUS: That's fine. It's kind of speculative.

10 THE COURT: [Indiscernible].

11 MR. SCHWARTZ: That's -- it's actually [indiscernible]  
12 incredibly speculative. Why did [indiscernible].

13 MS. HOLTHUS: You could ask is -- are they valuable, I  
14 suppose. I don't know.

15 MR. BOLEY: Relevance then.

16 MR. SCHWARTZ: [Indiscernible].

17 THE COURT: [Indiscernible].

18 MR. SCHWARTZ: Correct.

19 MS. HOLTHUS: I'm just --

20 MR. SCHWARTZ: Thank you.

21 [Bench Conference Ends]

22 THE COURT: Sir, I'm going to ask you a couple  
23 questions --

24 THE WITNESS: Okay.

25 THE COURT: -- and ask you to look at the jury -- you're

1 going to look at me. I'm going to ask you look at the jurors  
2 when you answer so that they can hear you. All right?

3 Did the men kick or break through your door down or  
4 was it unlocked?

5 THE WITNESS: I don't remember whether it was locked or  
6 not.

7 THE COURT: Look at the jurors so they can hear.

8 THE WITNESS: Okay. I -- I don't know [indiscernible].  
9 I don't remember.

10 THE COURT: Okay. Did you know Mr. Venegas before this  
11 issue happened?

12 THE WITNESS: Yes.

13 THE COURT: And was the cover guy wearing gloves?

14 THE WITNESS: Yes.

15 THE COURT: Any follow-up from the State?

16 MR. SCHWARTZ: Court's brief indulgence.

17 MS. HOLTHUS: Court's indulgence, Judge. We're looking  
18 for something.

19 [Pause]

20 REDIRECT EXAMINATION

21 BY MS. HOLTHUS:

22 Q Javier, you just -- you said the cover guy -- we're  
23 talking about the second guy as the cover guy had gloves on,  
24 correct?

25 A Yes.

1 Q And you also said he had something covering his  
2 face?

3 A Yes. He got -- I don't know -- probably a -- a  
4 beanie, bandana, something. I don't know.

5 Q But at the -- earlier in your testimony, you  
6 identified him as being the individual here in the courtroom.

7 A Yes.

8 Q And you said that was somebody that told you that?

9 A Yes.

10 Q Had you also previously testified that, in fact, you  
11 were able to see and recognize his eyes?

12 A Yes. Because I saw -- I saw his eyes when -- when  
13 he came. I don't -- I don't know. I don't see his face.

14 Q But are you -- when you identified him earlier, was  
15 it just because someone told you or were you recognizing any  
16 part of him, as well?

17 A Because somebody told me.

18 Q Okay. Do you, in fact, recognize his eyes from that  
19 night?

20 A Yes. I saw his eyes. Yes. I recognize the eyes,  
21 too.

22 Q And so do you see the eyes here in court that were  
23 with the second individual?

24 A Yes.

25 Q And who were -- who's eyes are those?

1 A Jose Pina.

2 MS. HOLTHUS: Thank you.

3 THE COURT: Mr. Gill

4 MR. GILL: Thank you.

5 RECROSS-EXAMINATION

6 BY MR. GILL:

7 Q You said somebody had gloves on, correct? That I  
8 think you --

9 A Yes.

10 Q -- described him as the cover man or --

11 A Yes.

12 Q What color were those gloves?

13 A That was black and red.

14 Q Black and red gloves on the cover man?

15 A Yes.

16 Q What about the coat?

17 A Black.

18 Q And what about --

19 A And -- huh? Excuse me?

20 Q No. I -- go ahead and finish.

21 A Oh. Yeah. Not -- not -- that was coal black.

22 Yeah.

23 Q Okay. So when I say "cover man", that was kind of  
24 how the question was written, we're talking about the person  
25 not speaking to you, correct?

1 A Yes.

2 Q So you said red and black gloves?

3 A Yes.

4 Q Black coat?

5 A Yes.

6 Q Did you get a color of the pants or shorts, whatever  
7 they were wearing?

8 A No. No. I don't remember.

9 Q Okay. And what about -- can you describe the  
10 covering, the -- or bandana? Do you know what color that was?

11 A I think that was green. I think so. Yeah.

12 Q Green?

13 A Green.

14 Q Okay. What about the other person?

15 A The other one --

16 Q And nothing to be specific. The other person not  
17 wearing a mask, correct?

18 A No.

19 Q What about the color of that person's coat?

20 A I don't remember.

21 Q Okay. And what about that person's gloves? The  
22 color specifically?

23 A About him? I don't -- I don't see that color  
24 because that was dark. The other one I saw because that light  
25 that came from outside.

1 Q All right.

2 A They -- they get him --

3 Q Okay.

4 A -- with the lights, so --

5 Q So if I ask you any other questions about the other  
6 person, you're not going to know the color; you didn't it?

7 A No. Because it was too dark.

8 MR. GILL: Thank you, Your Honor. Nothing further.

9 RE CROSS-EXAMINATION

10 BY MR. BOLEY:

11 Q Okay, Mr. Colon. You testified just a moment ago  
12 that you saw Mr. Pina's eyes.

13 A Yes.

14 Q What color are his eyes?

15 A That's brown.

16 Q Brown eyes?

17 A Yes.

18 Q What color is his eye brows? Could you see those?

19 A No.

20 Q You could not see his eye brows; just his eyes?

21 A Yes.

22 Q And you remember those eyes from working with him.

23 A Because -- yeah. In -- in --

24 Q What kind of work did you do when you were working  
25 with him?



1 A Landscaping.

2 Q Housekeeping?

3 A Landscaping.

4 MR. GILL: Landscaping.

5 MR. BOLEY: Landscaping. I'm sorry.

6 BY MR. BOLEY:

7 Q Okay. You testified also about some things that  
8 were stolen from your home. What else was stolen?

9 A I don't know. I don't know. No. I don't know  
10 what's -- what is still lost.

11 MR. BOLEY: Okay. Nothing further.

12 THE COURT: Anything else from the State?

13 FURTHER REDIRECT EXAMINATION

14 BY MS. HOLTHUS:

15 Q Had you seen gloves like those before?

16 A Yes.

17 Q Which -- where had you seen them?

18 A In -- in the land -- land -- landscaping company  
19 that keep for us.

20 Q That keep what -- and what color are the gloves you  
21 have at the landscaping company?

22 A Red and blacks.

23 MS. HOLTHUS: Nothing else.

24 BY MS. HOLTHUS:

25 Q Well, is that the same company that some --

1 A Yes.

2 Q -- you worked at. And who else worked there?

3 A Casimiro and Jose.

4 Q Thank you.

5 FURTHER RECROSS EXAMINATION

6 BY MR. GILL:

7 Q And just so we're clear, the, quote, unquote, cover  
8 man had the red gloves on?

9 A Yes.

10 MR. GILL: Nothing further.

11 THE COURT: Mr. Boley, anything else?

12 MR. BOLEY: [No verbal response]

13 THE COURT: All right. Thank you, sir. You are --

14 MR. BOLEY: Nothing further.

15 THE COURT: Thank you, sir. You're free to go.

16 THE WITNESS: All right. Thank you.

17 THE COURT: State, please call your next witness.

18 MS. HOLTHUS: Adriana Colon.

19 THE COURT: Good afternoon, ma'am. If you could kind of  
20 raise your right hand, turn and face the clerk? The clerk's  
21 going to swear you in.

22 ADRIANA COLON, PLAINTIFF'S WITNESS, SWORN

23 THE COURT: Good afternoon, ma'am. Go ahead and have a  
24 seat.

25 THE WITNESS: Thank you.

1 THE COURT: If I could get the interpreter's name for the  
2 record?

3 THE INTERPRETER: Noel Tatton. T-A-T-T-O-N.

4 THE COURT: Thank you, ma'am.

5 THE INTERPRETER: Interpreter's oath, Your Honor? No?

6 THE COURT: [No verbal response].

7 THE INTERPRETER: Cool.

8 THE COURT: Are you --

9 THE INTERPRETER: I'm certified.

10 THE COURT: [Indiscernible].

11 THE INTERPRETER: Yes.

12 THE COURT: Ma'am, could you state your name and then  
13 spell it for the record, please?

14 THE WITNESS: Adriana Colon. Adriana Colon, A-D-R-I-A-N-  
15 A C-O-L-O-N.

16 THE COURT: Thank you.

17 Whenever you're ready.

18 DIRECT EXAMINATION

19 BY MS. HOLTHUS:

20 Q Adriana, directing your attention to back in January  
21 of 2016, were you living at 504 Brush Street in Las Vegas,  
22 Clark County, Nevada?

23 A Yes.

24 Q How long had you been living there?

25 A For six months.

1 Q Were you owning, renting?

2 A We were renting.

3 Q Who did you live there with?

4 A Just my three children and myself.

5 Q What are the names and ages of your children?

6 A Lizbeth. She's 16 years old. Samantha is 14, and  
7 Cesar is ten.

8 Q And you'd been living there six months?

9 A Yes.

10 Q Were you working at the time?

11 A Yes.

12 Q Where were you working?

13 A I was cleaning houses.

14 Q Did there come a time when your brother came to live  
15 with you?

16 A Yes. He was living there. I had him living there  
17 because he was not working, and he had no place to live.

18 Q Okay. So where -- how was the house set up? Who  
19 lived where in the house?

20 A Well, he was living in sort of the garage.

21 Q Okay. How many bedrooms were in the house?

22 A Three bedrooms.

23 Q And who had the bedrooms in the house?

24 A Well, Lizbeth had one bedroom. The other one I was  
25 in, and the other one, the third one, Cesar and Samantha lived

1 in that one.

2 Q Adriana, directing your attention to January 12th,  
3 2016, in the early morning hours, did something happen?

4 THE INTERPRETER: Interpreter requests repetition. Early  
5 in the morning or late at night?

6 MS. HOLTHUS: Early in the morning.

7 THE WITNESS: Well, it was 4:00 in the morning, and I  
8 heard Javier yell at me or scream at me that someone was  
9 threatening him. So then I went up to the window, and I was  
10 told to shut up. There were two men outside.

11 BY MS. HOLTHUS:

12 Q And who told you to shut up?

13 A I don't know which one it was. Well, they -- I  
14 don't know which one it was, but they were telling -- they  
15 were telling Javier to tell me in Spanish and in English to  
16 shut up.

17 Q Okay. And so they were telling you to shut up.

18 A Yes. Yes. Because if I wouldn't that they were  
19 going to break me, too.

20 Q Is that what they said to you?

21 A Yes.

22 Q Did they have any weapons?

23 A Yes. They were both pointing pistols at both  
24 windows.

25 Q And who was in the windows?

1           A     Well, they thought, I guess, that there was two  
2 windows and then there was where Javier was, and they were  
3 pointing the -- the guns at both windows like that.

4           Q     Was anybody in the windows?

5           A     Well, when I saw that they were pointing pistols at  
6 both windows, I told my children that no one should get up  
7 into the windows, that they needed to stay low.

8           Q     Were the guns pointed at you -- the pistols pointed  
9 at you?

10          A     Well, it was hard to see. I don't think they could  
11 see me because it was very dark, but they were pointing the  
12 pistols at both the windows because they knew that people were  
13 inside both of the windows.

14          Q     And were you inside the windows?

15          A     Yes.

16          Q     Were you able to see out there?

17          A     Yes.

18          Q     What did you see?

19          A     They were telling him to stand up. They were  
20 screaming at him to stand up, and that they wanted him to come  
21 outside. And I told them to leave. I didn't want my children  
22 -- I -- I had -- kept telling them to leave, that I didn't  
23 want my children to see this, and I kept saying leave, come  
24 on, just leave.

25          Q     And what happened? Did they leave?

1           A     No. They didn't leave, and you could hear that he  
2 was getting beaten up.

3           Q     Did you actually see them beating him up?

4           A     No. I was on the floor. I wasn't looking outside  
5 anymore.

6           Q     You got down after you saw the guns?

7           A     Yes. We were sitting on the floor.

8           Q     What was -- what did you hear that made you believe  
9 Javier was getting beaten?

10          A     You could hear that they were hitting him really  
11 hard. I don't know what they were hitting him with, but you  
12 could definitely hear it.

13          Q     So you could hear something contacting his body?

14          A     Yes.

15          Q     Was he saying anything? Javier?

16          A     No.

17          Q     When you last saw Javier --

18          A     I don't think so.

19          Q     When you last saw Javier before you ducked down,  
20 where was he?

21          A     He was lying down, and I didn't see him get back up.

22          Q     What happened then? You hear Javier getting beaten.  
23 Your -- you and your kids are down. What happens now?

24          A     My daughter, Lizbeth, she said, mommy, you know,  
25 we've got to call the cops.

1 Q Had you called the cops at that point?

2 A No. Lizbeth was the one that dialed them. I -- I  
3 didn't know what to do.

4 Q So when you first saw that, you didn't call the  
5 police?

6 A No.

7 Q Why not?

8 A I was afraid.

9 Q Did you go to your brother's aid?

10 A No. Well, no. We didn't go outside. The police  
11 came, like, five minutes later, and my daughter was still on  
12 the phone with the police when they arrive -- when they  
13 arrived with the off -- my daughter was still on the phone  
14 with the operator when the police arrived outside.

15 Q So you didn't help your brother. Were you afraid to  
16 go out and help your brother?

17 A No. The operator told us not to go outside.

18 Q What did -- what happened -- so it was Lizbeth who  
19 decided to call the police and actually called?

20 A Yes. She dialed them on her phone.

21 Q Were you there when she dialed?

22 A Yes.

23 Q How soon after she dialed did the police respond?

24 A They came right away. Five minutes.

25 Q Were the two individuals still in the garage with



1 Javier when the police first got there?

2 A No. No. They weren't there when the police  
3 arrived. They must have seen -- I mean I can only imagine  
4 that maybe they saw some lights or something, and they just  
5 took off.

6 Q So when you say that, are you saying that there were  
7 the lights of the police and the two individuals took off  
8 right about that same time?

9 A I would say so. Yes.

10 Q Did you recognize either of the individuals in the  
11 room with Javier?

12 A Well, one of them had -- had -- had his face  
13 covered. The other one, it wasn't very easy to see him  
14 because it was very dark.

15 Q So were you able to see either one?

16 A I just saw one's face. The other guy had -- had his  
17 face covered.

18 Q Do you see that -- the one that you saw in the  
19 courtroom today?

20 A I think that's him.

21 Q Can you point to the individual and tell me which  
22 person it is?

23 A He has a -- he has a white shirt on. He's in the  
24 middle.

25 MS. HOLTHUS: Record reflect identification of Defendant

1 Venegas.

2 THE COURT: The record will so reflect.

3 MS. HOLTHUS: Thank you.

4 BY MS. HOLTHUS:

5 Q Had you seen that person before?

6 A No.

7 Q Did you see Javier after this?

8 A Yes. I went to take my children over to my mother's  
9 house, and he left in the ambulance.

10 Q At the time that the individuals pointed the guns at  
11 you, who was with you?

12 A I was -- I was with my three children. We're always  
13 together. We take walks together. We're always together.

14 Q And were -- so were your three children with you  
15 when the men pointed their guns at you?

16 A Yes. They were pointing -- yes. They were pointing  
17 the pistols at us, and they were telling us that we needed to  
18 stay quiet and not say anything or they were going to break  
19 us.

20 Q "Break" you was the word?

21 A Yes.

22 Q Eventually the police came, and did you stay there  
23 that night?

24 A Yes. We stayed there until -- yes. They -- we  
25 stayed there until the ambulance took him away, and there were

1 a lot of policemen still in the area. We stayed there that  
2 night, and they said we could go to the hospital. There was a  
3 lot of people -- a lot of police in the area checking things  
4 out.

5 Q So did you go to the hospital?

6 A Yes.

7 Q After this night, did you continue to live in the  
8 home?

9 A We weren't able to.

10 Q Why not?

11 A We were too afraid.

12 Q So did you guys all move?

13 MR. GILL: Objection as to relevance.

14 THE WITNESS: Yes.

15 THE COURT: Hang on just a second.

16 THE INTERPRETER: Sorry.

17 MS. HOLTHUS: You want to approach?

18 THE COURT: Sure.

19 [Bench Conference Begins]

20 MS. HOLTHUS: I told you -- to her credibility. She's  
21 not making up this thing. She's not making it like it's  
22 something that she knew what was going on. Something horrible  
23 happened so bad that she uprooted the children and took them  
24 away, and that's --

25 MR. GILL: The testimony stands for itself as to what

1 happened. I don't see how them moving or not moving --

2 MS. HOLTHUS: If you're making up --

3 MR. GILL: -- is relevant.

4 MS. HOLTHUS: -- a lie, you don't usually life change  
5 event after the lie. Do you know what I mean? It's  
6 corroborative of what she's telling you happened that night.

7 THE COURT: I'll sustain the objection.

8 [Bench Conference Ends]

9 THE COURT: Objection is sustained.

10 MS. HOLTHUS: Nothing else. We'll pass the witness.

11 THE COURT: Mr. Gill?

12 MR. GILL: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. GILL:

15 Q Ms. Colon, you stated earlier that this all happened  
16 around 4 a.m.?

17 Q Yes.

18 A And you heard Javier shouting or calling out for  
19 you, correct?

20 Q Yes.

21 A And then you responded by going to that window; is  
22 that correct?

23 Q Yes.

24 MR. GILL: And Court's brief indulgence.

25 Judge, I'm going to ask for the Court's indulgence.

1 I'm just going to find a couple photos here.

2 [Pause]

3 BY MR. GILL:

4 Q And, Ms. Colon, I'm showing you what's been admitted  
5 as State's 24. Do you recognize that photograph? And if you  
6 could look on the screen just to your left?

7 A Yes. That's where Javier was.

8 Q Okay. That's in your house at 504 Brush?

9 A Yes.

10 Q And is the window that you went to depicted in that  
11 photograph?

12 A Yes. It's right there.

13 Q And if you actually touch it, it'll make a mark.  
14 Did you touch the -- oh, okay. So above the television?

15 A Yes.

16 Q And is -- it looks like there's a set of blinds  
17 there; is that correct?

18 A Yes.

19 Q And then I don't know what it is, and I don't know  
20 if you can see it, but there's some covering underneath those  
21 blinds. Is that also correct?

22 A Yes. There was a towel up there.

23 Q Okay. And what color is that towel?

24 A I don't remember the color. I think it was white,  
25 but I don't remember.

1 Q Lighter colored? Is that fair to say?

2 A Yes.

3 Q And then there looks to be, and just correct me if  
4 I'm wrong, but some other sort of covering. It might be on  
5 the garage side of that window. Is that depicted in that  
6 photograph?

7 A It's on this side.

8 Q On the garage side, correct?

9 A Yes.

10 Q And what is that?

11 A I don't know.

12 Q But in the photograph, you can see it, and it looks  
13 to be some sort of plastic?

14 A Could be.

15 Q Okay. And then what's on top of the television?

16 A I think I see a dog and a virgin.

17 Q Okay. It's statues or porcelain dolls?

18 A Yes.

19 Q And which side of that window were you looking out  
20 of? Does that make sense? And you can touch the screen  
21 again.

22 A Here.

23 Q So if we're looking straight at it in the photo,  
24 you're talking about the right side?

25 A Yes. Correct.

1 Q Closest to the water bottle, which is also depicted  
2 on the right side of the photograph?

3 A [No verbal response].

4 Q You see that big water bottle there in the front?

5 A Yes.

6 Q So when you're on the side of the window that's  
7 closest to that; is that right?

8 A Yes. Yeah. We were looking through the windows --  
9 well, on the other side.

10 Q Okay. And when you say "we", you're talking about  
11 your three children?

12 A Yes. Yes. Of course. My three children.

13 Q Did they ever look out the window?

14 A No. I told them that I didn't want them to look out  
15 the window. I think we were looking through -- I think I had  
16 pulled the blinds up on the window.

17 Q Kind of the way they're depicted now?

18 A Yes.

19 Q But the children -- I'm assuming they're not tall  
20 enough to look out that window; is that correct?

21 A I -- I have my bed there, and I had gotten out of my  
22 bed, and my -- and -- and I had jumped on my bed to see out  
23 there. It's -- it's a tall window.

24 Q Okay. So if we're in the garage, it's fairly tall,  
25 but on the other side is a bed, correct?

1           A     Yes. My bed -- my bed is on the other side, and  
2 that's when I got up on the bed, but then on the other window,  
3 there's no bed there, but it's easier to see out.

4           Q     Okay. And then when you say "other window", is that  
5 depicted -- is that other window depicted here?

6           A     Not in this one. No.

7           Q     Okay.

8           MR. GILL: And Court's brief indulgence.

9 BY MR. GILL:

10          Q     Now, I don't know that we have a photograph of the  
11 other window. Are you saying that off to the right of this  
12 photo is another window?

13          A     Yes.

14          Q     Okay. You're looking out the window depicted in  
15 State's 24, correct?

16          A     Yes.

17          Q     And only you --

18          A     At the beginning.

19          Q     -- correct?

20          A     Yes.

21          Q     Now, you said that -- you testified earlier that  
22 they kept pointing pistol -- the pistols at the windows. Do  
23 you remember that statement?

24          A     Yes.

25          Q     And --



1           A     They were pointing at this window, and then they  
2 were pointing at the other window in the bedroom.

3           Q     Okay. But you're at this window, correct, that's in  
4 State's 24?

5           A     In the beginning.

6           Q     In the beginning. Correct. But that's the window  
7 you're at, the one depicted here, correct?

8           A     Yes.

9           Q     And then you can hear what's being said in the room,  
10 correct? Miss --

11           THE INTERPRETER: Hold on.

12           MR. GILL: Go ahead.

13 BY MR. GILL:

14           Q     I asked if you could hear what was being, not what  
15 was being said.

16           A     Yes, you could hear it.

17           Q     And that's from both the two men and your brother,  
18 correct?

19           A     Yes.

20           Q     And, again, without saying what anyone actually  
21 said, was Javier speaking to the two men?

22           A     Yes. They -- he was telling them to get out.

23           Q     And, again, ma'am, without saying what anyone said  
24 -- okay? I -- the question was simply were they speaking to  
25 one another and was Javier speaking to them? He was speaking

1 to them? Yes or no?

2 A Yes.

3 Q Were they having any kind of conversation?

4 A I remember he would tell them that he hadn't done  
5 anything.

6 Q Okay. And, ma'am, I hate to keep repeating myself,  
7 but when I'm asking these questions, I'm just asking if they  
8 actually spoke, not what they said.

9 Was there back and forth between the men?

10 A Yes. They were talking to each other, and that's  
11 when he -- he started yelling for me, I would imagine.

12 Q Okay. And you heard that, and, again, we  
13 established that once you heard that you came to that window,  
14 correct?

15 A Yes. That's when I started looking out the window,  
16 got up into the window.

17 Q And, ma'am, I'm going to show you State's 20. You  
18 recognize that photo?

19 A Yes.

20 Q And what -- that shows the side of the house or the  
21 back of the house?

22 A Side. It's the side of the house.

23 Q In this opening here, this doorway that's open, what  
24 is that?

25 A That's the door to get into Javier's place.

1 Q It's the one and only door to get into Javier's  
2 place, correct?

3 A Yes.

4 Q There's no other way in or out of that converted  
5 garage, correct?

6 A No.

7 Q And I zoomed in a little bit on State's 20. You can  
8 see kind of the TV in the window, correct?

9 A Yes.

10 Q Those are the same that were depicted in 24,  
11 correct?

12 A Yes.

13 Q Now, you were asked by Ms. Holthus if you recognize  
14 anyone in the courtroom. Do you remember that question?

15 A Yes.

16 Q And your response was that you think it's this  
17 gentleman that sits to my right; is that correct?

18 A No. Yes. Yes. Because his face, I recognize his  
19 face. The other one had his face covered.

20 Q Okay. And, again, your statement was that you think  
21 it's him.

22 A Yes.

23 MR. GILL: Court's brief indulgence.

24 BY MR. GILL:

25 Q And, Ms. Colon, if you know, do you know what was

1 taken from Javier's room?

2 A No.

3 Q Did you know what he kept in his room?

4 A No. I -- I wouldn't go in there.

5 MR. GILL: Okay. Nothing further, Your Honor. Thank  
6 you.

7 THE COURT: Mr. Boley?

8 MR. BOLEY: No questions.

9 REDIRECT EXAMINATION

10 BY MS. HOLTHUS:

11 Q There was that -- the one picture was of the one  
12 window, and then you're saying there's another window?

13 A Yes.

14 Q So after you were looking out the one window, then  
15 you -- then did you move to the other window?

16 A Yes.

17 Q So this is the first window you were looking out on  
18 State's Exhibit 24?

19 A Yes.

20 Q And then would this be the other window you were  
21 looking in?

22 A Yes.

23 Q And that's Exhibit 25. Now, on 24, this window you  
24 said is your bedroom and your bed's underneath it?

25 A Yes.

1 Q What's on the other side of this window?

2 A That was the room where Lizbeth used to sleep.

3 Q And when you were looking out that window, where  
4 were the children?

5 A We were all at the window. We weren't right in the  
6 window, but we were a certain distance away from the window,  
7 all three -- all of us.

8 Q Were you able to see out the window?

9 A Yes.

10 Q Were the guns pointed at you from that window?

11 A Yes. They would point the guns at both windows.

12 Q And did they say anything to you when you were  
13 standing in this window?

14 A Yes. I was -- that was when I told them that I  
15 didn't want them there and to please leave. I didn't want my  
16 children to see any of this.

17 Q And did -- what did they say?

18 A They would tell me to shut up, and then they tell  
19 Javier you tell her to shut up, otherwise tell her we're going  
20 to break her.

21 Q Is this water cooler in both these exhibits the  
22 same?

23 A Yes.

24 MS. HOLTHUS: I have one more question, but I can't  
25 remember it, so just wait two minutes. One minute even. Oh.

1 BY MS. HOLTHUS:

2 Q The picture with this -- State's Exhibit 20, this  
3 is -- this open door is the only way in and out of Javier's  
4 room, the garage?

5 A Yes.

6 Q So you said it was the garage. Was the garage door  
7 sealed off?

8 A Well, it's supposed to be a garage, but I don't  
9 know. Here is -- in -- in this other door here, that's the  
10 laundry.

11 Q In here?

12 A Uh-huh.

13 Q Okay. So is there -- this is separated, though,  
14 right?

15 A Yes.

16 Q Does this door to Javier's room lock?

17 A Yes.

18 Q Do you know if it was locked that night or not?

19 A Well, I would imagine that, yes, it would have been  
20 locked. I know my gate was locked, and they must have jumped  
21 over.

22 Q Did you see any damage to the door or the doorway?

23 A No. I didn't see anything else. You know, we all  
24 went over to my mother's house. You could say that we were  
25 traumatized. We didn't want to look at anything. I didn't

1 want to go back to the house. We didn't even want to go back  
2 and get our clothes.

3 Q So you have no idea how they got in there.

4 A No.

5 Q Other than it had to be somehow through this door  
6 because it's the only way in or out.

7 A There's no other way.

8 Q Okay. Thank you.

9 THE COURT: Mr. Gill, anything?

10 MR. GILL: No. Nothing else. Thank you.

11 THE COURT: You were done, right?

12 MS. HOLTHUS: I'm sorry.

13 THE COURT: You were done, Ms. Holthus, right?

14 MS. HOLTHUS: I'm done.

15 THE COURT: Okay.

16 RE CROSS-EXAMINATION

17 BY MR. GILL:

18 Q Now, you didn't -- and I know Ms. Holthus touched on  
19 this on 20 with the door.

20 You didn't lock that door that night, correct?

21 A No. I didn't sleep in there. He was the one that  
22 slept in there.

23 Q Okay. So you know you didn't lock it, correct?

24 A No.

25 Q And you don't know if he did, correct?

1           A     I don't know.

2           Q     And then these -- the laundry room that you're  
3 talking about, it looks like there's a cement pathway there.  
4 Where does that cement pathway go? And that's right in the  
5 middle of the picture. You can kind of see a closed door.

6           A     Well -- well, there's sort of like on one side  
7 there's a carport, and that's where I used to put my car, and  
8 then continuing in, that's where you go to the entrance to the  
9 house.

10          Q     Okay. So if somebody were to come out of the open  
11 door there, they would just kind of wrap around there. Then  
12 they could eventually get to a -- an area where they could be  
13 enter -- where they could enter the house, correct?

14          A     Yes.

15          Q     Now, on 25, this is that other window we were kind  
16 of discussing earlier, correct?

17          A     Yes.

18          Q     And at the time that was Lizbeth's room?

19          A     Yes.

20          Q     Now, where do you enter Lizbeth's room?

21          A     Well, through the main entrance. You go down a  
22 hall.

23          Q     So inside the house?

24          A     Yes.

25          Q     And you could enter and exit through her bedroom



1 door, correct?

2 A Yes. Yes.

3 Q And then -- and in this photo, are those -- those  
4 blinds appear to be closed; is that correct?

5 A Yes.

6 Q So did you just push them aside when you looked  
7 through that window?

8 A Yes. Yes. When we looked through the window.

9 Q And then you said both guns were pointed at you,  
10 correct?

11 A Yes.

12 Q What kind of guns were they?

13 A Small. They weren't very big.

14 Q Well, do you know -- do you have an idea how big?

15 A I really have no idea, but they appeared to be about  
16 like this.

17 Q And like this, would agree, about six or seven  
18 inches? Is that what --

19 A Uh-huh.

20 Q Okay. So you agree, six or seven inches?

21 A Yes.

22 Q Is that both guns?

23 A Yes. You could tell that both of them looked pretty  
24 much the same size.

25 Q Were they revolvers?

1           A     Well, I don't really know too much about guns. I've  
2 never liked them. And even for my son, I would never even buy  
3 him a toy gun.

4           Q     Okay. So you don't know if they were revolvers or  
5 not, correct?

6           A     Uh-huh.

7           Q     And you only saw two of them, correct?

8           A     Yes.

9           Q     And what color were the guns?

10          A     I don't know.

11          Q     Do you know what caliber the guns were?

12          A     No.

13          Q     And what part of your body were the guns pointed?

14          A     They're -- they were pointing them up towards -- up,  
15 like, to your head. They were pointing them toward the top.

16          Q     But you kind of did a -- you held up your fingers --  
17 your finger and your thumb as if it were a pistol, correct?

18          A     Yeah. Like, they were pointing them.

19          Q     Okay. And you had it up in the air, but they  
20 weren't pointed up in the air, correct?

21          A     No, they weren't.

22          MR. GILL: Court's indulgence.

23 BY MR. GILL:

24          Q     Now, you said both guns were pointing at -- pointed  
25 at you at the same time, correct?

1           A     They were pointing them both at the same time to the  
2 both windows.

3           Q     Okay. And so they weren't -- at that particular  
4 time, they were not pointed at Javier, correct?

5           A     Well, they -- I imagine that they were --

6           MR. GILL: Your Honor, I'm going to object to anything  
7 that's going to be speculation. I know that we haven't had a  
8 statement, but we have a preface of "I imagine".

9           THE COURT: Sustained. Ma'am, just if you know.

10          THE INTERPRETER: The interpreter requests a repetition  
11 of the question.

12          MR. GILL: The original question was if they were pointed  
13 at her or they were not pointed at Javier? And I believe  
14 her --

15          THE WITNESS: No. They were pointing the pistols at me,  
16 and they told me to shut up.

17          MR. GILL: Thank you, Your Honor.

18          THE COURT: Mr. Boley?

19          MR. BOLEY: No questions.

20          THE COURT: All right. Any questions from the jury?

21                 Approach, please.

22                 [Bench Conference Begins]

23          MR. GILL: This is my favorite part. It's a nice simple  
24 one. That's my favorite part.

25          THE COURT: [Indiscernible] know what's going to happen.

1 MR. GILL: If we stand up here, we're going to -- maybe  
2 we can get some more.

3 MR. SCHWARTZ: Do you think the -- any of these two men  
4 have ever been over to your house before? And did you know  
5 any of Javier's friends that visit him?

6 MR. GILL: I don't care.

7 MS. HOLTHUS: It's fine to me.

8 MR. GILL: Thank you.

9 [Bench Conference Ends]

10 THE COURT: Ma'am, do you think that any of these two men  
11 had ever been over to your house before?

12 THE WITNESS: I never saw them come to the house before,  
13 I don't think. I pretty much dedicate myself to going to  
14 work, and then after work, I come home, and I go inside my  
15 house.

16 THE COURT: Did you know any of Javier's friends that  
17 visited him?

18 THE WITNESS: Well, I never really saw in any of -- any  
19 of them come over. They always had -- they'd always come into  
20 the separate entrance, and sometimes if they did come through,  
21 I would be at work, so I wouldn't see them.

22 THE COURT: Any follow-up from the State?

23 MS. HOLTHUS: No thank you.

24 THE COURT: Mr. Gill?

25 MR. GILL: Very briefly, Your Honor.

1 FURTHER RECROSS EXAMINATION

2 BY MR. GILL:

3 Q So you've never seen any -- you've never seen these  
4 two men at the house previously; is that fair?

5 A I had not seen them before.

6 Q And what about any of Mr. Venegas's relatives? Do  
7 you know anybody that is related to Mr. Venegas?

8 A No. I don't know anybody.

9 MR. GILL: Thank you. Nothing further, Your Honor.

10 THE COURT: Mr. Boley? All right. Any follow-up on  
11 that? No.

12 Thank you, ma'am. You are free to go.

13 THE WITNESS: Thank you.

14 THE COURT: And thank you, madam interpreter, for your --

15 THE INTERPRETER: You're welcome, Your Honor.

16 THE COURT: -- help today.

17 THE INTERPRETER: Were there any other witnesses that  
18 require a Spanish interpreter?

19 THE COURT: Not that I'm aware of.

20 MR. SCHWARTZ: No, Your Honor.

21 THE COURT: Let's go ahead and take a break, and then we  
22 will call the State's next witness up.

23 All right. Folks, we're going to go ahead and take  
24 a 15-minute break. During this break, you're admonished not  
25 to talk or converse among yourselves or with anyone else on

1 any subject connected with this trial or read, watch, or  
2 listen to any report or any commentary on the trial or any  
3 person connected with this trial by any medium of information,  
4 including without limitation newspaper, television, internet,  
5 and radio or form or express any opinion on any subject  
6 connected with the trial until the case is finally submitted  
7 to you. And we'll be back at 3:37.

8 THE MARSHAL: Please rise for the jury.

9 [Jury Exits]

10 [Recess at 3:23 p.m.]

11 THE MARSHAL: Please rise for the jury.

12 [Jury In]

13 THE COURT: Back on the record in Case C31318 -- 118,  
14 State of Nevada versus Venegas and Monay-Pina.

15 Let the record reflect the presence of all the  
16 jurors, Defendants, and counsel.

17 State, please call your next witness.

18 MR. SCHWARTZ: Your Honor, the State's next witness is  
19 Lizbeth Colon.

20 THE MARSHAL: Please remain standing and raise your right  
21 hand.

22 LIZBETH AVINA, PLAINTIFF'S WITNESS, SWORN

23 THE COURT: Good afternoon. Go ahead and have a seat.

24 THE WITNESS: Okay. Thank you.

25 THE COURT: And then if you could state your name and

1 then spell it for the record?

2 THE WITNESS: Okay. Lizbeth Avina, L-I-Z-B-E-T-H A-V-I-  
3 N-A.

4 THE COURT: Thank you. Go ahead.

5 MR. SCHWARTZ: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. SCHWARTZ:

8 Q Lizbeth, how old are you?

9 A I'm 17.

10 Q Seventeen? And directing your attention about a  
11 little over a year ago, January 12th, 2016, do you remember  
12 where you were living?

13 A Yeah. We were at 504 Brush Street.

14 Q Okay. And at that point, about how long had you  
15 guys lived there?

16 A I think it was like six months.

17 Q And who lived there with you?

18 A My mom, my brother, my sister, and my uncle.

19 Q Mom, brother, sister, and uncle. What are your  
20 brother and sister's name?

21 A Samantha and Cesar.

22 Q And do you still live there today?

23 A No.

24 Q Okay. Did something happen on January 12th, 2016,  
25 that causes you not to live there anymore?

1 MR. GILL: Your Honor, objection. I think we went -- if  
2 we can approach?

3 THE COURT: No. I'm sorry. Sustained. If you could  
4 just rephrase the question?

5 MR. GILL: Okay.

6 BY MR. SCHWARTZ:

7 Q If I could direct your attention to January 12th,  
8 2016, what happened that day?

9 A I woke up to my mom yelling stop, and I got up, and  
10 I asked her what was happening? She said that there is --

11 MR. GILL: Objection as to hearsay, Your Honor.

12 MR. SCHWARTZ: And, Your Honor, the response would be  
13 that it's an excited utterance, but I can lay some more  
14 foundation if you'd like.

15 THE COURT: Sure.

16 BY MR. GILL:

17 Q Okay. Let's break that down a little bit what you  
18 said. You said you woke up to your mom saying something to  
19 you. What was the tone of her voice like?

20 A I know it was, like, scared. She was just kind of  
21 yelling and -- for help, I guess, really.

22 Q And so what was it that she was saying to you?

23 A She wasn't telling me. She was screaming out to her  
24 window saying stop, stop.

25 Q After you heard her saying stop, stop, did you hear



1 her say anything else right at that point?

2 A I remember it was, like, just kind of, like, softly,  
3 my kids are here.

4 Q And you said you woke up. Were you sleeping in your  
5 room?

6 A Yes.

7 Q And how many different rooms are there in that  
8 house?

9 A Inside the house there's three rooms.

10 Q Your room?

11 A Yes.

12 Q And what about the other two rooms?

13 A One's my mom -- one was my mom's and the other one  
14 was my brother and my sister's.

15 Q And then your uncle, where did -- where was his  
16 room?

17 A He was in -- there's a shed in the outside of the  
18 house, and he was there.

19 Q So you're inside your room when you are awoken by  
20 your mom. And what is the first thing you do when you hear  
21 your mom screaming stop, stop?

22 A I got up, and I went to where her room was, and I  
23 asked her what was going on.

24 Q And where was it in the house that she was located?

25 A She was in her room.

1 Q And when you went in there, what, if anything, was  
2 she doing?

3 A I know she was, like -- I think she was, like,  
4 opening her curtains, and then her window was duct taped so  
5 that there was no really way of seeing in and -- in or out,  
6 but there was, like, small cracks, so I know she was trying  
7 to, like, look through there and telling them to stop.

8 Q And so when you look through that window in your  
9 mom's room, what room does it look into?

10 A The shed.

11 Q And that's where you said your uncle stays?

12 A Uh-huh.

13 THE COURT: Ma'am, could you answer yes or no for me,  
14 please?

15 THE WITNESS: Oh, yes.

16 THE COURT: Thank you.

17 THE WITNESS: Uh-huh.

18 BY MR. SCHWARTZ:

19 Q Okay. She has to type down everything you're  
20 saying, so -- when you went in there and you saw your mom sort  
21 of looking through the window, did she say anything else at  
22 that point?

23 MR. GILL: Your Honor, in -- as to the objection, did you  
24 rule whether or not he laid a proper foundation?

25 THE COURT: He -- I didn't, but he did, so I'm going to

1 allow it as an excited utterance --

2 MR. GILL: And just --

3 THE COURT: -- so the objection's overruled.

4 MR. GILL: Thank you, Your Honor.

5 THE WITNESS: I remember her just kind of saying stop, my  
6 kids are here, I don't want them seeing this.

7 BY MR. SCHWARTZ:

8 Q And when you arrived to the room, saw your mom doing  
9 that, what did you do?

10 A I told her let's call the police, and she said no  
11 because they're going to shoot, and I kept telling her let's  
12 call the police, let's call the police.

13 Q Could you see that your mom -- how was your mom  
14 appearing to you when you were speaking to her?

15 A She was just very out of it. She didn't know what  
16 to do.

17 Q Could you hear anything happening inside the shed  
18 area?

19 A That I remember not really.

20 Q So you told your mom let's call the police. What  
21 happens next?

22 A After that, she said no, and I know my siblings got  
23 up, and I told them to stay in their room, and she had me go  
24 to the dining room to record anyone who was going to come out,  
25 and I was, like, no, what if they don't come out? And I

1 winded -- she winded up just dropping, like, in the hallway,  
2 and she said she didn't know what to do, and that's when I  
3 called the police.

4 Q So did you, at any point, look outside of your mom's  
5 window?

6 A No.

7 Q Is there a window in your room?

8 A Yes.

9 Q Did you, at any point, look outside that window into  
10 the shed?

11 A No.

12 Q So you never saw what was happening inside the shed?

13 A No.

14 Q You only heard what your mom was saying to you?

15 A Uh-huh.

16 Q And you said your mom sort of fell -- sat down in  
17 the hallway?

18 A Yes.

19 Q Is that -- would that be -- so she left her -- did  
20 you leave her room with her, and you guys were in the hallway?

21 A Yes.

22 Q Is that a hallway between her room and your room?

23 A Yes.

24 Q And it's at that point that you called 9-1-1?

25 A Yes.

1 Q And where were your brother and sister at that  
2 point?

3 A At that point, they were with us in the hallway.

4 Q So they were in their room originally, and they  
5 joined you when you guys were in the hallway?

6 A Yes.

7 Q And did you guys go anywhere from the hallway after  
8 that?

9 A The lady on the phone call of the 9-1-1, she said to  
10 go somewhere where most likely we wouldn't be but a -- like,  
11 the safest place, so we went to the living room because that  
12 wasn't -- that didn't have any windows to the shed, and we  
13 were waiting next to the living room on the floor.

14 MR. SCHWARTZ: If I could approach your clerk, Your  
15 Honor?

16 THE COURT: Yeah.

17 MR. SCHWARTZ: Thank you.

18 BY MR. SCHWARTZ:

19 Q I think I might have asked you this. You said you  
20 didn't hear any voices coming from inside the shed; is that  
21 correct?

22 A I could hear voices, but I didn't make out what was  
23 happening.

24 Q What was being said.

25 A Uh-huh.

1 Q Okay. Could you tell if they were, like, male  
2 voices versus female voices?

3 A Yes.

4 Q Yes to which?

5 A Yes, it was male voices.

6 MR. SCHWARTZ: Your Honor, at this point I would request  
7 to publish State's Exhibit 105.

8 THE COURT: Go ahead.

9 [Counsel confer]

10 [Audio media published for jury]

11 BY MR. SCHWARTZ:

12 Q So Lizbeth, when you're on the phone with 9-1-1,  
13 were you kind of talking to them and to your mom?

14 A Yes.

15 Q You mentioned on the 9-1-1 call that you had looked  
16 out your window. Is that -- do you remember looking out your  
17 window?

18 A I think I was talking about my mom because I don't  
19 remember looking out a window.

20 Q Did your mom look out your window, as well?

21 A Yes.

22 Q And your window would be in the room next to her  
23 room?

24 A Yes.

25 Q And as you were talking to the lady on the 9-1-1

1 call, you said the "police are here now". How did you know  
2 that the police were there?

3 A You could see out through the window of the living  
4 room.

5 Q Did you see their light -- the lights?

6 A Yes.

7 Q Okay. At the time the police were there when you  
8 saw the lights, did the noises in the shed stop?

9 A We were in the living room, so I don't know.

10 Q You couldn't hear anything?

11 A Uh-huh.

12 Q After the police arrived, did you have a chance to  
13 talk with your Uncle Javier?

14 A No. We put him in the ambulance.

15 Q And what did you do after that happened?

16 A I went inside my mom's car, and we went to my  
17 grandma's house.

18 Q And did you later go visit Javier at the hospital  
19 that night?

20 A No. My mom and my grandma did.

21 Q And you stayed at your grandma's house?

22 A Yes.

23 MR. SCHWARTZ: Nothing further at this time, Your Honor.  
24 Thank you.

25 THE COURT: Mr. Gill?

1 MR. GILL: No questions, Your Honor. Thank you.

2 MR. BOLEY: No questions.

3 THE COURT: Anything from the jury? No? Okay.

4 Thank you. You are free to go.

5 THE WITNESS: Thank you.

6 THE COURT: State, please call --

7 MR. SCHWARTZ: Your Honor, I think he is --

8 THE COURT: Oh --

9 MR. SCHWARTZ: -- raising his hand.

10 THE COURT: Oh, gosh. I'm so sorry. I'm sorry. Hang on  
11 a second.

12 MR. SCHWARTZ: If I could approach your clerk, Your  
13 Honor?

14 THE COURT: Uh-huh. Counsel approach, please.

15 [Bench Conference Begins]

16 MR. GILL: This makes me feel we're not doing our jobs  
17 [indiscernible]. As you were on the 9-1-1 call, you mentioned  
18 being scared because of popped tires. Can you elaborate? The  
19 popped tire.

20 MS. HOLTHUS: [Indiscernible].

21 MR. GILL: Okay. [Indiscernible].

22 [Bench Conference Ends]

23 THE COURT: All right. I'm going to ask you to look at  
24 the jurors so they can hear your answer, okay?

25 THE WITNESS: Okay.



1 THE COURT: As you were on the 9-1-1 call, you mentioned  
2 being scared because of popped tires. Can you elaborate?

3 THE WITNESS: The week before we had popped -- we had --  
4 I had woken up to -- my mom was taking me to work -- to  
5 school, sorry. When she was taking me to school, we noticed  
6 that the tires were flat on my mom's car, and she thought it  
7 was just normal for them to be flat, but then we looked around  
8 on the other side of the car, and all four tires were flat,  
9 and then we looked at my mom's van, and all four tires were  
10 flat, too, and I had told her that the -- they looked popped.  
11 And we looked, and there was all eight tires were popped.

12 THE COURT: Mr. Schwartz?

13 MR. SCHWARTZ: Nothing from the State, Your Honor. Thank  
14 you.

15 THE COURT: Mr. Gill?

16 MR. GILL: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. GILL:

19 Q And you don't know who popped the tires on that day,  
20 right?

21 A No.

22 Q And that was a week before?

23 A Yes.

24 Q And you've never seen these gentlemen at the table  
25 here with me before?

1 A Not that I recall.

2 Q So you're not saying you think it was them that  
3 popped the tires. It was just something that came to your  
4 mind.

5 A Yes.

6 MR. GILL: Nothing further, Your Honor.

7 MR. BOLEY: No questions.

8 THE COURT: Anything else? All right. Now you can go.  
9 Thank you.

10 THE WITNESS: Okay. Thank you.

11 THE COURT: State, please call your next witness.

12 MR. SCHWARTZ: Samantha Avina, Your Honor.

13 THE MARSHAL: Remain standing and raise your right hand  
14 and face the clerk. She's going to swear you in. Okay?

15 SAMANTHA AVINA, PLAINTIFF'S WITNESS, SWORN

16 THE COURT: Good afternoon. Go ahead and have a seat.  
17 Would you please state your name and then spell it for the  
18 record?

19 THE WITNESS: Samantha Avina, S-A-M-A-N-T-H-A A-V-I-N-A.

20 THE COURT: Thank you, Ms. Holthus, whenever you're  
21 ready.

22 MS. HOLTHUS: Thank you.

23 DIRECT EXAMINATION

24 BY MS. HOLTHUS:

25 Q Samantha, how old are you?

- 1 A Almost 15.
- 2 Q I'm sorry?
- 3 A Fifteen.
- 4 Q You go to school?
- 5 A Yes.
- 6 Q What school?
- 7 A Spring Valley High School.
- 8 Q What grade are you in?
- 9 A Ninth.
- 10 Q Have you been there all for -- for all of ninth  
11 grade?
- 12 A Yes.
- 13 Q Who do you live with?
- 14 A My mom, my sister, and my brother.
- 15 Q And that was your mom and sister that just left the  
16 courtroom?
- 17 A Yes.
- 18 Q And your brother's out in the hallway yet?
- 19 A Yes.
- 20 Q You kind of know why you're here, right?
- 21 A Yes.
- 22 Q On January 12th of last year, 2016, where were you  
23 living?
- 24 A In Brush Street.
- 25 Q With the same people?

1 A Yes. Including Javier.

2 Q Who's Javier?

3 A My uncle.

4 Q And can you just kind of tell me what was the  
5 sleeping situation in the house?

6 A In one room -- me and my brother were sleeping in  
7 one room, and my mom was sleeping in her room, and my sister  
8 was sleeping in her room.

9 Q And kind of how were they laid out?

10 A Oh. Well, my brother, he went to go sleep with my  
11 mom, and it was a bed -- it was my bed and then my brother's  
12 bed, and then my mom has her own bed, and my sister has her  
13 own bed.

14 Q That was a terrible question because I don't even  
15 know what I was asking.

16 But are they all in a hallway, all three bedrooms?

17 A Yes. One is in the right side, one is in the other  
18 side, and then one is in the middle.

19 Q Who's on the right side?

20 A Me and my brother.

21 Q Who's on the left side?

22 A My sister.

23 Q And in the middle is your mom?

24 A Yes.

25 Q Sometime early that morning, did something happen?

1 A Yes.

2 Q What happened?

3 A Well, I just hear -- I woke up to my mom screaming,  
4 like, to stop, and then I saw that my brother wasn't in his  
5 room, and then I -- I -- I wasn't --

6 Q There's a Kleenex right next to you. You said you  
7 saw your brother wasn't in his room because he was supposed to  
8 be in your room, right?

9 A Yes.

10 Q So you noticed he wasn't in his bed?

11 A And then I went to my mom's room, and she was  
12 yelling at the window, and then I told my sister what was  
13 going on, and she told me to go to our room with my brother,  
14 so then I went, and I saw that -- I heard my mom to -- and  
15 telling them to stop, and then my sister said that they had  
16 guns, and that they were pointing to the window --

17 MR. GILL: Your Honor, objection as to hearsay.

18 MS. HOLTHUS: I believe the circumstances itself justify  
19 excited utterance.

20 THE COURT: Objection's overruled.

21 THE WITNESS: And then I went to the hallway, and then I  
22 saw my mom trying to -- like, telling them to stop, that she  
23 was going to call the police, and they told her that if they  
24 (sic) call the police, they would shoot at us, and they would  
25 shoot at the window, and so my mom didn't want to, and my

1 sister said she had to do something. We were all in the hall  
2 -- we were all in the hallway and -- and then my sister told  
3 my mom that she had to call the police --

4 MR. GILL: Your Honor, can we approach, please?

5 THE COURT: Sure.

6 [Bench Conference Begins]

7 MR. GILL: And I don't know if it was a blanket  
8 overruling, but it's continuous, and it's getting to be multi-  
9 layered where the two of them, the mother and the older  
10 sister, are talking, so same objection as to hearsay.

11 MS. HOLTHUS: They're all woken up in the middle of the  
12 night screaming stop, telling someone to get out of their  
13 house, the guns, [indiscernible] --

14 MR. GILL: But --

15 MS. HOLTHUS: -- it's excited utterance [indiscernible]  
16 impression that it's a combination [indiscernible]. It can't  
17 get any more contemporaneous. It can't get any more excited.  
18 She's --

19 MR. GILL: But --

20 MS. HOLTHUS: -- [indiscernible] and she's excited for  
21 them. Her sister [indiscernible] and her mother was excited  
22 [indiscernible]. Her testimony is corroborated  
23 [indiscernible].

24 MR. GILL: But we've already heard from mom and older  
25 sister, and now we're hearing from another sister who never

1 saw anything, so we're hearing mom's descriptions --

2 MS. HOLTHUS: Mom [indiscernible].

3 MR. GILL: -- through the older sister now to her, and  
4 then -- and so on, but that's the layers I'm talking about.

5 We're getting information from an older sister who  
6 didn't see anything.

7 MR. SCHWARTZ: And I think if each layer is justified by  
8 the exception, which is excited utterance, it's -- it can be --  
9 -- it can come in under that ruling would be my response, but I  
10 understand Mr. Gill's point, but each layer of hearsay is  
11 accepted by the excited utterance.

12 MR. GILL: And present sense --

13 MS. HOLTHUS: Is it just hearsay?

14 MR. GILL: Well, it's not present sense impression  
15 because --

16 MS. HOLTHUS: [Indiscernible] present sense impression  
17 announcing that they've got guns, and she says they've got  
18 guns. That's a present sense impression --

19 MR. GILL: But it's --

20 MS. HOLTHUS: -- with regard to what you're saying at the  
21 time that you're saying it --

22 MR. GILL: But she's not.

23 MS. HOLTHUS: No. But that's how mom's gets the sister  
24 if -- assuming you don't like present -- assuming you don't  
25 like excited utterance, but I think they're all -- I don't

1 know how they can be more excited utterance [indiscernible]  
2 than all being what they're saying and screaming at the time,  
3 but [indiscernible] --

4 MR. BOLEY: [Indiscernible] over and over again  
5 [indiscernible].

6 THE COURT: [Indiscernible].

7 MS. HOLTHUS: [Indiscernible].

8 MR. GILL: In our -- and I'll join, you know, Mr.  
9 Boley's -- I think objection that it is cumulative and that it  
10 is overly prejudicial.

11 MR. BOLEY: [Indiscernible].

12 MS. HOLTHUS: [Indiscernible].

13 THE COURT: [Indiscernible].

14 MR. GILL: That's just the jury with one more witness who  
15 is crying.

16 THE COURT: [Indiscernible].

17 MS. HOLTHUS: It's one more victim that was in the house  
18 [indiscernible].

19 MR. BOLEY: [Indiscernible] what's already been testified  
20 to.

21 MS. HOLTHUS: It is prejudicial. I agree with that.  
22 It's just not unfairly prejudicial. Most -- [indiscernible]  
23 prejudicial, but it --

24 MR. GILL: And we understand that. That's why I said it  
25 was overly prejudicial.



1 THE COURT: Yes. [Indiscernible].

2 MR. GILL: And then as to the next -- her testimony and  
3 the next witness, you're going to make a ruling at this time?

4 THE COURT: [Indiscernible].

5 MR. GILL: Okay. Thank you, Your Honor.

6 [Bench Conference Ends]

7 MS. HOLTHUS: Ms. Holthus, whenever you're ready.

8 MS. HOLTHUS: Okay.

9 BY MS. HOLTHUS:

10 Q And you were kind of explaining what was going on.

11 So mom is -- mom doesn't want to call the police  
12 because she's saying they're going to kill -- shoot us.

13 A Yeah.

14 Q Lizbeth is saying we need to call the police. And  
15 you said somebody said they have guns. Who said that?

16 A My sister.

17 Q Lizbeth?

18 A Yes.

19 Q What happened then?

20 A And then we had went to the room, and we didn't know  
21 what to do. Then my sister --

22 Q Which room did you go to?

23 A To our room. To my -- my only sister -- mine and my  
24 brother's room.

25 Q So that's the room on the --

1           A     On the right side.

2           Q     On the right side. Is there a window into the shed  
3 or the garage from there into Javier's room?

4           A     Yes. There's two. One from my sister's room and  
5 one from my mom's room.

6           Q     Okay. Not from your room, though?

7           A     No.

8           Q     So you guys went to the -- to your room without  
9 windows?

10          A     Yes.

11          Q     Okay.

12          A     And then my sister had called the police, and then I  
13 just kept hearing the guys, like, yelling, cussing to my uncle  
14 telling him -- like, just kind of like bad words, some of them  
15 were in Spanish. Most of them was English, and --

16          Q     You understand Spanish?

17          A     Yes.

18          Q     Can you tell us exactly what you remember them  
19 saying? And then so even if they're bad words?

20          A     Well, it was -- I'm not sure what, like, Spanish  
21 word because I don't know how to say it, but they kept calling  
22 him that word, and --

23          Q     They kept calling him what word?

24          A     With the P.

25          Q     Is it an English word or a --

1 A It's a Spanish word.

2 Q Spanish word. And you don't know what the word is?

3 A No. I don't know how to say them. And --

4 Q But you know it to be a bad word?

5 A Oh, yes.

6 Q Do you know what it means?

7 A No. I don't know what it is in English.

8 Q Okay. But you know it's a bad word in Spanish?

9 A Yes. And then --

10 Q Do you know anything else specifically that they  
11 called you?

12 A No.

13 Q Can you say the word in Spanish?

14 A It's the -- I'm not sure.

15 Q Can you spell the word in Spanish?

16 A P-U-T-O.

17 Q Was there anything else specifically that they said  
18 that you heard?

19 A No.

20 Q Did you hear -- the voices that you heard saying the  
21 bad words in English and Spanish, were they voices that you  
22 recognized?

23 A No.

24 Q Did you hear your uncle, Uncle Javier, saying  
25 anything?

1           A     No. Not really. I just heard him, like, in the  
2 beginning to, like, stop, to, like, do this. Like -- well,  
3 they were, like, telling him to go outside, but he didn't want  
4 to.

5           Q     So you heard that yourself?

6           A     Yes.

7           Q     And then you said you heard him saying stop?

8           A     Yes.

9           Q     Did you hear any noises other than voices from the  
10 garage -- or is it a garage, a shed? What do you call it?

11          A     A shed pretty much.

12          Q     Did you hear any noises from the shed?

13          A     No. Just the gun -- just the guy voices.

14          Q     Okay. Did you, at one point, say that you heard  
15 punching the wall?

16          A     Yes. When the -- I'm not sure who it was, but I  
17 just heard, like, the wall. Like, someone, like, punching it.

18          Q     Banging on the wall?

19          A     Yes.

20          Q     But you didn't see what exactly was going on?

21          A     No. Because it was dark.

22          Q     So then what happened?

23          A     And then we had went to the living room, all four of  
24 us, and my sister was calling the -- the police, and -- and  
25 then, like, once they heard the sirens, I'm guessing that they

1 left.

2 Q And why do you think that?

3 A To, like, not get caught.

4 Q Okay. But that -- what I'm saying is did the -- you  
5 say you think that they heard the sirens, and then they left.  
6 Did the noise in the garage -- the shed stop --

7 A Yeah.

8 Q -- as soon as you heard the sirens? Is that yes?

9 A Yes.

10 Q But it didn't stop until till then?

11 A No.

12 Q Did you actually look out and see them at all?

13 A I only saw one of their faces when they were getting  
14 put in the police car.

15 Q Okay. So before that you didn't see anything?

16 A No.

17 Q Did you see any of the guns?

18 A Yes. The -- when the police had them.

19 Q Okay. But not before that. Had you seen the  
20 individual that you saw once the police came, had you seen him  
21 before?

22 A Because my -- like, before we -- me and my brother  
23 lived -- I mean slept in the other room, and we slept in the  
24 room that my mom was at, and we would hear, like, different  
25 types of voices. And then one time we looked, like, from the

1 window, and I recognized his face.

2 Q And so you think you saw one of the people before?

3 A Yeah.

4 MS. HOLTHUS: Nothing else. Thank you. Pass the  
5 witness.

6 MR. GILL: Nothing, Your Honor. Thank you.

7 MR. BOLEY: No questions.

8 THE COURT: All right. Thank you. From the jury?

9 [Bench Conference Begins]

10 MR. SCHWARTZ: Does the situation still effect you in  
11 your everyday life since this accident?

12 Adam was shaking before he even read the question.  
13 (Indiscernible).

14 MR. SCHWARTZ: [Indiscernible].

15 MR. GILL: I would object, Your Honor.

16 MS. HOLTHUS: [Indiscernible].

17 THE COURT: [Indiscernible].

18 MR. BOLEY: [Indiscernible].

19 THE COURT: Okay.

20 MR. GILL: And then, Judge, just so we don't have to come  
21 back up, just I know the Court note my objection that --  
22 regarding Cesar's testimony.

23 THE COURT: [Indiscernible].

24 MR. GILL: I know we haven't heard it, but if Your Honor  
25 would at least allow me to make a standing objection as to his

1 testimony for cumulative purposes or do you want me to  
2 approach when --

3 THE COURT: Well, no [indiscernible] that you think is  
4 objectionable.

5 MR. SCHWARTZ: I think he's objecting to the whole --

6 THE COURT: [Indiscernible].

7 MR. SCHWARTZ: Yeah.

8 MR. GILL: Okay. Then I will.

9 THE COURT: [Indiscernible].

10 MR. GILL: Yes.

11 THE COURT: [Indiscernible] you think is cumulative or  
12 objectionable, then just --

13 MR. GILL: Thank you.

14 THE COURT: [Indiscernible].

15 MR. GILL: Thanks.

16 THE COURT: All right.

17 [Bench Conference Ends]

18 THE COURT: Okay, ma'am. You are free to go. Thank you.

19 State, please call your next witness.

20 MR. SCHWARTZ: State's going to call Cesar Avina.

21 [Pause]

22 THE MARSHAL: You're going to stand up there. Raise your  
23 right hand, face her right there. She's going to swear you  
24 in. Stand up.

25 CESAR AVINA, PLAINTIFF'S WITNESS, SWORN

1 THE COURT: Just do me a favor and have -- go ahead and  
2 have a seat.

3 Good afternoon. Can you scootch on up there so  
4 you're close to the table? And then say your name.

5 THE WITNESS: My name is Cesar.

6 THE COURT: And can you say your last name?

7 THE WITNESS: My last name is Avina Colon.

8 THE COURT: And can you spell all of that for me?

9 THE WITNESS: C-E-S-A-R A-V-I-N-A.

10 THE COURT: Great.

11 DIRECT EXAMINATION

12 BY MS. HOLTHUS:

13 Q All right. I just want -- let me just double check.  
14 So the Avina is A, B as in boy?

15 A No. V.

16 Q V.

17 A Yes.

18 Q Okay. As in Victor?

19 A Yes.

20 Q And then it's I --

21 A Yes.

22 Q -- N --

23 A Yes.

24 Q -- A? Okay. Cesar, how old are you?

25 A Eleven.



1 Q What grade are you in?

2 A [No verbal response].

3 Q What grade are you --

4 A Fifth grade.

5 Q What school do you go to?

6 A Dondero Elementary.

7 Q Did you have to skip school to come to court today?

8 A Yes.

9 Q And you know kind of why you're here, right?

10 A Yes.

11 Q Did -- was there a time you used to live over on  
12 Brush Street?

13 A Yes.

14 Q Would that have been back in January of 2016?

15 A Yes.

16 Q And you kind of know why you're here.

17 A Uh-huh.

18 Q Tell us the first thing you remember about what  
19 happened that brings you here to court today.

20 A When I was -- when I -- the first thing that I  
21 remember is my uncle knocking on the window and yelling my  
22 mother's name, and --

23 Q Do you know where that happened?

24 A In my mother's room.

25 Q Had you kind of gone in there to sleep with her?

1 A Yes.

2 Q Were you asleep when you first heard it? Did it  
3 wake you up?

4 A A little.

5 Q So was it a soft knocking or a loud knocking?

6 A It was sort of loud.

7 Q And what was he saying?

8 A He was saying this in Spanish. He was yelling my  
9 mother's name and he was saying help, help.

10 Q And what happened then?

11 A Like, my -- I woke -- my mom told me to go in my  
12 sister's and our living room, and we were just staying there,  
13 and my mom said that the -- the two men were pointing the guns  
14 at my uncle and my mother.

15 MR. GILL: And, Your Honor, just for the record, I want  
16 to launch the same objection. I know you've ruled on it  
17 previously.

18 THE COURT: All right.

19 BY MS. HOLTHUS:

20 Q Okay. And that was what mom said, correct?

21 A Yes.

22 Q Was she upset when she was saying -- was she scared?

23 A Yes.

24 Q Did you ever look out and see any of that?

25 A No. My mom told me not to look through the window.

1 Q So you went -- did you stay there with mom?

2 A She told me to stay with my sisters.

3 Q So you left that room then?

4 A Yes.

5 Q Did mom stay there?

6 A Not very long.

7 Q Then what happened?

8 A Then we went, and we were all together in the living  
9 room until the police came.

10 Q Did you hear anything else coming from out in your  
11 uncle's room?

12 A He was yelling, and they were -- the two men were  
13 just yelling at my uncle and telling him to be quiet.

14 Q And what was your uncle yelling?

15 A He was -- he -- I didn't hear him yell much, but all  
16 I heard is -- was him yelling my mom's name and saying help.

17 Q So he was saying help and that's when they were  
18 telling him to be quiet?

19 A Yes.

20 Q And then eventually the police came?

21 A Yes.

22 Q Thank you, Cesar.

23 A Okay.

24 THE COURT: Mr. Gill?

25 MR. GILL: No, Your Honor.

1 MR. BOLEY: No questions.

2 THE COURT: All right. Any questions from the jury? No?

3 All right. Thank you, Cesar. You can go.

4 THE WITNESS: Okay.

5 THE MARSHAL: Right this way.

6 THE COURT: State, please call your next witness.

7 MS. HOLTHUS: Thank you.

8 MR. SCHWARTZ: State's going to call Officer Duron.

9 THE MARSHAL: Duron?

10 MR. SCHWARTZ: Yes.

11 [Pause]

12 THE MARSHAL: Raise your right hand and face the clerk to  
13 be sworn in, please.

14 IVAN DURON, PLAINTIFF'S WITNESS, SWORN

15 THE COURT: Good afternoon, sir. Go ahead and have a  
16 seat.

17 THE WITNESS: Thank you.

18 THE COURT: If you could please state your name and then  
19 spell it for the record?

20 THE WITNESS: First name Ivan, I-V-A-N, last name Duron,  
21 D-U-R-O-N.

22 MR. BOLEY: Your Honor, can we approach, please?

23 THE COURT: Sure.

24 [Bench Conference Begins]

25 MR. SCHWARTZ: I'm not sure if we needed to approach for

1 this, but we're going to call our other officer first in the  
2 event that we run out of time because he, outside, is not  
3 available tomorrow.

4 MS. HOLTHUS: [Indiscernible].

5 MR. SCHWARTZ: We were --

6 MS. HOLTHUS: -- [indiscernible].

7 THE COURT: [Indiscernible].

8 MR. SCHWARTZ: Can we please call him first? Yeah.

9 MS. HOLTHUS: That's fine.

10 THE COURT: All right.

11 MR. SCHWARTZ: Thank you.

12 THE COURT: So a false start?

13 MS. HOLTHUS: False alarm.

14 MR. SCHWARTZ: Thanks.

15 [Bench Conference Ends]

16 MR. SCHWARTZ: Sorry, Officer Duron.

17 THE WITNESS: Hi.

18 MR. SCHWARTZ: We're going to call Officer Spurling to  
19 the stand.

20 THE WITNESS: All right.

21 MR. SCHWARTZ: At least he spells your name right.

22 [Pause]

23 THE MARSHAL: Raise your right hand. Face the clerk to  
24 be sworn in, please.

25 JUSTIN SPURLING, PLAINTIFF'S WITNESS, SWORN

1 THE COURT: Good afternoon, sir. Go ahead and have a  
2 seat.

3 Could you please state your name and spell it for  
4 the record?

5 THE WITNESS: Sure. It's Justin Spurling, J-U-S-T-I-N.  
6 Spurling is S-P-U-R-L-I-N-G.

7 MR. SCHWARTZ: Court's brief indulgence while I organize  
8 some stuff here.

9 [Pause]

10 DIRECT EXAMINATION

11 BY MR. SCHWARTZ:

12 Q Officer Spurling, how are you employed?

13 A I work for the Las Vegas Metropolitan Police  
14 Department.

15 Q And how long have you been with Metro?

16 A Approximately eight and a half years.

17 Q And in the eight and a half years, has it been all  
18 with patrol?

19 A No.

20 Q Okay. What were the different assignments?

21 A I've been assigned to the neighborhood engagement  
22 team, and then I'm currently back on patrol now as a field  
23 training officer.

24 Q And directing your attention to January 12th, 2016,  
25 were you operating as patrol that day?

1           A     Yes, sir.

2           Q     And were you a field training officer at that time,  
3 as well?

4           A     No, sir.

5           Q     Did you have occasion to respond to a 504 Brush  
6 Street address?

7           A     Yes, sir. I did.

8           Q     And what was the nature of that call?

9           A     We received details that somebody was being beaten  
10 by two men with handguns.

11          Q     Were you the first to arrive at that 504 Brush  
12 Street address?

13          A     Yes, sir. My partner and I.

14          Q     Who's your partner?

15          A     Officer Ivan Duron.

16          Q     The gentleman that just walked back out?

17          A     Yes, sir.

18          Q     As you arrived at that address, what's the first  
19 thing that happened?

20          A     I exited my patrol car, turned down my radio, and I  
21 told my partner I heard screaming coming from the side of the  
22 house.

23          Q     And if I'm showing you State's Exhibit 9 --

24          MR. SCHWARTZ: If we could switch over, please, to the  
25 over?

1 BY MR. SCHWARTZ:

2 Q Is that 504 Brush Street right there?

3 A Yes, sir.

4 Q And when you arrived to this address, you mentioned  
5 that you had heard screaming?

6 A Yes, sir.

7 Q So did you follow the screams?

8 A Yes.

9 Q Okay. Where'd you go?

10 A It's hard to see, but if I could point out?

11 Q Okay. Yeah. Put -- you can draw on the screen.

12 A We -- there's a dark shadow right here. Wow.  
13 That's way off.

14 Right next to the garage port, there's an -- a  
15 doorway that leads around to the north side of this house, and  
16 along the outside of this carport, there's, like, a little  
17 attachment to this house. We walked over there, and we saw an  
18 open door. We entered that --

19 Q And let me stop you right there. So if I'm showing  
20 you this State's Exhibit 11, does that kind of clear up a  
21 little bit what we're talking about?

22 A Yes. That's the carport, and that dark shadow to my  
23 left of that green line is the doorway. Sorry.

24 Q Okay. And when you go through that doorway, what  
25 are you going to see once you go through there?



1           A     You're going to immediately see a fence in front of  
2 you, and to your right is going to be that door I was talking  
3 about.

4           Q     And then going through that door -- you go through  
5 this doorway, you see a doorway on your right. That's where  
6 you ended up going?

7           A     Yes, sir.

8           Q     Okay. And what was in that room?

9           A     There was a bed, a bunch of other items stacked  
10 along the wall. I noticed a gentleman on the bed bleeding  
11 pretty badly from his face, as well as blood spatter on the  
12 wall behind there.

13          Q     Did you have any kind of -- and just so we're not  
14 talking just in words. Page -- State's Exhibit 20, that's the  
15 doorway you were talking about, right?

16          A     Yes, sir.

17          Q     Okay. So did you have any contact with the  
18 gentleman that was on the bed?

19          A     Very briefly.

20          Q     What was his demeanor like?

21          A     Definitely in pain, screaming.

22          Q     Did he say anything to you at that point?

23          A     Naw. He was mostly crying.

24          Q     Okay. What, if anything, did you do next?

25          A     Well, I had heard screaming, like I said. It

1 sounded like more than one person, so there's a -- a block  
2 wall that runs just north of this house that leads to  
3 buildings. I ended up jumping that wall, which is out onto  
4 Alta in back of those businesses.

5 Q So at this point, Officer, is it fair to say you're  
6 trying to locate anyone else who might be involved?

7 A Yes, sir.

8 Q Okay. I'm showing you State's Exhibit 92. Does  
9 that help sort of orient what you were just talking about --

10 A Yes, sir.

11 Q -- about Alta Avenue or Alta Drive? So if you could  
12 draw on the screen? Put an X kind of -- or could draw a  
13 little line as to the direction you went from that room?

14 A Sure. I'll -- I'll try my best.

15 Q Try to do it.

16 A Yeah. The block wall I'm talking about is right  
17 here. Wow.

18 Q And I can reset it for you and give you another  
19 shot.

20 A All right. I'm really terrible at this, apparently.  
21 I'll try this. Okay. It's -- it's that same wall. It's just  
22 further up.

23 Q So this wall that we're talking about right here is  
24 the block --

25 A Right.

1 Q -- wall you're indicating?

2 A Yes, sir.

3 Q Right behind the Brush Street --

4 A Yes.

5 Q -- address?

6 A Yes, sir.

7 Q And that's the wall you went over?

8 A Yes, sir.

9 Q Okay. What'd you do once you went over that wall?

10 A I just kind of looked around, scanned the area to  
11 which I started looking to the south. As soon as I did that,  
12 2 yards to the south, which is correct --

13 Q Two houses down?

14 A Yes, sir. I saw an individual standing in the  
15 middle of that back yard.

16 Q Okay. So if we're looking two houses down from  
17 Brush Street, the center of that back yard?

18 A Yes, sir.

19 Q Okay. What did you see?

20 A I saw an individual with a black stocking cap. We  
21 made eye contact, and as soon as he saw me and I saw him, he  
22 immediately ducked down, which is not a normal thing.

23 Q Did he have the stocking cap covering his whole  
24 head?

25 A No, no. Just the top.

1 Q Okay.

2 A It was kind of pulled up.

3 Q And once he ducked down, what did you do next?

4 A I immediately got on the radio and notified my  
5 resources coming to me that I potentially located suspects in  
6 the back yard.

7 Q And at that point had you only seen one of the  
8 potential suspects?

9 A Yes, sir.

10 Q Okay. After you notified on your radio, did you  
11 proceed into that back yard?

12 A Not immediately into the back yard where the suspect  
13 was. I walked down the wall and jumped into the one that is  
14 just south of the victims and just north of the potential  
15 suspects.

16 Q So if we're at the wall from 504 Brush Street, you  
17 went -- you were over that wall, and you --

18 A Correct.

19 Q -- went south kind of towards this big parking lot,  
20 and you went into the house just -- the back yard just south  
21 of 504 Brush?

22 A Yes, sir.

23 Q Okay. What did you do once you were in that back  
24 yard?

25 A Well, I jumped that back yard. I un-holstered my

1 firearm, and I began giving verbal commands to the gentleman  
2 in the back yard of the -- back yard to my south.

3 Q Okay. And did it appear to you that he was  
4 complying with those verbal commands?

5 A No.

6 Q Could you see him?

7 A Yes.

8 Q Okay. And so what did you do as he did not comply  
9 with your commands?

10 A I got back on the radio and let them know which yard  
11 I was talking about and set up a perimeter so that these  
12 gentlemen wouldn't escape or this gentleman wouldn't escape if  
13 he bolted over this wall.

14 Q Okay.

15 A After doing that, I continued to give verbal  
16 commands to that same subject. This time as I did, instead of  
17 staying in the front yard -- or I'm sorry, in the back yard  
18 toward the center, he came back. It's -- it's hard to see.  
19 If you could zoom in?

20 Q Sure.

21 A And then just a little bit lower. There we go.

22 There's some bushes along this wall that runs into  
23 the -- for a lack of a better business name, the Arizona  
24 Charlie's parking lot where some of the employees park.

25 Q Okay. So we're talking about the back wall of the

1 back yard at this house over the wall?

2 A Yes, sir. Almost right where your pen is pointing.  
3 To the north where you see those green shadows is some trees  
4 and sticks and bushes, things like that. The gentleman ran  
5 and tried to hide behind what I'd describe as a Charlie Brown  
6 Christmas tree.

7 Q Okay. So probably not the best hiding place?

8 A Terrible.

9 MR. GILL: Your Honor, objection as to relevance.

10 THE COURT: Sustained.

11 BY MR. SCHWARTZ:

12 Q And as you observed him hiding in those bushes area,  
13 what was it that you were doing?

14 A I had moved closer and was using the wall to the  
15 north as cover.

16 Q So you're still in the house that's just south -- if  
17 I back up a little -- just south of the 504 address?

18 A Yes, sir.

19 Q And so you're along the wall that's dividing that  
20 house from the house where you observed the suspect?

21 A Yes, sir.

22 Q Okay. And as you're proceeding to that wall, what  
23 is it that you -- are you still issuing commands?

24 A I am. I'm issuing commands at him and scanning for  
25 the potential second suspect, who I have no located yet.

1 Q Did he -- after you were scanning for the other  
2 suspect, did you ultimately make your way into that back yard?

3 A Yes, sir, I did.

4 Q Okay. And how did you get into the back yard?

5 A I jumped that wall almost right in the middle. It  
6 was just to the west of this giant shed in the back yard where  
7 the suspect was.

8 Q And correct me if I'm wrong, but you're saying "just  
9 to the west" as in this way? This --

10 A Yes, sir.

11 Q -- kind of area?

12 A Yes, sir.

13 Q That's where you cleared the wall?

14 A Yes, sir.

15 Q What happened when you were in that back yard?

16 A I was still alone in the back yard with this  
17 subject, who's not listening to me, so I kind of crept along  
18 the back of this house using that as my back -- backdrop so  
19 nobody could sneak up on me. As I began to close in on the  
20 suspect, that's when he finally started listening to my  
21 commands, went down on his stomach.

22 Q And is that what you'd been asking him to do? What  
23 were the commands you were issuing?

24 A Get down on the ground, that kind of thing.

25 Q And as you -- you testified that as you're kind of

1 approaching this back of this house, he eventually gets down  
2 on the ground.

3 A Yes, sir.

4 Q And what is it that you do at that point?

5 A I sweep back around because he's now -- his head is  
6 facing to the north, and his feet are to the south, so I  
7 continue to sweep around as I search the rest of this back  
8 yard. As I clear the rest of the back yard to make sure  
9 nobody's going to sneak up on me as I take him into custody, I  
10 end up putting one of my knees across his back, and then I  
11 look to the north, and I spot a second subject lying  
12 underneath the shed.

13 Q Okay. So -- and to orient myself, I guess, north --  
14 you're saying you're looking back towards the shed?

15 A Yes, sir.

16 Q Okay. So let me show you a couple other pictures to  
17 make sure we're on the same page.

18 What you were describing as the Charlie Brown  
19 Christmas tree in State's Exhibit 34, is that what we're  
20 looking at here?

21 A Yes, sir.

22 Q So can you try to circle as best you can sort of the  
23 area where he was hiding and got down on the ground?

24 A Yeah. I want to say it was somewhere right in here.

25 Q And you said that as he on the ground, you were able



1 to eventually approach him, and you said you placed your knee  
2 on his back?

3 A Yes, sir.

4 Q And then you were scanning the rest of the yard --

5 A Yes, sir.

6 Q -- for what had happened? And where was it that you  
7 looked to see someone else?

8 A Directly to the north.

9 Q And that was in the vicinity of a shed you  
10 mentioned?

11 A Yes, sir. It was --

12 Q State's Exhibit 61, is that what we're looking at  
13 here?

14 A Yes, sir.

15 Q Where about in this picture did you observe someone?

16 A I'll try and circle it. It's -- oh, geez. Right  
17 under there, tucked down. Actually underneath the structure  
18 itself.

19 Q So I don't -- tell me kind of when to stop the  
20 picture.

21 A Right in there.

22 Q Okay. So it's about center of the shed underneath  
23 it?

24 A Yes, sir.

25 Q And what do you start doing once you see that person

1 there?

2 A I start issuing him verbal commands, as well,  
3 because at this point I can't see his hands.

4 Q Does it appear to you that he's complying with the  
5 commands?

6 A No.

7 Q So what are you doing at that point?

8 A I'm now pointing my firearm at him while shining a  
9 flashlight that's attached to my handheld -- handgun and  
10 getting on the radio allowing my other resources to know that  
11 I found both subjects in this back yard and that I'm going to  
12 need some more resources in the back yard with me.

13 Q The suspect that is under your knee, does he appear  
14 to be complying with you at this point?

15 A Yes, sir.

16 Q Do you do anything else with regards to him while  
17 you're also watching this other person or is he just kind of  
18 staying put?

19 A He's just kind of staying put with his arms  
20 stretched out in front so I could keep track of him.

21 Q So with regards to the suspect that was at the shed,  
22 what happened next?

23 A That's when I'm joined up in the back yard with  
24 Sergeant O'Greary (phonetic) and Officer Matt Carter. I let  
25 them know that I am on top of one suspect and the other

1 suspect is underneath the shed not complying with our  
2 commands.

3 Q At this point are you still maintaining, I guess, a  
4 light or a visual on the suspect under the shed?

5 A Yes, sir. We all were.

6 Q So what happens at that point?

7 A We start issuing him verbal commands to put his  
8 hands out in front of him, kind of Army crawl his way out.

9 Q Does he comply?

10 A No. He hesitates. And at one point, he reaches his  
11 hands down to his waist, and I remember being very close to  
12 pulling my trigger. Kind of made me nervous.

13 Q And what was -- what made you nervous about that?

14 A In my experience, in the eight and a half years I've  
15 been on, when people have firearms, they keep them in their  
16 waistline or in their jacket pockets.

17 Q To be clear, you didn't up discharging your firearm.

18 A No, sir.

19 Q So what -- did he eventually end up complying with  
20 your guys' commands?

21 A Yes.

22 Q And is it at that point that Sergeant O'Greary and  
23 Officer Carter were able to apprehend him?

24 A Yes, sir.

25 Q So at that point, is it fair to say that you are

1 focusing then on the person that's below your leg?

2 A Yes, sir.

3 Q So what happens with that?

4 A I put my hand -- my handgun away, and I'm now  
5 telling him to put his hands behind his back. As -- as I do  
6 that, and I'm placing handcuffs on him, he goes -- he makes a  
7 statement to me saying that you don't understand. We were a  
8 victim, I believe, tire slashing, and we made a report, but  
9 you guys didn't listen. At that point, I placed handcuffs on  
10 him.

11 Q Once you placed handcuffs on him, did you do any  
12 type of pat-down or anything of that nature with regard to  
13 that suspect?

14 A Yes. I checked his immediate area of access, which  
15 would be the waistline area and pulled out big, bulky items  
16 from his pocket to make sure they weren't weapons.

17 Q And where were those items discarded at that point?

18 A On the ground next to him.

19 Q So if I'm showing you State's Exhibit 35, is that  
20 consistent with what you recall sort of discarding from his  
21 person?

22 A Yes, sir.

23 Q And what items were those; if you recall?

24 A These items here.

25 Q Okay.

1           A     It's really --

2           Q     Is it also including some of these items off to the  
3 side? Is everything in this picture what was taken off his  
4 person?

5           A     No. Just these items that are circled here. Those  
6 items in the bushes here were -- were already there, and that  
7 was the bush that he was hiding behind.

8           Q     And was this article, this dark cloth material, was  
9 that something that was on the suspect when you first  
10 approached him?

11          A     Yes, sir.

12          Q     Okay. Where was it?

13          A     That was the beanie on top of his head.

14          Q     Once you were able to place handcuffs on that  
15 individual and pat him down for any other weapons, what did  
16 you do next?

17          A     I stood my suspect up, and I brought him to the  
18 front yard so we could try and identify him.

19          Q     And were you able to eventually able to identify  
20 that individual?

21          A     Yes, sir.

22          Q     And do you see him in the courtroom today?

23          A     Yes, sir.

24          Q     Could you please point to him and describe an  
25 article of clothing he's wearing?

1           A     Yes, sir. That's going to be this gentleman here  
2 with the white shirt and black slacks.

3           Q     And what side of the table is he sitting on?

4           A     He's going to be on my left --

5           Q     Okay.

6           MR. SCHWARTZ: Your Honor, could the --

7           THE WITNESS: Their right.

8           MR. SCHWARTZ: -- record please reflect that the witness  
9 has identified the Defendant, Mr. Jose Monay-Pina?

10          THE COURT: The record will so reflect.

11 BY MR. SCHWARTZ:

12          Q     Showing State's Exhibit 77. Is this consistent with  
13 what you recall Defendant looking like that day?

14          A     Yes, sir.

15          Q     And, again, that's the Defendant Monay-Pina?

16          A     Yes, sir.

17          Q     At that point, what did you do after you had taken  
18 him out to the vehicle?

19          A     I handed him off to another officer.

20          Q     What was the rest of your responsibilities at the  
21 scene at that time?

22          A     Well, I went back and looked at the items that were  
23 back there that I had taken out of his pocket.

24          Q     Okay. So you went back to the back yard and scanned  
25 the area that items had been placed on the ground?

1 A Yes, sir.

2 Q Okay. Did you pick those items up at all?

3 A No, sir.

4 Q And, again, we're showing State's Exhibit 35. Okay.  
5 So you didn't touch or move these items?

6 A No, sir.

7 Q You mentioned that there were items in the bushes  
8 that you did not take off him.

9 A Yes, sir.

10 Q Did you get a closer look at those?

11 A Yes, sir.

12 Q Showing you State's Exhibit 43. Do you recall what  
13 those were?

14 A Yes. It was a wad of cash and what appeared to be  
15 the victim's wallet from the beating that I had seen in the  
16 bedroom when I first responded.

17 Q Did you pick up either of those items?

18 A No, sir. I did not.

19 Q Okay. Did you also go look at the area where the  
20 other suspect had been apprehended?

21 A Yes, sir.

22 Q And do you recall what you saw over there?

23 A Yes, sir. I remember --

24 Q I'm sorry. Let me back-track you for one second.  
25 Do you recall seeing in that back yard sort of a

1 circle, like, planter?

2 A Yes. There were several of them in that back yard.

3 Q Okay. Do you recall seeing anything when you were  
4 back there looking at these different items anything of note  
5 in the circle planter?

6 A Yes. There was a circle planter, I believe, to the  
7 south of the suspect I placed my knee on. In that planter, if  
8 I recall correctly, I remember seeing a replica firearm, as  
9 well as a knife and a sheath.

10 Q Showing you State's Exhibit 56. Is that what we're  
11 looking at here?

12 A Yes, sir.

13 Q If I show you a close-up of that, State's 57?

14 A Yes, sir.

15 Q And, again, you just looked at these items. You  
16 didn't pick up or move these in any way?

17 A Correct.

18 Q Okay. So now in reference -- and you -- I  
19 apologize. You said this was near where Mr. Monay-Pina was  
20 apprehended by yourself?

21 A yes, sir.

22 Q Just south, meaning just a little bit closer to the  
23 house than where you guys were?

24 A No. In a direction away from the second suspect.

25 Q Okay.



1 A If that makes sense.

2 Q Let me give you a different picture to look at --

3 A Sure.

4 Q -- just so I understand that. So if we're looking  
5 at State's 50 -- 34, which direction from there?

6 A I took him into custody somewhere in this area here,  
7 and I believe the planter is somewhere right around here.

8 Q Okay. Thank you.

9 A Yes, sir.

10 Q In reference to the other suspect who was  
11 apprehended under the shed, do you recall observing items of  
12 interest to you over there?

13 A Yes, sir.

14 Q What items were those?

15 A I believe we found another replica firearm, as well  
16 as another sheath with a knife.

17 Q And if I'm showing you State's Exhibit 67?

18 A Yes, sir.

19 Q Those items were what you observed when you went  
20 over in this corner area, which is -- where is this in  
21 location to the shed?

22 A That's just north of and just a little bit to the  
23 east of.

24 Q So is this the corner of the back yard?

25 A Yes, sir.

1 Q Okay. And the shed would be almost as if I was  
2 standing at the shed taking a picture of this?

3 A Yes, sir.

4 Q Okay. Did you notice anything of interest under the  
5 shed?

6 A Yes. I believe there were some gloves underneath  
7 the shed.

8 Q Showing you State's Exhibit 62.

9 A Yes, sir.

10 Q Consistent with your recollection of what you  
11 observed?

12 A Yes, sir.

13 Q This is a close-up of 63. And so if we're looking  
14 at 62, the Defendant was underneath the shed at this point --

15 A Yes.

16 Q -- crawling out the other end?

17 A Yes. No. Crawling out towards, I believe. Wait.  
18 Hold on.

19 Q And I can show you the shed again if that helps.

20 A Yeah. If you could show me that, the zoomed out  
21 version? I believe that was to the side of the shed.

22 Q Okay. So if we see the red sort of step here -- I'm  
23 showing you State's Exhibit 61 if that helps orient you.

24 A Yeah. So if I remember correctly, I remember seeing  
25 those gloves and that hat on the side that's closest to that

1 block wall.

2 Q Okay. And that suspect that we've been talking  
3 about that was apprehended under the shed, do you see him in  
4 the courtroom today?

5 A Yes, sir.

6 Q Could you please point to him and describe an  
7 article of clothing he's wearing?

8 A Yes, sir. He's sitting in the center of the table  
9 with a white shirt on.

10 MR. SCHWARTZ: Your Honor, would the record please  
11 reflect identification of Defendant Casimiro Venegas?

12 THE COURT: Which person with the white shirt, sir?

13 THE WITNESS: I don't want to be rude. The gentleman  
14 with no hair.

15 THE COURT: All right. Got it. Thank you.

16 The record will so reflect.

17 MR. SCHWARTZ: Thanks, Your Honor.

18 BY MR. SCHWARTZ:

19 Q And showing you State's 75. Is that what you recall  
20 the Defendant, Mr. Venegas, looking like on that day?

21 A Yes, sir.

22 Q Did you have any other interactions with the two of  
23 them after this point?

24 A I remember standing next to him for the show-up, but  
25 I don't remember speaking to either one of them after that.

1 Q So another officer had brought someone to do a show-  
2 up with these gentlemen?

3 A Yes, sir.

4 Q Okay.

5 MR. SCHWARTZ: Court's indulgence?

6 BY MR. SCHWARTZ:

7 Q A couple more questions, Officer.

8 A Sure.

9 Q Would you describe all three of the firearms you  
10 observed as replica guns?

11 A Yes, sir.

12 Q And correct me if I'm wrong. I'm not sure exactly  
13 what is a replica gun.

14 A Replica firearm is a firearm that uses gas to expel  
15 a bullet, sort of like a BB, but it's not an actual --

16 Q Okay. So it would be --

17 A Yeah.

18 Q Is it fair to say then -- correct me if I'm wrong,  
19 please -- the way the replica gun works, the mechanics of it,  
20 is consistent with how, like, a BB gun would work in the way  
21 that it expels a bullet using gas or other air pressure?

22 A Yes, sir.

23 Q Okay. Is that something you can tell by looking at  
24 a gun if you're experienced with guns?

25 A You have to get pretty close to --

1 Q Okay.

2 A -- determine.

3 Q But you were able to look at these and determine  
4 that they were replica guns?

5 A Yes, sir.

6 MR. SCHWARTZ: Court's indulgence.

7 BY MR. SCHWARTZ:

8 Q And as far as these guns, let me just show you just  
9 so we're talking about the same ones. 57 and 68. Sorry.  
10 It's kind of a weird angle there, but BB gun, replica gun, is  
11 that also consistent with what's referred to as a pneumatic  
12 gun?

13 A Yes, sir.

14 Q Just to clarify, as well. I'm sorry. The -- there  
15 was a -- like a red digital camera and a phone that was kind  
16 of in the area --

17 MR. GILL: Your Honor, objection. It misstates his  
18 testimony. I don't think he testified as to a camera or  
19 any --

20 MR. SCHWARTZ: I'd be happy to rephrase it, Your Honor.

21 THE COURT: All right.

22 BY MR. SCHWARTZ:

23 Q State's 35 --

24 MR. GILL: And, Your Honor, this is now leading.

25 MR. SCHWARTZ: Well, I'll withdraw any other -- any

1 question that I just said and ask --

2 THE COURT: I don't know that there was -- all right. Go  
3 ahead, Mr. Schwartz. Ask a question.

4 BY MR. SCHWARTZ:

5 Q I just want to know which items were not removed  
6 from Defendant Monay-Pina's person, other than the ones you  
7 mentioned already in the bushes.

8 [Counsel confer]

9 MR. SCHWARTZ: Court's indulgence. Could I --

10 MS. HOLTHUS: You're good now.

11 MR. SCHWARTZ: -- look at the monitor to make sure --

12 MS. HOLTHUS: You're good now.

13 MR. SCHWARTZ: -- I can see the same things he can see?

14 MS. HOLTHUS: It's okay now, Ryan. I moved it up.

15 THE COURT: Okay.

16 MR. SCHWARTZ: That appears that we can see the same  
17 thing.

18 BY MR. SCHWARTZ:

19 Q All right, Officer. Last question. Were any of  
20 these items that I'm referring to not the ones in the bushes?

21 A No.

22 Q Were any of these not taken off of Mr. Monay-Pina's  
23 person?

24 A I believe all those items, except for the ones you  
25 mentioned in the bush, were taken off his person.

1 Q Thank you.

2 MR. SCHWARTZ: No further questions at this time, Your  
3 Honor.

4 THE COURT: Okay. Mr. Gill?

5 MR. GILL: Thanks, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. GILL:

8 Q Now, Officer Spurling, you testified that you first  
9 got the call and then responded, and the first thing you did  
10 was tell -- and I believe it was your partner -- that you were  
11 hearing screaming; is that correct?

12 A Yes, sir.

13 Q And was it male voices, female voices? What was the  
14 hearing -- or the screaming that you were hearing?

15 A Just high-pitched screaming, like somebody was in  
16 pain.

17 Q Okay. You -- could you tell if it was a male or  
18 female voice?

19 A No, sir.

20 Q But you could hear it from the 504 Brush?

21 A Yes, sir.

22 Q And then you said that you walked kind of towards  
23 that, and I'll find the -- if you can give me just one second?

24 MR. GILL: Court's indulgence, Your Honor.

25 BY MR. GILL:

1 Q Okay. I suppose we can use the overhead. This is  
2 State's 93. So you see 504 Brush is labeled there, correct?

3 A Yes, sir.

4 Q And then there's a car -- truck there with a shadow  
5 of a light pole is what that looks like, correct?

6 A Yes, sir.

7 Q Is that approximately where you parked your car?

8 A Yes. I believe I parked right in front of the  
9 driveway.

10 Q Okay. So you do see the driveway there, and you  
11 guys pull up. Are you driving the car?

12 A Yes, sir.

13 Q And who is it that's with you?

14 A Officer Ivan Duron.

15 Q Okay. The gentleman who popped in before you?

16 A Yes, sir.

17 Q And you hear screaming, and you tell him I'm going  
18 to walk up or you just start walking up?

19 A No. Well, we walked to the fence, which was closed.

20 Q Okay. And so -- and I don't mean to interrupt you,  
21 but this -- there's a fence on the sidewalk.

22 A Yes, sir. It's a chain link fence that I believe  
23 roles open and closed to cover the driveway.

24 Q Okay. So you walked up to the fence.

25 A Yeah. We couldn't open it, so we jumped it.



1 Q Okay. And how high was that fence?

2 A If I were to guesstimate, about 3 and a half, 4  
3 feet, maybe.

4 Q So standard chain link?

5 A Yes, sir.

6 Q And then where'd you go?

7 A We walked -- this -- the gray vehicle that's parked  
8 here in the dirt, it actually, I believe, an SUV or a van.

9 Q Okay. That gray vehicle, was it there at the time?

10 A Yes, sir.

11 Q Okay. And then did you walk to that side of the  
12 house?

13 A Yes, sir.

14 Q Being the northwest side?

15 A Yes, sir.

16 Q Because the house kind of sits on an angle?

17 A Yeah.

18 Q So you walked to the northwest side. You go in the  
19 back. You don't see anybody when you go into that back room,  
20 correct, other than the gentleman on the bed?

21 A Correct.

22 Q And did you have an opportunity to speak to him?

23 A No.

24 Q But you -- I'm sorry. I'm just trying to find a  
25 picture of that room. You went inside that room, correct?

1 A Yes, sir.

2 Q Was Duron with you at this time?

3 A Yes, sir.

4 Q Did either of you stay with him or did you both kind  
5 of go in/go out?

6 A Officer Duron stayed with him.

7 Q And then you went out searching, you said, for the  
8 suspects?

9 A Yes, sir.

10 Q Now, when you -- now, I'll get 93 back up.

11 You get to -- you exited in kind of the same wall  
12 that that SUV, correct? Is that where you hopped to go  
13 into -- to get away from this 504 Brush or did you hop the  
14 other wall in the rear?

15 A I -- I jumped the one to -- that I would -- I don't  
16 how to describe it without -- I'll just attempt to draw a line  
17 there for you.

18 Q Yeah.

19 A There's a brown wooden fence that connects this --  
20 this corner. Oh, geez.

21 Q Is the calibration off?

22 A Yeah. It's pretty far off. There's a brown fence  
23 right here, sir.

24 Q Okay. The rear corner of the house?

25 A Yes, sir. I would -- I would call that the

1 northeast for argument's sake.

2 Q Yeah.

3 A Maybe.

4 Q North. North tip?

5 A North. Sure. And I was going to originally jump  
6 that fence to check the back yard and make sure nobody was in  
7 it, but I didn't think it could support my weight at the time.  
8 I was a little bit heavier, so I ended up jumping that block  
9 wall.

10 Q Okay. And when you say "that block wall", same  
11 block wall where the fence is?

12 A Correct.

13 Q Okay. And how high is that wall?

14 A Maybe six feet on my side and maybe like four feet  
15 or four and a half feet on the actual back side of the  
16 business.

17 Q Okay. So you're going up and then not as high --  
18 not as far down on the other side?

19 A Yes, sir.

20 Q And is it from there that you looked into 510  
21 Brush -- what ends up being 510 Brush?

22 A Yeah. I -- I remember walking right around over  
23 here.

24 Q So your testimony is it's four feet on that side,  
25 and you can kind of see over it?

1           A     Yes, sir.

2           Q     And let's talk specifically.  You get in that yard,  
3 and you've got your knee on one suspect, and then you  
4 testified that you put your flashlight and your gun on another  
5 suspect, right?

6           A     Yes, sir.  My weapon-mounted flashlight.

7           Q     I'm sorry.  Your -- you have both, I think you  
8 testified.  You had the weapon -- or the flashlight on the  
9 weapon?

10          A     Correct.  The one that's mounted to my flash -- to  
11 my handgun --

12          Q     Right.

13          A     -- you flip the switch on.

14          Q     So when you said my flashlight, it's one action?

15          A     Yes, sir.

16          Q     And that was someone under the shed, correct?

17          A     Yes, sir.

18          Q     Now, you stated that you almost fired, but you  
19 didn't, obviously, correct?

20          A     Yes, sir.

21          Q     And how tall is that?  And I'm trying to find a good  
22 picture of it, but there's -- that shed has a little bit of  
23 a -- it's raised off the ground, correct?

24          A     Yes, sir.

25          Q     And how high?  I mean what's the width -- what's the

1 distance between the ground and the bottom of that shed? And  
2 I'll try and find --

3 A I -- I would guesstimate maybe 2, 2 and a half, 3 at  
4 the most --

5 Q Feet?

6 A -- raise -- raised off -- yes, sir.

7 Q Okay.

8 MR. GILL: Court's indulgence.

9 BY MR. GILL:

10 Q And this is State's 61. And that kind of depicts  
11 what you're talking about, correct?

12 A Yes, sir.

13 Q Now, I don't know if we were entirely clear. When  
14 you were -- when you had your knee on the other suspect, and  
15 you were pointing your flashlight and gun this way, where was  
16 that second suspect?

17 A Underneath the center of that shed.

18 Q Okay. So he's in the middle, and I think you did  
19 try and draw -- and maybe Mr. Schwartz had moved this over,  
20 but kind of center on every angle, no matter which way you  
21 look at it? He's just smack in the center?

22 A Pretty close. Yes, sir.

23 Q Okay. And you can see him -- at least you can see  
24 his arms, right?

25 A Yes, sir.

1 Q You can see his hands?

2 A For the most part, yes, sir.

3 Q Okay. Or lack of hands at some point, correct?

4 A Yes, sir.

5 Q And then -- and you eventually apprehend him, right?

6 A Yes, sir.

7 Q So he kind of had to do an Army crawl to get out of  
8 there?

9 A Yes, sir.

10 Q And you could, at that point, at least see his  
11 hands?

12 A Yes, sir.

13 Q So after you apprehend him, you took the guys out.  
14 You did a what you call a show-up or at least you were there  
15 when they did they show-up --

16 A Yes, sir.

17 Q -- correct? Then you went back and looked at the  
18 back yard, correct?

19 A No, sir.

20 Q When was it that you went back to check out the back  
21 yard? At least the items in the back yard?

22 A Immediately after passing them off to the officers  
23 in the front yard.

24 Q Okay. So you didn't really stick around. You said  
25 here, and then you went back?

1           A     Correct. It took a few minutes for the show-up to  
2 actually have it.

3           Q     Okay. But you didn't stick around for that?

4           A     I did. Yes, sir.

5           Q     Okay. And then right after that you went back?

6           A     No, sir. Well, I'm confused. What was your  
7 question?

8           Q     I'm just trying to get a time frame of how long you  
9 were out in the front yard before you returned to the back.

10          A     Okay. Yeah. So we ended up bringing them to the  
11 front fence, which you had to -- we had to get the homeowners,  
12 I believe, to open the side gate so we could get the suspects  
13 out.

14          Q     And that's at 510 Brush, right? The home depicted  
15 in the southern portion of this overhead?

16          A     Yes, sir.

17          Q     Okay.

18          A     Well, I --

19          Q     It's okay.

20          A     -- can only see -- I can only see -- there we go.

21                There's a carport right -- golly, this is off --  
22 right around here, and towards this back opening there's what  
23 I want to call a wrought iron fence, maybe for a third-wheel  
24 parking or something so that they can get back there.

25          Q     And you had to wait for that gate to be open to go

1 out front?

2 A Yes, sir.

3 Q And then once you get out front, how long are you  
4 out there?

5 A Seconds.

6 Q Okay.

7 A Minutes.

8 Q And then it's back to the back yard?

9 A Yes, sir.

10 Q And at some point you made it over to the shed,  
11 correct?

12 A Yes, sir.

13 Q Now, State's 63, you were -- you testified regarding  
14 those, correct?

15 A Yes, sir.

16 Q And those items are the -- their gloves and it looks  
17 like either a hoodie or a beanie or a scarf, mask, whatever  
18 you want to call it, correct?

19 A Yes, sir.

20 Q They were in that position when you came back there?

21 A Yes, sir.

22 Q You hadn't touched them --

23 A No, sir.

24 Q -- nor had you seen anyone touch them?

25 A Correct.



1 Q They were just like that?

2 A Yes, sir.

3 Q And in relation to -- I'm going to see if there's  
4 anything on this. In relation to the shed as we see it --  
5 and, again, as we see it in State's 61, it is essentially  
6 somebody standing at the back of the house looking towards the  
7 back yard, correct, when they take that photo?

8 A Yes, sir.

9 Q So where were those gloves and that scarf in  
10 relation to this photograph? Are they on that back wall or  
11 near that -- nearest to that back wall?

12 A They're on that side nearest to the wall.

13 Q Okay. So the opposite side of what we're looking  
14 at?

15 A Correct.

16 Q Okay. And is that where the suspect came out of  
17 from underneath the shed, that side?

18 A I'm sorry. What -- what -- what are you asking?

19 Q So he crawled out.

20 A Yes, sir.

21 Q Which side of that shed did he crawl out of?

22 A He crawled out to the side that has the overhang.

23 Q Okay. Where it looks maybe a front door?

24 A Yeah.

25 Q Opposite of these little red stairs?

1 A Correct.

2 Q Kind of front where the --

3 A Correct. This --

4 Q -- awning is?

5 A -- direction.

6 Q Okay. Now, you testified kind of towards the end of  
7 your questioning with Mr. Schwartz regarding these replica  
8 guns. Do you recall that testimony?

9 A Yes, sir.

10 Q And you have eight and a half years of training and  
11 experience with firearms, correct?

12 A Yes, sir.

13 Q Part of your training at Metro is obviously  
14 firearms. You carry one.

15 A Yes, sir.

16 Q And it's not uncommon or out of the realm of  
17 possibilities for you to be able to look at a firearm and tell  
18 the caliber, correct?

19 A Sometimes. Yes, sir.

20 Q I mean, you know, you know what a .9 is and a .45 is  
21 generally?

22 A Yes, sir.

23 Q And you were able to -- and I believe he showed you  
24 this, and this is 57. Showed you that one, and you were able  
25 to kind of look at it and say that's a replica gun or a BB

1 gun, correct?

2 A Yes, sir.

3 Q And what about it led you to that conclusion?

4 A It's hard to tell in the photo.

5 Q I'll try to zoom it in a little bit. I don't know  
6 if that'll help you, but I'll do my best.

7 A Yes, sir. That little writing right there on the  
8 barrel or I'll try and circle it here.

9 Q Okay. All down the side of that barrel?

10 A Yes, sir. If you shine enough light on it and get  
11 it close enough, you can -- you can read it, and it says  
12 warning, don't point it.

13 Q Okay. So --

14 A It pretty much tells you --

15 Q -- is it common for, say, like, a -- the .9 you  
16 carry, for instance, to have writing down the side of it?

17 A No, sir.

18 Q More common in a replica gun?

19 A Yes, sir.

20 Q And, again, if we say BB gun, are we being  
21 inaccurate?

22 A No, sir.

23 Q And there were two others found, and I'm showing you  
24 State's 68, and I'll zoom out a little bit. You saw those  
25 back in the back yard, as well, correct?

**CERTIFICATE OF ELECTRONIC TRANSMISSION**

The undersigned hereby declares that on September 24, 2018, an electronic copy of the foregoing APPELLANT'S APPENDIX VOLUME III was sent via the master transmission list with the Nevada Supreme Court to the following:

STEPHEN B. WOLFSON  
Clark County District Attorney

ADAM PAUL LAXALT  
Nevada Attorney General

A handwritten signature in black ink, appearing to read 'M Lay', is positioned above a horizontal line.

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